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

COURT (CHAMBER)

CASE OF X. v. FRANCE

(Application no. 18020/91)

JUDGMENT

STRASBOURG

31 March 1992

In the case of X 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 J. CREMONA,
Mr F. GÖLCÜKLÜ,
Mr L.-E. PETTITI,
Mr R. MACDONALD,
Mr A. SPIELMANN,
Mr N. VALTICOS,
Mr J.M. MORENILLA,
Mr A.B. BAKA,

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

Having deliberated in private on 25 January and 24 March 1992,

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 18 October 1991, 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. 18020/91) against the French Republic lodged with the Commission under Article 25 (art. 25) by a French national, Mr X, on 19 February 1991. The applicant, who had requested the Court not to disclose his identity, died on 2 February 1992; his parents expressed the wish that the proceedings should be continued.

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).

---

[*] The case is numbered 81/1991/333/406. 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.

[**] As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

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 the lawyers who would represent him (Rule 30).

3. The Chamber to be constituted included ex officio Mr L.-E. Pettiti, the elected judge of French nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 25 October 1991, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr J. Cremona, Mr F. Gölcüklü, Mr R. Macdonald, Mr A. Spielmann, Mr N. Valticos, Mr J.M. Morenilla and Mr A.B. Baka (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

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's lawyers on the organisation of the procedure (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant's memorial on 12 December 1991, the Government's memorial on 23 December 1991 and the written observations of the Delegate of the Commission on 13 January 1992.

5. On 28 November 1991 Mr Ryssdal gave leave to the French Association of Haemophiliacs to submit, pursuant to Rule 37 para. 2, written observations on the steps which it had taken in similar cases to the applicant's. These observations reached the registry on 19 December.

6. On 22 November 1991 the Commission produced the documents in the proceedings conducted before it, as requested by the Registrar on the President's instructions.

7. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 21 January 1992. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr J.-P. PUISSOCHET, Director of Legal Affairs,
Ministry of Foreign Affairs, *Agent*,
Mr B. GAIN, Assistant Director of Human Rights
at the Legal Affairs Department, Ministry of Foreign Affairs,
Mrs H. KHODOSS, Assistant Director
for the organisation of care and medical programmes at the General Department of Health, Ministry of Social Affairs and Integration,
Mr P. CHAMBU, Human Rights Section,
Legal Affairs Department, Ministry of Foreign Affairs,
Dr A. LAPORTE, AIDS Division,
Section for the organisation of care and medical

programmes at the General Department of Health,
Ministry of Social Affairs and Integration, *Counsel*;
- for the Commission
Mr J.-C. GEUS, *Delegate*;
- for the applicant
Mrs E. LASSNER, avocate,
Mr F. THIRIEZ, avocat
at the Conseil d'État and the Court of Cassation, *Counsel*.

The Court heard addresses by Mr Puissochet for the Government,

Mr Geus for the Commission and Mrs Lassner and Mr Thiriez for the applicant, as well as their answers to its questions.

AS TO THE FACTS

I. THE PARTICULAR CIRCUMSTANCES OF THE CASE

8. Mr X, a French national born in 1963, died on 2 February 1992 after several stays in hospital. He lived in Paris with his parents. He received a State allowance of 3,000 French francs per month as a disabled adult and did not pursue an occupation.

9. Mr X was a haemophiliac and had undergone several blood transfusions, in particular between September 1984 and January 1985 at the Saint-Antoine hospital in Paris. On 21 June 1985 it was discovered that he was HIV (Human Immunodeficiency Virus) positive.

10. As other haemophiliacs had been infected by HIV, the French Association of Haemophiliacs tried to obtain compensation from the State for the damage suffered by its members who had been so infected. Since it was unable to secure a settlement, the Association recommended to its members that they should institute proceedings before the four-year limitation period expired.

A. The preliminary application to the administrative authority

11. On 1 December 1989 the applicant addressed - as he was required to do under Article R.102 of the Administrative Courts' Code (see paragraph 23 below) - a preliminary claim for compensation to the Minister for Solidarity, Health and Social Protection. He sought an amount of 2,500,000 francs; he had, he maintained, been infected by HIV as a result of the negligent delay of the Minister in implementing appropriate rules for the supply of blood products.

Six hundred and forty-nine other such claims were sent to the Minister.

12. On 30 March 1990, the day before the expiry of the statutory limit of four months (see paragraph 23 below), the Director General for Health rejected Mr X's claim.

