



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

COURT (CHAMBER)

CASE OF BELLET v. FRANCE

(Application no. 23805/94)

JUDGMENT

STRASBOURG

4 December 1995

In the case of Bellet v. France ¹,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A ², as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,

Mr L.-E. PETTITI,

Mr B. WALSH,

Mr C. RUSSO,

Mr J. DE MEYER,

Mr R. PEKKANEN,

Mr J. MAKARCZYK,

Mr D. GOTCHEV,

Mr P. JAMBREK,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 4 September and 20 November 1995,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") and by the French Government ("the Government") on 1 March and 20 April 1995, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 23805/94) against the French Republic lodged with the Commission under Article 25 (art. 25) by a French national, Mr Daniel Bellet, on 24 March 1994.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby France recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by

¹ The case is numbered 21/1995/527/613. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission

² Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

the respondent State of its obligations under Article 6 para. 1 (art. 6-1) of the Convention.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30).

3. The Chamber to be constituted included ex officio Mr L.-E. Pettiti, the elected judge of French nationality (Article 43 (art. 43) of the Convention), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 para. 4 (b)). On 9 May 1995, in the presence of the Registrar, Mr R. Ryssdal, the President of the Court, drew by lot the names of the other seven members, namely Mr B. Walsh, Mr C. Russo, Mr J. De Meyer, Mr R. Pekkanen, Mr J. Makarczyk, Mr D. Gotchev and Mr P. Jambrek (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43).

4. As President of the Chamber (Rule 21 para. 6), Mr Bernhardt, acting through the Registrar, consulted the Agent of the Government, the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant's memorial on 4 July 1995 and the Government's memorial on 11 July. On 26 July the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

5. In the meantime, on 11 July 1995, the Commission had produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

6. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 31 August 1995. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mrs M. MERLIN-DESMARTIS, administrative court judge
on secondment to the Legal Affairs Department,
Ministry of Foreign Affairs, *Agent*,

Mrs C. NICOLETIS, magistrat, on secondment to the
Civil Affairs Department, Ministry of Justice,

Mrs S. CECCALDI, Head of the General Civil Law Office,
Civil Affairs Department, Ministry of Justice, *Counsel*;

(b) for the Commission

Mr J.-C. GEUS, *Delegate*;

(c) for the applicant

Mrs S. HUBIN-PAUGAM, advocate, *Counsel*.

The Court heard addresses by Mr Geus, Mrs Hubin-Paugam and Mrs Merlin-Desmartis.

AS TO THE FACTS

I. CIRCUMSTANCES OF THE CASE

7. Mr Daniel Bellet, a French national born in 1944, is a local government officer of the City of Paris and is on extended sick-leave. As a sufferer from haemophilia A, the symptoms of which first appeared in 1948, he has frequently had blood transfusions, and in 1983 and 1984 numerous blood products were administered to him. On 26 October 1983 he was diagnosed as having been infected with the human immunodeficiency virus (HIV).

A. The applications for compensation

1. The application to the Administrative Court

8. On 19 May 1990 the applicant applied to the Paris Administrative Court seeking damages from the State on account of his infection.

9. In a judgment of 8 April 1992 the court dismissed his action on the ground that he had been shown to be HIV-positive outside the period of the State's liability for negligent failure to act, which began on 12 March 1985, when the ministerial authorities were fully apprised that the blood products prepared from groups of donors in Paris were dangerous.

2. The application to the ordinary civil courts

10. Concurrently, in December 1991, Mr Bellet made an urgent application to the President of the Paris tribunal de grand instance for an interim order that the National Blood Transfusion Foundation ("the FNTS"), an organisation created by the merger of the National Blood Transfusion Centre and the National Blood Transfusion Institute, should pay him the sum of 3,000,000 French francs (FRF) in respect of damage sustained.

On 13 January 1992 the judge ordered an expert opinion to be prepared. In a report of 13 April the medical expert concluded that the applicant's infection had very probably originated in the blood products supplied by the FNTS.

11. On 19 May 1992 counsel for the applicant, without informing the court of the claim lodged with the Compensation Fund (see paragraph 15 below), brought a second action against the FNTS for the sum of FRF 3,000,000.

12. In a judgment of 14 September 1992 the court held: "The HIV virus contracted by the plaintiff can only have been caused by the massive administration of blood products supplied by the defendant." The FNTS

was consequently ordered to pay the applicant compensation in the amount of FRF 1,500,000, and the court ruled that its decision should be enforceable immediately.

On 16 October 1992 the FNTS, which had learnt of the compensation paid by the Fund, successfully applied for a stay of execution.

13. On an appeal by the FNTS and a cross-appeal by the applicant, who had joined the Fund to the proceedings by third-party notice, the Paris Court of Appeal set aside the judgment of the court below and held that Mr Bellet's application to have the sum increased to FRF 3,000,000 was inadmissible. In its judgment of 12 March 1993 it gave the following reasoning:

"... section 47(III) [of the Act of 31 December 1991 - see paragraph 21 below] lays down that the Fund shall provide full compensation for damage resulting from infection.

While the obligation on the Fund and the one that may arise from the FNTS's liability have different legal foundations, they have the same purpose, namely full compensation for damage sustained by victims.

Victims who have submitted a claim for compensation to the Fund may also bring legal proceedings to obtain compensation for the damage they have sustained, but once they have accepted the offer made by the Fund, they cease to have an interest enabling them to bring proceedings as they have been fully compensated.

The specific damage caused by infection and compensated for by the Fund is in the nature of pain and suffering, aesthetic damage and loss of amenity, not an economic loss. In the phase during which the victim is HIV-positive it includes the distress caused by reduced life expectancy, uncertainty as to the future, suffering and the fear of suffering, disruption of family and social life and damage relating to intimacy. In the phase after AIDS has developed, it includes suffering, which is greater, aesthetic damage and loss of amenity.

