CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

COURT (CHAMBER)

CASE OF ACQUAVIVA v. FRANCE

(Application no. 19248/91)

JUDGMENT

STRASBOURG

21 November 1995

In the case of Acquaviva v. France [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 C. RUSSO,
Mr A. SPIELMANN,
Mr S.K. MARTENS,
Mr A.N. LOIZOU,
Mr A.B. BAKA,
Mr K. JUNGWIERT,

and also of Mr H. PETZOLD, *Registrar*,

Having deliberated in private on 26 June and 23 October 1995,

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 9 September 1994, 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. 19248/91) against the French Republic lodged with the Commission under Article 25 (art. 25) by three French nationals, Mr Ange-François, Mrs Anne-Marie and Mrs Marie-Noëlle Acquaviva, on 16 December 1991.

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

[1] The case is numbered 45/1994/492/574. 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) 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.

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 Court 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 L.-E. Pettiti, the elected judge of French nationality (Article 43 (art. 43) of the Convention), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 24 September 1994, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Matscher, Mr C. Russo, Mr A. Spielmann, Mr S.K. Martens, Mr A.N. Loizou, Mr A.B. Baka and Mr K. Jungwiert (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the French Government ("the Government"), the applicants' lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicants' and the Government's memorials on 24 March and 1 April 1995 respectively. The applicants lodged a memorial in reply on 3 May 1995. On 2 May the Secretary to the Commission had informed the Registrar that the Delegate would make his submissions at the hearing.

On 16 January 1995 the Commission had produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 19 June 1995. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Ms M. PICARD, magistrat, on secondment to the Legal Affairs Department, Ministry of Foreign Affairs, *Agent*,

Mr J.-P. VIDALLIER, magistrat, on secondment to the Criminal Affairs and Pardons Department, Ministry of Justice, *Counsel*;

(b) for the Commission

Mr D. SVÁBY, *Delegate*;

(c) for the applicants

Mr V. STAGNARA, avocat,

Mr F. MARTINI, avocat, *Counsel*.

The Court heard addresses by Mr Sváby, Mr Stagnara and Ms Picard.

AS TO THE FACTS

I. PARTICULAR CIRCUMSTANCES OF THE CASE

6. On 15 November 1987 at approximately 8 p.m. the officers of the Vescovato brigade of gendarmerie received a telephone call from Mrs R. informing them that an attack had just been carried out at her and her husband's farm at Querciolo, Sorbo Ocagnano (Haute-Corse). The perpetrator of the attack had been fatally wounded.

When the officers arrived at the scene of the incident, they found the body of a man, identified at the morgue as being that of Jean-Baptiste Acquaviva, the applicants' son and brother. The deceased had been a militant nationalist on the run, whose photograph had appeared on police posters offering a reward for information leading to his arrest.

R. was immediately placed in police custody, but was released at 1.30 a.m. on 16 November 1987. His wife was also questioned. A post-mortem report was drawn up on 17 November 1987. The following day the Bastia public prosecutor sought ballistic and toxicological reports, which were submitted on 4 December 1987 and 4 January 1988.

7. In two communiqués issued the day after the killing, the Corsican National Liberation Front (FLNC) - an organisation that had been dissolved in January 1983 - described the deceased as a "brother in arms" and a "martyr for the nationalist cause", deliberately assassinated by R.

On 18 November 1987 Mr and Mrs R. left Corsica under false identities as the local police commander (capitaine de gendarmerie) had advised them that he could not guarantee their safety. The furniture disappeared from the R.s' farm on 20 November.

8. On 3 December 1987 the police investigation concluded that there was sufficient serious and consistent evidence to justify charging R. with fatal wounding, but that he had apparently been acting in self-defence.

On 11 December 1987 the deceased's parents laid a complaint against R. for intentional homicide and filed an application to join the proceedings as civil parties. They wished to discover the circumstances of their son's death and requested a reconstruction of the events; they did not seek damages. On 14 January 1988 they lodged security for costs of 5,000 French francs (FRF) fixed by an order of 14 December 1987.

9. On 19 December 1987 the R.s' farm, which had been under police surveillance, was partly destroyed by a bomb attack. The investigation opened into this incident was closed on 2 January 1990 under the amnesty of 10 July 1989.

A. The investigation at Bastia

1. By the investigating judge

10. On 25 January 1988 an investigation was opened into an offence of fatal wounding by persons unknown. On the same day Judge Catalano was assigned to the investigation and the prosecutor's office requested an inquiry and a reconstruction of the events.

