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

COURT (CHAMBER)

CASE OF H. v. FRANCE

(Application no. 10073/82)

JUDGMENT

STRASBOURG

24 October 1989

In the case of H. v. France[*],

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 the Rules of Court, as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,
Mr Thór VILHJÁLMSSON,
Mr F. GÖLCÜKLÜ,
Mr L.-E. PETTITI,
Mr R. MACDONALD,
Mr J.A. CARRILLO SALCEDO,
Mr N. VALTICOS,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 22 April and 29 September 1989,

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 May 1988, 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. 10073/82) against the French Republic lodged with the Commission under Article 25 (art. 25) by Mr H., a French national, on 21 June 1982.

The applicant asked the Court not to reveal his identity.

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

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings and designated his lawyer. The President of the Court gave him leave to present his own case, provided that he was assisted during the

[*] Note by the Registrar: The case is numbered 6/1988/150/204. 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.

proceedings and represented at the hearing by a lawyer (Rule 30 para. 1, second sentence).

3. The Chamber to be constituted included ex officio Mr L.-E. Pettiti, the elected judge of French nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 30 May 1988, in the presence of the Registrar, the President drew by lot the names of the other five members, namely Mr F. Gölcüklü, Mr R. Macdonald, Mr J. Gersing, Mr J.A. Carrillo Salcedo and Mr N. Valticos (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Mr Thór Vilhjálmsson, substitute judge, replaced Mr Gersing, who had died (Rules 22 para. 1 and 24 para. 1).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the French Government ("the Government"), the Delegate of the Commission and the applicant on the need for a written procedure (Rule 37 para. 1). In accordance with his orders and instructions, the registry received: Mr H.'s and his lawyer's memorials, on 18 October 1988; the Government's memorial, on 14 November; and a new version of the applicant's memorial, on 23 February 1989.

In a letter of 14 December 1988 the Secretary to the Commission indicated that the Delegate would submit his observations at the hearing.

The applicant's claims for just satisfaction (under Article 50 of the Convention) (art. 50) reached the registry on 30 March and 10 April 1989; the President had granted the applicant legal aid (under Rule 4 of the Addendum to the Rules of Court) on 13 September 1988. The Government replied on 6 July, and the Delegate of the Commission on 21 July.

The Government, the applicant and the applicant's lawyer also filed various documents between 17 April and 13 September 1989.

5. Having consulted, through the Registrar, those who would be appearing before the Court, the President directed on 2 February 1989 that the oral proceedings should open on 21 April 1989 (Rule 38).

6. The hearing took place in public in the Human Rights Building, Strasbourg, on the appointed day. The Court had held a preparatory meeting immediately beforehand.

There appeared before the Court:

- for the Government

Mr J.-P. PUISSOCHET, Director of Legal Affairs,
Ministry of Foreign Affairs, *Agent*,
Mr P. BAUDILLON, Assistant Director,
Directorate of Legal Affairs, Ministry of Foreign Affairs,
Mr J.-C. DARRAS, Assistant Director, Litigation and Legal Affairs,
Ministry of the Interior, *Counsel*;

- for the Commission

Mr S. TRECHSEL, *Delegate*;

- the applicant and his counsel,
Ms C. WAQUET, avocat
at the Conseil d'État and the Court of Cassation.

The Court heard addresses by Mr Puissochet for the Government, by Mr Trechsel for the Commission, and by Ms Waquet for Mr H., who also addressed the Court, as well as their replies to questions put by the Court.

AS TO THE FACTS

7. Mr H., a French citizen born in 1937, lives at Vandoeuvre (Meurthe-et-Moselle). In 1957 he entered the teaching profession as a primary-school supply teacher and worked continuously until 1961.

I. BACKGROUND TO THE CASE

A. The visit to the hospital

8. In May 1961 Mr H. went to Strasbourg Hospital, taking with him a letter of introduction from his general practitioner to Professor Thiébaut, the head of the neurological clinic. As Professor Thiébaut did not hold a surgery on the day in question, Mr H. was examined in the neurological clinic by Dr Ebtinger, the doctor in charge of "Department 58" of the psychiatric clinic. Dr Ebtinger allegedly assured him that his problems were "not very serious" but apparently advised him to enter hospital for "a fortnight at most" in order for the doctor to get to know him better.

The general practitioner's letter and the report of this first examination are said to have disappeared from Mr H.'s hospital file.

B. The stay in hospital

9. On 25 May 1961, on Dr Ebtinger's recommendation but without having been ordered by him to stop work, Mr H., who was unaccompanied, reported to the neurological clinic at Strasbourg Hospital for observation, thinking that he would be in hospital for a fortnight and of his own free will. He allegedly waited for a house physician for two or three hours and was then placed in "Department 58". The admission notes read as follows:

> "Presented himself alone at 8 p.m. Being treated by Dr Zarenski ofSarralbe and seen by Dr Ebtinger. 'I don't feel right, I don't know what's wrong with me. I'm depressed.' has been for five years. asthenia, difficulties with work. no interest in anything. (Limited answers, difficulties expressing himself.) Has worked withouta break until today. unmarried. lives with his parents at Holving. Referred to 58B."

The applicant claims that the comments on an interview of 27 May have been antedated and that the pages of his file covering the period from 11 August to 15 September 1961 have vanished.

10. On 12 June 1961 Professor Kammerer, the head of the psychiatric clinic, diagnosed the applicant as suffering from schizophrenia with developing symptoms of catatonia (a state of motor and mental inertia) and prescribed narcoanalysis, i.e. an investigation of the subject's unconscious after he has been put into a sleeplike state. This was allegedly the only occasion on which he examined Mr H. - for ten minutes before a large group of students, at a time when Mr H. was already being treated with neuroleptic drugs.

11. On 13 June 1961 a house physician, Dr Schneider, instead of carrying out the narcoanalysis prescribed the previous day, gave Mr H. an intravenous injection of an unspecified dose of "Maxiton" dexamphetamine, which caused "amphetamine shock".

In so doing, he acted, so the applicant alleges, without either a prior examination or Mr H.'s consent, on a purely experimental basis, in public and without the knowledge even of the two persons primarily responsible for "Department 58", Drs Kammerer and Ebtinger.

The injection allegedly brought about something akin to a myocardial infarction together with violent muscular contractions and hysterical fits, of which the applicant immediately complained, as appears from the medical file.