In the instant case Mr Bellet is suing the FNTS for compensation for this exceptionally serious damage and as he has been fully compensated by the Fund, he cannot claim additional compensation."

14. On 26 January 1994 the Court of Cassation (Second Civil Division) dismissed an appeal on points of law by Mr Bellet, who had argued that he had no access to a court for the purposes of Article 6 para. 1 (art. 6-1) of the Convention. It gave the following reasons for its judgment:

"The Court of Appeal, having found that the damage compensated for by the Fund was the same as that for which compensation was being sought from the FNTS and that the acceptance of the offer of compensation for the specific damage resulting from infection that had been made to him by the Fund fully compensated Mr Bellet, rightly concluded - on that sole ground and without infringing Article 6 para. 1 (art. 6-1) of the European Convention on Human Rights as the victim had been able to apply to a court to have compensation assessed for his damage - that Mr Bellet's action was inadmissible as he lacked any interest enabling him to bring proceedings."

B. The claim submitted to the Compensation Fund

15. On 9 April 1992, while his civil action was being prepared for trial and without acting through his lawyer, the applicant had submitted a claim to the Compensation Fund for Transfusion Patients and Haemophiliacs that had been set up by the Act of 31 December 1991 (see paragraph 21 below). He did not inform the Fund of the action he had brought in the Paris tribunal de grande instance.

16. On 21 May the Fund offered him as "HIV-infection compensation" the sum of FRF 993,750 payable in three instalments over a period of two years, from which FRF 100,000 paid out by the private haemophiliacs' solidarity fund in 1989 was to be deducted. In addition, the applicant was to receive the sum of FRF 331,250 as soon as he developed AIDS (acquired immunodeficiency syndrome). The compensation offer contained the following information:

"At its sitting on 19 May 1992 the Compensation Board decided to make you an offer of compensation corresponding to the whole of your specific damage resulting from infection, that is to say the current and future damage resulting from HIV infection, and thereafter, if applicable, from the symptoms of AIDS.

On the basis of the average compensation awarded to date by the ordinary courts and the administrative courts and of the age at which you have shown that you were infected, the Board has determined the manner of compensation it is offering you as follows.

...

If you accept this offer, you should do so by registered letter with recorded delivery ...

Naturally, the award of this compensation does not prevent you from claiming other compensation in respect of pecuniary damage you may sustain or already have sustained, provided, of course, that you can furnish proof of it.

If this offer is not acceptable to you, you may bring legal proceedings in the Paris Court of Appeal as provided in section 47(VIII) of the Act of 31 December 1991 ..."

17. Following acceptance of the offer by the applicant on 7 July 1992, the Fund sent him an initial instalment of FRF 297,920 on 16 July. II. The compensation scheme

A. Legislative history of the Act of 31 December 1991

1. National Assembly

18. In a report of 5 December 1991 that he laid before the National Assembly on behalf of the Cultural, Family and Social Affairs Committee,

Mr Boulard, MP, indicated that a victim could seek better compensation after accepting an offer from the Fund:

"That the compensation procedure is quite distinct is confirmed by the fact that it is possible for victims or their heirs to continue civil or criminal actions they may have brought in the administrative courts or even to institute them where they did not do so when submitting a claim to the Fund. Compensation by the Fund is therefore not a 'settlement' which precludes judicial remedies, unlike the aid granted by the public and private funds set up in 1989, but a compensation scheme based on the concept of risk and independent of any attempt to determine fault.

A victim must, however, inform the Fund and the court of the various actions brought. This provision is necessary because the Fund is subrogated to the victim's rights against the person liable for the damage or against those who are, for one reason or another, under a duty to provide compensation."

19. Following the Court of Cassation's judgment of 26 January 1994 in the present case, Mr Mazeaud, MP, proposed an interpretative Act in order to remove the drafting ambiguities which had given rise to that judgment. He considered that the court had interpreted the Act of 31 December 1991 in a way that achieved a result opposite to the one sought by the legislature. He consequently invited Parliament to amend section 47 of the Act of 31 December 1991 and particularly to delete in subsection (III) of that section the word "full" and insert at the beginning of subsection (V) a paragraph worded as follows:

"Acceptance of the compensation offer shall not preclude any concurrent or subsequent court proceedings in respect of the same damage."

In a report of 2 July 1994 on Mr Mazeaud's bill on behalf of the National Assembly's Cultural, Family and Social Affairs Committee, Mr Leccia, MP, supported the bill in substance and proposed a new text, adopted by the committee, which read as follows:

"Bill to amend the rules on compensation for transfusion patients and haemophiliacs infected with the AIDS virus

There shall be added after subsection (V) of section 47 of Law no. 91-1406 of 31 December 1991 making miscellaneous social-welfare provisions a new subsection (V bis) worded as follows:

'Victims who have already been compensated by the date of publication of Law no. ... of ... shall retain, notwithstanding any court decision that has become final, the right to apply to the Paris Court of Appeal for a fresh assessment of the damage for which they have already been compensated.'

'In respect of victims who have not been compensated by the date of publication of Law no. ... of ..., acceptance of the offer of compensation shall entail abandonment of any concurrent or subsequent court proceedings in respect of the same damage. Where a victim applies to the Paris Court of Appeal to challenge the amount of the offer made him by the Fund, he shall immediately receive from the Fund an advance amounting to at least four-fifths of the offer made.' "

This bill is still being considered by the National Assembly.