11. The applicants were interviewed on 8 April 1988. On 13 June 1988 the prosecutor's office called for evidence to be taken from the doctor who had signed the death certificate and the senior officer of the gendarmerie. These two persons were questioned on 25 August 1988.

The civil parties were summoned to appear on 4 July 1988, but did not do so because their lawyer was unable to be present.

On 2 September 1988 the investigating judge sought the opinion of the doctors who had carried out the post-mortem examination. They submitted their report on 23 September. On 20 September evidence was taken from the police officers concerned, as witnesses.

12. On 27 September 1988 the R.s' farm - which had been purchased in Spring 1988 by the Ministry of Agriculture - was placed under seal.

13. On 13 October 1988 the applicants were interviewed on the subject of the medical experts' report. They maintained their complaint and continued to stress the need for a reconstruction.

On 20 October 1988 R. was summoned to give evidence, but he requested the judge to excuse him and did not appear on 3 November for the interview.

14. In additional submissions of 26 October 1988 the public prosecutor called for fresh expert reports, in particular a ballistic report. One month later the civil parties also sought further investigative measures.

On 10 January 1989 the investigating judge visited Orly Airport, near Paris, to question R. as a "witness assisted by a lawyer" (temoin assisté) and his wife as an ordinary witness.

15. On 11 January 1989 the judge rejected the applications for investigative measures submitted by the prosecutor's office and civil parties. The prosecutor's office and the applicants challenged his decision.

Mr Catalano, who had been appointed to another post, was replaced on 12 January 1989 by Judge Sievers.

2. By the Indictment Division of the Bastia Court of Appeal

(a) Proceedings concerning the reconstruction

16. The Bastia public prosecutor and the applicants appealed to the Indictment Division of the Bastia Court of Appeal, which ruled, in a

preliminary decision of 22 February 1989, that the refusal to carry out the investigative measures requested adversely affected the civil parties' rights.

In accordance with the principal public prosecutor's submissions, the Indictment Division quashed Judge Catalano's decision and ordered further investigative measures including a reconstruction of the events at the scene of the incident in the presence of R. and two ballistic experts. It assigned the task of carrying out the reconstruction to Judge Sievers and ordered that the costs of the expert reports be advanced out of public funds.

17. On 31 May 1989 the prosecutor's office lodged further submissions calling for Mr and Mrs R. to be brought to the scene of the incident for the purposes of the reconstruction. R. was interviewed as a "witness assisted by a lawyer" in Paris on 27 June 1989.

18. On 10 October 1989 the gendarmerie found that the seals put on the farm had been broken and that an item of evidence, the front door, which bore bullet marks, had been stolen. In a report submitted ten days later the senior police officer indicated that this had made it impossible to carry out the reconstruction under satisfactory conditions, in view in particular of the fact that there was no furniture in the house.

The investigating judge visited the scene on 23 October 1989. He questioned R. in Paris on 26 October.

19. On 31 October 1989 the Bastia public prosecutor's office called for the opening of an investigation in respect of the destruction of the seals and the theft of the door by persons unknown. This investigation was subsequently terminated by a decision finding that there was no case to answer.

20. On 7 November 1989 the investigating judge ordered an inquiry into the removal of the furniture and the disappearance of the door. He visited the site on 9 November and interviewed the applicants the following day in connection with the preparations for the reconstruction.

In the course of this inquiry the judge questioned the police officers concerned on 15 November 1989, Mr and Mrs R.'s son on 8 December and on 18 December the prosecutor who had been called out on the night of the killing. On 20 December he gave instructions for evidence to be taken.

21. The former public prosecutor of Bastia told him on 15 January 1990 that it had been planned from the beginning of the investigation to organise a reconstruction.

The reconstruction, which had been scheduled for 16 January 1990 and organised with extensive security precautions, did not take place because of the absence of R. and the police officer who had conducted the inquiry and the applicants' refusal to attend in such circumstances.

22. The following day the applicants requested that coercive measures be taken in regard to Mr and Mrs R.

On 19 January 1990 the prosecutor's office called for the transmission of the documents to the Indictment Division for a ruling on the new applications and a decision on the further procedure.

23. On 29 January 1990 Judge Sievers forwarded the file to the Indictment Division, which, on 7 March 1990, ordered that it be communicated to the principal public prosecutor. On 21 May 1990 the latter called for a reconstruction of the events.