12. Mr H. further claims that Dr Ebtinger, who was on leave at the time, had promised him that no treatment would be given him without his (Mr H.'s) consent; the doctor is said not to have learned what had happened until he returned.

In an article entitled "Methods of inducing shock (other than ECT and Sakel's method)", published in May 1965 in the Encyclopédie médico-chirurgicale, Drs Ebtinger and Fétique wrote, under the heading "Amphetamine shock":

> "...
>
> This treatment should not be given to patients with weak cardiovascular systems or to those suffering from hypertension, coronary disease or atheroma.
>
> ...
>
> Catatonic symptoms are generally worsened in certain schizophrenics, and may even make their first appearance after amphetamine shock.
>
> ...
>
> There is lasting therapeutic benefit in comparatively few cases.
>
> ..."

C. Discharge from hospital

13. After spending more than three and a half months in "Department 58", Mr H. left hospital on 15 September 1961. He claims to have resumed work as a primary-school teacher the very next day - although it was only with the greatest difficulty that he managed to remain up - in order that the holidays should not be counted as sick leave and for fear of being transferred to "another institution".

14. On 16 November 1961 he received a letter from a school doctor requesting him to undergo a medical examination on the 23rd. The doctor decided that Mr H.'s condition made it necessary for him to go on sick leave, and this began the next day. On 28 January 1963 a Ministry of Education medical board studied his file and took a "decision to remove", which was upheld on appeal on 23 March 1963.

Mr H.'s name was subsequently taken off the list of supply teachers in the département, with effect from 28 January 1963.

15. On 8 August 1964 the Regional Social Security Office of the départements of Haut-Rhin, Bas-Rhin and Moselle informed the applicant that he had been registered with effect from 25 May 1964 as a Category 1 disabled person ("capable of performing paid work" - 66% disablement). After a further medical examination on 15 September 1965, he was registered as a Category 2 disabled person ("wholly unable to perform any work" - 100% disablement), and remained in that category until 1969, his registration being renewed in 1967.

From 1 June 1969 until 1971 he did not receive his pension, as a medical examination on 5 March 1969 had shown that the extent of his disablement had dropped to below 50%. Since 1972 he has again been receiving a Category 2 pension.

II. THE PROCEEDINGS

A. Proceedings in the Strasbourg Administrative Court

1. Preliminaries

16. Mr H. allegedly learned from a letter of 4 November 1970 written by Professor Kammerer that the drug injected by the house physician in 1961 was not a "powerful tonic", as he had been told at the time, but an amphetamine. He claims that in 1970 he asked Strasbourg Hospital to disclose his medical file and that his request was refused.

17. On 29 May 1973 he applied to the appropriate office of the Strasbourg Administrative Court for legal aid. He was granted this on 16 October 1973, on the grounds that legal representation was compulsory in

the Administrative Court and that that court would probably order investigative measures. The sum ordered to be paid out of public funds for the expenses and fees of the lawyer appointed was 600 FF.

18. On 9 May 1974, at the request of his lawyer, Mr F., Mr H. obtained a medical certificate from Dr Rayel, the general practitioner who had been treating him since 1970. It read as follows:

> "I, the undersigned, certify that Mr H..., aged 36, a graduate in Natural Sciences (Radio Geology), has been treated by me for several years for the following complaints: Extreme liability to physical and mental fatigue with major dystonic consequences, feelings of loss of concentration and of speech disturbances associated with feelings of paralysis on the left side of the body.
>
> These complaints are reflected objectively in electroencephalographic disturbances, which were clearly shown up in 1971:
>
> 'Irregular electrical activity combining a moderate number of unstable alpha waves with numerous irregular theta-delta potentials and with anterior and posterior bilateral spikes, aspects increased by hyperpn÷a with strong photic stimulation.' Dr Hay, Nancy.
>
> At times, complete physical prostration with depressive ideas, weariness of life, painful sensations of mental blankness with pressing need to be alone and even to take to his bed.
>
> These various complaints currently make any gainful activity impossible.
>
> Mr H...'s extreme tendency to physical and mental fatigue makes it impossible for him to work to any regular pattern or to be at all productive, he very quickly feels rejected by any working teams he tries to be part of, and he feels such rejection very keenly.
>
> The problems reportedly go back to about 1955, but Mr H... claims that they grew markedly worse in 1961 while he was in Strasbourg University psychiatric clinic and Mr H. attributes this worsening to the pernicious effect of an intravenous amphetamine injection he received during his stay in that clinic.
>
> This certificate has been given to [Mr H.] in person and at his request, for the appropriate legal purposes.
>
> This certificate may not be used in court proceedings."

Although intended solely for the lawyer, this document was nonetheless given by the latter to the Administrative Court.

2. Preparation of the case for trial

19. On 14 June 1974 Mr F. took out a writ against the hospital, returnable at the Strasbourg Administrative Court, with a view to having the hospital declared liable for the harmful consequences of the intravenous amphetamine injection. He asked the court:

"Before giving judgment: [to] appoint a specialist doctor [as] an expert with instructions to examine the plaintiff, obtain all documents, interview all persons able to give information, give an opinion on the physical damage sustained by the plaintiff and generally carry out the instructions given him by the court."

On 19 June the court served the writ and statement of claim on the hospital.

20. The hospital instructed a lawyer on 17 July and filed two pages of defence pleadings on 8 August. It conceded that Mr H. had indeed been given an amphetamine injection in 1961 but resisted the claim on the ground that it was time-barred under the special statutory limitation period of four years for actions against public bodies and further argued that "the complaints regarding the treatment received [were] quite absurd and manifestly due to an insufficiently stable mental state".

The court served the pleadings on Mr F. on 9 August 1974.

21. After two reminders from the court - dated 29 January and 14 March 1975 -, Mr F. produced his pleadings in reply on 8 April 1975. He sought a determination of "the hospital's negligence", "the disablement suffered by the plaintiff" and "the causal link between the hospital's negligence and this disablement", and to that end he earnestly requested that the court should appoint an expert.

22. Mr H. moved house in December 1974 and again in April 1975, after obtaining a council flat. On each occasion he informed his lawyer.

23. On 17 May 1975 the court asked Mr F. to advise it of Mr H.'s social-security number and of the office with which he was registered. Mr F. replied two months later, on 23 July, after a reminder dated 16 July. He had notified Mr H. of the request on 10 July and again on the 17th, and Mr H. had given him the requisite information.