B. The application to the administrative courts

13. Mr X applied for legal aid on 27 April 1990; he was granted it on 8 June. On 30 May he filed an application in the Paris Administrative Court for the annulment of the ministerial decision and for an order requiring the State to pay him compensation of 2,500,000 francs plus statutory interest.

Some four hundred applications lodged by persons who were in the same situation were brought before the administrative courts. They were assigned to the Paris Administrative Court and raised questions some of which were common to all the cases (responsibility of the State in fixing the rules for blood transfusions) and some of which were peculiar to each individual case (date and conditions of infection).

1. The filing of the first memorials

14. On 11 July 1990 the applicant lodged a memorial, which the administrative court forwarded to the Minister on 22 August; he stressed in particular the consequences for him of the discovery that he was HIV positive and of "the idea that he was potentially afflicted with an incurable disease". In a supplementary memorial of 29 October 1990 he emphasised the urgency of his case:

> "... the applicant's state of health has deteriorated since September 1990 as is attested by the medical certificate produced.
>
> It is for this reason that he asks the court to apply Article R.111 [(see paragraph 23 below)] of the Administrative Courts' Code, i.e. to give formal notice to the defendant Minister to the effect that he must make his submissions.
>
> Such notice would make it possible to respect the applicant's right to have his case heard within a reasonable time in accordance with Article 6 (art. 6) of the European Convention on Human Rights.
>
> This right must be respected taking into account his state of health and particularly because, as the Minister expressly rejected the preliminary application, the applicant's file has necessarily already been examined; the authorities do not therefore require any special extension of time in order to prepare their defence such as would justify an infringement of the applicant's right under the European Convention on Human Rights.
>
> FOR THESE REASONS
>
> The applicant requests the Paris Administrative Court to give to the Minister for Health, Solidarity and Social Protection formal notice that he is to produce his defence submissions speedily, and maintains his previous submissions."

The medical certificate in question, which had been drawn up by Professor Frottier, stated:

> "I the undersigned, Senior Consultant, certify that Mr [X] ... has for a long time been a patient in the haemostasis and blood transfusion department of the Saint-Antoine establishment of the CNTS (Centre national de transfusion sanguine - National Blood Transfusion Centre).
>
> He was taken into hospital for the first time in the department of infectious diseases from 17 to 27 September 1990, then he was re-admitted to the Saint-Antoine hospital on 5 October 1990, first in the general medical ward, then in intensive care and then, from 11 October 1990, in the infectious diseases department, where he is at present.
>
> His condition warrants his being taken into care for an indefinite period by a department specialising in the treatment of infectious diseases.
>
> ... ."

15. The Minister for Social Affairs and Solidarity replied by a memorial dated 12 December 1990, lodged on 21 February 1991 and communicated to the applicant on 27 February. In it he called upon the court to "dismiss the applicant's claim", but added:

> "However, in the event of the court's finding itself able to accept the principle of negligence on the part of the State, I would ask you to appoint an expert with a view to establishing whether the damage for which the applicant seeks compensation is genuinely attributable to such negligence."

16. On 3 April 1991 the applicant submitted his reply, in which he asked that the application for an expert opinion be rejected. He stated:

> "The applicant claims primarily that the application for an expert opinion should be dismissed, as such an opinion was requested by the defendant Minister only to establish whether the damage sustained by the applicant was indeed attributable to his negligence.
>
> As the causal connection has been clearly established by the evidence in the applicant's file, the only question to be ruled on by the court is whether the Minister was negligent.
>
> This assessment of whether the delay in taking the measures for protection of public health which he was under a duty to take was negligent may be made in the light of the evidence before the court, which can in addition request the communication of the expert opinion of Professor Jacquillat before the tribunal de grande instance.
>
> In the further alternative, should the court call for a new expert (Professor Jacquillat unfortunately having died), the expert appointed should be able to have access to his predecessor's work."

2. The additional investigative measures and the end of the written proceedings

17. On 5 April, 27 May and 28 June 1991, the President of the relevant section of the Paris Administrative Court asked the Minister or the Director of the National Blood Transfusion Foundation, as the case may be, for certain information and documents; they replied to these requests on 25 April, 6 June, 26 July and 30 October 1991. These various investigative measures concerned all the litigation involving infected haemophiliacs pending before the Paris Administrative Court.

