



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

CASE OF PAILOT v. FRANCE

(93/1997/877/1089)

JUDGMENT

STRASBOURG

22 April 1998

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SUMMARY¹

Judgment delivered by a Chamber

France – length of compensation proceedings brought by haemophiliac infected with Aids virus following blood transfusions, during which proceedings a friendly settlement was reached before Commission

I. ARTICLE 6 § 1 OF THE CONVENTION

A. Government's preliminary objection (application inadmissible on account of friendly settlement reached before Commission in connection with an earlier application concerning length of same proceedings)

Friendly settlement concerned only length of proceedings up to date of adoption of report noting that it had been reached.

Conclusion: objection dismissed (unanimously).

B. Merits of the complaint

1. Period to be taken into consideration

Starting-point: day after Commission adopted its report noting that friendly settlement had been reached.

End: delivery of *Conseil d'Etat's* judgment.

Total: one year and ten months.

2. Reasonableness of length of proceedings

Complexity of case: case of some complexity, but information needed to determine State's liability had been available for a long time.

Conduct of the applicant: not responsible for any delay.

Conduct of national authorities: what was at stake in proceedings was of crucial importance for applicant, in view of disease from which he was suffering and called for exceptional diligence, notwithstanding number of cases to be dealt with – period of one year and ten months between adoption of Commission's report noting that there had been a friendly settlement and *Conseil d'Etat's* judgment bringing to an end proceedings that had already lasted five years and six months up to conclusion of that settlement far exceeded reasonable time in such a case.

Conclusion: violation (unanimously).

1. This summary by the registry does not bind the Court.

II. ARTICLE 50 OF THE CONVENTION

A. Non-pecuniary damage

Claim allowed in part.

B. Costs and expenses

Reimbursed in full.

Conclusion: respondent State to pay applicant specified sums (unanimously).

COURT'S CASE-LAW REFERRED TO

26.10.1988, Martins Moreira v. Portugal; 25.2.1992, Pfeifer and Plankl v. Austria;
31.3.1992, X v. France; 23.3.1994, Silva Pontes v. Portugal; 26.4.1994, Vallée v. France;
26.8.1994, Karakaya v. France

In the case of Pailot v. France¹,

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) and the relevant provisions of Rules of Court A², as a Chamber composed of the following judges:

Mr THÓR VILHJÁLMSSON, *President*,

Mr L.-E. PETTITI,

Mr I. FOIGHEL,

Mr R. PEKKANEN,

Mr L. WILDHABER,

Mr B. REPIK,

Mr P. JAMBREK,

Mr J. CASADEVALL,

Mr P. VAN DIJK,

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

Having deliberated in private on 28 January and 24 March 1998,

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”) on 22 September 1997, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 32217/96) against the French Republic lodged with the Commission under Article 25 by a French national, Mr Jean-Marc Pailot, on 2 July 1996.

The Commission’s request referred to Articles 44 and 48 and to the declaration whereby France recognised the compulsory jurisdiction of the Court (Article 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 § 1 of the Convention.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of Rules of Court A, the applicant stated that he wished to take part in the

Notes by the Registrar

1. The case is numbered 93/1997/877/1089. 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 of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

proceedings and designated the lawyer who would represent him, namely Mr J.-A. Blanc, a lawyer practising in the *Conseil d'Etat* and the Court of Cassation (Rule 30).

3. The Chamber to be constituted included *ex officio* Mr L.-E. Pettiti, the elected judge of French nationality (Article 43 of the Convention), and Mr R. Ryssdal, the President of the Court (Rule 21 § 4 (b)). On 26 September 1997, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mr I. Foighel, Mr L. Wildhaber, Mr B. Repik, Mr P. Jambrek, Mr J. Casadevall and Mr P. van Dijk (Article 43 *in fine* of the Convention and Rule 21 § 5). Subsequently Mr Ryssdal, who was unable to take part in the further consideration of the case, was replaced as President of the Chamber by Mr Thór Vilhjálmsson and Mr R. Pekkanen, substitute judge, was called upon to sit as a full member (Rules 5, 10, 22 and 24 § 1).

