In the case of A and Others v. Denmark (1),

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

Mr R. Ryssdal, President,
Mr F. Matscher,
Mr L.-E. Pettiti,
Mr A. Spielmann,
Mr J. De Meyer,
Mr I. Foighel,
Mr J.M. Morenilla,
Mr D. Gotchev,
Mr B. Repik,

and also of Mr H. Petzold, Registrar, and Mr P.J. Mahoney, Deputy Registrar,

Having deliberated in private on 27 October 1995 and 22 January 1996,

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

Notes by the Registrar

1. The case is numbered 60/1995/566/652. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 6 July 1995, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 20826/92) against the Kingdom of Denmark

lodged with the Commission under Article 25 (art. 25) by ten Danish nationals (see paragraph 7 below) on 27 August 1992.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Denmark 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) of the Convention.

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

3. The Chamber to be constituted included ex officio Mr I. Foighel, the elected judge of Danish nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 4 (b)). On 13 July 1995, in the presence of Mr V. Berger, Head of Division, the President drew by lot the names of the other seven members, namely Mr F. Matscher, Mr L.-E. Pettiti, Mr A. Spielmann, Mr J. De Meyer, Mr J.M. Morenilla, Mr D. Gotchev and Mr B. Repik (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43).

4. As President of the Chamber (Rule 21 para. 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Danish Government ("the Government"), the applicants' lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 paras. 1 and 38). Pursuant to the order made in consequence on 3 August 1995, the Registrar received the Government's memorial on 13 September 1995 and the applicants' memorial on 18 September. On 10 October 1995 the Secretary to the Commission informed the Registrar that the Delegate did not wish to reply in writing.

5. On 12 and 19 October 1995 the Commission produced certain documents from its file on the proceedings before it and on 20 October the Government and the applicants submitted further particulars, as requested by the Registrar on the President's instructions.

6. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 26 October 1995. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr L. Mikaelsen, Ambassador, Head of the Legal Department,
Ministry of Foreign Affairs, Agent,
Mr J. Reimann, Chief Legal Adviser,
Ministry of Justice, Co-Agent,
Mr M. Jørgensen, Head of Department,
Ministry of Health,
Mr A. Skibsted, Legal Adviser,
Ministry of Foreign Affairs, Advisers;

(b) for the Commission

Mr Gaukur Jörundsson, Delegate;

(c) for the applicants

Mr T. Trier, advokat, Lecturer in Law
at the University of Copenhagen, Counsel,
Ms K. Sindbjerg, Legal Resources Centre, Durban,
Mr T. Andersen, Chairperson of the Danish
Association of Haemophiliacs, Advisers.

The Court heard addresses by Mr Gaukur Jörundsson, Mr Trier,
Mr Mikaelsen and Mr Reimann.

AS TO THE FACTS

I. Particular circumstances of the case

A. Events giving rise to compensation proceedings

7. The applicants, listed below, are all Danish citizens who are either themselves victims of the Human Immunodeficiency Virus (HIV) or relatives of deceased victims of the virus. All the victims frequently received blood transfusions at Danish hospitals and were infected with HIV during the periods indicated below in brackets.

Mr A (7 July 1985 - 25 May 1986) lives at St Heddinge and is studying agriculture.

Mr Henning Eg (9 June 1985 - 10 February 1986) lives at Kværndrup and worked as an electronics technician until he was granted an early retirement pension in 1991.

Mr C (1 January 1978 - 7 June 1985) worked as an electronics technician and was granted an early retirement pension after the first signs of the acquired immunodeficiency syndrome (AIDS) appeared during the winter of 1991 to 1992; he died of AIDS on 14 September 1993 and his widow, Mrs Gitte Christensen, is pursuing the application on his behalf.

Mr D (1 January 1978 - 27 April 1985) lives in Copenhagen.

Mr E (16 January 1980 - 21 February 1985) lives at Frederiksberg and withdrew from the domestic proceedings in issue in the present case on 4 November 1993.

Mr F (3 January 1980 - 6 March 1985) died of AIDS on 9 September 1992; his widow, Mrs F, is pursuing the application on his behalf.

Mr and Mrs G are the parents of a haemophiliac (10 May 1986 - 26 March 1987) who died of AIDS on 9 August 1992.

Mrs Kirsten Feldskov is the widow of a haemophiliac (1 January 1978 - 12 March 1985) who had received a pension since the age of 15 and who died of AIDS on 10 August 1987.

Mrs Britt Lykkeskov Jacobsen is the mother of a haemophiliac (1 January 1978 - 17 October 1985) who died of AIDS on 27 August 1986, the symptoms having appeared in 1985.

8. In 1982 it became known that AIDS could be transmitted through blood transfusion and through the use of certain blood products. In 1984 a Blood Products Committee (blodproduktudvalg) was established in Denmark. In 1985 the Committee discussed the question of screening donor blood in order to avoid the use of contaminated blood. In March 1985 the Danish Association of Haemophiliacs (Den danske Bløderforening - "the Association") requested the Minister of the Interior to introduce heat treatment of blood products and screening of donor blood.

9. On 10 September 1985 the Minister of the Interior requested the National Health Board to introduce, as soon as possible, a general obligation to subject blood products to heat treatment and to screen donor blood. As a result such heat treatment and screening were made compulsory as from 1 October 1985 and 1 January 1986 respectively.

However, it remained possible to use unscreened blood products in certain circumstances. On 11 November 1987 the National University Hospital submitted a report to the National Health Board on the possibility of unscreened blood products causing HIV infections. On 13 November 1987 the National Health Board indicated to the Danish producers that all unscreened blood products should be withdrawn immediately.

10. In the meantime, in April 1987, the Association had drawn up a report stating that approximately ninety haemophiliacs had been infected with HIV. The Association urged Parliament (Folketinget) to adopt legislation allowing awards of 450,000 Danish kroner (DKK) or more as ex gratia compensation to the victims.

11. By Executive Order (bekendtgørelse) of 2 September 1987, Parliament authorised the Minister of the Interior to award DKK 100,000 in ex gratia compensation to haemophiliacs who had become HIV-positive as a result of receiving contaminated blood

in transfusions. After criticism by the Association in a letter of 15 October 1987 to the Parliamentary Health Committee (Folketingets Sundhedsudvalg), Parliament increased the amount on 14 June 1988 to DKK 250,000 and ordered that awards could also be made to certain relatives. Finally, by a further Executive Order of 19 November 1992, the size of the award was increased to DKK 750,000. Awards of this amount have been, and will continue to be, made to haemophiliacs infected with HIV following treatment with blood products and to other HIV-positive persons infected through blood transfusions at Danish hospitals. The ex gratia compensation may in certain circumstances be paid to the heirs of persons in the above category.