On 8 September 1976 the court asked Mr F. for this information again. According to the Government, this was a mistake on the part of the registry, which had probably lost or misfiled the letter of 23 July 1975; moreover, when telephoned by the court, Mr F. had allegedly said that he did not have the information in question and was not able to provide it straightaway because his client was refusing to give it to him. It is not clear from the evidence at what juncture the court registry realised that it was pointless to persist in asking for information it already had.

24. On 5 August 1975 the Nancy Health Insurance Office informed the Administrative Court that it did not intend to intervene in the case.

25. On 13 April 1978 the court summoned the parties to a hearing on 25 April.

26. Five days before the hearing, on 20 April, the hospital submitted their final pleadings. They were not served either on Mr F. or on Mr H. As Mr F. considered that his presence was unnecessary since the proceedings were in written form, he did not appear and was therefore unable to reply to these pleadings, whereas Mr L. appeared for the defendant.

27. On the actual day of the hearing, the Nancy Health Insurance Office asked the court for Mr H.'s address, notwithstanding that according to Mr H. - it had been paying him his disablement pension since 1973 and that he had not changed address since 1975.

3. The judgment of 9 May 1978

28. The Administrative Court dismissed the action on 9 May 1978, for the following reasons:

> "Even supposing that a worsening of Mr H...'s condition was observed in 1969, the evidence - and in particular the medical certificate produced - does not establish that this was attributable to the intravenous injection received in 1961; consequently, in the absence of any causal link between the injection complained of and the alleged damage, and seeing that such a link cannot in this instance be presumed, Mr H... has no grounds for seeking to establish the hospital's liability; ... it follows that his application for an expert to be appointed to assess the extent of the damage suffered must be dismissed."

4. Notification of the judgment

29. On 23 May 1978 the court served the judgment on the applicant by registered letter with recorded delivery, but the Post Office returned the letter marked "not known at this address".

On 31 May the court asked Mr F. to give it Mr H.'s new address. The lawyer replied on 8 June that he did not know it. On 13 June, the court attempted to serve the judgment on the applicant through a court bailiff.

30. Concerned at the length of the proceedings, Mr H. telephoned the Administrative Court registry on 18 August 1978. He learned that the court had given judgment on 9 May and he immediately gave his address; he received a copy of the judgment on 18 September 1978.

5. The complaint to the leader of the Strasbourg Bar

31. On 22 September 1978 Mr H. wrote to the leader of the Strasbourg Bar, to complain of the shortcomings on the part of the lawyer who had been assigned to him by the Legal Aid Office. In particular, he blamed Mr F. for always losing his address, for not having informed him of the date of the hearing and for not having appeared in court on 25 April 1978.

After interviewing Mr F., the leader of the Bar disposed of the complaint in a letter dated 9 October, in which he endorsed Mr F.'s explanation, namely that he had seen no point in appearing at the hearing because the proceedings were essentially in written form and were designed, in the first instance, to secure the appointment of an expert on the basis of "medical certificates which [had] been submitted to the court".

B. The proceedings in the Conseil d'État

1. The application

32. Mr H. appealed to the Conseil d'État on 10 November 1978 by lodging pleadings and a file. He asked whether he could argue his own case and, if not, what he should do to secure the assistance of a lawyer and the appointment of a medical expert, which he maintained was essential.

33. On 20 November 1978 the Secretary of the Judicial Division of the Conseil d'État acknowledged receipt of the appeal, which had been registered in the registry on 10 November.

On 12 December he again wrote to Mr H., to tell him that an application such as his was not exempt from the requirement that he should be represented by a lawyer, and that he had a month in which to apply for legal aid.

On 26 December Mr H. made an application for legal aid, requesting the assignment of a lawyer who was genuinely willing to represent him; this was so that he could be sure that his interests would be defended conscientiously.

34. By a decision of 21 February 1979, notified on 13 March, the Legal Aid Office at the Conseil d'État granted Mr H. legal aid, setting the amount to be paid to the lawyer at 1,080 FF.

The lawyer, Mr G., was appointed by the leader of the Bar on 16 March and contacted Mr H. on the 20th.

2. Preparation of the case for trial

35. The applicant forwarded to the Conseil d'État a certificate issued by Dr Rayel on 7 November 1978, which read as follows:

> "I, the undersigned Dr Louis Rayel, hereby certify that I have been treating Mr H... for many years and that on 9.5.74 I gave him a medical certificate for his lawyer, purely for information purposes and in confidence.
>
> This certificate bore the words: 'THIS CERTIFICATE MAY NOT BE USED IN COURT PROCEEDINGS', followed by my signature
>
> Despite being formally so marked, the certificate was made use of by the Strasbourg Administrative Court, and moreover as evidence against Mr H...
>
> The use made of the certificate is clearly indicated in the report of the judgment, which states:
>
> 'The evidence - and in particular the medical certificate produced - does not establish that this was attributable to the intravenous injection received in 1961' ...
>
> ... 'it follows that his application for an expert to be appointed to assess the extent of the damage suffered must be dismissed' ...

Accordingly, it seems to me that Mr H... is fully entitled to appeal against a judgment based largely on a medical certificate which was not officially admissible.

I, the undersigned, hereby certify that on 9.5.74, a medical opinion was indeed essential, as it still is today, in order to study the course of Mr H...'s illness before and after the treatment given him by Strasbourg Hospital.

In support of my certificate, I would cite a letter sent to Mr H... on 4.XI.70 by Professor Kammerer, the doctor in charge of the department in which Mr H... was treated.

In that letter Professor Kammerer wrote:

'The hospital's regulations do not allow me to send you your medical file. But if a doctor or an expert wishes to inspect it, we will make it available to him in its entirety.'

Mr H... has shown me this letter and is willing to make it available to the Conseil d'État.

Lastly, I, the undersigned, hereby certify that the reason why in 1974 I did not give Mr H... a certificate which could be used in legal proceedings was that I thought that under the legal-aid scheme and without a judgment of the court it was possible for Mr H...'s lawyer to request an expert medical opinion on his own initiative which would be paid for direct by the legal-aid fund, in view of his client's financial difficulties at the time.

It appears that this was not possible, but I, the undersigned, hereby certify that I was not informed of this before the Strasbourg court's judgment. Otherwise I would obviously have advised Mr H... to try to finance for himself an authoritative expert medical opinion which he could have submitted to the Strasbourg court with his file.