4. As President of the Chamber (Rule 21 § 6), Mr Ryssdal, acting through the Registrar, had consulted the Agent of the French Government ("the Government"), Mr Y. Charpentier, the applicant's lawyer and the Delegate of the Commission Mr J.-C. Geus, on the organisation of the proceedings (Rules 37 § 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant's and the Government's memorials on 28 October and 5 December 1997 respectively and the applicant's reply on 16 December 1997.

5. On 25 November 1997 the Commission had produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

6. On 28 January 1998 the Chamber decided to dispense with a hearing in the case, having satisfied itself that the conditions for this derogation from its usual procedure had been met (Rules 26 and 38).

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. Mr Jean-Marc Pailot, a French national born in 1952, is a clerical worker employed by an insurance firm. He is a haemophiliac and has received numerous blood transfusions.

8. A test carried out on 27 August 1985 showed that the applicant had been infected by the human immunodeficiency virus (HIV). Since November 1994, he has been classified as having reached stage III of the four stages on the scale of the Atlanta Center for Disease Control.

A. The applications for compensation

1. *The preliminary application to the administrative authority*

9. On 23 December 1989 the applicant submitted a preliminary application for compensation to the Minister for Solidarity, Health and Social Protection. He sought 2,500,000 French francs (FRF) in compensation for the medical disorders of all kinds he had suffered on account of his infection with HIV. His application was rejected on 30 March 1990.

2. *The application to the administrative courts*

(a) **Before the Paris Administrative Court**

10. On 30 May 1990 Mr Pailot brought an action in the Châlons-sur-Marne Administrative Court seeking FRF 2,500,000 in compensation for the damage sustained as a result of the State's failure to take appropriate measures to prevent his becoming infected with HIV. On 14 December 1990 the Châlons-sur-Marne Administrative Court referred the case to the *Conseil d'Etat*, which, on 27 February 1991, designated the Paris Administrative Court to deal with it. The application was registered with that court on 18 March 1991.

11. On 1 June 1991 the Aube Health Insurance Office filed a pleading. The case was then set down for a hearing on 3 April 1992.

12. On 17 April 1992 the Administrative Court gave an interlocutory judgment, holding that "the State is liable in respect of haemophiliacs who were infected with HIV in the course of transfusion of non-heat-treated blood products during the period of liability defined above, that is between 12 March and 1 October 1985" and "... that there are grounds for the Administrative Court to order the State to pay compensation for the whole of the damage suffered".

At Mr Pailot's request, the court ordered an expert medical opinion in order to establish whether he had been infected during that period. An expert was appointed by the President of the Administrative Court the same day.

13. The expert's report, filed on 23 December 1992, stated:

"...

In 1985 [Mr Pailot] was given two prescriptions for 6 P.P.S.B. and Factor IX concentrates, the first on 2 March 1985 and the second on 27 August 1985 ... in other words, within the period of liability defined above (12 March to 1 October), at least as regards the prescription of 27 August 1985. However, it has not been possible to ascertain the exact date on which the products delivered on 2 March 1985 were administered.

On 27 August 1985 it was confirmed that he had been infected with HIV...

Given that the appearance of antibodies detectable by biological tests (seroconversion) cannot be observed until 6 to 12 weeks (or, exceptionally, several months in rare cases) after infection, it can be concluded that Mr Jean-Marc Pailot might have been infected in May or June 1985 (1st serological test performed on 27 August 1985).

...

As regards the ‘period of the State’s liability’ (12 March 1985 to 1 October 1985), it is not impossible, but neither is it certain, that the products delivered at the beginning of March 1985 were administered after 12 March 1985, resulting in an infection with seroconversion confirmed on 27 August 1985, assuming that infection had not taken place earlier, which is unlikely in view of the blood derivatives he had received previously.

... the date on which he became infected cannot be determined with certainty.”

14. After holding a hearing on 26 February 1993, the Administrative Court gave the following judgment on 26 March 1993:

“Regarding the claim for the award of damages against the State:

The expert’s report has shown that a causal link between the applicant’s infection with HIV and the administration of blood derivatives during the period of the State’s liability (12 March 1985 to 1 October 1985) cannot be deemed to have been established; consequently, the claim contained in Mr Jean-Marc Pailot’s application for compensation from the State for the damage sustained as a result of this infection can only be rejected.”