2. Senate

20. In the opinion of 12 December 1991 that was submitted to the Senate on the bill then before it on behalf of the Committee on the Constitution, Legislation, Universal Suffrage, Regulations and General Administration, Senator Thyraud wrote, *inter alia*:

"The bill is a response to an exceptional situation. The arrangements it proposes may be regarded as being likewise exceptional. Independently of the current investigation into the apportionment of liability, including criminal liability, the community must afford the best redress it can for the consequences of such a tragedy.

...

As indicated in the introduction to this commentary, the intention of those who have framed the bill was to set up a fully independent scheme that could not be interpreted as in any way validating recent trends in the case-law on this matter. Simultaneously, victims' possibility of resorting to the procedures of ordinary law, whether in the civil or administrative courts or in the criminal courts, has been preserved.

However, the bill's wording is not fully explicit on this subject, and the text before us is silent as to the possible effects of earlier court decisions on the Compensation Board's decisions, and also as to the effects of the Board's decisions on subsequent judgments of other courts. The bill does not, for example, make it possible to determine whether or not the Board's decisions imply recognition of liability or a presumption of guilt. Similarly, it does not state whether the Board is bound by earlier decisions of the courts."

B. Legislation

21. Law no. 91-1406 of 31 December 1991 making miscellaneous social-welfare provisions set up a special scheme for the compensation of haemophiliacs and transfusion patients who had been infected following injections of blood products. The distinctive feature of the system, which is based on solidarity, is that it enables reparation to be made for the consequences of HIV infection independently of the investigation of liability. Section 47 provides:

"I. Victims of damage resulting from infection with the human immunodeficiency virus caused by transfusion of blood products or injection of blood derivatives carried out within the territory of the French Republic shall be compensated in the manner set out below.

II. No final settlement clause whereby a victim undertakes not to pursue any proceedings or action against any third party in respect of his infection shall be a bar to the procedure herein provided for.

III. Full compensation for the damage defined in subsection (I) shall be provided by a Compensation Fund, having legal personality, presided over by a serving or retired divisional president or judge of the Court of Cassation and administered by a compensation board.

A council whose members shall include representatives of the associations concerned shall be established to assist the chairman of the Fund.

IV. In their claims for compensation, victims or their heirs shall provide proof of their infection with the human immunodeficiency virus and of the transfusion of blood products or injections of blood derivatives.

...

Victims or their heirs shall communicate to the Fund all the information in their possession. Within three months of the receipt of a claim, a period which may be extended at the request of the victim or his heirs, the Fund shall consider whether the conditions for payment of compensation have been fulfilled. It shall investigate the circumstances under which the victim was infected and make any necessary inquiries, which may not be resisted on grounds of professional secrecy.

...

V. The Fund shall be required to make an offer of compensation to any victim referred to in subsection (I) within a time-limit laid down by decree, which may not exceed six months from the day on which the Fund receives full proof of the damage

...

VI. The victim shall inform the Fund of any judicial proceedings pending. If legal proceedings are brought, the victim shall inform the court of his application to the Fund.

VII. ...

VIII. The victim shall not be entitled to take legal action against the Compensation Fund unless his claim for compensation has been dismissed, no offer has been made to him within the time-limit referred to in the first paragraph of subsection (V), or he has not accepted an offer made to him. Proceedings shall be brought in the Paris Court of Appeal.

IX. The Fund shall be subrogated, for an amount no higher than the sums paid out, to the victim's rights against the person liable for the damage and against persons required, for whatever reason, to make full or partial reparation for that damage, within the limits of those persons' liabilities. However, the Fund may institute proceedings on the basis of that subrogation only where the damage is attributable to negligence.

The Fund may intervene in proceedings in the criminal courts, even if it does not do so until the appeal stage, where the victim or his heirs have claimed compensation as a civil party in proceedings pending against the person or persons responsible for the

damage defined in subsection (I). In such cases it shall be considered a full party to the proceedings and may have recourse to all the remedies available in law.

If the acts which caused the damage have given rise to criminal proceedings, the civil court shall not be required to defer its decision until there has been a final decision by the criminal court.

X. Unless otherwise provided, the provisions governing the implementation of this section shall be laid down in a decree issued after consultation of the Conseil d'Etat.

XI. ...

XII. The Compensation Fund's sources of revenue shall be specified in a subsequent Act.

XIII. ...

XIV. ..."

C. The position of the Conseil d'Etat

1. The judgments of 9 April 1993

22. In three judgments of 9 April 1993 the Judicial Assembly of the Conseil d'Etat ruled that "the State is wholly liable in respect of persons infected with the human immunodeficiency virus following a transfusion of non-heat-treated blood products between 22 November 1984 and 20 October 1985".

2. The opinion of 15 October 1993

23. At the request of the Paris Administrative Court in respect of the Vallée case, on which the European Court had to rule (judgment of 26 April 1994, Series A no. 289-A), the Conseil d'Etat gave its view on the consequences of bringing concurrent proceedings in the administrative courts and before the Compensation Fund. Sitting in its judicial capacity on 15 October 1993, it gave the following opinion:

"1. The decree of 12 July 1993 ..., which is applicable to cases pending at the date of its publication, ... provides a solution to the problem raised [by the Administrative Court].

2. ... An administrative court asked to make such an award should raise of its own motion the fact that the damage complained of has already been wholly or partly indemnified by a third party, when the evidence shows this to be the case, even if that party does not file submissions - on the basis of its subrogation to the rights of the victim - seeking reimbursement of the amounts it has paid as compensation for the damage suffered by the latter.

Accordingly, an administrative court to which a claim for compensation for damage suffered as a result of infection with the human immunodeficiency virus has been submitted must, when it has been informed by one of the parties that the victim or his heirs have already received compensation for the damage complained of, deduct of its own motion such compensation from the amount payable in respect of the damage.

...