12. Under the above compensation scheme the first five applicants and Mrs Feldskov each received DKK 750,000. Mr F received DKK 250,000 and, after his death on 9 September 1992, his widow, Mrs F, was awarded the remaining DKK 500,000. Mr and Mrs G's son received DKK 250,000 before he died on 9 August 1992. As he did not have any principal heirs (livsarvinger), the remaining DKK 500,000 were not paid out. No payment was made in respect of Mrs Lykkeskov Jacobsen's son as he died before the Executive Order of 2 September 1987 and left no principal heirs.

13. In addition to authorising ex gratia payments, Parliament requested the Government to take steps to clarify the circumstances in which unscreened blood products came to be used after the introduction of screening on 1 January 1986. As a result, a judicial inquiry was carried out and a report on the inquiry was presented in May 1988. In July of the same year, the Ministry of Health opened an official inquiry in respect of seven officials who had been criticised in the report. Moreover, criminal proceedings were instituted against a producer of blood products, who, on 29 November 1989, was found guilty of a violation of the Medical Drugs Act and fined DKK 15,000.

B. Civil proceedings in the High Court

14. On 14 December 1987 the Association filed a writ instituting proceedings in the High Court of Eastern Denmark (Østre Landsret) against the Ministry of the Interior (which later became the Ministry of Health), the National Health Board, Novo-Nordisk A/S (a company) and the National Serum Institute. The Association and the company were each represented by an advokat and the other three defendants were represented by the Government Solicitor (kammeradvokaten). In its writ the Association alleged that the defendants had acted in an unjustifiable and irresponsible manner towards its members through their involvement after 1 January 1986 in the use of products which might have contained the AIDS virus. The Association requested the High Court to order the defendants to acknowledge that they were jointly and severally liable to pay

damages to those of its members who were found to have been infected by HIV after using blood products supplied by Novo-Nordisk A/S and/or the National Serum Institute.

15. At the first court sitting in the case, held on 18 February 1988, the defendants submitted their replies (svarskrift), requesting the High Court to dismiss the plaintiffs' claims on the grounds that the Association could not act on behalf of its members. The defendants maintained that the action should only be admitted for examination if the Association acted as the representative (mandatar) of its members. In the alternative, the defendants asked the High Court to rule in their favour on the merits. They also requested the High Court to adjourn the case pending the final defence pleadings which would not be made until after the conclusion of the judicial inquiry mentioned in paragraph 13 above.

The High Court adjourned the case first until 7 April 1988 and then until 5 May 1988, each time pending the final defence pleadings, as the judicial inquiry report did not become available until May 1988. At the next court sitting on 15 August 1988, the defendants submitted no observations but asked the High Court to hear their dismissal claim separately, whereas the Association requested permission to submit written observations on this point. The High Court accordingly adjourned the case until 8 September 1988.

16. On 8 September 1988 the Association asked the High Court to reject the defendants' request for separate examination of their dismissal claim. The Association stated that it was now acting as representative (mandatar) of a member who wished to remain anonymous and that it also had an independent legal interest, on behalf of all its members, in obtaining the High Court's decision on whether the defendants could be held liable vis-à-vis members infected by HIV after a certain date. The case was adjourned until 10 November 1988 in order to allow the defendants to submit written observations in reply.

17. On 10 November 1988 the defendants maintained their claim that the case should be dismissed but indicated their willingness to reconsider the matter if the Association agreed to regard the case as one concerning a claim of specific and actionable damage caused by the defendants to the member the Association was acting for as mandatar. At the parties' request, the High Court decided to hold a preliminary hearing on 9 February 1989 under section 355 of the Administration of Justice Act (retsplejeloven) in order to have the above matters clarified (see paragraph 49 below). However, owing to illness, counsel for the Association was unable to attend. On 2 March 1989 the High Court, having consulted the parties, set the preliminary hearing down for 18 May 1989.

18. During the preliminary hearing on 18 May 1989 counsel for the Association agreed to discuss with the Association whether individual members could be identified so that specific claims for damages could be made. In order to allow such discussion the case was adjourned until 28 September 1989.

In its pleadings of 18 May 1989, the Association modified its claims to the effect that the defendants were liable for their actions already as from 1 January 1985, as opposed to 1 January 1986, the date previously maintained.

19. On 28 September 1989 the Association asked for an eight-week adjournment in order to consider whether to await the outcome of the criminal proceedings against Novo-Nordisk A/S. It had not yet been decided whether individual plaintiffs should be identified. The High Court granted the request and set the case down for 23 November 1989. However, the presiding judge, referring to discussions at the preliminary hearing on 18 May 1989, requested the parties to settle certain questions of formality.

20. At the hearing on 23 November 1989 the Association submitted that it acted as the representative (mandatar) of members who had been infected with HIV after 1 January 1985 and that the first six applicants and Mr and Mrs G's son had joined the case on the understanding that their identity would not be made public.

21. In order to allow the defendants to submit their final statement of defence, the High Court adjourned the case to 18 January 1990 and then to 22 March 1990.

22. At the hearing on 22 March 1990 four further plaintiffs, including Mrs Feldskov and Mrs Lykkeskov Jacobsen (see paragraph 7 above), joined the case. The proceedings were adjourned until 17 May 1990, pending the defendants' final defence pleadings which, they argued, could not be submitted until the applicants had decided to what extent they maintained their various requests for documents.

23. On 17 May 1990 the case was adjourned until 21 June 1990 in order to allow the applicants to examine certain documents. On 21 June 1990 the applicants submitted twenty-one further documents. Pending the defendants' observations on this evidence the case was adjourned until 23 August 1990 and then until 27 September 1990.

24. At the hearing on 27 September 1990 the applicants proposed that a medical opinion be obtained and stated that they would present relevant documents in this respect. The case was then adjourned until 25 October 1990, in order to enable the

defendants to comment on the applicants' suggestion. On 25 October 1990 Novo-Nordisk A/S accepted their proposal, whilst the other defendants did not state their views on the matter, for which reason the case was adjourned until 29 November 1990.

25. On 29 November 1990 all parties agreed to obtain a medical opinion. The case was adjourned until 21 February 1991 and then until 4 April 1991, as the applicants were in the process of preparing further medical evidence in respect of six additional prospective plaintiffs.