One of the documents which was added to the file as a result was a report entitled "Blood Transfusion and AIDS in 1985. Chronology of the facts and decisions with regard to haemophiliacs"; the General Inspectorate of Social Affairs (I.G.A.S.) had drawn up this report on 10 September 1991, at the request of the Minister for Social Affairs and Integration and the Deputy Minister for Health on the previous 10 June. It set out the facts and analysed the decisions taken, essentially between 1983 and 1985, with a view to ensuring "safe transfusions" over the first years of the development of AIDS.

Mr X was informed of these various investigative measures on 6 September 1991. The documents produced both by the authorities and the National Blood Transfusion Foundation were communicated to him.

18. On 10 and 17 September 1991 he submitted two supplementary memorials in which he stated that he had now "developed full AIDS" (acquired immune deficiency syndrome). The second memorial contained an application for interim relief in the form of an advance (see paragraph 23 below).

The Ministry of Social Affairs and Solidarity lodged a further defence memorial on 30 October and on 7 November the court asked the applicant to produce various medical documents.

3. The trial

19. The hearing in the Paris Administrative Court was held on 18 December 1991. Two days later the court dismissed Mr X's claims on the following grounds:

"...

Mr [X] claims that the State is liable on account of alleged negligence on the part of the Minister responsible for Health in exercising the powers of health policy vested in him pursuant to the combined provisions of Articles L. 668 and L. 669 of the Public Health Code; in support of his submissions the applicant argues that the Minister delayed prohibiting the distribution to haemophiliacs of blood products contaminated with the human immunodeficiency virus (HIV) although, as early as 1983, the process of heat- treating blood made it possible to inactivate the virus; he further complains that the relevant ministry did not inform the haemophiliac community of the serious risks incurred through the use of such products; the ministerial authority is also

criticised for having, in the exercise of its powers of health policy, on 23 July 1985, postponed until 1 October 1985 the ending of reimbursement by health insurance funds of the blood products used by the haemophiliacs, a measure which it is agreed amounted in fact to a prohibition owing to the high cost of the products known as `factors VIII and IX';

In a new pleading filed on 11 July 1990, Mr [X] argues in the alternative that the State is also liable on the ground of liability for presumed negligence in the organisation and functioning of the public service of blood transfusion; he further alleges that the State is liable on the basis of the risk arising from the reckless activity of the public blood transfusion service ;

The liability of the State

The public blood transfusion service in France is run by private associations, having none of the prerogatives of a public authority, which are moreover exclusively exercised by the State as holder of the specific powers of health policy (as indicated above); the State is, however, neither prescriber, nor manufacturer, nor supplier of the offending blood products[;] accordingly its liability may be incurred only on account of negligent acts committed in the exercise of its regulatory powers and it is for the applicant to prove that such negligence occurred;

The investigation shows that progress in scientific knowledge concerning HIV, whose first pathological manifestations appeared as early as 1980, from the point of view both of its transmission and of the techniques for its inactivation, was very slow and was the subject of controversy within the scientific community itself; in particular, although the process of heat-treating blood was approved by the American health authorities as early as the beginning of 1983, this technique was developed to combat the hepatitis virus; its effectiveness against HIV remained purely hypothetical for several months; moreover, some researchers feared that the use of this technique would be likely to have an adverse effect on the products' clotting and auto-immunising property; although such fears proved unfounded, an assessment of the liability incurred must necessarily be made on the basis of the scientific knowledge available at the time; in confining itself to issuing, by way of a circular on 20 June 1983, a recommendation concerning the selection of blood donors, for the information of donors and doctors at transfusion centres about the potential risks of infection, the administrative authority did not therefore commit a negligent act such as to render it liable; the same applies, for identical reasons, to the lack of information furnished to the haemophiliac community concerning the risks to which they were exposed;

However, after this date scientific knowledge constantly progressed; the State, which was moreover an ex officio member of the National Blood Transfusion Foundation, could not fail to have been aware both of such progress and of the spread of the epidemic, and it could not plead the lack of availability of reliable HIV screening tests in order to justify its "wait-and-see" policy once cases of AIDS in the haemophiliac community had revealed the existence of a statistically significant causal relationship between the administration of blood product derivatives and HIV infection; even granted that there remained some uncertainties concerning hypothetical side effects of the heat-treatment technique at the beginning of 1985, the revelation of the scale of the predicted health catastrophe demanded that the distribution of contaminated blood products be halted rigorously and without delay;