Steps must therefore be taken to ensure that a similar situation does not arise again and I have therefore advised Mr H. to ask the Conseil d'État for the list of medical experts from which he could choose an expert who might agree to draw up an opinion in defence of Mr H...'s medical interests before the Conseil d'État, provided that the fees of these experts remain within limits compatible with Mr H...'s current resources if he is required to pay these fees himself.

I shall be able to give this expert all the medical information known to me in connection with this case, medical information which it is impossible for me to set out and discuss here, even in summary form, as part of this certificate.

Lastly, I certify that Mr H...'s current position is much the same as in 1974 as regards both his state of health and his financial resources, and that consequently it will be only with the greatest difficulty that he will be able to take the measures necessary for the preparation of the file for his appeal to the Conseil d'État.

Nancy, 7.XI.78

This certificate has been given to [Mr H.] for the appropriate legal purposes.

THIS CERTIFICATE MAY BE USED IN COURT PROCEEDINGS."

36. After unsuccessfully asking several doctors to go through his medical file at Strasbourg Hospital, Mr H. approached Dr Roujansky, a radiologist in Schiltigheim, who agreed and was appointed for the purpose on 11 May 1979. Professor Kammerer consented to the inspection, stating that the file would be made available between 11 a.m. and noon and from 3 p.m. to 6 p.m.

The applicant claims that on 25 May 1979 Dr Roujansky was given access only to a "falsified and truncated" file (see paragraphs 8 and 9 in fine above) and was allowed to photocopy only 21 pages of it.

On 16 October 1979 Dr Roujansky drew up a ten-page report with several appendices. In it he concluded inter alia:

> "It can be stated that had Mr H... been treated less drastically, without the use of this highly dangerous drug, which destroys the physiology of the brain, he would have stood a good chance of leading a normal life, of being able to work and to earn his living instead of leading the life of an invalid.
>
> Strasbourg Hospital should therefore be required to compensate him."

Mr H. produced this report to the Conseil d'État. He states that it did not have the status of a medical opinion by a court expert as Dr Roujansky had not personally examined him and had only been able to study the file made available by the hospital.

37. On 26 July 1979 Mr G. filed supplementary pleadings seeking the appointment of an expert who would assess the extent of the damage suffered and, if necessary, would establish the causal link between the injection complained of and the state of Mr H.'s health.

On 25 September 1979 the presiding judge of the Fifth Section of the Judicial Division ordered that these pleadings should be served on the hospital and the Strasbourg Regional Health Insurance Office.

On 4 April 1980 the hospital produced its defence pleadings, in which it relied in particular on the special four-year limitation period for actions against public bodies. The Directorate-General of Administration of Staff and Budget of the Ministry of Health filed pleadings on 5 September in which it expressed the following opinion:

> "As is pointed out in Strasbourg Hospital's defence pleadings of 4 April 1980, the decisions on the presumption of imputability associated with a presumption of negligence constitute an exception and they all relate to cases in which the consequences of a given treatment are so incommensurate with what would normally be foreseeable that they suggest professional negligence.
>
> This is not so in the instant case. The treatment given in 1961 was carried out in accordance with proper practice and it is difficult to suppose that an injection administered in 1961 could have had consequences that did not become apparent until 1969, seeing that the patient had had problems as far back as 1955, even though in 1963 he did have to be struck off the list of supply teachers in the département after an

opinion had been given by a medical board. As the Strasbourg Administrative Court rightly recognised, the causal link between the injection and the damage relied on is wholly unsubstantiated.

..."

Mr G. replied in writing on 5 December 1980, asking the Conseil d'État to "order an expert to be appointed to assess the extent of the damage suffered and possibly establish the causal link between the intravenous injection administered in 1961 and the state of Mr H...'s health".

38. The applicant asserts that in 1980 he again (see paragraph 16 above) asked the hospital for access to his medical file, and that this was refused.

3. The Government Commissioner's submissions

39. At the Conseil d'État hearing on 2 November 1981, Mr Dutheillet de Lamothe, a Government Commissioner (commissaire du Gouvernement), made the following submissions:

"Mr H..., who was born in 1937 and at the material time was a primary-school teacher, was admitted on 25 May 1961 to the psychiatric clinic of Strasbourg Hospital suffering from depression. On 13 June 1961 'amphetamine shock' treatment was administered. This consists in an injection of amphetamine - in this instance 'Maxiton' [dexamphetamine] - designed to overcome the patient's emotional and affective inhibitions, thereby facilitating analysis of his psychological problems. In Mr H...'s case this procedure caused what the doctors described as an 'aggressive and anxious' reaction, and Mr H... complained of various problems. He left hospital on 13 September 1961, however, and apparently went back to work. He was again placed on sick leave from the end of 1961 onwards and then on 28 January 1963 his name was removed from the list of primary-school teachers for the département.

In 1974 - 13 years after his stay in hospital - Mr H... asked Strasbourg Hospital to compensate him for the harmful consequences of the amphetamine injection he had been given in 1961, consequences which he alleged had not become apparent until 1969. When the hospital refused, [Mr H.] brought an action in the Strasbourg Administrative Court to have the hospital declared liable and an expert appointed in order to assess the extent of the damage caused. In a judgment of [9] May 1978 the court dismissed the action, [pointing out] that there was no causal link between the amphetamine injection complained of and the alleged deterioration in Mr H...'s health in 1969. Mr H... is appealing against that judgment.

1. I consider that the Administrative Court was right in finding that a causal link had not been established. Admittedly, the very scanty evidence on which its decision was based has been supplemented, on appeal, by the medical file opened by the hospital in 1961 and by a very well researched report. But it does not enable a real causal link to be established. The evidence shows that:

(a) the appellant's psychological problems date back to before his admission to hospital in 1961;

(b) while he complained of real problems after the injection administered on 13 June 1961, the hospital carried out the necessary tests (electrocardiogram, biological tests);

(c) when he left hospital on 13 September 1961, his state of health had improved, since he wished to return to work;

(d) his state of health seems to have worsened more particularly in 1963, as he was removed from the list of primary-school teachers and again admitted to hospital;

(e) in 1969, however, the Strasbourg Regional Health Insurance Office found him less than 50% incapacitated for work and discontinued payment of his disablement pension, which was restored in 1972.

