



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

AFFAIRE HENRA c. FRANCE

CASE OF HENRA v. FRANCE

(110/1997/894/1106)

ARRÊT/JUDGMENT

STRASBOURG

29 avril/April 1998

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SUMMARY¹

Judgment delivered by a Chamber

France – length of compensation proceedings brought by minor infected with Aids virus from birth, 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)

Objection not raised during Commission's examination of admissibility – estoppel.

Conclusion: objection dismissed (unanimously).

B. Merits of the complaint1. *Period to be taken into consideration*

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

End: proceedings still pending.

Total: more than two years and seven 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, who has been HIV-positive from birth, and called for exceptional diligence, notwithstanding number of cases to be dealt with – period of more than two years and seven months after adoption of Commission's report taking notice of friendly settlement without any final decision yet being reached when proceedings had already lasted nearly five years and two 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 full.

B. Costs and expenses

Reimbursed in full.

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

COURT'S CASE-LAW REFERRED TO

31.3.1992, X v. France; 26.4.1994, Vallée v. France; 26.8.1994, Karakaya v. France;
22.4.1998, Pailot v. France; 22.4.1998, Richard v. France

In the case of Henra 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 R. BERNHARDT, *President*,

Mr L.-E. PETTITI,

Mr N. VALTICOS,

Mr A.N. LOIZOU,

Mr L. WILDHABER,

Mr P. JAMBREK,

Mr E. LEVITS,

Mr T. PANTIRU,

Mr V. TOUMANOV,

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

Having deliberated in private on 31 March and 22 April 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 11 December 1997, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 36313/97) against the French Republic lodged with the Commission under Article 25 by a French national, Mr Mathieu Henra, on 21 May 1997.

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.

Notes by the Registrar

1. The case is numbered 110/1997/894/1106. 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.

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 proceedings and designated as his representative Mr J.-A. Blanc, a lawyer practising in the *Conseil d'Etat* and the Court of Cassation (Rule 30).

3. On 31 January 1998 the Vice-President of the Court decided that, in the interests of the proper administration of justice, a single Chamber should be constituted to consider both the instant case and the case of *Leterme v. France*¹ (Rule 21 § 7).

4. The Chamber to be constituted for that purpose included *ex officio* Mr L.-E. Pettiti, the elected judge of French nationality (Article 43 of the Convention), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 § 4 (b)). On 31 January 1998, in the presence of the Registrar, Mr Bernhardt drew by lot the names of the other seven members, namely Mr N. Valticos, Mr A.N. Loizou, Mr L. Wildhaber, Mr P. Jambrek, Mr E. Levits, Mr T. Pantiru and Mr V. Toumanov (Article 43 *in fine* of the Convention and Rule 21 § 5).

5. As President of the Chamber (Rule 21 § 6), Mr Bernhardt, acting through the Deputy Registrar, 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 16 January and 5 February 1998 respectively.

6. Having regard to the opinions expressed by the applicant, the Government and the Delegate of the Commission and having satisfied itself that the condition for derogation from its usual procedure had been met (Rules 26 and 38), the Chamber decided to dispense with a hearing in the case and Mr Bernhardt gave the applicant and the Government leave to file observations on each other's memorials.

7. On 16 February and 3 March 1998 respectively, the applicant's counsel and the Government informed the Registrar that they did not intend to submit supplementary memorials. On 13 March 1998 the Delegate of the Commission submitted his observations in writing.

8. In the meantime, on 16 February 1998 the Commission had produced the file on the proceedings before it, as requested by the Registrar on the instructions of the President of the Chamber.

1. Case no. 111/1997/895/1107.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. Mr Mathieu Henra, a French national born in 1986, who is a minor, is represented by his testamentary guardian and is acting on his own behalf and as his parents' sole heir.

The applicant's father, who was born in 1955, was a haemophiliac and received numerous blood transfusions. On 20 April 1985 he married the applicant's mother. An antenatal test carried out on the applicant's mother in August 1986 revealed that she was HIV-positive. A test subsequently carried out on the applicant's father showed that he too was HIV-positive. When the applicant was born it was found that he was also HIV-positive.

A. The applications for compensation

1. The preliminary applications to the administrative authority

10. On 16 July 1990 three preliminary applications for compensation were submitted to the Minister for Solidarity, Health and Social Protection on behalf of the applicant's father, his mother and himself. They sought compensation for the medical disorders of all kinds they had suffered on account of their infection. These applications were rejected on 1 October 1990.