The investigation, and in particular the report of the General Inspectorate for Social Affairs, shows that the ministerial authority was informed at the latest and in unequivocal terms on 12 March 1985 of the very strong probability that in the Paris region "all blood products prepared from pools of Parisian donors [were] currently contaminated"; the author of the report appositely noted that the importance of this message did not seem to have been perceived; in failing to adopt immediately a measure prohibiting the distribution of such products, either by legislation or taking appropriate practical measures, the authority responsible for health policy thus committed a negligent act such as to render the State liable;

Moreover, when on 23 July 1985 the authority correctly assessed the danger to health in deciding that non-heat- treated blood products should no longer be reimbursed, it saw fit to postpone the date on which its decision was to take effect until 1 October 1985; given the certainty established at that time that all blood products were contaminated, it cannot, in order to justify opting for a transitional period, plead either the consent of the haemophiliac community, which had in any case not been accurately informed of the scale of the catastrophe, or an alleged need to maintain haemophiliacs' self-sufficiency, while decontaminated products were available on the international market;

On the other hand, the physiological consequences of re- infection of those who were already HIV positive on 12 March 1985, made possible through the shortcomings of the State referred to above, are entirely hypothetical in the present state of scientific knowledge; consequently, the alleged damage from re-infection is purely contingent and cannot give rise to a right to compensation;

It follows from all the foregoing that the State is liable in respect of haemophiliacs who were infected by HIV in the course of transfusion of non-heat-treated blood products, during the period of liability defined above, between 12 March and 1 October 1985;

Although the State, as indicated above, is neither the prescriber, nor the manufacturer, nor the supplier of the offending blood products, and although it is for the courts alone to assess whether the blood transfusion centres have incurred liability, nonetheless the task of such centres is to provide a public service, and accordingly there are grounds for the administrative court to order the State to pay compensation for the whole of the damage suffered;

The causal relationship between the damage suffered by Mr [X] and the liability of the State

Even if Mr [X], who received for the treatment of his haemophilia not clotting factors VIII or IX, which it has been established above were negligently distributed, but A cryoprecipitates, may validly claim that the State is liable, the case-file shows that he was found to be HIV positive on 20 March 1985, a condition, which, taking into account an irreducible period of seroconversion, must be regarded as having actually arisen prior to the beginning of the period of the State's liability defined above, and consequently the submissions of his application must be dismissed;"

20. As the trial court had given its decision, the application for an advance was rejected by an order of 15 January 1992 (see paragraph 18 above).

4. Before the Paris Administrative Court of Appeal

21. On 20 January 1992 Mr X appealed to the Paris Administrative Court of Appeal; the proceedings in that court, which have been continued by his parents, are still pending.

II. THE EXISTING COMPENSATION MACHINERY

22. The participants in the Strasbourg proceedings provided the Court with information concerning the various schemes for compensating AIDS victims introduced since 10 July 1989, in particular by Law no. 91-1406 of 31 December 1991 "on various social welfare provisions" (Journal officiel de la République française of 4 January 1992).

III. THE RELEVANT PROCEDURAL LAW

23. At the material time the Administrative Courts' Code contained, inter alia, the following provisions:

Article R.102

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

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

... "

Article R.111

"The President of the Administrative Court shall give a formal warning (mise en demeure) to the relevant authority or to a party who has failed to comply with the time-limit laid down pursuant to Articles R.105 and R.110; in a case of force majeure, a new and final time-limit may be accorded."

Article R.129

"The President of the Administrative Court or of the Administrative Court of Appeal, or the judge delegated by one of the latter, may award an advance to a creditor whose application on the merits is pending before the court in question, where the existence of an obligation cannot seriously be contested. He may, even of his own motion, make the payment of the advance subject to the lodging of a security."

Article R.142

"Immediately after the application instituting the proceedings has been registered with the registry, the President of the court or, in Paris, the President of the section to which the application has been transmitted, shall appoint a rapporteur.

Under the authority of the President of the competent court, the rapporteur shall, having regard to the circumstances of the case, fix the time-limit to be given, if necessary, to the parties for the production of supplementary memorials, observations, statements of defence or replies. He may request the parties to supply any evidence or documents relevant to the solution of the dispute, to be added to the file so as to be accessible to all parties."

Article R.182

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

PROCEEDINGS BEFORE THE COMMISSION

24. Mr X lodged his application with the Commission on 19 February 1991 alleging that his case had not been heard within a reasonable time as required under Article 6 para. 1 (art. 6-1) of the Convention.