Dr Olievenstein, who was consulted by the applicant's medical adviser, wrote: 'A single dose of amphetamine, however large, can only decompensate but not cause psychological disturbance. No one can say whether in any case your patient's psychosis [would] not [have] been decompensated at a later date.'

In these circumstances, I do not consider that a causal link has been established or that the presumptions relied on are sufficient to justify ordering the expert opinion applied for.

2. Contrary to the appellant's submission, a causal link cannot be presumed. Admittedly, in our case-law negligence in the organisation or functioning of a hospital is presumed where a common, mild form of treatment - in particular an injection - has caused particularly serious health problems (23 February 1962, Maïer, page 122, and a great many decisions: 19 March 1969, Assistance Publique de Paris v. Bey, page 165; 19 May 1976, CHR de Poitiers, page 266; 22 December 1976, Assistance Publique de Paris v. Dame Derridj, page 576; 13 May 1977, Rémy-Waris, T., page 961; 9 January 1980, Mortins, page 4). But in all these decisions it was noted at the outset that there was a direct relation of cause and effect between the treatment complained of and the damage relied on: it is the negligence which is presumed and not the imputability of the damage.

3. I believe that accordingly you cannot but dismiss Mr H...'s appeal and affirm the Administrative Court's judgment, without needing, it seems to me, to express a view either on the negligence alleged against the hospital or on the four-year limitation period on which the hospital relies.

(1) As regards the first of those points, I do not think it possible to say that the use of the 'amphetamine shock' technique amounted, in 1961, to gross negligence, even though that technique has apparently now been superseded. Nor would it seem that special tests should have been carried out before it was used. On the other hand, I think that such a technique could not be used, even in the case of psychiatric treatment, without the patient's consent (J., 7 February 1979, M. Barek, page 87; 9 January 1970, Carteron, page 17). The appellant, however, states - and it was not denied - that he was not told about the treatment.

(2) As to the four-year limitation period, the hospital could in any event only rely on it in respect of part of Mr H...'s claim, since the alleged damage is continuing damage and the date on which it stabilised has not been determined (J., 10 November 1967, Auguste, page 422).

For these reasons I submit that Mr H...'s appeal must be dismissed."

4. The judgment of 18 November 1981

40. On 18 November 1981 the Conseil d'État gave the following judgment:

"The Conseil d'État, sitting in its judicial capacity, (Judicial Division, 3rd and 5th sections combined),

...

It is unnecessary to express a view on the hospital's objection that the action is time-barred under the four-year limitation period.

Mr H... was admitted to the psychiatric clinic of Strasbourg Hospital in 1961; he claims that treatment received on that occasion - and, in particular, an intravenous amphetamine injection administered on 13 June 1961 - caused a deterioration in the state of his health and led to a permanent disruption of his life.

It appears from the preliminary examination of the case and the evidence before us that there is no direct relation of cause and effect between the alleged deterioration in the appellant's health and the treatment he underwent at Strasbourg Hospital in 1961.

The court below was accordingly right in dismissing the appellant's action against the hospital and his application for an expert to be appointed both to establish the links between the treatment and the alleged damage and to assess the latter's extent.

DECIDES AS FOLLOWS:

1. Mr H...'s appeal is dismissed.

2. This decision shall be served on Mr H..., Strasbourg Hospital and the Ministry of Health."

The judgment was served on 19 January 1982.

5. The correspondence between the applicant and the leader of the Ordre des avocats aux Conseils

41. On 29 November 1981 Mr H. wrote to the leader of the Bar of avocats practising at the Conseil d'État and the Court of Cassation to complain that he had been badly represented. In particular, he criticised Mr G. for having never allowed him to speak to him directly before the hearing, for having avoided any dialogue "because he [was] legally aided and it would be detrimental to [his] case", and for having refused to tell him of the date of the hearing and to send him the file, thereby preventing him from adding to it.

In a letter of 2 December the leader of the Bar replied that he did not intend taking up each of his complaints, as they mostly showed his "ignorance of administrative procedure and its characteristic features".

PROCEEDINGS BEFORE THE COMMISSION

42. In his application of 21 June 1982 to the Commission (no. 10073/82), Mr H. alleged that there had been two violations of Article 6 para. 1 (art. 6-1) of the Convention: the administrative courts had not heard his case within a reasonable time and, by failing to order an expert opinion and a proper investigation, had not given him a fair trial.

43. The Commission declared the application admissible on 12 March 1986. In its report of 4 March 1988 (made under Article 31) (art. 31), the Commission expressed the opinion that there had been a violation of Article 6 para. 1 (art. 6-1) in respect of the first point (unanimously) but not in respect of the second (by nine votes to two).

The full text of the Commission's opinion and of the separate opinion contained in the report is reproduced as an annex to this judgment.

FINAL SUBMISSIONS TO THE COURT

44. In their memorial the Government "ask the Court to dismiss Mr H...'s application".

AS TO THE LAW

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

45. In the applicant's submission, the French administrative courts had not heard his case in accordance with Article 6 para. 1 (art. 6-1) of the Convention, whereby:

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

A. The applicability of Article 6 para. 1 (art. 6-1)

46. Before the Commission the Government did not argue that the impugned proceedings did not involve "the determination of ... civil rights and obligations" within the meaning of Article 6 para. 1 (art. 6-1).

Before the Court, however, the Government submitted that the applicability of Article 6 (art. 6) was a preliminary question which the Court had to consider if necessary of its own motion. They pointed out that while Mr H.'s action for damages had a pecuniary purpose, it was directed against a public body, Strasbourg Hospital, and was subject to the rules on the liability of such bodies in French law. For the rest, the Government left to the Court's discretion the question whether the dispute related to "civil rights and obligations".

47. The Court recognises that this is an issue going to the merits, which must be determined without regard to the previous attitude of the respondent State (see, mutatis mutandis, the Barthold judgment of 25 March 1985, Series A no. 90, p. 20, para. 41).

It is clear from the Court's established case-law that the concept of "civil rights and obligations" is not to be interpreted solely by reference to the respondent State's domestic law and that Article 6 para. 1 (art. 6-1) applies irrespective of the parties' status, be it public or private, and of the nature of the legislation which governs the manner in which the dispute is to be determined; it is sufficient that the outcome of the proceedings should be "decisive for private rights and obligations" (see, as the most recent authority, the Tre Traktörer Aktiebolag judgment of 7 July 1989, Series A no. 159, p. 13, para. 41).