24. On 12 June 1990 the applicants laid a complaint concerning the destruction of the seals put on the R.s' house and the theft of the front door; they also applied to join the proceedings as civil parties. This complaint for theft, concealment and destruction of evidence was declared inadmissible on technical grounds.

(b) Interlocutory proceedings concerning the status of "witness assisted by a lawyer"

25. On 13 June 1990 the Indictment Division of the Bastia Court of Appeal held a hearing. At the opening of the hearing the applicants protested at the presence in the courtroom of the lawyers of R., a "witness assisted by a lawyer". By an interlocutory decision of the same day, the court allowed the objection and reserved judgment on the remaining issues until 20 June.

26. R. appealed on points of law to the Court of Cassation and requested an expedited hearing of his appeal.

The Bastia Indictment Division decided on 20 June 1990 to stay the proceedings pending the decision of the Court of Cassation. The same day the President of the Division instructed the investigating judge not to take any new steps until further notice.

27. On an application by the public prosecutor, and then by the Principal Public Prosecutor, the Indictment Division, by a decision of 27 June 1990, quashed the five investigative measures effected after 29 January 1990.

28. On 27 November 1990 the Court of Cassation dismissed R.'s appeal, which it declared inadmissible on the ground that his status as a "witness assisted by a lawyer" did not confer on him the standing of party to the proceedings.

The status of "witness assisted by a lawyer" introduced by Law no. 87-1062 of 30 December 1987 was intended to afford persons who are the subject of a complaint laid with a civil party application the same guarantees as those accorded to persons charged (inculpés) or, to use the current terminology, placed under judicial investigation (mises en examen).

B. The investigation at Versailles

29. On an application by its principal public prosecutor, the Court of Cassation decided on 27 February 1991 to remove jurisdiction from the Bastia Indictment Division. On grounds of public safety it transferred the proceedings instituted against persons unknown for fatal wounding to the Indictment Division of the Versailles Court of Appeal.

30. That Division examined the case file as communicated by Judge Sievers by his order of 29 January 1990.

On 21 June 1991 it gave a preliminary decision in which it allowed the principal public prosecutor's application and held "that it was not necessary to carry out the reconstruction ordered by the Bastia Indictment Division". The reconstruction could no longer "be effected in satisfactory conditions. In addition the participation of Mr and Mrs R. in such events would entail unacceptable risks in view of the insecurity reigning in the region in question according to police reports".

It annulled all the measures taken with a view to the reconstruction, delegated its President to continue the additional investigative measures decided on 22 February 1989 and ordered that from that point the costs should be borne by the civil parties, who might be required to lodge further security.

31. By letter of 27 August 1991 the President of the Indictment Division asked the applicants to inform him what steps they wished to have carried out and on 29 October 1991 the Indictment Division communicated the investigation file to the prosecutor's office for its final submissions.

32. On 30 October 1991 the Versailles prosecutor's office called for an order finding that there was no case to answer. On 19 November 1991 the applicants lodged pleadings seeking a reconstruction of the events.

In a decision of 10 December 1991 the Versailles Indictment Division found that R. had been acting in self-defence and that there was not sufficient evidence to justify charging anyone with the offence that was the subject of the proceedings. It therefore ruled that there was no case to answer.

33. The applicants lodged an appeal on points of law against this decision. In a judgment of 14 April 1992 their appeal was declared inadmissible by the Criminal Division of the Court of Cassation on the ground that the pleadings had not been lodged with the registry of the Court of Appeal but had been sent directly to the Court of Cassation without using the services of a lawyer with a right of audience before the Court of Cassation. The grounds of appeal had not therefore been validly submitted to the Court of Cassation. The decision was served on the applicants on 1 September 1992.

II. RELEVANT DOMESTIC LAW AND PRACTICE

34. Article 2 of the Code of Criminal Procedure provides as follows:

> "All those who have personally suffered from the damage directly caused by a serious offence (crime), less serious offence (delit) or petty offence (contravention) may bring civil party proceedings (action civile) to seek compensation for such damage.
>
> Discontinuance of such proceedings can neither halt nor stay the criminal proceedings, without prejudice to the cases provided for in paragraph 3 of Article 6 [of the present Code]."

However, in the case of petty offences, only the prosecuting authority may set in motion the criminal proceedings.

Under paragraph 3 of Article 6 of the Code of Criminal Procedure,

> "[Criminal proceedings] may, in addition, be discontinued by settlement where express provision is made for this possibility. They may likewise be discontinued in the event of withdrawal of the complaint where the complaint was an essential condition for the proceedings to be brought."