25. The Commission declared the application (no. 18020/91) admissible on 12 July 1991.

In its report of 17 October 1991 (Article 31) (art. 31), it expressed the opinion, by thirteen votes to two, that there had been a violation of Article 6 para. 1 (art. 6-1). The full text of its opinion and the dissenting opinion contained in the report is reproduced as an annex to this judgment[*].

AS TO THE LAW

I. PRELIMINARY OBSERVATION

26. The applicant died on 2 February 1992. In a letter of 6 February his parents expressed their wish to continue the proceedings.

---

[*] Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 234-C of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

In such circumstances the Commission has sometimes struck out of its list cases concerning compliance with the reasonable time requirement laid down in Article 6 para. 1 (art. 6-1) of the Convention. It has taken the view that the complaint was so closely linked to the person of the deceased that the heirs could not claim to have a sufficient interest to justify the continuation of the examination of the application (reports of 9 October 1982 on application no. 8261/78, Kofler v. Italy, Decisions and Reports no. 30, p. 9, paras. 16-17, and of 13 January 1992 on application no. 12973/87, Mathes v. Austria, paras. 18-20).

The Court, however, in accordance with its own case-law, accepts in the present case that Mr X's father and mother are now entitled to take his place (see, inter alia, the Vocaturo v. Italy judgment of 24 May 1991, Series A no. 206-C, p. 29, para. 2, the G. v. Italy judgment of 27 February 1992, Series A no. 228-F, p.65, para. 2, and the Pandolfelli and Palumbo v. Italy judgment of 27 February 1992, Series A no. 231-B, p.16, para. 2).

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

27. The applicant complained of the time taken to examine the action which he had brought against the State in the administrative courts. He alleged a violation of Article 6 para. 1 (art. 6-1) of the Convention, according to which:

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

A. Applicability of Article 6 para. 1 (art. 6-1)

28. The applicant and the Commission both considered that this provision was applicable in the present case.

29. The Government took the opposite view. In instituting proceedings in the administrative courts, Mr X had challenged the Minister's delay in using the powers relating to health policy which Articles L. 668 and L. 669, taken together, of the Public Health Code conferred on him. His action had been founded exclusively on the State's liability for alleged negligence in the exercise of its regulatory authority, which in France fell outside the scope of the principles of the civil law and could not be classified as "civil". In addition, the legal problems raised by Mr X's application differed considerably from those in issue in the H. v. France case (judgment of 24 October 1989, Series A no. 162); the general negligence deriving from the rules concerning the supply of blood products could not be regarded as equivalent to the individual negligence of a doctor who had prescribed inappropriate treatment.

30. As the Court has consistently held, the notion of "civil rights and obligations" is not to be interpreted solely by reference to the respondent State's domestic law and Article 6 para. 1 (art. 6-1) applies irrespective of the parties' status, be it private or public, 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.

That is indeed the case in this instance, in view of the purpose of the action, so that Article 6 para. 1 (art. 6-1) is applicable.

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

1. Period to be taken into consideration

31. The period to be taken into consideration began on 1 December 1989 when the applicant filed his preliminary claim with the Minister for Solidarity, Health and Social Protection (see paragraph 11 above). It has not yet ended, as Mr X appealed to the Paris Administrative Court of Appeal on 20 January 1992 (see paragraph 21 above). It has therefore already lasted more than two years.

2. Reasonableness of the length of the proceedings

32. The reasonableness of the length of proceedings is to be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the behaviour of the applicant and the conduct of the relevant authorities. On the latter point, what is at stake for the applicant in the litigation has to be taken into account in certain cases (see, mutatis mutandis, the H. v. the United Kingdom judgment of 8 July 1987, Series A no. 120-B, pp. 59 and 62-63, paras. 71 and 85, and the Bock v. Germany judgment of 29 March 1989, Series A no. 150, pp. 18 and 23, paras. 38 and 48-49).

(a) Complexity of the case

33. According to Mr X, the proceedings did not give rise to any particular difficulty because they concerned typical questions of liability: namely whether there had been negligence, whether there had been any damage and whether there was a causal connection between the two. Furthermore, the administrative court could have given judgment without the report drawn up by the I.G.A.S. (see paragraph 17 above).

34. That is also in substance the Commission's opinion. In 1989 the relevant authorities had already had available to them for several years all the information which they needed to decide the case without delay.