(b) Before the Paris Administrative Court of Appeal

15. On 9 April 1993 the Judicial Assembly of the *Conseil d’Etat* gave three landmark judgments, fixing 22 November 1984 as the start of the period of the State’s liability and awarding the victims compensation at a flat rate of FRF 2,000,000 (see paragraph 39 below).

16. Relying on this case-law, the applicant appealed to the Paris Administrative Court of Appeal on 4 June 1993.

17. On 28 August 1993 the Deputy Minister for Health filed his defence pleadings in which he submitted that only the judgment of 26 March 1993 was being appealed and that the judgment of 17 April 1992, which established the period of the State’s liability as 12 March to 1 October 1985, had therefore become final.

18. On 3 November 1993 the Compensation Fund for Transfusion Patients and Haemophiliacs infected with HIV informed the Administrative Court of Appeal that Mr Pailot had accepted the Fund’s offer of compensation.

19. After holding a hearing on 20 January 1994, the Administrative Court of Appeal gave judgment on 3 February 1994 in which it upheld the Minister's arguments and dismissed the applicant's appeal, holding that it had not been established by the contents of the file that the applicant had received after 12 March 1985 blood products which could have infected him.

(c) Before the *Conseil d'Etat*

20. On 1 April 1994 the applicant appealed on points of law to the *Conseil d'Etat*.

21. On 1 June 1994 the applicant filed supplementary pleadings claiming that his appeal, in which he had requested that the start of the period of the State's liability be fixed at 22 November 1984 implicitly but necessarily criticised the interlocutory judgment of 17 April 1992 which had fixed the start at 12 March 1985. He therefore requested the *Conseil d'Etat* to quash the Administrative Court's judgment and, under section 11 of Law no. 87-1127 of 31 December 1987, to determine the merits of the case without remitting it to the Administrative Court of Appeal and to order the State to pay him FRF 2,000,000, less the amount paid out by the Compensation Fund.

22. On 27 March 1995 the Admissibility Committee declared his appeal admissible.

23. In the meantime, on 28 December 1994, Mr Pailot had lodged an application (no. 26116/95) with the European Commission of Human Rights. On 28 June 1995 the Commission adopted a report pursuant to Article 28 § 2 of the Convention noting that the parties had reached agreement on a friendly settlement of the case (see paragraph 42 below).

24. On 13 and 19 October 1995 respectively, the Aube Health Insurance Office and the Compensation Fund for Transfusion Patients submitted their observations.

25. On 30 October 1995 the *Conseil d'Etat* asked the Minister of Employment and Social Affairs to submit his observations on the applicant's appeal. On 15 December 1995 the Minister replied that the application did not call for any observations on his part.

26. On 26 December 1995 the applicant submitted his observations.

27. On 3 January 1996 a reporting judge at the *Conseil d'Etat* was appointed.

28. On 19 January 1996 the applicant filed a number of documents. On 17 January and 17 April 1996 Mr Pailot wrote to the Secretary to the Fifth Section of the Judicial Division of the *Conseil d'Etat*, which was dealing with the case, and to the reporting judge who had been appointed, drawing their attention to the length and protractedness of the proceedings and the urgency of the case given his state of health. He received no reply.

29. On 2 July 1996 the applicant lodged a further application (no. 32217/96) with the Commission, which was registered on 10 July 1996, complaining that the proceedings were still pending before the *Conseil d'Etat*.

30. On 29 August 1996 the reporting judge at the *Conseil d'Etat* filed his report.

31. On 2 September 1996 the case was allocated to a judge-reviser.

32. On 26 February 1997 a government commissioner was appointed. The case was then listed for a hearing on 19 March 1997.

33. On 23 April 1997 the *Conseil d'Etat* quashed the judgments of the Administrative Court and the Administrative Court of Appeal. Applying section 11 of the Law of 31 December 1987 (see paragraph 21 above), the *Conseil d'Etat* found the State liable for Mr Pailot's infection and gave the following judgment:

"The State is liable in respect of persons who were infected with the human immunodeficiency virus following the transfusion of non-heat-treated blood products between 22 November 1984 and 20 October 1985; Mr Pailot was found to be HIV-positive on 27 August 1985; the State is therefore liable for the damage sustained by Mr Pailot as a result of the blood transfusions he received during the period defined above; he is therefore justified in requesting this Court to quash the judgments of the Paris Administrative Court of 17 April 1992 and 26 March 1993 rejecting his claim for compensation..."

