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Translation of the Court Opinion by Anne Witt, as Revised by Vivian Grosswald Curran

t débats - Procès Georges LIPIETZ c/ l'Etat et la SNCF : le dossier -
Publication date: June 2006

The Lipietz plaintiffs and their attorney, Rémi Rouquette, extend warm thanks to Anne Witt and Vivian Grosswald Curran for volunteering their scarce time, respectively, to create and to revise the American English translation of the Administrative Court of Toulouse's opinion.

Anne Witt is a lawyer and a legal translator in New York. Vivian Grosswald Curran is a professor of law at the University of Pittsburgh.

Although the work of completely bilingual lawyers, this translation is not an official translation. Anyone wishing to obtain an official version should contact Anne Witt.

Traduction du jugement, par Anne Witt et révision par Vivian Grosswald Curran

« Les consorts Lipietz et leur avocat, Rémi Rouquette, remercient chaleureusement Mesdames Anne Witt et Vivian Grosswald Curran d'avoir bénévolement consacré leur précieux temps, respectivement à établir et à réviser la traduction en anglais (Etats-Unis) du jugement du tribunal administratif de Toulouse.

Anne Witt est avocate et traductrice-juriste à NewYork. Vivian Grosswald Curran, est professeur de droit à l'Université de Pittsburgh.

Bien qu'établie par des juristes parfaitement bilingues, la présente traduction n'a aucune valeur officielle ou légale. Les personnes qui souhaiteraient disposer d'une version officielle peuvent contacter directement Mme Anne Witt.

Enfin, l'importance historique de ce jugement justifierait sa large diffusion dans plusieurs langues. Les volontaires

pour traduire dans d'autres langues peuvent contacter Rémi. Rouquette (de préférence écrire en français, anglais ou espagnol).

The State and the SNCF [French national railway company] were found liable by the Administrative Court of Toulouse on Tuesday, June 6, 2006, by reason of their role in the deportation of Jews during the Second World War

THE ADMINISTRATIVE COURT
OF TOULOUSE

Case No. 0101248

Mr. A.. and the similarly situated LIPIETZ
plaintiffs,

versus

the Prefect of Haute-Garonne and

the Société nationale des chemins de fer [French National Railway Company , hereinafter "SNCF"]
THE FRENCH REPUBLIC

IN THE NAME OF
THE FRENCH PEOPLE

Mr. Jullière
Presiding Judge- rapporteur

The Administrative Court of Toulouse
2nd Chamber
Mr. Truilhé, *Commissaire du gouvernement* [1]

Hearing by the court of May 16, 2006
Reading by the court of June 6, 2006

In view of the petition filed on November 14, 2001 with the Clerk of the Administrative Court, and introduced by Mr. Rémi ROUQUETTE, on behalf of plaintiffs, Messrs. A. and Georges LIPIETZ, Messrs. A. and Georges LIPIETZ, request the Court to grant judgment jointly and severally against the State and the SNCF [2] and to order them to pay damages in the amount of Euros250,000 and Euros150,000, respectively, to compensate for the injury suffered by themselves as well as by Mrs. A, their mother, and by Mr. X, the second husband of Mrs. A. and the father of Mr. A., due to their confinement in the premises of the prison authorities of Toulouse, as a consequence of their arrest by the Gestapo on May 8, 1944, of their transport by the SNCF on May 10 and May 11, 1944, from Toulouse to Paris-Austerlitz, and of their internment in the camp of Drancy from May 11 to August 17, 1944;

They maintain that:
the cause of action is linked to prior requests addressed to the SNCF and the Secretary of Defense which the SNCF rejected on behalf of itself, and the Secretary of Defense on behalf of the Prefect of Haute-Garonne;

the Administrative Court has jurisdiction since, on the one hand, the State's liability is claimed on the basis of acts that were committed by public servants acting within the scope of their employment, and on the basis of the claim that, on the other hand, as to the SNCF, the latter a legal entity under private law in 1944 and currently a commercial and industrial public corporation, engaged in conduct of a governmental nature;

since the actions of the State at issue come within extra-contractual duties, the Administrative Court of Toulouse has jurisdiction, given that the act which generated the harm was within its geographical and subject-matter jurisdiction: namely, to have detained the family instead of having obtained its release, which would have been possible in light of the factual circumstances;