35. The Government invoked the very exceptional nature of the dispute, which raised not merely the question of the liability of a medical establishment for prescribing treatment, but also the more complex and general problem of the liability of the State for negligence in the exercise of its power to regulate blood products and derivatives. They cited in support of this view the report of the I.G.A.S. That document showed that at the time when Mr X's application was introduced, and until the completion of the report, the relevant authorities had lacked the information necessary to determine whether, if at all, the State authorities were liable. It demonstrated, by drawing attention to the nature and the number of the problems involved, the complexity of the case. The report pointed out that for a long time and for various reasons the scientific community had been divided on the matter.

36. In the Court's opinion the case was one of some complexity and investigations could have been necessary to determine the State's liability and its extent. However, the Government had probably been aware for a long time that proceedings were imminent. It would have been possible for them to obtain much of the relevant information and they ought to have commissioned an objective report on the question of liability immediately after the commencement of the cases against them.

(b). The applicant's behaviour

37. The Government criticised the applicant for not having produced until 11 July 1990 medical information on his personal condition and for having, prior to that, expressed himself in very general terms, which failed to make clear that he had developed full AIDS. Urgency in this kind of case could not be assessed in the abstract.

Mr X had also made the mistake of opting for a means of redress which necessitated a wide-scale investigation and which went beyond the confines of an action for damages, whereas he could have brought other proceedings, for instance against the suppliers of the contaminated plasma or the establishments where the transfusions had been carried out.

38. The applicant stated in reply that the communication on 11 July 1990 of Professor Frottier's medical certificate had been intended to confirm an established and undisputed question of fact, namely that he was HIV positive. As soon as he had developed full AIDS in the second half of 1990, he had informed the court and requested it to speed up the examination of his case.

It was true that he could have decided to sue the blood transfusion centres in the ordinary courts, but he stressed that his action, like those of the other infected haemophiliacs (see paragraph 13 above), was intended to challenge the State, on which it was considered that responsibility really fell.

39. According to the Commission, Mr X displayed normal diligence and used all the possibilities available to him to galvanise the investigation.

40. The Court notes that already in his memorial of 11 July 1990 the applicant had emphasised the consequences for him of the discovery that he was HIV positive and of the "idea that he was potentially afflicted with an incurable disease"; in his supplementary memorial of 29 October 1990 he had stated that his condition had deteriorated (see paragraph 14 above). Even before the disclosure on 10 September 1991 that he had developed full AIDS (see paragraph 18 above), he had therefore drawn the administrative court's attention to the worsening of his condition and the immediacy of the grave risks with which he was confronted.

The Court adds that the choice of the means of redress for obtaining compensation fell to the applicant alone.

(c) Conduct of the national authorities

i. The administrative authorities

41. The applicant complained that the relevant Minister had waited until the last day of the four-month prescribed period before rejecting the preliminary application and until 21 February 1991 before filing his memorial in the administrative court.

42. In the Commission's view it is incumbent on the administrative authorities, when they are the defendants in court proceedings, to take every necessary measure not only to comply with the time-limits laid down, but also to ensure that the dispute is speedily concluded. That had not been the case in this instance. Moreover, the Government's delay in making public all the details concerning the infection of numerous haemophiliacs in 1984 and 1985 had contributed to prolonging the proceedings.

43. The Government maintained that a party could not be criticised for using the entire period prescribed by statute for replying and that the filing of the ministerial defence memorial had not been indispensable for the continuation of the proceedings.

44. The Court can accept this argument only in so far as the nature and the importance of what is at stake for the applicant permit (see paragraph 47 below).

ii. The judicial authorities

45. The applicant acknowledged that the French administrative courts took on average two years to give judgment and that the examination of his case had not suffered any really abnormal delay. He argued nevertheless that his case - like those of the other infected haemophiliacs - ought to have been dealt with as a matter of urgency because the life expectancy of the persons concerned was of from 16.7 to 28.5 months.

Yet the court had not communicated the memorial of 11 July 1990 to the ministry until 22 August, over a month later. The President-judge-rapporteur accorded the defendant the usual three months to reply thereto, whereas, in view of the nature of the case, he could have reduced this period; he ought to have directed the Minister to submit his memorial once the time-limit had expired, especially as the applicant had requested him to do so in his memorial of 29 October 1990. The court had not ordered additional investigative measures until 5 April 1991, one month and ten days after receiving the Minister's memorial. Finally, if it considered that it did not have available to it important information the court should have had recourse to the powers of inquiry conferred on it by Articles R. 158 to R.185 of the Administrative Courts' Code, without its being necessary to wait for the report of the I.G.A.S.