Where the sum offered by the Fund has been accepted by the claimants, ... it should be held that all or part of the damage complained of has been actually and finally compensated for by the Fund. Consequently, it is incumbent on an administrative court which has been informed that this is the case to deduct, of its own motion, the amount thus owed by the Fund from the compensation which it orders the public authority liable for the damage to pay to the victim."

III. RELEVANT PROCEDURAL LAW

24. Decree no. 93-906 of 12 July 1993 adds Articles 15-20 to Decree no. 92-759 of 31 July 1992 on proceedings brought in the Paris Court of Appeal under section 47 of Law no. 91-1406 of 31 December 1991 (see paragraph 21 above). It applies to all proceedings pending at the date of its publication, 17 July 1993.

"Part II

Provisions relating to actions seeking to establish liability brought against those responsible for the damage defined in subsection (I) of section 47 of the aforementioned Act of 31 December 1991

Article 15

In order to bring the action by subrogation provided for in subsection (IX) of section 47 of the aforementioned Act of 31 December 1991, the Fund may intervene in proceedings in any of the administrative or ordinary courts, even if it does not do so until the appeal stage. In such cases it shall be considered a full party to the proceedings and may have recourse to all the remedies available in law.

Article 16

The registries of the administrative and ordinary courts shall send the Fund by registered post with recorded delivery a copy of the procedural documents submitting to those courts any initial or additional claim for compensation of the damage defined in subsection (I) of section 47 of the aforementioned Act of 31 December 1991.

Article 17

Within one month of receipt of the letter referred to in Article 16, the Fund shall inform the president of the relevant court by ordinary mail whether or not it has received a claim for compensation with the same purpose and, if so, what stage the

procedure has reached. It shall also state whether or not it intends to intervene in the proceedings.

Where the victim has accepted the offer made by the Fund, the latter shall send the president of the court a copy of the documents in which the offer was made and by which it was accepted. The Fund shall, where relevant, indicate the stage reached in proceedings instituted in the Paris Court of Appeal under the provisions of Part I of this decree and forward any judgment delivered by that court.

The registry shall notify the parties of the information communicated by the Fund.

Article 18

The registry shall send the Fund copies of the decisions given at first instance and, where relevant, on appeal in proceedings in which the Fund has not intervened.

Article 19

...

Article 20

The provisions of Articles 15 to 19 shall be applicable to cases pending on the date of entry into force of [this] decree ..."

PROCEEDINGS BEFORE THE COMMISSION

25. Mr Bellet applied to the Commission on 24 March 1994. He complained that he had not had access to a court, for the purposes of Article 6 para. 1 (art. 6-1) of the Convention, to assert his right to compensation.

26. The Commission declared the application (no. 23805/94) admissible on 20 October 1994. In its report of 19 January 1995 (Article 31) (art. 31), it expressed the opinion by twenty-four votes to two that there had been a violation of Article 6 para. 1 (art. 6-1). The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment ³.

³ Note by the Registrar: for practical reasons this annex will appear not only with the printed version of the judgment (volume 333-B of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

FINAL SUBMISSIONS TO THE COURT

27. In their memorial the Government asked the Court to "dismiss Mr Bellet's application".

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 (art. 6-1) OF THE CONVENTION

28. Mr Bellet argued that the Paris Court of Appeal's judgment of 12 March 1993, in which the court ruled that his action was inadmissible and which was upheld by the Court of Cassation on 26 January 1994, had deprived him of his right of access to a court, as secured in Article 6 para. 1 (art. 6-1) of the Convention, which provides:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing by [a] ... tribunal ..."

Although he had accepted the offer from the Fund as he was in urgent need of money before his imminent death, which he knew to be inevitable, the applicant said that he had thought he was entitled to sue the party responsible for his infection. He had had no reason to doubt the outcome of his court action, having regard in particular to the very terms of section 47(IX) of the Act of 31 December 1991 providing for the subrogation of the Fund and to the legislative history of the Act showing unanimous agreement that acceptance of an offer from the Fund had no effect on the continuation of court actions. Furthermore, the standard receipt form which the Fund asked each victim to sign included the following words: "I have taken note of the provisions of section 47(VI) of the Act of 31 December 1991, which require me to inform the Fund of any pending or future court action."

Furthermore, it could not be claimed that the Court of Appeal had ruled both on admissibility and on the merits, for if that had been the case, it would have studied the expert report he had filed.

Lastly, acceptance of the offer did not amount to a settlement, and if it did, it was a forced one, concluded under duress.

29. Before the Court, the Government advanced somewhat different arguments from those put forward before the Commission, since they acknowledged that acceptance of the offer did not amount to a settlement. Mr Bellet, they said, had had free access to a court with full jurisdiction.

Quite apart from criminal proceedings to which he could have been a civil party, three types of action for damages had been available to him.

Firstly, an action in administrative law: in this instance, the Administrative Court had considered the case and dismissed the claim in a duly reasoned decision. Secondly, an ordinary civil-law action for damages: on appeal, the applicant's case had been ruled inadmissible for want of any interest enabling him to bring proceedings, a decision affirmed by the Court of Cassation; such a decision, taken, according to the Government, after the court had considered the merits of the case both in fact and in law, had not deprived the applicant of his right to an effective remedy. Lastly, the special appeal to the Paris Court of Appeal, provided for in the 1991 Act: as it required neither of the usual two different legal representatives, this procedure was quick and free.

In the instant case, unlike the one under consideration in the *de Geouffre de la Pradelle v. France* judgment of 16 December 1992 (Series A no. 253-B), the inadmissibility was based on the very wording of the Act, the expression "full compensation". That interpretation accorded with the Court of Cassation's case-law. Admittedly, the Conseil d'Etat in its opinion of 15 October 1993 had held otherwise. This inconsistency was explained by the fact that the Act was silent as to whether a victim, once he had accepted the Fund's offer, could sue in the courts for additional compensation in respect of the same damage. As the Act was silent, resort had to be had to further interpretation or to the legislative history. Both supreme courts had construed the Act in the light of their settled case-law and their own techniques of interpretation. And the parliamentary proceedings were not so clear.