the acts committed by the officials of the French State and by the SNCF constituting criminal complicity in a crime against humanity, the four-year statute of limitations is not applicable; [3]

as the evidence of record establishes, these acts clearly constitute a wrongful act of state conduct of the kind that triggers the liability of the French State; the wrongful act that can be imputed to the SNCF, resulting from, in particular, the conditions under which it performed the transporting, also gives rise to liability;

contrary to the position that seems to have been expressed by the Secretary of Defense in rejecting plaintiffs' prior request for compensation from the State, the plaintiffs are not barred from recovery by prior measures of compensation for the harms herein stated; indeed, plaintiffs do not seek damages for physical injury; moreover, it would be contrary to Article 1 of the additional protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms as well to Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms to raise this objection where plaintiffs at no relevant time were connected to the service [of defendants] [4];

in light of injuries caused by the deprivation of freedom, the horrific conditions of the transportation and confinement, the permanent fear of deportation (designated in [the French internment/concentration camp of] Drancy as "deportable," plaintiff prisoners were interned from May 11 to August 17, 1944, then released), as well as in light of their psychological disorders, they state a claim for Euros100,000 per person for their own injuries, and Euros100,000 for each decedent of whom they are the heir;

the wrongful acts committed by the State and by the SNCF are joint and several and generated an indivisible harm; therefore the Court's judgment should bind all parties;

In view of the Secretary of Defense's memorandum of law filed on May 30, 2002, the Secretary of Defense informs the Court that he delivered the plaintiffs' request for compensation to the Department of the Interior, of Interior Security and Local Freedoms;

He maintains that he is not entitled to represent the State in litigation instituted by individuals arising from conduct of the police services within the framework of deportations;

In view of the plaintiffs' memorandum of law filed on September 14, 2002, on behalf of Messrs. A. and Georges LIPIETZ, seeking an award by the Court of accrued interest on damages owed by the State and by the SNCF;
They maintain that "the prior request for damages was received [by defendants] more than a full year ago;"

In view of the memorandum of law filed on October 24, 2002 by Mr. Yves BAUDELOT on behalf of the SNCF whose headquarters are located at 10 place de Budapest in Paris (75436 Paris cedex 09); the SNCF rejected plaintiffs'

request inasmuch as it affected the SNCF principally on the ground of having been brought before a court lacking jurisdiction and in addition, as being substantively without merit.

It maintains that:

In spite of the particular attributes due to the corporation's having both state and private ownership interests, at the time of the facts relevant to this case, it was a legal entity under private law, which can be sued only in civil and criminal courts because it could not have engaged in state action ; no text [of law] grants to it said capacity; plaintiffs A. and LIPIETZ were not transported to Paris-Austerlitz on its initiative since, pursuant to the Armistice Agreement [concluded between France and Germany after France's military defeat in 1940], it [the SNCF] was placed at the disposal of the occupying forces [i.e., Nazi Germany] whose requisitions for the deportation of people the SCNF was required to execute; the conversion of its status into a commercial and industrial public establishment in no way alters jurisdiction; the administrative court lacks jurisdiction all the more in that the action for compensation is sought here on the grounds of violations of individual freedom;

The four-year statute of limitations is applicable, as well as the ten-year statute of limitations of Article 2270-1 of the Civil Code; indeed, pursuant to Article 10 of the Code of Criminal Procedure, the imprescriptability of crimes against humanity comes into play solely when the legal action for damages is before a criminal court judge, in which case the civil suit (seeking compensation for damages suffered as a result of a crime) is then subject to the same statute of limitations as is the criminal action against the perpetrator of crimes against humanity [5];

The SNCF can not be deemed liable because the Armistice Agreement of June 22, 1940 allowed it no autonomy;

In view of the memorandum of law filed on November 15, 2002 on behalf of Messrs. A. and Georges LIPIETZ, stating the same claims, damages, and legal theories, and, in addition, that:

the Administrative Court has jurisdiction over the SNCF; the latter in fact implemented the prerogatives of state action; Article 13 of the Armistice Agreement is argued incorrectly since the rail transport was ordered by the French authorities and not by the Nazis, who were not taking charge of the implementation of the domestic transports but, rather, only of transfers to the extermination camps; the implementation of prerogatives of state action also is implicit in the fact that the transport of persons was against their will;