26. On 4 April, 16 May and 6 June 1991 the High Court granted further adjournments as the parties failed to agree on which experts should be appointed, the questions to be put to them and the procedure. On 8 August 1991, at a preliminary hearing under section 355 of the Administration of Justice Act (see paragraph 49 below), the plaintiffs submitted their proposals in respect of obtaining a medical expert opinion and three of the defendants asked for an adjournment in order to consider the matter further. The High Court adjourned the case until 12 September 1991.

On 12 September 1991 the parties informed the High Court that they had now agreed on the procedure for the medical opinion. In order to allow the parties to reach agreement on the appointment of experts and on the questions to be put to the experts, the High Court granted further adjournments on the aforementioned date, on 19 December 1991, 20 February 1992, 12 March 1992 and 4 June 1992. According to the applicants, although they presented their suggestion of questions on 5 February 1992, they did not receive the comments of three of the defendants until 6 August.

The plaintiffs' pleadings of 5 February 1992 replaced all of their seven previous pleadings, entailing the reformulation of their claims and arguments on a number of points. Two plaintiffs withdrew from the case.

27. On 6 August 1992 the parties informed the High Court that they had reached agreement on who could be appointed as experts and on the issues to be dealt with by them. The High Court then appointed the experts suggested and adjourned the case until 10 December 1992 pending their report.

28. On 9 August 1992 Mr and Mrs G's son died and on 9 September 1992 Mr F died. On the latter date the High Court was informed that the applicants had lodged an application with the European Commission of Human Rights complaining under Article 6 para. 1 (art. 6-1) of the Convention about the length of the proceedings. Further, it appears that certain problems arose in respect of the material to be transmitted to the experts for evaluation.

In the light of the above, the presiding judge, on 13 October 1992, added this statement to the court records:

> "... during the preparatory stage up till now the case has been adjourned each time in accordance with the requests made jointly by counsels for the parties ...
>
> The presiding judge has urged the defendants' counsel to submit to the High Court and counsel [for the plaintiffs], by 1 November 1992, their reply to [the plaintiffs' counsel's] observations of 9 September 1992.
>
> The presiding judge added that any further exhibits to be presented to the experts should first be presented in court."

29. On 11 November 1992, at the request of the Minister of Health, the Government Solicitor convened counsel for the plaintiffs to a meeting in order to consider possibilities of expediting the proceedings. The defendants argued in particular that although the purpose of the lawsuit in their opinion was to obtain damages, the applicants had not yet presented any specific claim in this respect. The applicants stated that the object of their action was not only to secure damages but also to establish where responsibility for the alleged wrongdoings lay.

30. As the expert opinion was not yet available by the time of the next hearing, on 10 December 1992, the High Court adjourned the case, with the parties' agreement.

31. On 10 December 1992 the applicants made an application for legal aid to the Ministry of Justice in so far as their action for damages was concerned (having previously obtained legal aid for the action for liability). The Ministry granted legal aid to eight of the applicants on 11 June 1993.

32. Following the submission of the expert opinion on 17 December 1992, the parties commenced discussions on additional questions to the experts. At a hearing on 11 February 1993 the case was adjourned until 18 March 1993 in order to allow the parties to state their views on the matter.

On 18 March 1993 the parties had still not agreed. According to the record of the hearing on that date, counsel for the Ministry of Health, the National Health Board and the National Serum Institute had remarked that the Minister of Health wished the case to proceed as quickly as possible. The presiding judge repeated what he had stated on 13 October 1992 (see paragraph 28 above), namely that each adjournment of the case had been made at the joint request of counsels for both parties. Moreover, he pointed out that in civil proceedings it was

primarily the responsibility of the parties to pursue the case. The case was adjourned until 1 April 1993, pending the parties' agreement on additional questions to the experts. The parties agreed that there was no need for a preliminary hearing under section 355 of the Administration of Justice Act (see paragraph 49 below).

33. On 1 April 1993 the parties informed the High Court of the additional questions to be put to the experts. Pending the experts' reply, the proceedings were adjourned until 13 May 1993 and then until 17 June 1993.

34. At the hearing on 17 June 1993 the applicants submitted a preliminary claim for damages in the amount of DKK 1,000,000 in respect of the first six applicants and of Mr and Mrs G's son. They also claimed DKK 750,000 for Mrs Feldskov but made no preliminary claim for Mrs Lykkeskov Jacobsen, as the relevant legislation provided no basis for a parent to claim compensation for loss of a child below the age of 18.

As the supplementary expert opinion was not yet available, the case was adjourned until 2 September 1993 and then until 4 November 1993. Parts I and II of the report were presented on 9 September and 22 October 1993 respectively.

35. On 14 September 1993 Mr C died.

36. At a hearing on 4 November 1993 the first four applicants, Mrs F, Mr and Mrs G and Mrs Feldskov, presented specific compensation claims in amounts up to DKK 1,090,000 for unfitness for work, disability, loss of supporter and funeral costs. Mrs Lykkeskov Jacobsen did not claim damages and Mr E announced that he was withdrawing from the case.

At further hearings held on 16 December 1993 and 13 January 1994 additional evidence with regard to damages was produced. The defendants suggested that the Industrial Injuries Board (Arbejdsskadestyrelsen) should be asked to make an assessment of the applicants' claims, but agreed not to pursue this any further.

37. On 3 March 1994, at a preliminary hearing held under section 355 of the Administration of Justice Act (see paragraph 49 below) the High Court, having consulted the parties, set the case down for trial between 24 October and 22 November 1994. At the applicants' request, the case was adjourned and set down for 28 November 1994 to 17 January 1995.

38. The case was tried during the period fixed. The applicants dropped all claims against the National Serum Institute. Mr Eg, Mrs Christensen, Mr D, Mrs F widow and

Mrs Lykkeskov Jacobsen withdrew all claims against Novo-Nordisk A/S. With these changes the applicants, except for Mr E who had withdrawn from the case, maintained that the defendants had acted negligently and thereby caused the HIV infections. The remaining applicants, but not Mrs Lykkeskov Jacobsen, maintained their claims for damages, which ranged between DKK 24,630.24 and DKK 1,090,000.

39. By judgment of 14 February 1995 the High Court rejected all remaining claims against Novo-Nordisk A/S and found that the Ministry of Health and the National Health Board had acted negligently in respect of a certain period of time. On the other hand, only the son of Mr and Mrs G had been affected thereby. On an equitable basis, the High Court awarded him DKK 18,718.24 plus interest as from 17 June 1993, when the compensation claim was first submitted (see paragraph 34 above). All other compensation claims were rejected.