2. The applications to the administrative courts

(a) Before the Paris Administrative Court

11. On 6 December 1990 the applicant's parents lodged three applications with the Paris Administrative Court seeking compensation for the damage sustained as a result of the State's failure to take appropriate measures to prevent their infection with HIV.

12. The Minister of Health lodged defence pleadings on 12 February and 13 March 1991. The replies were filed on 8 July 1991.

13. On 22 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".

The Administrative Court also ordered a medical report to determine whether the applicant's father had been infected during that period. The expert filed his report on 31 December 1992.

14. The applicant's father died on 8 April 1993.

15. On 28 April 1993 the Administrative Court joined the three applications and rejected them, on the ground that no causal connection had been proved between the applicant's father's infection and the administration of non-heat-treated blood products during the period of the State's liability, between 12 March and 1 October 1985.

16. The applicant's mother died on 24 August 1993.

(b) Before the Paris Administrative Court of Appeal

17. 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 2,000,000 French francs (FRF) (see paragraph 39 below).

18. On 9 December 1993 the applicant's testamentary guardian (appointed in a will of 9 March 1993) and auxiliary guardian appealed to the Paris Administrative Court of Appeal.

19. On 4 March 1994 the Deputy Minister of Health filed his defence. The applicant filed his reply on 15 March 1994.

20. The Administrative Court of Appeal gave judgment on 23 June 1994, holding that, in accordance with the above-mentioned case-law of the *Conseil d'Etat*, the State was liable for the damage sustained by the applicant's father, the applicant's mother and the applicant as a result of the transfusions.

It awarded each of them FRF 2,000,000. However, since they had accepted offers of FRF 1,514,000, FRF 1,610,000 and FRF 1,900,000 respectively made to them in respect of the same damage by the Compensation Fund for Haemophiliacs and Transfusion Patients, the Administrative Court of Appeal decided that the balance of the compensation still owed was FRF 676,000. It calculated interest on the basis of that sum with effect from 18 July 1990, and specified that compound interest was to be paid from 9 December 1993 (see paragraphs 36 and 37 below).

(c) Before the *Conseil d'Etat*

21. On 26 July 1994 the applicant's testamentary guardian appealed on points of law to the *Conseil d'Etat*. She complained in particular that a sum of FRF 500,000 to be paid to him only in the event of Aids being diagnosed had been deducted from the compensation payable, and of the way the Administrative Court of Appeal had calculated the interest.

22. On 9 December 1994 Mr Henra lodged an application (no. 25972/94) with the European Commission of Human Rights. On 13 September 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 43 below).

23. On 1 December 1995 the reporting judge at the *Conseil d'Etat* filed his report. On the same day the case was allocated to a government commissioner.

24. The case was listed for a hearing on 19 December 1995.

25. On 31 January 1996 the *Conseil d'Etat* gave judgment quashing the Administrative Court of Appeal's judgment of 23 June 1994 in so far as that court – notwithstanding the *Conseil d'Etat*'s case-law on the question (see paragraph 40 below) – had deducted from the sums the State was required to pay Mr Henra the amount of compensation to be paid by the Compensation Fund for Haemophiliacs and Transfusion Patients in the event of Aids being diagnosed. It remitted the case to the Paris Administrative Court of Appeal.

(d) Before the Paris Administrative Court of Appeal

26. The file was received by the Paris Administrative Court of Appeal on 27 February 1996.

27. In a letter of 13 March 1996 the court's senior registrar informed the applicant that the case had been remitted to that court by the *Conseil d'Etat* and asked him to submit his observations within one month. The applicant's observations were filed at the court registry on 25 March 1996.

28. On 5 June 1996 the Compensation Fund for Transfusion Patients and Haemophiliacs submitted observations.

29. On 30 August 1996 the case was allocated to the Third Investigation Division.

30. On 26 September 1996 the court decided to proceed without waiting for observations from the Paris Health Insurance Office.

31. On 28 October 1996 Mr Henra's lawyer wrote to the President of the Paris Administrative Court of Appeal to draw his attention to the length and protractedness of the proceedings and the urgency of the case, given the applicant's state of health. No reply was forthcoming.