However that might be, it was not for the Court of Human Rights to rule on the construction of French law, or else it would be setting itself up as a court of last instance. At all events, the applicant could not have been misled as to the consequences of his acceptance on 7 July 1992 of the Fund's offer by events after that date, such as the aforementioned opinion of the Conseil d'Etat.

30. In its report the Commission expressed the opinion that there had been a breach of Article 6 para. 1 (art. 6-1) of the Convention on the ground that if there had been a settlement, it had been vitiated by an inevitable mistake as to the consequences of accepting the Fund's offer and the applicant's consent had not been freely given.

The Delegate of the Commission submitted that it followed from section 47(VIII) of the Act of 31 December 1991 that the special appeal to the Paris Court of Appeal was not available to anyone who had accepted the Compensation Fund's offer; in a case like Mr Bellet's such an action would be manifestly inadmissible. On the other hand, it was clear from the legislative history and the provisions proposed following the Court of Cassation's judgment in the present case (see paragraph 19 above) that the legislature had wanted victims to retain the possibility of resorting to the procedures of ordinary law after acceptance of an offer from the Fund; its

unvarying position showed that if AIDS-infected haemophiliacs and transfusion patients were to have been prevented from having access to the courts, an express legislative provision would have been necessary. That was why the National Assembly's Cultural, Family and Social Affairs Committee had considered it essential to add to the 1991 Act a provision of that kind. Moreover, the last sentence of Article 4 of the statutes of the Compensation Fund clearly meant that acceptance of the Fund's offer did not prevent a compensated victim from bringing court actions, whether civil or criminal.

31. Since establishing the principle of the right of access to a court in its judgment of 21 February 1975 in the case of *Golder v. the United Kingdom* (Series A no. 18, p. 18, para. 36) the Court has clarified its scope in the following terms:

"(a) The right of access to the courts secured by Article 6 para. 1 (art. 6-1) is not absolute but may be subject to limitations; these are permitted by implication since the right of access 'by its very nature calls for regulation by the State, regulation which may vary in time and in place according to the needs and resources of the community and of individuals'.

(b) In laying down such regulation, the Contracting States enjoy a certain margin of appreciation, but the final decision as to observance of the Convention's requirements rests with the Court. It must be satisfied that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired.

(c) Furthermore, a limitation will not be compatible with Article 6 para. 1 (art. 6-1) if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved."

(*Fayed v. the United Kingdom* judgment of 21 September 1994, Series A no. 294-B, pp. 49-50, para. 65, citing the *Lithgow and Others v. the United Kingdom* judgment of 8 July 1986, Series A no. 102, p. 71, para. 194, and the *Ashingdane v. the United Kingdom* judgment of 28 May 1985, Series A no. 93, pp. 24-25, para. 57)

32. Without a doubt, French law afforded the applicant a possibility of bringing legal proceedings; he availed himself of it by suing the National Blood Transfusion Foundation ("the FNTS") in the Paris tribunal de grande instance for damages in respect of his infection with HIV. Having subsequently submitted a compensation claim to the Fund, he accepted the Fund's offers in respect of his specific damage resulting from infection and pursued his legal action against the FNTS by a cross-appeal, joining the Compensation Fund to the proceedings by third-party notice (see paragraph 13 above). The Court of Appeal held the action to be inadmissible.

It is true that, as the Government pointed out, the applicant did not make use of the special appeal to the Paris Court of Appeal provided for in section 47 (VIII) of the Act of 31 December 1991 (see paragraph 21 above).

However, even though, after acceptance of an offer from the Compensation Fund, the Court of Appeal has allowed several appeals of this kind confined to certain heads of damage, those cases cannot be taken into account seeing that they are both very recent and controversial.

33. The Court points out that the French State's establishment of a special scheme for the compensation of haemophiliacs and transfusion patients infected with AIDS displays a remarkable spirit of solidarity (see paragraphs 18-21 above).

34. In the instant case, however, it is not for the Court to assess France's compensation system as such. It will therefore confine itself as far as possible to examining the specific issues before it (see, among many other authorities, the *Philis v. Greece* judgment of 27 August 1991, Series A no. 209, p. 21, para. 61). While it is not empowered to substitute its own assessment for that of the national authorities as regards the application of domestic law, it is its duty to rule at last instance on compliance with the requirements of the Convention. To this end, it must nevertheless consider the provisions of the Act of 31 December 1991 in so far as the restrictions on the right of access stem from the procedures for making use of the remedies open to Mr Bellet.

35. The Court does not have to examine whether the applicant's acceptance of the Compensation Fund's offer amounted to a settlement or not, seeing that the Government no longer relied on that argument. It remains to be determined whether in ruling that the applicant's action was inadmissible, the Court of Appeal infringed his right of access to a court.

36. The fact of having access to domestic remedies, only to be told that one's actions are barred by operation of law does not always satisfy the requirements of Article 6 para. 1 (art. 6-1). The degree of access afforded by the national legislation must also be sufficient to secure the individual's "right to a court", having regard to the principle of the rule of law in a democratic society. For the right of access to be effective, an individual must have a clear, practical opportunity to challenge an act that is an interference with his rights (see the *de Geouffre de la Pradelle* judgment previously cited, p. 43, para. 34).

37. In the instant case the Court notes that the applicant could reasonably believe that he was entitled to begin or continue actions in parallel with his application to the Compensation Fund, even after accepting the Fund's offer.