C. Political measures taken after the High Court's judgment

40. On 22 February 1995, following a discussion in Parliament of the political consequences of the High Court's judgment, the Minister of Health issued a press release, delivered to the Association on the same date, declaring that "the Parties of the Parliament and the Government" sympathised with the HIV-infected haemophiliacs and regretted the terrible tragedy that eighty-nine haemophiliacs at the end of the 1970s and in the following years had been infected with HIV via their factor preparations before the danger of HIV infection was realised and methods of preventing its transmission were developed. Parliament and the Government acknowledged and regretted that in the light of recent knowledge measures taken in 1985 and 1986 had to be regarded as insufficient in certain respects.

On the other hand, they respected the High Court's judgment upholding the view of the relevant authorities that they had not acted negligently by not demanding heat treatment of blood until 1 October 1985 and screening of all donor blood until 1 January 1986.

Nevertheless, Parliament and the Government considered that they had a moral duty to show great flexibility in order to reach a politically acceptable solution. The indemnification which had already been granted (see paragraph 11 above) was a clear manifestation of the sympathy which Parliament had for all HIV-infected haemophiliacs. In addition, Parliament and the Government had agreed to create as soon as possible a fund of DKK 20 million to be administered by the Association. This was to ensure that the special and individual needs of the haemophiliacs - now and in the years to come - could be better

met. Furthermore, the Government would initiate as soon as possible - through special legislation - a medical insurance scheme to cover drugs in broad terms and to ensure easier access to compensation than provided by the Product Liability Act.

Finally, the Government would offer the Association representation on the Blood Product Committee of the National Health Board, which had the task of proposing measures to ensure the best possible use of donor blood and the greatest possible self-sufficiency in products deriving therefrom.

The Fund established as a result of the above, has recently decided to grant an additional DKK 90,000 to haemophiliacs who have been contaminated through blood transfusion.

41. In a press release of 15 March 1995 the Association stated that, in its view, the Minister's declaration was a sufficient basis for the case to come to an end. For a long time the Association had actively pursued a quick and honourable solution to the case, bearing in mind not only human considerations but also the limited resources of the Association. Nevertheless, the Association considered that it would have been more appropriate had the declaration contained a more unreserved recognition of the fact that the haemophiliacs' risk of HIV infection had not been dealt with adequately during the period from 1984 to 1986. Furthermore, it would have been preferable if the statement had better reflected the High Court's judgment, including the fact that the State's liability had been established in one of the cases.

The Association further stated that it regretted the fact that at least three of the eight plaintiffs had decided to appeal against the High Court judgment to the Supreme Court. Although it respected their choice in this respect, it would no longer act as their representative.

On the other hand, the Association pointed out, since no regrets had been expressed in respect of the unreasonableness of the length of the proceedings - more than seven years - the Association considered that there was still a violation of the haemophiliacs' human rights and therefore that the application lodged with the European Commission of Human Rights would be maintained.

D. Appeal to the Supreme Court

42. On 10 April 1995 Mr A, Mr Eg and Mrs Feldskov, but not the other applicants, appealed against the High Court's judgment to the Supreme Court. They reserved their right to request a new expert opinion and to ask the Supreme Court to hear those witnesses who had given evidence before the High Court.

43. On 10 May 1995 Novo-Nordisk A/S submitted its statement of defence and, on 16 May, the three other defendants filed their statements of defence. The defendants invited the appellants to specify the arguments upon which they based their claims.

44. On 16 May 1995, counsel for the defendants asked the Supreme Court to obtain an assessment by the Industrial Injuries Board of the disability degree and loss of earning capacity of Mr A and Mr Eg. Pending the appellants' comments, the Supreme Court adjourned the proceedings on 17 May, 7 June, 14 June and 30 June.

On 14 June 1995 the Supreme Court gave permission to approach the National Industrial Injuries Board and, on 16 June, counsel for the defendant authorities requested the Board's assessment.

45. On 27 June 1995, Mr A and Mrs Feldskov put certain questions to Novo-Nordisk A/S and, on their suggestion, the Supreme Court adjourned the case until 27 July 1995 pending the company's reply.

46. The Supreme Court again adjourned the case until 22 August 1995, pending the appellants' comments on the statements of defence. It also invited the appellants to state as soon as possible their views on the evidence in the case. On 2 November 1995, the Supreme Court set the case down for trial for the period from 16 to 23 September 1996.

II. Relevant domestic law

47. Civil proceedings such as the present ones may be brought before the High Court, as the court of first instance, by issuing a writ of summons. They are considered to be instituted when the court receives the writ (sections 224 to 226 and 348 of the Administration of Justice Act). The proceedings are divided into two stages, a preparatory stage and a trial stage.

48. The preparation of a case may take an oral form, with the parties appearing, in person or through representatives, at preliminary hearings, during which pleadings and other documents are exchanged and formally submitted to the competent court (section 351 of the Administration of Justice Act). The preparation may also be conducted in writing, with each party forwarding the documents to the court, which sees to it that copies are transmitted to the other party (section 352).

The purpose of such preparations is to establish the facts and the legal issues of the case, to ensure that the case is elucidated in the best possible way and to identify the

subject-matter of the dispute.

49. In addition to the above, should the court deem it expedient, it may summon the parties to a special preliminary hearing under section 355 of the Administration of Justice Act, in order to clarify as far as possible the parties' positions regarding the facts and law in question, the extent to which the facts are undisputed and whether the production of evidence is required. During such preliminary hearings, the court may also determine disputes between the parties relating to the preparation of the case and organisation of the procedure.

50. In civil proceedings it is for the parties to determine the subject-matter of the case. The court may not award a party more than he or she has claimed and may in principle only take into account the submissions made by that party (section 338 of the Administration of Justice Act).

On the other hand, under section 339 the court may, by putting questions to the parties, seek clarifications of their claims or submissions and invite them to indicate their views on questions of facts and of law which have a significant bearing on the case or to adduce evidence. The parties may make suggestions to the court as to the appointment of experts, but the court is not bound to follow their proposals (section 200).

According to section 340, evidence should be submitted at the trial but, in exceptional circumstances, the court may decide that all evidence or parts of it should be submitted prior to the trial and may then prescribe a time-limit.

51. Where expedient, the court may order a stay of the proceedings (section 345). In practice, such measures are taken, for instance, to allow a party to comment on the pleadings of the other party or to produce relevant evidence, or to enable the parties to obtain and consider an expert opinion, conduct friendly settlement negotiations or clarify their respective positions.