The State was ordered to pay the applicant FRF 2,000,000, less FRF 1,037,750 paid out by the Compensation Fund for Transfusion Patients and Haemophiliacs and FRF 100,000 paid out by the Haemophiliacs' Solidarity Fund, that is FRF 862,250 in all, plus interest at the statutory rate from 26 December 1989 with capitalisation of the accrued interest from 1 June 1994.

34. The State paid the applicant the principal of FRF 862,250 in July 1997 but, to date, has not paid the interest.

B. The claim submitted to the Compensation Fund

35. In separate proceedings 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 38 below).

36. In a decision of 8 September 1992, the Fund awarded him compensation of FRF 1,517,000, of which FRF 1,137,750 was payable in three equal annual instalments and FRF 379,250 if and when Aids was diagnosed. The Compensation Fund deducted from this offer the FRF 100,000 paid out by the Haemophiliacs' Solidarity Fund.

37. On 28 January 1993 the Compensation Fund paid Mr Pailot FRF 1,037,750.

II. THE COMPENSATION MACHINERY

A. Legislation

38. The Act of 31 December 1991 making miscellaneous social-welfare provisions set up special machinery for the compensation of haemophiliacs and transfusion patients who had been infected following injections of blood products. 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. ...

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.

...

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. ..."

B. Case-law

39. In three judgments of 9 April 1993 the Judicial Assembly of the *Conseil d'Etat* decided that "the State was wholly liable in respect of persons who were infected with the human immunodeficiency virus following transfusion of non-heat-treated blood products between 22 November 1984 and 20 October 1985" (see paragraph 15 above).

III. THE RELEVANT PROCEDURAL LAW

A. The rules applicable at the material time

40. At the material time the Administrative Courts and Administrative Courts of Appeal Code contained, *inter alia*, the following provisions:

Article R.102

“Except in cases concerning public works, proceedings may not be instituted in the Administrative Court otherwise than in the form of an appeal against a decision; such an appeal shall be lodged within two months of the notification or the publication of the contested decision.

Where no reply is forthcoming from the relevant authority for more than four months, that silence is to be construed as a decision rejecting the complaint.

...”

Article R.129

“The President of the Administrative Court or of the Administrative Court of Appeal, or a judge delegated by one of them, may, where the existence of an obligation cannot seriously be contested, award an advance to a creditor who has filed an application on the merits in the court in question. He may, even of his own motion, make the payment of the advance subject to the lodging of a security.”

Article R.142

“Immediately after the application instituting the proceedings has been registered by the registry, the president of the court or, in Paris, the president of the division to which the application has been transmitted, shall appoint a rapporteur.

Under the authority of the president of the court or division to which he belongs, the rapporteur shall, regard being had to the circumstances of the case, fix the time-limit to be given, if necessary, to the parties for the production of supplementary pleadings, observations, statements of defence or replies. He may request the parties to supply any evidence or documents relevant to the resolution of the dispute, which shall be added to the file so as to be accessible to all the parties.”

Article R.150

“Where one of the parties or the administrative department has been asked to submit observations and has not complied with the time-limit laid down pursuant to Articles R.142 and R.147 of this code, the president of the court or division shall issue a formal notice to comply.

In the event of *force majeure*, a final extension of time may be granted.

If the formal notice to comply has no effect or if the final time-limit given is not complied with, the court shall give judgment.”

Article R.151

“Where a final notice to comply relates to an administrative department of the State, it shall be sent to the authority with competence to represent the State; in other cases it shall be sent to the party or his representative if he has appointed one.”

Article R.182

“A member of the Administrative Court or the Administrative Court of Appeal may be assigned by the competent court or by the latter’s president to carry out any investigative measures other than those provided for in sections 1 to 4 of this chapter.”

B. The current rules

41. Decree no. 93-906 of 12 July 1993 applies to all proceedings pending at the date of its publication. It lays down provisions for the implementation of section 47 of the Act of 31 December 1991 (see paragraph 38 above):

“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 an 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..."