35. A civil party application (constitution de partie civile), which has the effect of staying the proceedings in the civil courts, may be made at any time to the investigating judge or the indictment division up to the decision concluding the investigation. It may be opposed by the prosecuting authority, by the person placed under investigation or by another civil party, or the investigating judge may, of his own motion, declare it inadmissible by an order which must state reasons and which is open to appeal (Article 87 of the Code of Criminal Procedure).

The decision of the investigation authority allowing a civil party application to join the proceedings does not prejudge that of the trial court as to the admissibility of that application.

36. The intervention of a civil party may be motivated solely by the wish to support the public prosecution and to ensure that the guilt of the accused is established. For this reason, according to the case-law, a civil party application may be admissible even if no claim for damages is possible. As a civil party, the victim is kept informed of the steps of the investigation, may appeal against decisions which harm his interests and has access to the investigation file under the same conditions as the person placed under investigation.

37. When an investigation that has been opened on the basis of a civil party complaint is terminated by an order finding that there is no case to answer, any person who was the subject of the complaint may seek damages in the criminal and civil courts and request that criminal proceedings be brought against the civil party for false accusation; the prosecuting authority may also summons the civil party to appear in the criminal court before which the investigation was conducted. If the civil party application is held

to have been improper or vexatious, the court may impose a civil fine not exceeding FRF 100,000 (Article 91 of the Code of Criminal Procedure).

PROCEEDINGS BEFORE THE COMMISSION

38. Mr and Mrs Acquaviva, and their daughter, applied to the Commission on 16 December 1991. They criticised the length of the investigation proceedings instituted on the basis of their civil party application and made various complaints under Article 6 para. 1 (art. 6-1) of the Convention concerning the judgment of the Versailles Court of Appeal.

39. The Commission declared the application (no. 19248/91) admissible on 1 September 1993 in so far as it concerned the length of the proceedings. In its report of 4 July 1994 (Article 31) (art. 31), the Commission expressed the opinion, by twenty-three votes to one, that there had been a violation of Article 6 para. 1 (art. 6-1). The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment [3].

FINAL SUBMISSIONS TO THE COURT

40. In their memorial the Government requested the Court to hold

> "that the application lodged by the Acquavivas [was] incompatible ratione materiae with the provisions of the Convention and in the alternative that it [was] ill-founded".

AS TO THE LAW

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

41. The Acquaviva family criticised the length of the proceedings relating to the investigation of the complaint lodged with their civil party application. They considered it to be contrary to Article 6 para. 1 (art. 6-1) of the Convention, according to which:

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[3] Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 333-A of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

"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)

42. The Government's principal submission, which they had not made before the Commission, was that the proceedings in issue did not concern "civil rights and obligations". They did not deny that Mr Acquaviva and his wife and daughter were entitled to discover the truth as to the circumstances of the death of their son and brother, to lodge a civil party application in order to set in motion a public prosecution and to request investigative measures. For the purposes of the applicability of Article 6 para. 1 (art. 6-1), however, they drew a distinction between a civil party application seeking "vengeance" and one whose purpose was to obtain damages.

The Government maintained that the applicants' sole aim had been to initiate a prosecution. Their action had not therefore been a civil one within the meaning of Article 6 para. 1 (art. 6-1), unless it was accepted that the Convention guaranteed to everyone the right to seek a criminal conviction or at least to bring criminal proceedings against other persons. In addition, the lodging of a civil party application was to be distinguished from the action for damages which might accompany or follow that step. In the instant case, no right to compensation had been generated in the applicants' favour and no proceedings had been instituted before any court to determine a dispute on that issue.

43. The applicants stressed that their civil party application - brought in order to set in motion a public prosecution - had been allowed by the investigating judge, who had required them to lodge a sum of money as security for costs. The judge had thus recognised the validity of their dispute without however ruling on their right to damages, which could arise only in the event of a conviction by a criminal court. The outcome of the proceedings was therefore decisive for the right to compensation in respect of their pecuniary and non-pecuniary damage.

44. The Delegate of the Commission pointed out that the Commission had, of its own motion, found Article 6 para. 1 (art. 6-1) to be applicable on the basis of the Tomasi v. France judgment of 27 August 1992 (Series A no. 241-A, p. 43, para. 121). The lodging of a civil party application by the applicants, even though it had not been accompanied by a claim for damages, indicated their wish to take action to secure reparation for the damage which they had sustained; the closure of the investigation by an order finding that there was no case to answer had been decisive for their civil rights.