This is so in the instant case, so that Article 6 para. 1 (art. 6-1) applies.

B. Compliance with Article 6 para. 1 (art. 6-1)

1. Length of the proceedings

(a) Period to be taken into consideration

48. The Commission and the Government submitted that the proceedings in the administrative courts began on 14 June 1974, when the applicant started his action in the Strasbourg Administrative Court, and ended on 19 January 1982, when he was notified of the judgment given by the Conseil d'État on 18 November 1981.

Before the Court Mr H. maintained that the relevant period had actually begun as early as 29 May 1973, the date of his application to the Legal Aid Office at the Strasbourg Administrative Court.

49. Given the total length of the proceedings on the merits, the Court does not consider it necessary to ascertain whether the preliminary legal-aid

procedure also came within the scope of Article 6 para. 1 (art. 6-1). It will accordingly confine its review to the period from 14 June 1974 to 19 January 1982, that is to say a period of just over seven years and seven months.

(b) Reasonableness of the length of the proceedings

50. The reasonableness of the length of proceedings must be assessed in the light of the particular 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, the behaviour of the applicant and the conduct of the relevant authorities (see, inter alia, the Unión Alimentaria Sanders SA judgment of 7 July 1989, Series A no. 157, p. 13, para. 31).

i. Complexity of the case

51. According to the Government, although a question of liability on the part of a hospital was involved, there was nothing in the evidence submitted to the Administrative Court which established a causal link between the treatment impugned by the applicant and the damage complained of. As to the evidence submitted to the Conseil d'État, the Government claimed that it did not disclose even a minimum of presumptions supporting the applicant's allegations.

The applicant maintained the contrary on both points.

The Government did, however, acknowledge that the case was not a complex one.

52. Like the Commission, the Court shares that opinion. It notes that the administrative courts did not order any inquiries into the facts and that the legal issues raised did not present any special difficulties.

ii. Behaviour of the applicant and his lawyer

53. Two periods during the proceedings in the Strasbourg Administrative Court may seem abnormally long. The Government said that they were attributable to the behaviour of the applicant or of his lawyer. The lawyer, they claimed, had not replied until 8 April 1975 to defence pleadings filed by Strasbourg Hospital on 8 August 1974 (see paragraphs 20-21 above); and the time which elapsed between the request for information on 8 September 1976 and the summoning to the hearing of 25 April 1978 (see paragraphs 23 and 25 above) had likewise been caused by his inaction.

54. The applicant argued that he could not be held responsible for the temporary inactivity of his lawyer. Once the Legal Aid Office had assigned Mr F. to assist him in the Administrative Court proceedings, it was counsel who had been in charge of the conduct of the proceedings, and the applicant had had no means of expediting them or changing his lawyer.

55. The Court points out that in civil proceedings the parties too must show "due diligence" (see the Pretto and Others judgment of 8 December 1983, Series A no. 71, pp. 14-15, para. 33) and that only delays attributable to the State may justify a finding of a failure to comply with the "reasonable time" requirement (see, among other authorities, the H v. the United Kingdom judgment of 8 July 1987, Series A no. 120-B, p. 59, para. 71).

By taking eight months to reply to defence pleadings filed by Strasbourg Hospital, the applicant's lawyer may, albeit to a limited extent, have contributed to delaying the proceedings before the Strasbourg Administrative Court.

iii. Conduct of the judicial bodies

56. The proceedings in that court were commenced on 14 June 1974; judgment was delivered on 9 May 1978 and served on the applicant on 18 September 1978 (see paragraphs 19, 28 and 30 above). These proceedings therefore lasted about four years.

During this period the court sought certain information from the applicant's counsel but did not take any investigative measures. It also prolonged the proceedings by asking the lawyer on 8 September 1976 for information already given it on 23 July 1975. Above all, the hearing did not take place until two years and nine months after that information was received (see paragraph 25 above).

The Government pointed out that there was a backlog of cases waiting to be heard in the Strasbourg Administrative Court at the time, but provided no evidence that the situation was a temporary one (see, inter alia, the Guincho judgment of 10 July 1984, Series A no. 81, p. 17, para. 40, and the Unión Alimentaria Sanders SA judgment previously cited, Series A no. 157, p. 15, para. 40) and that remedial action had been taken.

The Court concludes that the length of the disputed proceedings was excessive.

57. The Conseil d'État, which had been seised of the case on 10 November 1978, gave judgment on 18 November 1981, after a little over three years (see paragraphs 32 and 40 above). That is undoubtedly a long time. But it cannot be overlooked that when Mr H.'s appeal was registered, he did not have the assistance of a lawyer; he did not request this until 26 December 1978 and was granted it on 21 February 1979 (see paragraphs 33-34 above). Once Mr G. had been appointed on 16 March, pleadings were exchanged from 26 July 1979 to 5 December 1980 and a hearing took place on 2 November 1981 during which the Government Commissioner made his submissions (see paragraphs 34, 37 and 39 above).

In the circumstances of the case the length of the proceedings in the Conseil d'État, the supreme administrative court, does not appear excessive, despite certain delays.

58. The Court is not unaware of the difficulties which sometimes delay the hearing of cases by national courts and which are due to a variety of factors. Nevertheless Article 6 para. 1 (art. 6-1) requires that cases be heard "within a reasonable time"; in so providing, the Convention underlines the importance of rendering justice without delays which might jeopardise its effectiveness and credibility.

59. Assessing the circumstances of the case as a whole, the Court concludes that "a reasonable time" was exceeded by the Strasbourg Administrative Court, and that there was therefore a breach of Article 6 para. 1 (art. 6-1).

2. Fairness of the proceedings

60. In Mr H.'s submission, the failure to appoint an expert despite his express requests and in proceedings for which he was receiving legal aid contravened Article 6 para. 1 (art. 6-1).

The Government contended that the requirements of a "fair trial" could not include an obligation on the court trying the case to order an expert opinion to be given or any other investigative measure to be taken solely because a party had sought it; it was for the court to judge whether the requested measure would serve any useful purpose.

61. The Court agrees with the Government. It must, however, ascertain whether the proceedings as a whole were fair as required by Article 6 para. 1 (art. 6-1) (see, among other authorities, the Barberà, Messegué and Jabardo judgment of 6 December 1988, Series A no. 146, p. 31, para. 68).