In practice the court also ensures that continuous progress is made in the case. It intervenes in situations where one of the parties professes misgivings concerning a stay of proceedings, or when the court feels that a stay does not serve any real purpose.

52. The court decides when the preparation of the case is completed (section 356). When this decision has been taken the parties may not alter their claims, make new submissions or adduce new evidence unless they satisfy certain restrictive conditions (sections 357 and 363). In practice, the court will normally be reluctant to end the preparatory stage if the parties consider that there are matters which need further clarification.

Once the preparation of the case has been completed or immediately thereafter, the court fixes a date for the hearing (section 356).

53. Under Danish law the plaintiff in compensation proceedings has the burden of proving damages, fault or negligence and liability. The burden of proof may shift to the defendant if it is probable that the factual allegations made by the plaintiff are accurate.

PROCEEDINGS BEFORE THE COMMISSION

54. In their application to the Commission of 27 August 1992 (no. 20826/92), the applicants complained that, in breach of Article 6 para. 1 (art. 6-1) of the Convention, their case had not been determined within a reasonable time.

55. On 30 November 1994, the Commission declared the application admissible. In its report of 24 May 1995 (Article 31) (art. 31), the Commission expressed the opinion that there had been a violation of Article 6 para. 1 (art. 6-1) of the Convention with respect to the first eight applicants (unanimously) but not with regard to Mrs Feldskov and Mrs Lykkeskov Jacobsen (unanimously). The full text of the Commission's opinion is reproduced as an annex to this judgment (1).

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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 - 1996-I), but a copy of the Commission's report is obtainable from the registry.

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FINAL SUBMISSIONS MADE TO THE COURT

56. At the hearing on 26 October 1995 the Government, as they had done in their memorial, invited the Court to hold that there had been no violation of Article 6 para. 1 (art. 6-1) of the Convention.

57. On the same occasion the applicants reiterated their request to the Court, stated in their memorial, to find that there had been a breach of Article 6 para. 1 (art. 6-1) and to award them just satisfaction under Article 50 (art. 50) of the Convention.

AS TO THE LAW

I. ALLEGED VIOLATION OF Article 6 Para. 1 (art. 6-1) OF THE CONVENTION

58. The applicants alleged that they were victims of a violation of Article 6 para. 1 (art. 6-1) of the Convention, which, in so far as is relevant, reads:

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

59. The Government contested this allegation. The Commission upheld it in so far as it concerned Mr A, Mr Eg, Mr C, Mr D, Mr E, Mr F and the son of Mr and Mrs G, but rejected it with respect to Mrs Feldskov and Mrs Lykkeskov Jacobsen (for details on the applicants, see paragraph 7 above).

60. It was common ground between those appearing before the Court that the proceedings in question involved the determination of the applicants' "civil rights" and that Article 6 para. 1 (art. 6-1) was applicable to those proceedings. The Court sees no reason to hold otherwise. On the other hand, the applicants disputed that the proceedings had been conducted within a reasonable time, as required by that provision (art. 6-1). Before examining this issue, the Court must determine the periods to be taken into consideration.

A. Periods to be taken into consideration

61. In the applicants' submission, the periods to be considered began on 14 December 1987 when the Association filed the writ with the High Court requesting it to declare that the relevant authorities were liable vis-à-vis those members who had been infected by HIV through blood products (see paragraph 14 above). The action of 14 December 1987 should be considered as one lodged on behalf of a distinct group of ninety haemophiliacs, including the applicants, who clearly had an interest in the outcome of the case. The reason why it had taken until 23 November 1989 for the Association to specify individual claimants (see paragraph 20 above) lay in part in the members' fear of their identity being disclosed in the court proceedings.

In any event, as regards the son of Mr and Mrs G, the relevant period started at the latest on 8 September 1988, as he had been explicitly mentioned in the plaintiff's written pleadings of that date (see paragraph 16 above).

62. In the Commission's opinion, the relevant periods began when the applicants joined the proceedings, namely on 23 November 1989 in the case of Mr A, Mr Eg, Mr C, Mr D, Mr E, Mr F and the son of Mr and Mrs G and on 22 March 1990 with regard to Mrs Feldskov and Mrs Lykkeskov Jacobsen (see paragraphs 20 and 22 above).

63. The Government contended that, since the proceedings in

issue essentially concerned compensation, the relevant periods had not started until the applicants had presented their initial compensation claims on 17 June 1993 (see paragraph 34 above). In the Government's alternative argument, the periods had started on 5 February 1992, when the plaintiffs withdrew and amended a number of their pleadings (see paragraph 26 above). In the further alternative, they maintained that under no circumstances could the periods have started to run before the applicants had joined the proceedings, as the Association had not been the proper plaintiff in the proceedings.

In any event, the applicants' argument that the son of Mr and Mrs G had already joined the proceedings on 8 September 1988 was unfounded, as the pleadings of that date only referred to an anonymous haemophiliac and did not identify the person as the son of Mr and Mrs G (see paragraph 16 above).

64. The Court observes that there were significant changes in the proceedings instituted by the Association, not only with regard to the plaintiffs' submissions (see paragraphs 14, 18, 26 and 34 above) and claims but also with regard to their identity (see paragraphs 14-20 and 22 above).

As to the changes in the arguments and claims the Court does not find that these were such as to warrant removing specific stages of the domestic court proceedings from the Court's assessment of whether their duration was reasonable.

On the other hand, the changes as to the identity of the plaintiffs were of greater consequence. In its writ of 14 December 1987 the Association requested the High Court to find that the defendants were liable to pay damages to those of its members who had been contaminated with HIV by using blood products supplied by the defendants (see paragraph 20 above). There is nothing to indicate that a finding of liability by the domestic courts would have meant that all contaminated members of the Association would have been entitled to compensation. On the contrary, as explained by the applicants, under Danish law, in order to establish liability they had to show that the defendants had negligently failed to take such precautionary measures as could reasonably be expected of them in the circumstances prevailing at the material time (see paragraph 53 above). Thus, for each member of the Association the question of liability depended upon certain individual factors such as the time at which the member had been contaminated. Eventually, only ten or so of the approximately ninety HIV-infected members joined the court action.