45. The Court recalls that the applicability of one of the substantive clauses of the Convention constitutes, by its very nature, an issue going to the merits of the case, to be examined independently of the previous attitude

of the respondent State (see, inter alia, the following judgments: Belgian linguistic, 9 February 1967, Series A no. 5, pp. 18-19; Barthold v. Germany, 25 March 1985, Series A no. 90, p. 20, para. 41; and H. v. France, 24 October 1989, Series A no. 162-A, p. 20, para. 47). The Court will therefore examine the question whether the proceedings in issue concerned a dispute over the applicants' "civil rights and obligations".

46. According to the principles laid down in its case-law (see the judgments of Zander v. Sweden, 25 November 1993, Series A no. 279-B, p. 38, para. 22, and Kerojärvi v. Finland, 19 July 1995, Series A no. 322, p. 12, para. 32), the Court must ascertain whether there was a dispute ("contestation") over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law. The dispute must be genuine and serious; it may relate not only to the existence of a right but also to its scope and the manner of its exercise; and, finally, the outcome of the proceedings must be directly decisive for the right in question.

47. The Court notes that the Acquavivas' application, which was allowed by the investigating judge and not opposed by the prosecuting authority, temporarily denied them access to the civil courts for the purpose of seeking compensation for any damage that they may have sustained.

By choosing the avenue of criminal procedure, the applicants set in motion judicial criminal proceedings with a view to securing a conviction, which was a prior condition for obtaining compensation, and retained the right to submit a claim for damages up to and during the trial.

The finding of self-defence - which excluded any criminal or civil liability - made by the Indictment Division of the Versailles Court of Appeal (see paragraph 32 above) deprived them of any right to sue for compensation. The outcome of the proceedings was therefore, for the purposes of Article 6 para. 1 (art. 6-1), directly decisive for establishing their right to compensation.

48. In sum, Article 6 para. 1 (art. 6-1) is applicable in the present case.

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

49. It remains to be established whether a "reasonable time" was exceeded. The applicants and the Commission submitted that it had been, whereas the Government contended that it had not.

1. Period to be taken into consideration

50. According to the applicants and the Commission, the proceedings commenced on 11 December 1987, the date on which the Acquavivas lodged their civil party application with the investigating judge, and ended on 14 April 1992 with the Court of Cassation's judgment declaring their appeal on points of law inadmissible (see paragraphs 8 and 33 above).

51. Before the Court the Government argued that the proceedings had ended with the decision of the Indictment Division of the Versailles Court of Appeal finding that the accused had acted in self-defence, on 10 December 1991 (see paragraph 32 above); as the Acquavivas' appeal to the Court of Cassation had been declared inadmissible, it could not be included in the calculation of the relevant period.

52. In accordance with its consistent case-law (see, inter alia, the Tomasi judgment cited above, p. 43, para. 124), the Court considers that the proceedings before the Court of Cassation should be taken into account. It therefore finds that the relevant period ran from 11 December 1987 to 14 April 1992, that is four years and four months.

2. Reasonableness of the length of the proceedings

53. The reasonableness of the length of proceedings is to be assessed in the light of the circumstances of the case and with reference to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the parties and of the competent authorities (see, inter alia, the judgments of Vernillo v. France, 20 February 1991, Series A no. 198, p. 12, para. 30, and Monnet v. France, 27 October 1993, Series A no. 273-A, p. 11, para. 27).

(a) Complexity of the case

54. The applicants asserted that the case had in no way been a complex one.

55. The Commission shared that view.

56. The Government argued, on the other hand, that the proceedings had been seriously disrupted by the local political climate, which had been the cause of Mr and Mrs R.'s departure and of the difficulties encountered in the judicial investigation. In addition, the scope of the powers of the investigating judge delegated by the Indictment Division to conduct the further inquiries and the status of "witness assisted by a lawyer" attaching to Mr R. had given rise to legal problems that had had an evident effect on the course of the proceedings.

57. The Court does not discern any particular difficulties of a legal nature. It does not, however, underestimate the political climate reigning in Corsica at the material time. That situation caused the departure from Corsica of the witnesses, who were afraid to return to the island despite the arrangements made by the State authorities for their protection, and led to the transfer of jurisdiction from the Bastia court to the Versailles Court of Appeal. The latter decision inevitably resulted in further delay.

(b) Conduct of the applicants

58. According to the Government, the applicants contributed to prolonging the proceedings. By filing a civil party application without waiting for the results of the preliminary inquiry, by refusing to participate on 16 January 1990 in the reconstruction and by instituting various legal proceedings, they had slowed down the investigation.