(a) The Administrative Court

62. The Strasbourg Administrative Court rejected the application for an expert opinion on the ground that as no causal link had been established between the intravenous injection given to Mr H. and the alleged damage, his action could not succeed (see paragraph 28 above).

63. The Government submitted that the cogency of that argument was unquestionable: "An expert opinion designed to assess damage obviously serves no useful purpose if the damage ... does not give rise to any compensation", for example because there is no evidence that it is attributable to the defendant. And they argued that the only medical document produced to the Administrative Court - Dr Rayel's certificate of 9 May 1974 (see paragraph 18 above) - did not support the applicant's allegations but merely reproduced them.

64. The applicant said that the purpose of the expert opinion he had requested in June 1974 and April 1975 was precisely to determine the causal link between the hospital's negligence and the disablement he had suffered. He considered that the Administrative Court should at least have allowed him the opportunity to avail himself at his own expense of the services of a private expert and at all events have based its decision on an expert medical

opinion. The certificate of 9 May 1974, however, was not an official expert opinion by a medical specialist; it had been given to his lawyer as a confidential guide by Dr Rayel and moreover was not contrary to the applicant's interests.

Furthermore, the applicant continued, the hospital had always refused to give him his complete file. He had also had to wait until 1970 in order to be able to show that the injection given him had been amphetamine and not a "powerful tonic", as he had been assured at the time (see paragraph 16 above).

65. The Administrative Court held that no causal link had been established between the injection complained of and the alleged damage; it took the documentary evidence into account, in particular the medical certificate of 9 May 1974. The Court notes that this certificate was drawn up thirteen years after the event and nearly four years after the nature of the injection had been disclosed to the applicant. As Mr H. had not made out any prima facie case to the contrary, the Administrative Court could reasonably hold that it was not necessary to test the accuracy of its conclusion by means of an expert medical opinion.

(b) The Conseil d'État

66. Before the Conseil d'État Mr H. specified the purpose of the requested expert opinion by explicitly asking the appellate court to instruct an expert to give an opinion on, among other things, the very existence of a causal link. The Conseil d'État dismissed his appeal. It held that it was apparent "from the preliminary examination of the case and the evidence before [it] that there [was] no direct relation of cause and effect between the alleged deterioration in the appellant's health and the treatment he underwent ... in 1961"; accordingly, the Administrative Court was "right in dismissing the appellant's ... application for an expert to be appointed both to establish the links between the treatment and the alleged damage and to assess the latter's extent" (see paragraph 40 above).

67. The applicant contended that the Conseil d'État had not given reasons for its decision and had not had available to it any evidence which would have enabled it to give judgment without an expert opinion. In particular, it did not have the complete medical file that the hospital had opened in 1961, including the letter of introduction to the hospital, the first interview with Dr Ebtinger and all the observations made between 11 August and 15 September 1961; the ones relating to the interview of 27 May 1961 had, moreover, been antedated (see paragraphs 8-9 above).

The applicant also mentioned that the medical certificate and report he had produced to the Conseil d'État assisted him (see paragraphs 35-36 above).

He added that his counsel before the Conseil d'État had submitted that the doctor was guilty of gross negligence because the "amphetamine shock"

had been administered in disregard of the treatment prescribed (narcoanalysis), without his consent and without any preliminary examination of his cardiovascular system, and it was a dangerous treatment that had been discarded by the medical profession on account of the serious physical and psychological risks attaching to it.

At all events, having regard to its own case-law, the Conseil d'État should, the applicant maintained, have verified whether there had actually been the alleged negligence highlighted in Dr Roujansky's report, because in the event of gross negligence a causal link would be presumed.

Lastly, Mr H. disputed a number of assertions in the submissions made by the Government Commissioner, in particular that his health had worsened in 1969. After leaving hospital on 15 September 1961 he had been forced to stop work on 24 November 1961; his name had been taken off the list of supply teachers on 28 January 1963; and he had been registered as a Category 1 disabled person (66% disablement) from 25 May 1964 to 15 September 1965 and as a Category 2 disabled person (100% disablement) from 1965 to 1969 and from 1972 to the present day (see paragraphs 14-15 above). The applicant claimed that before his admission to hospital he had worked continuously.

68. In the Government's submission, the Conseil d'État was only bound to order an expert opinion if there was sufficiently strong circumstantial evidence of the likelihood of a causal link. This had not been the case, since the evidence did not disclose a minimum of presumptions to support the applicant's allegations. Under national case-law, there could only be a "presumption that the hospital administration was liable and actually responsible" if "the treatment undergone [was] an extremely mild form of treatment, if the ailment for which [the patient] ha[d] sought treatment [was] an extremely minor one and if ... he emerge[d] from his visit to hospital with an ... exceptionally serious illness".

69. According to the Commission, the refusal to appoint an expert had been preceded by a fairly detailed examination of the question whether or not there was a presumption of a causal link, as appeared from the submissions of the Government Commissioner on which the Conseil d'État relied, and the Conseil d'État could not be blamed for not having ordered such an investigative measure or given any reasons for refusing the applicant's request.

70. The Conseil d'État's decision not to order an expert opinion might at first sight seem open to criticism in a case concerning medical treatment with a controversial drug. The Court notes, however, that the Conseil d'État had available to it the parties' pleadings and the documents that the parties had supplied relating, inter alia, to the applicant's stay in Strasbourg Hospital and the effects of the injection he had been given.

When the application was made to the Strasbourg Administrative Court, thirteen years had elapsed since the applicant's stay in hospital, and Mr H.

did not produce any valid explanation during the proceedings of why, when he had been informed by Professor Kammerer on 4 November 1970 that amphetamine had been used to treat him, he did not apply for legal aid until 29 May 1973.

Having regard to all these circumstances, the Conseil d'État was entitled to take the view that it had sufficient information for it to be able to give judgment on the basis of its preliminary examination of the case and the evidence before it. Accordingly, the fact that it did not order an expert opinion did not infringe the applicant's right to a fair trial.

II. APPLICATION OF ARTICLE 50 (art. 50)

71. By 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."

The applicant is claiming compensation for damage and reimbursement of costs and expenses.

A. Damage

72. The applicant claimed to have suffered both pecuniary and non-pecuniary damage on account of the length and unfairness of the proceedings.