For these reasons, the Court considers that the mere fact that the applicants belonged to a category of members on whose behalf the Association had acted on 14 December 1987 is not

sufficient to justify the conclusion that they were affected by the duration of the proceedings from that date onwards. Like the Commission, the Court finds that it was only from the dates when the Association identified the applicants as individual plaintiffs that they could claim to be victims, within the meaning of Article 25 (art. 25) of the Convention, of the alleged breach of Article 6 (art. 6). Accordingly, the periods to be taken into consideration started to run on 23 November 1989 in the case of Mr A, Mr Eg, Mr C, Mr D, Mr E, Mr F and the son of Mr and Mrs G; and on 22 March 1990 in the case of Mrs Feldskov and Mrs Lykkeskov Jacobsen.

65. Whilst Mr A, Mr Eg and Mrs Feldskov's appeals to the Supreme Court are still pending (see paragraphs 42 and 46 above), the proceedings concerning Mr E ended on 4 November 1993 when he withdrew from the case (see paragraph 36 above) and those concerning the remaining applicants came to a close on 14 February 1995 when the High Court delivered its judgment (see paragraph 39 above).

66. Consequently, the periods to be taken into account have now lasted approximately six years and two months in the case of Mr A and Mr Eg, five years and three months in the case of Mrs Christensen, Mr D, Mr F and Mr and Mrs G, four years in the case of Mr E, five years and ten months in the case of Mrs Feldskov and four years and eleven months in the case of Mrs Lykkeskov Jacobsen.

B. Reasonableness of the length of the proceedings

67. The reasonableness of the length of proceedings is to be assessed in the light of the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicants and that of the relevant authorities. On the latter point, what is at stake for the applicants in the litigation has to be taken into account in certain cases (see, as the most recent authority, the Karakaya v. France judgment of 26 August 1994, Series A no. 289-B, p. 43, para. 30).

1. Complexity of the case

68. The applicants submitted that the case was of some complexity since it was necessary to obtain medical opinions and other evidence in order to enable the High Court to examine the case properly.

69. In the Commission's view, although the case raised undoubtedly difficult questions concerning the use of donor blood, these had to a certain extent already been solved by the National Health Board's decision of 13 November 1987 prohibiting the use of unscreened blood and the judicial inquiry report available in May 1988 (see paragraphs 9 and 13 above). The case

was therefore not so complex as to justify the length of the proceedings.

70. In the Government's submission, the case was a particularly complex one. It raised a number of difficult legal questions, for instance whether the public authorities could, in view of the speediness demanded by the Association, be held liable for failure to issue new regulations in this particular area at a specific time. Moreover, it was crucial to establish what the authorities knew or ought to have known at the relevant time about a wide range of issues, including the safety, effectiveness and possible side-effects of heat-treated products, the safety of imported heat-treated preparations based on screened blood from paid as opposed to voluntary donors and a number of scientific and technological developments. The findings by the National Health Board of November 1987 and those of the judicial inquiry of May 1988 were of little assistance to the court as they dealt primarily with screening rather than heat-treatment of blood (see paragraphs 9 and 13 above).

71. The Court, although satisfied that the case raised factual and legal questions of some complexity, does not consider that this alone could justify the considerable length of the proceedings. It will therefore examine the conduct of the parties to the proceedings and of the relevant authorities.

2. Applicants' conduct

72. The applicants admitted that they were responsible for a limited number of delays in the proceedings. These were however insignificant when considered in the context of the total length of the proceedings. At the preparatory stage their representatives had been faced with the difficult dilemma whether to secure the speedy progress of the proceedings by accepting the suggestions of the defendants and the President of the High Court or to ask the High Court to decide the points discussed. The applicants had accepted the large number of adjournments requested by the defendants, partly through fear of being penalised if they took an aggressive stance and partly because of what they described as the collegiate spirit among lawyers in civil cases in Denmark. However, as they had repeatedly stated at the preliminary hearings held under section 355 of the Administration of Justice Act, they at all times wanted the proceedings to progress (see paragraphs 17, 26 and 49 above). In addition, copies of their application of 27 August 1992 to the Commission complaining about the length of the proceedings had been transmitted to the defendants and to the President of the High Court (see paragraph 28 above).

The reason why the applicants had not presented their claims for damages until 17 June 1993 was that their application

of 10 December 1992 to the Ministry of Justice for legal aid had not been granted until mid-June 1993 (see paragraph 31 above).

73. The Government argued that the regrettable delays in the case were essentially caused by the conduct of the applicants' representatives, for which the applicants themselves, not the Danish authorities, were responsible. At no time during the proceedings did the applicants or their representatives request the High Court to speed up the proceedings or in any other way express any wishes to that effect. The fact that the applicants had transmitted for information to the High Court a copy of their application to the Commission was not tantamount to a request for expeditious handling of the case by the High Court. Their conduct in the domestic proceedings rather gave the opposite impression.

Through their representatives, the applicants had either asked for or consented to the large number of adjournments granted by the High Court. Moreover, on 27 September 1990 the plaintiffs had undertaken to submit records and medical certificates and suggestions for questions to the experts (see paragraph 24 above). The evidence in question was not filed until 21 February 1991 for some of the applicants and 16 September 1991 for others and the proposals for questions were not submitted until 5 February 1992. On the latter date the plaintiffs substantially changed their pleadings and only on 17 June 1993 did they present claims for damages (see paragraph 26 above).

In addition, on 3 March 1994, when counsel for the applicants was consulted on the fixing of the dates for the trial, he had stated that because of his own workload he would not be available until 16 May 1994 and that he would have difficulties in attending a trial before the summer holidays. As a result, the case was set down for trial after the summer. It was subsequently adjourned (see paragraph 37 above) in order to accommodate the wishes of the Association's Chairperson, who had other engagements.

74. The Court observes that when the applicants lodged their application to the Commission, the domestic proceedings had already lasted for an appreciable period; almost three years had elapsed since most of them had joined the case (see paragraphs 20, 22 and 28 above). Although, on that occasion, they undeniably conveyed to the High Court and the defendants that they found the length of the proceedings unacceptable, their attitude in this respect was contradicted by their own conduct before the High Court. Like the Commission, the Court notes that at no stage did they request the High Court to speed up the proceedings and the very large number of adjournments had either been requested or consented to by the applicants'

representatives. It took them more than two years to agree on the appointment of experts (see paragraphs 25-27 above). No convincing explanation has been provided for why they waited until as late as 17 June 1993 before submitting claims for damages. Therefore the applicants were to a significant extent responsible for the protracted nature of the proceedings (see, mutatis mutandis, the Kamasinski v. Austria judgment of 19 December 1989, Series A no. 168, p. 33, para. 65, and the Stanford v. the United Kingdom judgment of 23 February 1994, Series A no. 282-A, p. 11, para. 28).