Having regard to the wording of section 47(VIII) of the Act, Mr Bellet cannot be blamed for having referred to the legislature's intention as disclosed by the parliamentary proceedings. These show that the legislature did indeed want victims, even if they had already been compensated, to retain their standing to take proceedings. In the light of the Act and of the legislative history, Mr Bellet, who had accepted the compensation in good

faith, could not expect that the Court of Appeal would declare his action inadmissible.

All in all, the system was not sufficiently clear or sufficiently attended by safeguards to prevent a misunderstanding as to the procedures for making use of the available remedies and the restrictions stemming from the simultaneous use of them.

38. Having regard to all the circumstances of the case, the Court finds that the applicant did not have a practical, effective right of access to the courts in the proceedings before the Paris Court of Appeal. There has accordingly been a breach of Article 6 para. 1 (art. 6-1).

II. APPLICATION OF ARTICLE 50 (art. 50) OF THE CONVENTION

39. Under Article 50 (art. 50) of the Convention,

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

40. Under the head of pecuniary damage, the applicant sought FRF 1,129,550 in all. One million francs corresponded to the difference between the sum actually received from the Fund and the two million he would have been able to receive from the Court of Appeal if it had addressed the merits of the issue. The remainder (FRF 129,550) represented interest at the statutory rate on the additional sum of FRF 500,000 that the Paris tribunal de grande instance had awarded him (see paragraph 12 above), interest from which Mr Bellet could have benefited if the Court of Appeal had complied with Article 6 para. 1 (art. 6-1) of the Convention.

In respect of non-pecuniary damage, the applicant sought FRF 200,000.

41. The Delegate of the Commission considered that inasmuch as the Paris Court of Appeal had set aside the aforementioned judgment in which the applicant was awarded FRF 1,500,000, he should be allowed, in respect of pecuniary damage, the difference between that sum and the one granted by the Compensation Fund, plus interest. He was also in favour of awarding compensation in respect of the alleged non-pecuniary damage.

42. The Government did not oppose the latter claim but said that the compensation due to Mr Bellet on account of the loss of opportunities he had allegedly suffered could not exceed FRF 100,000.

43. The Court considers that on account of the breach found in this judgment, Mr Bellet sustained a loss of opportunities and undeniable non-

pecuniary damage. Taking into account the various factors and making its assessment on an equitable basis as required by Article 50 (art. 50), it awards him FRF 1,000,000.

B. Costs and expenses

44. The applicant also sought FRF 136,390 in respect of costs and expenses incurred in the national courts and before the Convention institutions, that is to say FRF 94,880 for the national proceedings, including FRF 11,860 for his appeal on points of law, and FRF 41,510 for the European proceedings.

45. The Government left the matter to the Court's discretion and the Delegate of the Commission favoured reimbursement of the costs incurred before the Convention institutions.

46. Making its assessment on an equitable basis, the Court awards a total sum of FRF 50,000.

FOR THESE REASONS, THE COURT

1. Holds by eight votes to one that there has been a breach of Article 6 para. 1 (art. 6-1) of the Convention;
2. Holds unanimously that the respondent State is to pay the applicant, within three months, 1,000,000 (one million) French francs for damage and 50,000 (fifty thousand) French francs in respect of costs and expenses;
3. Dismisses unanimously the remainder of the applicant's claims. Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 4 December 1995.

Rudolf BERNHARDT
President

Herbert PETZOLD
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of Rules of Court A, the following separate opinions are annexed to this judgment:

- (a) dissenting opinion of Mr Pettiti;
- (b) concurring opinion of Mr Walsh;
- (c) concurring opinion of Mr Pekkanen and Mr Jambrek.

R. B.

H. P.

DISSENTING OPINION OF JUDGE PETTITI

(Translation)

I have not voted with the majority in favour of holding that there has been a breach of Article 6 (art. 6). That decision may give satisfaction in humanitarian terms but, in my view, it does not do so in terms of the case-law on applying the European Convention. I have nevertheless voted with the majority on the application of Article 50 (art. 50) of the Convention.

The main problem raised by Mr Bellet's application was that of the availability of a court action to assert his objections and rights.

Were there procedures and remedies in France whereby infected haemophiliacs and AIDS sufferers could obtain compensation? On this point the judgment delivered by the Chamber is contrary to the European Court of Human Rights' case-law (the Golder, Deweer, Ashingdane, Airey, Powell and Rayner, Fayed and British-American Tobacco Company Ltd series of judgments).

The judgment even uses the wording of the Golder and Ashingdane judgments (see paragraph 36) in order to provide reasoning for the opposite result. In Ashingdane it was held that there was no breach.

The Chamber argued mainly on the basis of the concept of no access to the courts, whereas the question to be determined is whether there may in this particular case have been either no actions and remedies or else ineffective remedies for the purposes of Article 6 (art. 6) of the Convention.

On the one hand, the judgment rejects the "surrealistic" reasoning of the Commission: "the applicant in fact had no choice ... assuming that there was a settlement, the applicant did not freely consent to it ... it was tainted with an insurmountable error in the applicant's favour ... [the] consent was fundamentally vitiated". Hypothetical reasoning not in accordance with the facts, but the judgment nevertheless reaches the same conclusion.

On the other hand, the Court notes the Commission's mistake in saying that there was no possible appeal after acceptance of the Compensation Fund's offer but draws no practical inferences from this.

The Court mentions three possible procedures and actions in domestic law - administrative; civil, for damages; and a special appeal to the Paris Court of Appeal - but it considers only the Court of Cassation's judgment upholding the Paris Court of Appeal's judgment on the lack of standing to take proceedings.

AIDS sufferers and haemophiliacs could also take criminal proceedings against the management of the National Blood Transfusion Centre and the prescribing physicians; and even an action against ministers in the Court of Justice of the Republic. Many associations of infected people and infected individuals have used the criminal remedy in the Criminal Court and have obtained convictions and substantial damages.