He assessed pecuniary damage at 200,000 French francs (FF). The length of the proceedings had, he claimed, diminished his chances of establishing a causal link between his health problems and the injection complained of; furthermore, the failure to appoint an expert had deprived him of any opportunity of obtaining compensation.

He also claimed 200,000 FF in respect of non-pecuniary damage. For more than seven years he had experienced anxiety and uncertainty that had been all the greater as it was his mental health which was affected. The unfairness of the proceedings had, moreover, caused him feelings of frustration and helplessness that had been all the more acute as his human dignity was at stake and the opposing side's arguments amounted to a vicious circle.

73. In the Government's submission, if the Court held that the case had not been tried within a "reasonable time", its judgment would itself provide sufficient just satisfaction. The applicant's claims bore no proportion to the delays complained of, to which Mr H. and his lawyers had contributed by their conduct.

In respect of the second complaint likewise, the Government maintained that a finding of a breach would afford adequate redress.

74. The Delegate of the Commission was in favour of awarding compensation for pecuniary and non-pecuniary damage, in an amount to be determined at the Court's discretion.

75. The Court notes firstly that the sole basis on which the applicant can be granted just satisfaction is the Administrative Court's failure to try the case within the "reasonable time" required by Article 6 para. 1 (art. 6-1) (see paragraphs 59 and 70 above).

As regards pecuniary damage, the evidence does not establish that the length of the proceedings diminished the applicant's chances of establishing a causal link.

On the other hand, Mr H. has undeniably suffered non-pecuniary damage. He has lived in prolonged, distressing uncertainty and anxiety. Taking its decision on an equitable basis, as required by Article 50 (art. 50), the Court awards him compensation in the amount of 50,000 FF.

B. Costs and expenses

76. The applicant claimed reimbursement of the costs he had incurred in the proceedings in the French courts and before the Convention institutions. He included lawyers' fees and personal expenses entailed mainly by drafting pleadings, and deducted the sums already paid in legal aid. He thus arrived at a figure of 150,000 FF, of which 40,500 FF were accounted for in detail.

The Government expressed no view on the matter. The Delegate of the Commission considered that the applicant should provide details justifying the former figure and found the latter figure reasonable.

77. The Court has consistently held that reimbursement may be ordered in respect of costs and expenses that (a) were actually and necessarily incurred by the injured party in order to seek, through the domestic legal system, prevention or rectification of a violation, to have the same established by the Court and to obtain redress therefor; and (b) are reasonable as to quantum.

It notes that most of the applicant's costs in the French courts were incurred in connection with the merits of the case and not with the issue of the length of the proceedings. Taking its decision on an equitable basis, the Court considers that legal costs and travel and subsistence expenses to be repaid to the applicant may be assessed at 40,000 FF.

FOR THESE REASONS, THE COURT

1. Holds unanimously that Article 6 para. 1 (art. 6-1) has been violated, in that the Strasbourg Administrative Court did not hear the applicant's case within a "reasonable time";

2. Holds by five votes to two that there has been no other violation of this Article (art. 6-1), notably as regards the fairness of the proceedings;

3. Holds unanimously that France is to pay the applicant 50,000 (fifty thousand) FF in respect of damage and 40,000 (forty thousand) FF in respect of costs and expenses;

4. Dismisses unanimously 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 24 October 1989.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 52 para. 2 of the Rules of Court, the partly dissenting opinion of Mr Macdonald and Mr Carrillo Salcedo is annexed to this judgment.

R.R.
M.-A.E.

PARTLY DISSENTING OPINION OF JUDGES MACDONALD AND CARRILLO SALCEDO

(Translation)

We concur in the Court's judgment in so far as it is held that there was a breach of Article 6 para. 1 (art. 6-1) of the Convention in respect of the length of the proceedings, but unlike the majority we consider that the applicant did not receive a fair trial within the meaning of that provision.

The Conseil d'État dismissed the applicant's action against the hospital and his application for an expert to be appointed, holding that "it appear[ed] from the preliminary examination of the case and the evidence before [it] that there [was] no direct relation of cause and effect between the alleged deterioration in the appellant's health and the treatment he underwent ...".

It appears that the Conseil d'État did not take any investigative steps and that the evidence was in the applicant's favour. While it is true that in the Strasbourg Administrative Court the applicant had not adduced any prima facie evidence of a causal link between the injection complained of and the alleged damage, it is inaccurate to say that he did not do so in the Conseil d'État: Dr Rayel's certificate of 7 November 1978 emphasised that an expert opinion was "essential" (see paragraph 35 of the judgment) and Dr Roujansky's report refers to the injected drug as "highly dangerous" (see paragraph 36 of the judgment). Appended to that report, moreover, was an article by Dr Ebtinger highlighting the fact that amphetamine shock was absolutely contra-indicated in cases of the illness from which the applicant had been diagnosed as suffering (see paragraph 12 of the judgment).

As Mr Gözübüyük and Mr Martinez pointed out in their dissenting opinion appended to the Commission's report, the very purpose of the expert opinion sought was to determine the causal link between the hospital's negligence and the alleged disablement. It is undoubted that the causal link between disputed medical treatment and damage sustained cannot be established by a court unaided. The court must call upon a field of knowledge which is not its own, i.e. "medical science", which can only assist the court by means of an expert opinion, and if necessary a second opinion, the process being attended by safeguards provided for in the rules of procedure. It was unfair and even illogical to refuse the applicant an expert opinion, which was the only means of proving the relationship of cause and effect, and to reject his request on the precise ground that he had not established this causal link. It was the more important to appoint an expert as the treatment administered was not the one that had been prescribed and was carried out without the patient's consent (see paragraph 11 of the judgment).

Admittedly, assessment of the evidence is a matter for the national courts alone and is accordingly not subject to review by the Court. However,

having regard to the important part played in the Convention system by the right to a fair trial (see, among other authorities, the Barberà, Messegué and Jabardo judgment of 6 December 1988, Series A no. 146, p. 31, para. 68), it is not open to a national court not to order a measure without which the person seeking it would be put at a disadvantage vis-à-vis the opposing party, such that the balance which must prevail in the taking of evidence would be upset. In the instant case the applicant was contending alone against the administrative authorities, despite the requirements of the adversarial principle, so that the only way of restoring the balance was precisely to appoint an expert. Since such a balance was not ensured in the proceedings, there was a breach of the principle of a fair trial under Article 6 para. 1 (art. 6-1) of the Convention.