IV. APPLICATION No. 26116/95 TO THE EUROPEAN COMMISSION OF HUMAN RIGHTS

42. On 28 December 1994 Mr Pailot lodged an application with the Commission, registered on 4 January 1995 under file no. 26116/95, in which he complained of the length of the compensation proceedings and relied on Article 6 § 1 of the Convention. On 28 June 1995 the Commission adopted a report in which it noted, pursuant to Article 28 of the Convention:

"...

On 8 March 1995 the applicant's representative informed the Commission that the applicant was prepared to accept the sum of 200,000 (two hundred thousand) French francs for non-pecuniary damage, to which were to be added the costs and expenses he had incurred before the Commission, the whole to be paid within one month of the

adoption of the Commission's report. On 3 May 1995 he informed the Commission that the costs came to FRF 23,270 and also requested the payment of interest in the event of delayed settlement. In a letter of 24 May 1995 the Agent of the Government informed the Commission that the Government were prepared to agree to a settlement based on these proposals.

On 28 June 1995 the Commission noted that the parties had reached agreement on the terms of a settlement. It also stated the opinion, having regard to Article 28 § 1 (b) of the Convention, that the parties had reached a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention.

..."

The text of the applicant's declaration that he accepted the friendly settlement, which bears his signature, reads as follows:

"I acknowledge that the payment of these sums will constitute full and final compensation in respect of all the damage alleged in my application and will likewise cover all the lawyers' fees and other costs I have incurred in this case.

I therefore agree to withdraw from these proceedings and to waive the right to bring any further proceedings on this account against the French State in the French and international courts."

PROCEEDINGS BEFORE THE COMMISSION

43. Mr Pailot applied to the Commission on 2 July 1996. He alleged that the length of the proceedings had exceeded the reasonable time required by Article 6 § 1 of the Convention.

44. The Commission (Second Chamber) declared the application (no. 32217/96) admissible on 15 January 1997. In its report of 9 July 1997 (Article 31), it expressed the unanimous opinion that there had been a violation of Article 6 § 1 of the Convention. The full text of the Commission's opinion is reproduced as an annex to this judgment¹.

FINAL SUBMISSIONS TO THE COURT

45. In their memorial the Government asked the Court, as their main submission, "to recognise that the friendly settlement reached with Mr Pailot necessarily implied on his part the unequivocal waiver of all further proceedings against the State on account of the length of the

1. *Note by the Registrar.* For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1998), but a copy of the Commission's report is obtainable from the registry.

proceedings” and, in the alternative, to hold that there had been no breach of Article 6 § 1 of the Convention.

46. The applicant asked the Court to hold that there had been a breach of Article 6 § 1 and to award him, by way of just satisfaction under Article 50, FRF 200,000 as compensation for non-pecuniary damage and FRF 42,210 for costs and expenses.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

47. Mr Pailot complained of the length of time it had taken for his application for compensation from the State to be considered. He alleged a breach of Article 6 § 1 of the Convention, which provides:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

48. The Commission agreed in substance with that submission, whereas the Government contested it.

A. The Government’s preliminary objection

49. The Government submitted, as they had done before the Commission, that the application was inadmissible on account of the friendly settlement reached before the Commission on 28 June 1995 in respect of the first application (no. 26116/95). They said that by signing the declaration that he accepted the friendly settlement (see paragraph 42 above), Mr Pailot had not only withdrawn from the proceedings relating to his application, he had also unequivocally waived the right to take any further action against the French State concerning the length of the proceedings then pending. They added that the applicant had expressed his intention clearly without stipulating any reserves, and that the Government’s own acceptance had been conditional on their having the assurance that Mr Pailot had waived all rights to bring proceedings on the same grounds.

50. Mr Pailot submitted that his signed declaration of acceptance related to the application he had lodged with the Commission on 28 December 1994 (see paragraph 42 above) and that he had not waived the right to take action against the French State in respect of the length of the further proceedings or to claim compensation for any future, and as yet unknown, damage that he might sustain as a result.

51. Having regard to the special nature of the instant case, the Court considers that a thorough analysis is required in order to determine the effect of Mr Pailot's signed declaration accepting the friendly settlement.