32. On 14 November 1996 the Minister of Health submitted his observations on the applicant's appeal.

33. On 9 January 1997 the case was allocated to a reporting judge.

34. On 21 May 1997 the applicant lodged a further application with the Commission (no. 36313/97), which was registered on 3 June 1997, complaining that the proceedings were still pending before the Administrative Court of Appeal.

B. The claim submitted to the Compensation Fund

35. On 22 July 1992, in separate proceedings, the applicant's father, the applicant's mother and the applicant had submitted claims 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. On 19 November 1992 the Fund awarded them compensation of FRF 1,614,000, FRF 1,710,000 and FRF 2,000,000 respectively, from which were to be deducted in each case FRF 100,000 paid out by the Haemophiliacs' Solidarity Fund. It also decided that the sum offered to the applicant was to be payable in three equal annual instalments and that FRF 500,000 would be paid to him if the onset of Aids were to be diagnosed.

37. These proposals were accepted. On 11 January 1993 the Fund paid the claimants FRF 1,514,000, FRF 1,610,000 and FRF 1,400,000 respectively.

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 17 above).

40. In a series of landmark judgments of 24 March 1995 the *Conseil d'Etat* ruled that payment of the sum proposed by the Compensation Fund for Transfusion Patients and Haemophiliacs in the event of Aids being diagnosed was “a latent possibility subject to the onset of the disease” and that accordingly the Paris Administrative Court of Appeal had “made an error of law in deducting it from the sums it ordered the State to pay in compensation for the same damage”.

III. THE RELEVANT PROCEDURAL LAW

A. The rules applicable at the material time

41. 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

42. 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. 25972/94 TO THE EUROPEAN COMMISSION OF HUMAN RIGHTS

43. On 9 December 1994 Mr Henra lodged an application with the Commission, registered on 16 December 1994 under file no. 25972/94, in which he complained of the length of the compensation proceedings and relied on Article 6 § 1 of the Convention. On 13 September 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 600,000 (six 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 accept the results of the Commission's good offices if it could arrange a settlement.

On 26 May 1995 the Commission submitted to the parties proposals for a friendly settlement based on payment to the applicant of FRF 600,000 for non-pecuniary damage and FRF 23,720 for costs.

In a letter of 11 July 1995 the Agent of the Government indicated that his Government were prepared to agree to a settlement based on these proposals.

On 13 September 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.

...”

44. The text of the applicant’s declaration that he accepted the friendly settlement, signed by him on 2 November 1995, 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

45. Mr Henra applied to the Commission on 21 May 1997. He alleged that the reasonable time required by Article 6 § 1 of the Convention had been exceeded.

46. The Commission (Second Chamber) declared the application (no. 36313/97) admissible on 16 September 1997. In its report of 28 October 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

47. In their memorial the Government asked the Court, as their principal submission, “to recognise that the friendly settlement reached with Mr Henra necessarily implied on his part the unequivocal waiver of all further proceedings against the State on account of the length of the proceedings” and, in the alternative, to hold that “in order to assess the length of the proceedings which gave rise to the present application, the period covered by the friendly settlement cannot, in any event, be taken into account”.

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.

48. The applicant asked the Court to hold that there had been a breach of Article 6 § 1 of the Convention 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

49. The applicant 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...”

50. The Commission agreed in substance with that submission.

A. The Government's preliminary objection

51. In their memorial, the Government submitted that the application was inadmissible on account of the friendly settlement reached before the Commission on 13 September 1995 in respect of the first application (no. 25972/94). They said that by signing the declaration that he accepted the friendly settlement (see paragraph 44 above), Mr Henra 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 Henra had waived all rights to bring proceedings on the same grounds.

52. The applicant submitted that his signed declaration of acceptance related to the application he had lodged with the Commission on 9 December 1994 (see paragraph 43 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.

53. The Delegate of the Commission observed that the Government had never raised such an objection before the Commission. He emphasised that in their observations on the admissibility of the application the Government had left this question to the Commission's discretion and had merely

pointed out that, in accordance with the Commission's conclusions in the *Pailot v. France* and *Richard v. France* cases, the period to be taken into consideration began to run on the date of adoption of the report taking notice of the friendly settlement reached.

54. The Court agrees with the Delegate of the Commission and considers that the Government are estopped from raising such an objection before it.