Of all the Council of Europe member States that have experienced the tragedy of infection, France is the only one to have provided for multiple rights of action: an action against the State for negligence and also against the National Blood Transfusion Centre; an application to the Administrative Court; a civil action against doctors and private transfusion centres; criminal proceedings against doctors and private transfusion centres; proceedings in the Court of Justice of the Republic against ministers and the Prime Minister (the only example in Europe in this field).

Furthermore, provision has been made for lump-sum compensation allowing victims to obtain compensation without having to prove liability and negligence on the part of the State or the National Blood Transfusion Centre, and a solidarity fund has been set up.

A special appeal lies to the Paris Court of Appeal if the offer is refused, and in several cases an appeal has been allowed even after the offer has been accepted and compensation paid.

In the instant case Mr Bellet considered that in the light of the legislative history and the judgment obtained in the tribunal de grande instance against which an appeal was lodged, he had been deprived of a legal action in that the Court of Appeal, upheld by the Court of Cassation, had ruled that the application was inadmissible "for want of any interest enabling proceedings to be brought".

The Court has accepted this argument on grounds different from those advanced by the Commission. The Commission concluded as follows:

"56. ...

In view of the seriousness of the disease contracted by the applicant, on the one hand, and the uncertainty of living long enough to benefit from the compensation fixed by the civil courts, on the other hand, the Commission considers that the applicant in fact had no choice. He cannot therefore be blamed, given the critical and precarious situation regarding his future, for accepting the offer made by the Fund or for failing to object to an arrangement which clearly needed to be concluded as a matter of extreme urgency. The Commission therefore considers that even assuming that there was a settlement, the applicant did not freely consent to it.

57. Moreover, the Commission considers that the applicant could not have known either from the text of the Act or the preparatory documents, and still less from the interpretation given by the Conseil d'Etat, that his acceptance of the Fund's offer would have the consequences drawn by the Court of Appeal and the Court of Cassation.

The Commission notes furthermore that the Fund's offer included the condition that the applicant inform the Fund accordingly should he decide, having accepted the offer, to bring legal proceedings. In the circumstances, the Commission considers that, if indeed there was a settlement, it was tainted with an insurmountable error in the applicant's favour, this error being caused by various institutions rendering the respondent State liable.

58. To conclude, the Commission is of the opinion that, assuming the applicant did waive his right to a fair trial with the guarantees set forth in Article 6 (art. 6) of the Convention, his consent was fundamentally vitiated."

The majority of the Chamber appear to have followed the argument put forward at the hearing by the Delegate of the Commission, who on the basis of the parliamentary proceedings concerning the Act concluded that Mr Bellet was bound to believe that he had every chance of winning his case against the National Blood Transfusion Foundation in the tribunal de grande instance and in the Court of Appeal, notwithstanding that he had in principle accepted the lump-sum compensation which dispensed him from proving negligence.

The applicant considered that he did not have to bring such actions. The Court has not taken into account the major impact of the solidarity machinery which made it unnecessary for the plaintiff to establish negligence. The quid pro quo for this advantage was a lump-sum settlement which the victim could refuse or challenge.

There was therefore a choice: either act on the basis of liability for negligence or seek lump-sum compensation (State's liability without fault).

Because of his condition the applicant chose to proceed against the National Blood Transfusion Foundation in the civil tribunal de grande instance, in the first place by means of an urgent application for an interim order, without precise grounds but referring to negligence in the application for an advance, and then, in the main proceedings, on 19 May 1992, this time relying on negligent breach of contract, that is to say a different ground. In its judgment of 14 September 1992 the court found in his favour. On an appeal by the National Blood Transfusion Foundation, the case went to the Court of Appeal. The applicant cross-appealed. The Compensation Fund was joined to the proceedings by third-party notice. The parties pleaded on the merits, a fact not referred to in the Court of Appeal's judgment.

Did the law leave open all parallel actions? It seems not, from reading all the legislative provisions.

At the stage of the appeal against the judgment of the tribunal de grande instance, the Paris Court of Appeal learned that the applicant had accepted the offer and received advances from the Compensation Fund.

In the operative provisions of its judgment the Court of Appeal, after holding that it followed from Mr Bellet's acceptance of the offer that he no longer had any interest enabling him to bring proceedings, set aside the judgment of the court below and found against the applicant. The Court of Cassation dismissed an appeal on points of law on 26 January 1994, "the ground of appeal being unfounded".

The Commission and the Court note this dismissal of the case "for want of any interest enabling proceedings to be brought" and infer from it that the

applicant was prevented from bringing his action and therefore from having access to a court.

But access to a court means, according to earlier decisions of the European Court, that judicial remedies must be available, and does not mean that if a plaintiff has chosen the wrong action where several remedies are open to him it follows that he has not had access to a court.

The applicant, who had accepted the Fund's offer by 18 July 1992 at the latest, had available to him the special appeal to the Paris Court of Appeal.

No argument can be based on the date of the judgments given in this connection in favour of other infected individuals. Under the Convention, what matters is whether statutory provision is made for a remedy and not the dates of the earliest decisions applying the provision (see paragraph 32 of the judgment). The uncertainty pinpointed in the *de Geouffre de la Pradelle* case related to the juncture at which the time allowed for appealing began to run and not to the choice of procedure.

It would seem that the Court has taken the view that the applicant could in all good faith believe that in the light of the parliamentary debates, the legislature wanted victims to retain their standing to take proceedings (see paragraph 37 of the judgment). But in domestic law a misreading of a statutory provision does not confer a fresh right of action.