The Court, like the Commission, attaches great weight to the actual wording of the declaration, from which it is clear that the applicant said that he agreed to withdraw from the proceedings he had brought before the Commission on 28 December 1994 and to "waive the right to bring any further proceedings on this account against the French State in the French and international courts" (see paragraph 42 above). The words "on this account" expressly refer to the excessive length complained of in the first application and, consequently, to the domestic proceedings up to the point they had reached when the friendly settlement was agreed; they therefore exclude any subsequent proceedings such as those now in issue before the Court.

52. It is, furthermore, highly unlikely that the applicant would have accepted a friendly settlement proposal that allowed the outcome of the proceedings to be delayed with impunity. The Court reiterates in that connection that under its settled case-law the waiver of a right guaranteed by the Convention – in so far as such a waiver is permissible – must be established in an unequivocal manner (see, among other authorities, the *Pfeifer and Plankl v. Austria* judgment of 25 February 1992, Series A no. 227, p. 16, § 37) and requires minimum guarantees commensurate to its importance. Those requirements were not fulfilled in the present case.

53. The preliminary objection must therefore be dismissed.

B. Merits of the complaint

1. Period to be taken into consideration

54. The Government maintained that the period to be taken into consideration had begun on 29 June 1995, that being the day after the Commission adopted its report noting that a friendly settlement had been reached (see paragraph 42 above).

55. That was also the Commission's view.

56. The applicant contended that the period to be considered had begun on 4 January 1995 with the registration of his first application to the Commission, which resulted in a friendly settlement (see paragraph 42 above), since the settlement related only to the length of the proceedings up to that date.

57. The Court reiterates that in order to assess whether proceedings are reasonable in length, both the Commission and the Court look at the actual length of the proceedings up to the adoption of the report or judgment.

The present case, as referred to the Court, concerns the proceedings subsequent to the friendly settlement being reached (see paragraph 51 above). The starting-point must therefore be 29 June 1995, that being the day after the Commission adopted its report noting that the settlement had been agreed.

58. Mr Pailot submitted that the proceedings were not yet over as the *Conseil d'Etat*'s decision of 23 April 1997 (see paragraph 33 above) had not been fully executed. He had thus far received only the principal amount of the compensation, not the interest.

59. In common with the Government and the Commission, the Court notes that in that decision the *Conseil d'Etat* quashed the judgments of the Paris Administrative Court and the Administrative Court of Appeal, found the State liable for Mr Pailot's infection and, unlike the position in the cases of *Martins Moreira v. Portugal* (judgment of 26 October 1988, Series A no. 143, p. 16, § 44) and *Silva Pontes v. Portugal* (judgment of 23 March 1994, Series A no. 286-A, p. 13, § 30), determined the amount of compensation due, thereby bringing the domestic proceedings to an end.

60. The proceedings in issue therefore lasted one year and ten months.

2. Reasonableness of the length of the proceedings

61. The reasonableness of the length of the proceedings is to be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. On the latter point, what is at stake for the applicant in the litigation has to be taken into account (see the *X v. France* judgment of 31 March 1992, Series A no. 234-C, p. 90, § 32; the *Vallée v. France* judgment of 26 April 1994, Series A no. 289-A, p. 17, § 34; and the *Karakaya v. France* judgment of 26 August 1994, Series A no. 289-B, p. 43, § 30).

(a) Complexity of the case

62. Mr Pailot argued that the case was not at all complex as the criteria for determining State liability for the infection of haemophiliacs had been established by the landmark judgments of the Judicial Assembly of the *Conseil d'Etat* (see paragraphs 15 and 39 above).

63. The Government expressed no view on this issue. The Commission agreed in the main with the applicant's submission.

64. The Court considers that, even though the case was of some complexity, that fact alone could not justify the length of the proceedings in question as the information needed to determine the State's liability had been available for a long time (see the *X v. France*, *Vallée* and *Karakaya* judgments cited above, p. 91, § 36, p. 18, § 38, and p. 43, § 34, respectively).

(b) Conduct of the applicant

65. The Court notes that the Government have not made any observations on this point and that the applicant twice – on 17 January and 17 April 1996 – sought to expedite the proceedings, but without success (see paragraph 28 above).