3. Conduct of the administrative and judicial authorities

75. The applicants maintained that the main cause of the excessive length of the proceedings had been the conduct of the administrative and judicial authorities and that there had thus been a violation of Article 6 para. 1 (art. 6-1) of the Convention in respect of all the applicants.

76. The Government contested the above allegations, maintaining that any delays were caused only by the complexity of the case and the applicants' conduct. They argued that Danish civil procedure was not of the inquisitorial type but one whose progress depended almost entirely on the diligence of the parties (see paragraph 50 above). The preparatory stage of the proceedings under consideration had been conducted without any periods of inactivity. None of the adjournments in question had been granted without the agreement of both parties.

Furthermore, the Government Solicitor had taken a number of measures to ensure the progress of the proceedings. He had repeatedly asked the plaintiffs to clarify their claims and to adduce evidence and had taken the initiative in calling the meeting on 11 November 1992, the object of which was to accelerate the proceedings (see paragraph 29 above).

In addition, the Government maintained that it had been necessary to avoid any attempt to unduly speed up the proceedings, in view of the prejudice this might have caused to the applicants' preparation of their case and of the complexity and seriousness of the case.

77. As already indicated, the Court considers that the applicants contributed significantly to the length of the proceedings. It is also mindful of the fact that the proceedings in issue were not inquisitorial but were subject to the principle that it was for the parties to take the initiative with regard to their progress (see paragraph 50 above). Most of the period considered was spent on preparation of the case for trial (see paragraphs 20-37 above) and, as the proceedings went on, evidence was adduced and the plaintiffs' claims were reformulated (see

paragraphs 20, 26 and 34 above). The Court recognises that in these circumstances, the competent authorities were faced with a difficult task in trying to accommodate the various interests of the applicants. However, these features did not dispense them from ensuring compliance with the requirement of reasonable time in Article 6 para. 1 (art. 6-1) of the Convention (see, for instance, the Guincho v. Portugal judgment of 10 July 1984, Series A no. 81, p. 14, para. 32; the Capuano v. Italy judgment of 25 June 1987, Series A no. 119, p. 11, para. 25; and the Scopelliti v. Italy judgment of 23 November 1993, Series A no. 278, p. 9, para. 25).

78. The Court shares the Commission's opinion that what was at stake in the proceedings was of crucial importance for Mr A, Mr Eg, Mr C,
Mr D, Mr E, Mr F and the son of Mr and Mrs G in view of the incurable disease from which they were suffering and their reduced life expectancy, as was sadly illustrated by the fact that Mr C, Mr F and the son of Mr and Mrs G died of AIDS before the case was set down for trial. Accordingly, in so far as concerns the first eight applicants, the competent administrative and judicial authorities were under a positive obligation under Article 6 para. 1 (art. 6-1) to act with the exceptional diligence required by the Court's case-law in disputes of this nature (see the X v. France judgment of 31 March 1992, Series A no. 234-C, pp. 90-94, paras. 30-49; the Vallée v. France judgment of 26 April 1994, Series A no. 289-A, pp. 17-20, paras. 33-49; and the above-mentioned Karakaya judgment, pp. 42-45, paras. 29-45).

79. However, also the defendant authorities had themselves either asked for or accepted the very large number of adjournments requested to the High Court (see paragraphs 28 and 32 above). Only once, at the meeting on 11 November 1992, when the proceedings had lasted for almost three years, did they call for the proceedings to be accelerated (see paragraph 29 above). Despite this request, the defendant authorities themselves did not significantly change their pattern of prolonging the proceedings (see paragraphs 30-37 above).

80. As regards the conduct of the competent judicial authorities, the Court notes that when the first seven applicants joined the case, it had already been pending for approximately two years before the High Court (see paragraph 20 above). By that time the High Court was presumably familiar with a number of the issues involved and would have been able to take on an active role in conducting the proceedings before it. Despite this, the High Court granted all of the parties' numerous requests for adjournments, hardly ever using its powers to require them to specify their claims, clarify their arguments, adduce relevant evidence or decide on who should be appointed as

experts (see paragraphs 28, 32 and 50 above).

On the latter point, it is to be observed that, although all parties involved had agreed on 29 November 1990 that it was necessary to obtain a medical opinion, the High Court, without ever intervening, allowed them to negotiate until as late as 6 August 1992 the question who should be appointed as experts (see paragraphs 25-27 above). Thus, whilst the High Court had powers to give directions on these matters, the parties spent an abnormally long period of almost two years discussing them.

In addition, when the case was ready in March 1994, the High Court set it down for trial as late as October-November 1994 (see paragraph 37 above). Similarly, on 2 November 1995, the Supreme Court decided to hold the trial in September 1996 (see paragraph 46 above).

81. In these circumstances, even having regard to the delays caused by the applicants, the Court, like the Commission, does not find that the competent authorities acted with the exceptional diligence required by Article 6 (art. 6) of the Convention in cases of this nature. It holds that Mr A, Mr Eg, Mr C and his widow, Mr D, Mr E, Mr F and his widow, Mr and Mrs G and their son were victims of a breach of Article 6 para. 1 (art. 6-1) of the Convention.

On the other hand, since no duty of exceptional diligence applied with regard to Mrs Feldskov and Mrs Lykkeskov Jacobsen, the Court reaches the same conclusion as the Commission, namely that they were not victims of a violation of Article 6 para. 1 (art. 6-1).

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

82. Mr A, Mr Eg, Mrs Christensen (on behalf of Mr C), Mr D, Mr E, Mrs F (on behalf of Mr F) and Mr and Mrs G (on their son's behalf) (see paragraph 7 above) sought just satisfaction under Article 50 (art. 50) of the Convention, which reads:

> "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

83. The above-mentioned applicants requested compensation for non-pecuniary damage which they had sustained as a result of the excessive length of the proceedings. Under this heading, Mr A and Mr Eg, whose appeals are pending before the Supreme Court, asked for DKK 425,000 each; Mrs Christensen, Mr D, Mrs F and Mr and Mrs G, who did not appeal from the High Court's judgment of 14 February 1995, claimed DKK 375,000 each; and Mr E, who withdrew from the case on 4 November 1993, sought DKK 325,000.