The fact that there is more than one remedy may mislead a plaintiff as to the choice to be made, without there however being any lack of access to the courts. The opinion of the Cultural Affairs Committee of the National Assembly (see paragraphs 19 and 30 of the judgment) was not adopted by the legislature. Later private members' bills have no bearing.

In the first place, what is the weight of the parliamentary debates in the face of the Act and the European Convention on Human Rights? The quotations from ministers' and MPs' speeches are not decisive. What matters is the vote on the amendments. And the ones referred to by Mr Bellet were rejected by the Assembly. No proceedings were brought to challenge the constitutionality of the Act. It is for the national courts to resort to parliamentary proceedings in order to interpret an Act if the Act itself is not "clear". This does not, to my mind, come within the scope of the European Court's powers of interpretation.

Even if one were to give consideration to the parliamentary statement on "the other parallel remedies available", these could refer to civil actions against doctors and private centres and criminal proceedings, and not necessarily to taking proceedings in the *tribunal de grande instance* when lump-sum compensation had been accepted in which the *quid pro quo* to the victim's advantage was the exemption from having to prove negligence. At all events, appeal against the offer was possible.

Admittedly, the scope of the Chamber's judgment is limited as the Chamber decided the case on its particular facts and in the light of the special circumstances, namely, according to its interpretation, the fact that

the applicant had won his case in the tribunal de grande instance and could not expect that his action would be dismissed on the ground that he lacked an interest enabling him to bring proceedings, when submissions on the merits had been made to the Court of Appeal, in particular by the intervening third party.

Furthermore, the Paris Court of Appeal's case-law on the special appeal had not been consolidated by then.

But the reasoning adopted appears to me to be inadequate and not in accordance with the European Court's case-law in giving so much importance to the litigant's subjective impressions of the law. A litigant's mistake made in "good faith" does not necessarily warrant a finding that there has been a breach of Article 6 (art. 6) of the Convention on account of a "lack of access to the courts". In the instant case the law was clear once the amendments had been rejected, even if the parliamentary proceedings disclosed conflicting interpretations of it. But national parliamentary proceedings remain subject to interpretation by the national courts, not by the European Court. The Court has noted the exemplary solidarity underlying the compensation scheme, the only one of its kind within the member States of the Council of Europe.

The Court's final reason (see paragraph 37 of the judgment) - "All in all, the system was not sufficiently clear or sufficiently attended by safeguards to prevent a misunderstanding ..." - does not, to my mind, reflect any applicable principle of domestic law and does not appear to come within the ambit of Article 6 (art. 6) of the Convention.

The law was clear and foreseeable, and its effects were proportionate. It displayed a solidarity unknown in other States.

Certainly, any compensation scheme can be given a humanitarian reading, but the Convention does not yet make it possible to rule solely on the basis of an applicant's subjective impressions, notwithstanding the victim's tragic circumstances.

CONCURRING OPINION OF JUDGE WALSH

I agree with the decision of the Court in all respects. I am of the opinion that in all the circumstances of the case the applicant had, objectively speaking, a reasonable expectation that his court proceedings would be admissible and that his claim would not be challenged on the ground that in accepting the initial compensation he had thereby elected not to seek compensation in a negligence action.

CONCURRING OPINION OF JUDGES PEKKANEN AND
JAMBREK

We are in agreement with the majority's finding that the applicant did not have a practical, effective right of access to the courts, and that there has accordingly been a breach of Article 6 para. 1 (art. 6-1) of the Convention. We reached this conclusion, however, by somewhat different reasoning from that of the majority.

France's system of provision for court actions seems to us insufficiently clear to prevent a misunderstanding on the part of applicants as to the procedures for making use of the remedies available to them for obtaining additional compensation for the specific damage sustained. We arrived at this conclusion, however, mainly because of the differing opinions of the French supreme courts, rather than because of the legislature's intentions as disclosed by the parliamentary proceedings. We refer here to the Court of Cassation's judgment of 26 January 1994 and to the Conseil d'Etat's position in respect of the interpretation of the law in question (section 47(VIII) of the Act of 31 December 1991).

Mr Bellet made efforts to avail himself of different judicial remedies. He applied to the Paris Administrative Court, made an urgent application to the President of the Paris tribunal de grande instance, cross-appealed to the Paris Court of Appeal and appealed to the Court of Cassation, and he had also submitted a claim to the Compensation Fund. He clearly tried to gain access to various French courts in order to obtain additional compensation for the damage sustained and did so for an extended period of time, from May 1990 onwards.

The French State established special arrangements and legal procedures for the compensation of haemophiliacs and transfusion patients infected with AIDS. We note that they were created to provide a legal and judicial response to an urgent, specific public-health and social issue. In view of the seriousness of the disease contracted and the uncertainty about living long enough to benefit from the compensation fixed by various courts, a legal procedure was provided that was appropriate for cases where compensation had to be afforded as a matter of extreme urgency.

Mr Bellet's illness progressed to the present stage of his living behind closed doors while he unsuccessfully pursued various court actions to gain additional compensation. It is, in our view, understandable that he should not be able to find his way through the complexity of the provisions and procedures in domestic law with the exactness and thoroughness of a plaintiff in an ordinary situation.

Neither could he at the outset clearly assess the legal consequences of choosing to accept the lump-sum compensation instead of suing on the basis of liability and negligence. The practical choice Mr Bellet was confronted with was rather between awaiting the outcome of judicial proceedings of

uncertain duration and accepting immediate payment of the sum offered by the Fund.

Taking into account the difference of opinion between the French supreme courts and the existence of the special procedure for dealing with the misfortune of which Mr Bellet was a victim, we came to the conclusion that Mr Bellet had adequate reasons for assuming that he should use the procedure specially created to meet his situation.

We wish to stress that the finding of a breach must be interpreted strictly in the light of the special circumstances of the case, which consequently has only a limited value as a precedent.