46. In the Government's contention, it is impossible to establish a rigid link between the length of proceedings and the individual circumstances of a party to them, because that would disrupt the functioning of the national courts. Evidently the courts should proceed more quickly where health and life were at risk, but they could not determine the length of proceedings on the basis of the seriousness of an illness.

Far from disregarding the evolution of Mr X's condition, the proceedings respected the degree of urgency of the case and did not disclose any failure on the part of the relevant court in this regard. The interval between the filing of the applicant's initial memorial and its communication to the Minister was explained by the processing of mail, which was slightly less rapid in July and August. The administrative court could not be criticised for failing to shorten the time-limit for replying accorded to the State authorities and for not giving them formal notice that they should produce their statement of defence once that time-limit had expired; on 5 April 1991 it had called for the communication of additional documents as a result of the applicant's memorial in reply of 3 April 1991. It had waited for the report of the I.G.A.S. to appear in order to draw certain conclusions concerning the case. Moreover, the court had ordered, on 27 May 1991, the second additional investigative measure through administrative channels with a view to speeding up the proceedings and had adopted two further measures on 28 June and 7 November 1991. Finally, it had to deal with a considerable amount of litigation since some four hundred cases had been allocated to it (see paragraph 13 above).

47. Like the Commission, the Court takes the view that what was at stake in the contested proceedings was of crucial importance for the applicant, having regard to the incurable disease from which he was suffering and his reduced life expectancy. He was HIV positive when he lodged his preliminary application with the Minister and instituted proceedings in the administrative court and he had subsequently developed full AIDS (see paragraphs 11 and 18 above). There was a risk that any delay might render

the question to be resolved by the court devoid of purpose. In short, exceptional diligence was called for in this instance, notwithstanding the number of cases which were pending, in particular as it was a controversy the facts of which the Government had been familiar with for some months and the seriousness of which must have been obvious to them.

48. Yet the administrative court did not use its powers to make orders for the speeding up of the progress of the proceedings, although from 29 October 1990 it was aware of the deterioration in Mr X's health (see paragraph 40 above). In particular, it was under a duty, as soon as the case was referred to it, to conduct inquiries into the liability of the State and to enjoin forcefully the Minister to produce his defence memorial or to give judgment without it.

49. Making an overall assessment of the circumstances of the case, the Court finds that a reasonable time had already been exceeded when the judgment was delivered on 18 December 1991; the subsequent proceedings in the Paris Administrative Court of Appeal cannot redress this failure, whatever the outcome as to the merits. There has therefore been a violation of Article 6 para. 1 (art. 6-1).

III. APPLICATION OF ARTICLE 50 (art. 50)

50. According to Article 50 (art. 50) of the Convention:

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

A. Damage

51. The applicant claimed in the first place 150,000 francs for non-pecuniary damage. The length of the proceedings had prevented him from obtaining the compensation which he had hoped for, and thus from being able to live independently and in better psychological conditions for the remaining period of his life; he had received only an allowance of 3,000 francs a month as a disabled adult.

52. The Government considered the sum claimed excessive. Despite the offers made before the Commission, the repeated and growing demands of Mr X had made it impossible to reach a friendly settlement.

53. The Delegate of the Commission recommended the payment of compensation, but left it to the Court to assess the amount.

54. The Court finds that the applicant undeniably sustained non-pecuniary damage. Taking into account the various relevant factors and

making an assessment on an equitable basis in accordance with Article 50 (art. 50), it awards to his parents the entire 150,000 francs sought.

B. Costs and expenses

55. Mr X also claimed 30,000 francs for costs and expenses incurred before the Commission and the Court.

56. The Delegate of the Commission considered these claims justified. The Government did not put forward any objection to them.

57. The Court allows these claims in their entirety, having regard to the evidence at its disposal and to its case-law in this field.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a violation of Article 6 para. 1 (art. 6-1);

2. Holds that the respondent State is to pay to the applicant's parents, within three months, 150,000 (one hundred and fifty thousand) French francs for damage and 30,000 (thirty thousand) francs for costs and expenses.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 31 March 1992.

For the President
Feyyaz GÖLCÜKLÜ
Judge

Marc-André EISSEN
Registrar