· with respect to the statute of limitations, it would be erroneous to make a distinction that the law does not make based on whether the suit is or is not brought by a private plaintiff as part of the criminal trial of the perpetrator; [6]

on the merits, the SNCF restricts its defense to arguing that it operated under a duty to carry out the orders of the occupier, but the transport in question was not carried out on such orders; it [the SNCF] does not even substantiate having received from the French authorities an order of this nature which it could not have evaded;

In view of the memorandum of law filed on behalf of Messrs. A. and Georges LIPIETZ, stating the same claims, damages and legal theories as in their prior court submissions, and, in addition, that:

a federal court of the United States held that the SNCF had to be deemed analogous to a State and therefore, held that it was entitled to the immunity reserved for foreign States;

the "Bachelier Report" confirms that the SNCF, in spite of its statutory status as a mixed public and private company, in reality was managed by the French State, acting on behalf of itself and not on behalf of the occupying authorities;

that is the reason why, functioning as a true State operation, it never requested official requisitions;

the SNCF never even attempted to delay the transports, preoccupied instead by receiving payment for them from the French State.

In view of the filings as of January 25, 2003 on behalf of Messrs. A. and Georges LIPIETZ;

In view of the letter of January 28, 2003 by which the President of the 2nd Chamber of the Court, pursuant to Article R.612-3 of the Administrative Code of Justice, summoned the Minister of the Interior, Interior Security and Local Freedoms, to present his comments on behalf of the defense within a one-month period of time;

In view of the acknowledgement of receipt of this summons;

In view of the memorandum of law filed on May 28, 2003, on behalf of Mrs. Colette LIPIETZ, Mr. George LIPIETZ's spouse, as well as on behalf of her children, Mr. Alain LIPIETZ, Mrs. Catherine LIPIETZ-OTT, and Mrs. Hélène LIPIETZ, Mrs. Colette LIPIETZ, Mr. Alain LIPIETZ, Mrs. Catherine LIPIETZ-OTT and Mrs Hélene LIPIETZ declare that they revive the suit as instituted by Mr. Georges LIPIETZ, deceased on April 17, 2003;

In view of the memorandum of law filed on August 16, 2003, on behalf of the SNCF, stating the same defenses, arguments, and legal theories as in its prior court submissions, and, in addition, that:

the American federal court judge did not "deem the SNCF to be analogous to a foreign State," but considered it as a division of a foreign State;

the statute of limitations would bar this suit even if the Court applied the 30 year time period;

the SNCF systematically was subjected to requisitioning procedures on the part of the French and German authorities; it had no autonomy whatsoever in its actions and, as Mr. KLARKSFELD confirms in the name of the Association "*Les Fils et Filles des Déportés juifs de France*" [The Sons and Daughters of French Jewish Deportees], it only could renounce payment by the French authorities with respect to the transport invoices of Jews from the provinces bound for Drancy;

In view of the memorandum filed on September 22, 2003, on behalf of Mr. A. and the similarly situated LIPIETZ plaintiffs, stating the same claims, damages and legal theories as in their prior court submissions; they renew their claim for accrued interest, stipulated in the aforementioned memorandum of law of September 14, 2002, and furthermore claim accrued future interest as of each succeeding anniversary of the date of their prior claims;

In view of the memorandum of law filed on June 17, 2004 on behalf of the SNCF stating the same defenses, arguments, and legal theories as in its prior court submissions;

In view of the memorandum of law filed on July 2, 2004 on behalf of Mr. A. and the similarly situated LIPIETZ plaintiffs, stating the same claims, damages and legal theories as in their prior court submissions;

In view of the judge's order dated December 22, 2004, by which the Presiding Judge of the 2nd Chamber of the Court, pursuant to Article R.613-1 of the Code of Administrative Justice, set, the closing of the investigative phase of the proceeding at January 14, 2005;

In view of the legal memorandum filed on November 4, 2005 on behalf of the Secretary of Defense principally requesting the dismissal of the petition and in addition, that any liability of the State be reduced in relation to the claims of the petitioners,

He maintains that:

the four-year statute of limitations bars plaintiffs' claims pursuant to Article 9 of the Law of January 29, 1831 from December 31, 1948 onwards; the ten-year statute of limitations of Article 2270-1 of the Civil Code under Article 38 of the Law of July 5, 1985 also bars plaintiffs' claims, or, if the Court finds that the provisions of said Code are applicable as of the date of the injuries, then the thirty-year statute of limitations of Article 2262 of said Code bars the claims; the imprescriptability of crimes against humanity does not defeat the applicability of the statute of limitations because no legal provision extends its application to acts that are the subject of the administrative court's adjudication with respect to the liability of the State for circumstances that contributed to the realization of such crimes;