B. Merits of the complaint

1. Period to be taken into consideration

55. The Government maintained that the period to be taken into consideration had begun on 14 September 1995, that being the day after the Commission adopted its report taking notice of the friendly settlement reached (see paragraph 43 above).

56. That was also the Commission's view.

57. According to the applicant, who put forward this argument for the first time before the Court, the period to be considered began on 10 December 1994, that being the day after the introduction of his first application to the Commission, which resulted in a friendly settlement (see paragraph 43 above), since the settlement related only to the length of the proceedings up to that date.

58. 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 (see the *Pailot v. France* and *Richard v. France* judgments of 22 April 1998, *Reports of Judgments and Decisions* 1998-II, p. 802, § 57, and p. 823, § 54, respectively).

The present case, as referred to the Court, concerns the proceedings subsequent to the friendly settlement being reached. The starting-point must therefore be 14 September 1995, that being the day after the Commission adopted its report taking notice of the settlement reached.

59. In common with the participants in the proceedings, the Court notes that the proceedings before the domestic courts are not yet over, as the applicant appealed on 26 July 1994 to the *Conseil d'Etat* (see paragraph 21 above), which on 27 February 1996 remitted the case to the Paris Administrative Court of Appeal, before which it is still pending (see paragraph 26 above).

60. The proceedings in issue have therefore already lasted more than two years and seven months to date.

2. Reasonableness of the length of the proceedings

61. The reasonableness of the length of 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; the *Karakaya v. France* judgment of 26 August 1994, Series A no. 289-B, p. 43, § 30; and the *Pailot and Richard* judgments cited above, pp. 802–03, § 61, and p. 824, § 57, respectively).

(a) Complexity of the case

62. The applicant 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 17 and 39 above) and the *Conseil d'Etat's* judgments of 24 March 1995 concerning the method of calculation of damages (see paragraph 40 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*, *Karakaya*, *Pailot* and *Richard* judgments cited above, p. 91, § 36, p. 18, § 38, p. 43, § 34, p. 803, § 64, and p. 824, § 60, 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 sought on 28 October 1996 to expedite the proceedings, but without success (see paragraph 31 above).

(c) Conduct of the national authorities

66. The applicant criticised the length of the proceedings in the *Conseil d'Etat* and submitted that it could have decided the case itself without remitting it to the Paris Administrative Court of Appeal – before which it was still pending after the quashing of the earlier judgment – simply by following its judgments of 24 March 1995 (see paragraph 40 above) and reproducing word for word the reason given under the heading “deduction of compensation paid for the same damage”.

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". Before the Court the Delegate of the Commission emphasised that the *Conseil d'Etat* could itself have ruled on the merits of the case but had remitted it to the Paris Administrative Court of Appeal so that the latter could calculate how much compensation should be paid. Thus, more than two years after the case was remitted to it the Administrative Court of Appeal has still not given judgment, although all the information it needed was to be found in the judgments the *Conseil d'Etat* had already given on the question (see paragraph 40 above).

68. Like the Commission, the Court considers that what was at stake in the proceedings in issue was of crucial importance to the applicant, who has been HIV-positive from birth (see paragraph 9 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, Karakaya, Pailot and Richard judgments cited above, p. 94, § 47, p. 19, § 47, p. 45, § 43, p. 803, § 68, and p. 825, § 64, respectively).

69. In that connection, the Court notes that a period of two years and three months has elapsed to date since the delivery on 31 January 1996 of the *Conseil d'Etat*'s judgment quashing the Paris Administrative Court of Appeal's judgment of 23 June 1994 and remitting the case to the same court (see paragraph 25 above). In particular, since 9 January 1997, when a reporting judge was appointed to investigate the case before the Administrative Court of Appeal (see paragraph 33 above) no procedural step appears to have been taken and no convincing explanation of this inertia has been supplied by the Government.

70. The Court also notes that the proceedings had already lasted five years and two months by the time the Commission adopted its report noting that a friendly settlement had been reached and that they are still pending in the Paris Administrative Court of Appeal.

(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. There has therefore 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. The applicant 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 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 him FRF 200,000.

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 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, 200,000 (two hundred thousand) French francs for damage and 42,210 (forty-two thousand two hundred and ten) French francs for costs and expenses;
- (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.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 29 April 1998.

Signed: Rudolf BERNHARDT

President

Signed: Herbert PETZOLD
Registrar