Referring to the above-mentioned judgments in Vallée (p. 20, para. 54) and Karakaya (p. 46, para. 50), where the Court had ordered the French Government to pay FRF 200,000 in compensation for non-pecuniary damage, the applicants maintained that the awards in their case should be higher. Not only had the periods in question been longer in their case but also the compensation paid by the Danish authorities had been less.

84. In the Government's view, the finding of a violation would constitute adequate just satisfaction of any non-pecuniary damage suffered by the applicants as a result of the length of the proceedings. In any event, should the Court award a sum to any of the applicants, the Government invited it to take into account the ex gratia payments made to the applicants, ranging between DKK 250,000 and DKK 750,000, and the additional payments of DKK 90,000 made to each haemophiliac from the DKK 20 million fund established on 22 February 1995.

85. The Delegate of the Commission shared the views of the Government.

86. The Court considers that the applicants must have suffered non-pecuniary damage as a result of the excessive length of the proceedings and that the Court's finding of a violation of the Convention is not sufficient to constitute just satisfaction in this respect. On the other hand, the Court cannot, in reaching its decision under Article 50 (art. 50) of the Convention, overlook the fact that ex gratia payments had been made by the Danish State to the applicants (see paragraphs 12 and 40 above). Nor can it disregard the fact that, unlike the applicants in the above-mentioned French cases, the applicants in the present case significantly contributed to the length of the proceedings. Bearing these circumstances in mind, the Court, deciding on an equitable basis, awards DKK 100,000 each to Mr A, Mr Eg, Mrs Christensen, Mr D, Mr E and Mrs F and to Mr and Mrs G jointly for non-pecuniary damage.

B. Legal fees and expenses

87. The applicants further requested reimbursement of legal fees and expenses incurred, totalling DKK 427,653, in respect of

the following items:

(a) DKK 28,500 for legal fees in the domestic proceedings;

(b) DKK 399,153 for legal fees and expenses in the Strasbourg proceedings, including DKK 24,000 for travel expenses for appearance at the hearing before the Court, DKK 9,500 for subsistence expenses and local transport in this connection and DKK 1,438 for transport and postal charges in Denmark.

The above legal fees should be increased by any applicable Value Added Tax (VAT).

88. The Government did not comment on the above, whereas the Delegate of the Commission stated that any legal aid from the Council of Europe should be deducted.

89. As regards item (a) the Court does not find that the fees in question were necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention. This claim must therefore be rejected.

As regards item (b) the Court, deciding on an equitable basis, awards DKK 200,000 for fees and DKK 34,938 for expenses, to be increased by any applicable VAT, less the FRF 27,964 received by way of legal aid from the Council of Europe for fees and expenses.

C. Default interest

90. According to the information available to the Court, the statutory rate of interest applicable in Denmark at the date of adoption of the present judgment is 9.25% per annum.

FOR THESE REASONS, THE COURT

1. Holds by six votes to three that there has been a violation of Article 6 para. 1 (art. 6-1) of the Convention with respect to Mr A, Mr Eg, Mr C and his widow, Mr D, Mr E, Mr F and his widow and Mr and Mrs G and their son;

2. Holds unanimously that there has been no violation of this provision (art. 6-1) with respect to Mrs Feldskov and Mrs Lykkeskov Jacobsen;

3. Holds unanimously

(a) that the respondent State is to pay, within three months, 100,000 (one hundred thousand) Danish kroner each to Mr A, Mr Eg, Mrs Christensen, Mr D, Mr E and Mrs F and to Mr and Mrs G jointly in compensation for non-pecuniary damage and, for legal fees and expenses,

234,938 (two hundred and thirty-four thousand nine hundred and thirty-eight) Danish kroner, plus any applicable VAT, less 27,964 French francs to be converted into Danish kroner at the rate applicable on the date of delivery of the present judgment;

(b) that simple interest at an annual rate of 9.25% shall be payable from the expiry of the above-mentioned three months until settlement.

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 8 February 1996.

Signed: Rolv RYSSDAL
President

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of Rules of Court A, the joint dissenting opinion of Mr Ryssdal, Mr Matscher and Mr Foighel is annexed to this judgment.

Initialled: R. R.

Initialled: H. P.

JOINT DISSENTING OPINION OF JUDGES RYSSDAL, MATSCHER AND FOIGHEL

We do not agree that there has been a violation of Article 6 para. 1 (art. 6-1) of the Convention in the present case.

It is, of course, regrettable that several years passed until the preparatory stage of the case was completed and a date for the hearing could be fixed. However, in our opinion the responsibility for this lies essentially with the applicants and their lawyer.

The Court has found that the periods to be taken into consideration started to run on 23 November 1989 and on 22 March 1990 respectively as it was only from these dates that the applicants as individual plaintiffs could be regarded as victims of the alleged breach of Article 6 (art. 6) (see paragraph 64 of the judgment). However, even accepting this point of view, it is important to note that the applicants on these dates had not put forward specific claims to be determined

by the domestic court. Moreover, on 5 February 1992 they substituted all of their previous pleadings and reformulated their arguments. It was not until 17 June 1993 that they set out preliminary claims. Their finalised claims for damage were only presented at a hearing on 4 November 1993. At the same time one of the applicants, Mr E, withdrew from the case.

In the meantime, the applicants had requested or accepted a large number of adjournments, partly because of protracted discussion as to the appointment of medical experts and on questions to be put to them, partly because the applicants considered it necessary to provide further evidence in order to substantiate their claims. It is true that also the defendants asked for or consented to a number of adjournments. But on 11 November 1992 counsel for the defendants called for a meeting in order to expedite the proceedings and the President of the High Court stated on two occasions - in October 1992 and in March 1993 - that each adjournment had been made at the joint request of counsel for both parties.

Throughout the long-lasting preparatory stage the domestic court had regard to what was at stake for the applicants in their complex and important case. There were no inactive periods and, in our opinion, it has to be accepted that the court granted extensions which it considered to be in the interests of the applicants.

The period between the end of the preparatory stage in March 1994 and the hearing - which began in November 1994 - may seem to be too long. However, counsel for the applicants indicated that it would be very difficult for him to accept a date before the summer break. In addition, the adjournment from 24 October to 28 November was decided at the applicants' request. The hearing lasted seventeen days and the High Court delivered its judgment on 14 February 1995. Three of the applicants appealed to the Supreme Court and it is noteworthy that they have not made any objection as to the length of the appeal proceedings.

In sum, even bearing in mind the special diligence owed by national authorities in cases such as the present, there were, in our opinion, no delays attributable to the State which may justify the finding that a reasonable time has been exceeded in the present case.