(c) Conduct of the national authorities

66. Mr Pailot criticised the length of the proceedings in the *Conseil d'Etat*, where the case had remained pending for more than three years, including a period of one year and ten months after the adoption of the report noting that a friendly settlement had been reached.

67. The Commission agreed in substance with the applicant's submission and expressed the opinion that in the instant case the issue was not whether there had been unreasonable delays imputable to the court hearing the case, but whether that court had acted with "exceptional diligence".

68. Like the Commission, the Court considers that what was at stake in the proceedings complained of was of crucial importance to the applicant in view of the disease from which he is suffering. He was infected in 1985 and was classified in 1994 as having reached stage III, the last but one stage of infection (see paragraph 8 above). In short, exceptional diligence was called for in this instance, notwithstanding the number of cases to be dealt with, in particular as the facts of the controversy had been known to the Government for several years and its seriousness must have been obvious to them (see the *X v. France*, *Vallée* and *Karakaya* judgments cited above, p. 94, § 47, p. 19, § 47, and p. 45, § 43, respectively).

69. In this connection, several periods referred to by the applicant and the Commission appear to have been abnormally long:

(i) a period of almost seven months – including four months from the date when the Commission adopted its report noting that a friendly settlement had been reached – between the Admissibility Committee's decision of 27 March 1995 declaring the applicant's appeal to the *Conseil d'Etat* admissible and the submission of observations by the Aube Health Insurance Office and the Compensation Fund for Transfusion Patients on 13 and 19 October 1995 respectively (see paragraph 24 above);

(ii) a period of seven months – including four months from the date when the Commission adopted its report noting that a friendly settlement had been reached – between the Admissibility Committee's decision of 27 March 1995 to send the appeal to the Judicial Division of the *Conseil d'Etat* and the latter's communication of the appeal to the Minister of Employment and Social Affairs on 30 October 1995 so that he could submit his observations (see paragraph 25 above); and

(iii) a period of more than one year and three months between the final procedural step taken by a party, on 19 January 1996 (see paragraph 28 above), and the delivery of judgment on 23 April 1997.

70. The Court also notes that the proceedings had already lasted five years and six months by the time the Commission adopted its report noting that a friendly settlement had been reached and that thereafter the applicant waited a further one year and ten months before the *Conseil d'Etat* delivered its judgment bringing the proceedings to an end.

(d) Conclusion

71. Having regard to all the circumstances of the case and in particular to the applicant's situation, the Court cannot consider the time taken in the present case to have been "reasonable".

72. In sum, there has been a violation of Article 6 § 1.

II. APPLICATION OF ARTICLE 50 OF THE CONVENTION

73. Article 50 of the Convention provides:

"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. Non-pecuniary damage

74. Mr Pailot sought FRF 200,000 for non-pecuniary damage.

75. The Government expressed no view on this subject. The Delegate of the Commission supported the applicant's claim.

76. The Court notes that the amount claimed by Mr Pailot is equal to the amount of compensation awarded by the Court to the applicants in the Vallée and Karakaya cases cited above, in which the length of the proceedings to be taken into consideration was more than twice as long.

The Court considers that the applicant indisputably sustained non-pecuniary damage. Having regard to the various relevant factors and making its assessment on an equitable basis in accordance with Article 50, it awards Mr Pailot FRF 150,000.

B. Costs and expenses

77. The applicant also sought FRF 42,210 for the costs and expenses he had incurred before the Convention institutions.

78. The Government made no observation. The Delegate of the Commission found the applicant's claim to be justified.

79. The Court considers the applicant's claims reasonable and allows them in full.

C. Default interest

80. According to the information available to the Court, the statutory rate of interest applicable in France at the date of adoption of the present judgment is 3.36% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a breach of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, 150,000 (one hundred and fifty thousand) French francs for damage and 42,210 (forty-two thousand two hundred and ten) French francs for costs and expenses; and
 - (b) that simple interest at an annual rate of 3.36% shall be payable on those sums from the expiry of the above-mentioned three months until settlement;
4. *Dismisses* the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 22 April 1998.

Signed: THÓR VILHJÁLMSSON
President

Signed: Herbert PETZOLD
Registrar