· pursuant to the Franco-German Agreement of July 15, 1960, ratified on August 3, 1961, the relevant victims collected on November 1964 an individual indemnification amount pursuant to the executive decree of August 29, 1961 and pursuant to the ministerial decision of August 14, 1962; these amounts under all circumstances should be taken into account with respect to liability in the event that the State may be held liable;

In view of the letter of February 7, 2006, by which the Presiding Judge of the 2nd Chamber of the Court, pursuant to Article R.611-7 of the Code of Administrative Justice, let it be known to the parties that the Court was likely to raise an issue *sua ponte* based on *ordre public*;

In view of the memorandum of law filed on February 14, 2006, on behalf of Mr. A. and the similarly situated LIPIETZ parties, stating the same claims, damages and legal theories as in their prior court submissions, and, in addition, that:

in the instant situation, plaintiffs seek a finding of liability on the part of the State owing to acts of French, not German, civil servants, for Nazi persecutions, and therefore there is no cause to deduct from damages amounts that may have been received from German funds for the reparation of barbaric acts committed by the Nazis;

in any event, such a deduction could only be partial, since the amounts that would have been allocated in 1964 would have redressed a wrong caused in part by Germany;

the deduction could be performed only for the nominal amount of Euros260,69 per part, 1 franc at the time corresponding, according to INSEE [National Institute for Statistics and Economic Study], to Euros1.28442 in 2005;

In view of the memorandum of law filed on March 1, 2006 on behalf of
the Secretary of the Interior and Urban and Rural Planning, which asserts that, in accordance with the inter-ministerial meeting held on October 23, 2003 under the presidency of a representative from the office of the Prime Minister, the Secretary of Defense was charged with presenting the comments of the State for the defense;

In view of the judge's order of March 2, 2006, by which the Presiding Judge of the 2nd Chamber of the Court, pursuant to Articles R.613-4 and R.613-1 of the Code of Administrative Justice, reopened the investigative stage of the proceeding and set the closing of this phase for March 24, 2006;

In view of the memorandum of law filed on March 9, 2006 on behalf of Mr. A.. and the similarly situated LIPIETZ

plaintiffs, stating the same claims, damages and legal theories as in their prior court submissions, and further seeking that the State and the SNCF be jointly sentenced to pay, pursuant to Article 1.761.1 of the Code of Administrative Justice, an amount of Euros6,000 to Mr. A. and an amount of Euros1,500 to each of the other petitioners;

They maintain, among other things, that:

the facts are not contested by either the State or the SNCF;

the prior request having been addressed to the Prefect of Haute-Garonne, the implied decision that rejected it was taken by authority of the Interior Ministry and not of the Defense; the inter-ministerial meeting of October 23, 2003 pertains to "the memoranda of law of the defense concerning the appeals in litigation relating to compulsory work service;" involving an injury "arising from the conduct of the State's civil administrations in the region " of Haute-Garonne, the State, pursuant to Article R431-10 of the Code of Administrative Justice, must be represented in its defense in the Administrative Court by the Prefect of this region; it can not benefit from the delegation which would be available to the signatory of the memorandum of law of the Secretary of Defense; for all of these reasons, the State is not validly represented in this Court;

since the running of the four-year statute of limitations was not argued prior to the entry into effect of the Law of December 31, 1968, of which Article 10 repealed Articles 9 et seq. of the Law of 1831, only the Law of 1968 applies to the instant case;

the Secretary of Defense is not entitled to assert the statute of limitations [as a defense] in the name of the State, because the person with authority to order payment of the disbursement is the Minister of the Interior; the statutes of limitation were not substantiated through legal reasoning as is required by the Law of July 11, 1979; in violation of Article 24 of the Law of April 12, 2000, they are asserted without first having been analyzed in writing, and, as need may be, orally; defendant failed to provide notice of its decision to assert a violation of the statute of limitations;