59. The applicants replied that they had laid a complaint to compensate for the judicial authorities' inaction and their subsequent conduct had been guided by the same concern.

60. The Commission took the view that neither the applicants' failure to appear on 4 July 1988 (see paragraph 11 above) nor their laying, on 12 June 1990, of a new civil party complaint (see paragraph 24 above) had had any effect on the length of the investigation.

61. The Court recalls that only delays attributable to the State may justify a finding that a "reasonable time" has been exceeded (see, inter alia, the H. v. France judgment cited above, pp. 21-22, para. 55).

In this instance the applicants insisted on the presence of the "witness assisted by a lawyer" at the scene-of-crime reconstruction, thereby causing that measure to be postponed (see paragraph 21 above). They objected to the presence of the lawyers representing the same witness at the hearing before the Bastia Indictment Division to examine the complaint concerning the destruction of the seals (see paragraph 25 above). In addition and above all they failed to appear before the Bastia investigating judge (see paragraph 11 above) and to take part in the reconstruction (see paragraph 21 above). In short they contributed to prolonging the proceedings.

(c) Conduct of the judicial authorities

62. The applicants' main criticism was directed at the failure, despite the Bastia Indictment Division's order to that effect, to hold the reconstruction.

63. Pointing to the numerous investigative measures and judicial decisions punctuating the proceedings, the Government contended that there had been no period of inactivity that could be held against the judicial authorities; the latter had acted in pursuance of their discretionary power and with due diligence.

64. The Commission expressed the opinion that a "reasonable time" had been exceeded.

65. The Court notes that the necessary steps in the investigation had proceeded at a regular pace in the months following Jean-Baptiste Acquaviva's death.

It observes nevertheless, like the Commission, that the decision to organise a reconstruction was not taken until 22 February 1989, one year and three months after the events in question, and that even then the date fixed for the reconstruction was 16 January 1990, eleven months later.

66. Although State authorities must act with diligence taking special account of the interests and rights of the defence, they cannot disregard the political context where, as in this instance, it has an impact on the course of the investigation (see paragraphs 29 and 57 above). A situation of this kind may justify delays in proceedings, as Article 6 para. 1 (art. 6-1) is intended above all to secure the interests of the defence and those of the proper administration of justice.

(d) Conclusion

67. In the light of the particular circumstances of the case and the situation in Corsica at the time, the investigation proceedings, taken as a whole, did not exceed a "reasonable time". There has therefore been no violation of Article 6 para. 1 (art. 6-1).

FOR THESE REASONS, THE COURT

1. Holds by eight votes to one that Article 6 para. 1 (art. 6-1) of the Convention is applicable in this case;

2. Holds unanimously that there has been no violation of Article 6 para. 1 (art. 6-1).

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 21 November 1995.

Rolv RYSSDAL
President

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 partly dissenting opinion of Mr Baka is annexed to this judgment.

R. R.
H. P.

PARTLY DISSENTING OPINION OF JUDGE BAKA

I voted with the majority in holding that there has been no violation of Article 6 para. 1 (art. 6-1) in the present case. However, my reasoning differs from that of the majority of the Court.

Article 6 para. 1 (art. 6-1) of the Convention is applicable in relation to the criminal process once a "criminal charge" is laid against a suspect (which is definitely not the case here as regards the applicants) or, alternatively, in criminal proceedings in so far as they also involve the determination of "civil rights and obligations".

In the latter connection the French legal system enables civil parties to join a public prosecution or initiate criminal proceedings. In doing so, it gives recognition to two interests of civil parties: firstly it accepts that relatives and victims have a legitimate interest in taking part in the procedure with a view to finding the perpetrator and contributing in some way to the administration of criminal justice; secondly, it allows civil parties to claim compensation for damage sustained, thereby protecting their civil rights and obligations. The outcome of a criminal prosecution may be said, in a sense, to be directly decisive for a subsequent claim for damages, but it must also be recognised that such a claim, that is the "civil right" interest attracting the application of Article 6 para. 1 (art. 6-1), may not necessarily exist in a given criminal process.

In this case the applicants joined the relevant criminal proceedings as a civil party, but did not claim damages. The whole investigation procedure was concerned with the issue of whether a criminal prosecution should be brought; it did not involve at any point the determination of a "civil right". Consequently, I hold that Article 6 para. 1 (art. 6-1) has no application in the present case.