with respect to the imprescriptability of crimes against humanity, the *Cour de cassation* [Supreme Court for private and criminal law] always has held that it applies to actions for compensation; the imprescriptability of the crimes against humanity is a rule of international law and a statute of limitations would be incompatible with such a rule, as it also would be incompatible with Article 6-1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms , which provides for the right to a fair trial;

the statute of limitations only starts to run from the moment when they discovered the possibility of the State's having legal liability:, that is, starting from the decision in 1997 by the criminal division of the *Cour de cassation* in the Papon case; the work of historians concerning the SNCF is even more recent; moreover, the mental distress, essentially in the form of memories, ends only with death; this lawsuit thus was not barred when it was instituted in 2001;

the ten-year statute of limitations under Article 2270-1 of the Civil Code also started to run only in 1997, the year during which the publicity surrounding the Papon trial increased their mental distress;

lastly, the fact that the claim would become clear only when the court decision was made militates against the statute of limitations' having begun to run;

for lack of having a government accountant, the SNCF , which, for the same reasons as apply to the State, is not justified in challenging the statute of limitations under Article 2270-1 of the Civil Code, in any event may not invoke the four-year statute of limitations;

the organization of the transfers in abominable conditions suffices to give rise to the SNCF's libaility, inasmuch as it does not establish that it was forced to subject the persons transported to such conditions;

In view of the letter dated March, 13 2006 by which the President of the 2nd Chamber of the Court, pursuant to Article R.612-3 of the Code of Administrative Justice, summoned the Prefect of Haute-Garonne to present his comments in defense;

In view of the acknowledgement of receipt of this summons;

In view of the memorandum of law filed on March 24, 2006 on behalf of the Secretary of Defense, stating the same defenses, arguments and legal theories as in its prior memorandum, and, in addition, that:

the Prefect of Haute-Garonne is not entitled to state a defense in this Court pursuant to the case law of the *Conseil d'État* interpreting the provisions, of, in particular, Article R-431-9 of the Code of Administrative Justice, according to which the defense of the State must be conducted by "the relevant, involved minister" or, when several ministers meet that qualification, by any one of them; pursuant to the executive decree of May 19, 2005 establishing his assignments, the Secretary of Defense is the " relevant, involved minister";

therefore, the Secretary of Defense also is legally competent to invoke the four-year statute of limitations;

the signatory of the previous and present memoranda of law has at his disposal a delegation of signature duly published;

In view of the judge's order dates as of March 24, 2006 by which the Presiding Judge of the 2nd Chamber of the Court, pursuant to Article R.613.4 of the Code of Administrative Justice, re-initiated the investigative phase of the proceeding;

In view of the memorandum of law filed on March 28, 2006 on behalf of the Prefect of Haute-Garonne who in principal part abdicates his legal competence to defend at the hearing in this Court for the benefit of the Secretary of Defense and, in the alternative,, incorporates as his own the comments presented by the latter;

In view of the memorandum of law filed on March 28, 2006 on behalf of Mr. A. and the similarly situated LIPIETZ plaintiffs, stating the same claims, damages and legal theories as in their prior court submissions, and, in addition, that in any event, the Secretary of Defense is not the "relevant involved minister" because they are neither former war veterans nor war victims, the anti-Semitic measures being moreover highly different from compulsory work service;

In view of the letter of March 20, 2005, by which the Presiding Judge of the 2nd Chamber of the Court, pursuant to Article R.611-7 of the Code of Administrative Justice, made known to the parties that the Court was likely to raise *sua ponte* a ground of *ordre public*;

In view of the memorandum of law filed on March 30, 2006 on behalf of the Secretary of Defense, stating the same defenses, arguments and legal theories as in its prior court submissions:

In view of the memorandum of law filed on April 3, 2006 on behalf of the SNCF, stating the same defenses, arguments and legal theories as in its prior court submissions, and, in addition, that:

adjudicating a case initiated by the son of a deported person for the purpose of involving the extra-contractual liability of the SNCF, a judge held that the statute of limitations started to run from the time of the deportation;

in that decision of the Court of Appeals of Paris of June 8, 2004, it was noted that the plaintiff had not established, especially in light of the publication starting in 1946 of several books relating the circumstances and conditions of deportations, that he had been unable to bring the action within the period of the statute of limitations;

In view of the memorandum of law filed on April 3, 2006 on behalf of Mr. A. and the similarly situated LIPIETZ plaintiffs, stating the same claims, damages and legal theories as in their prior court submissions, and, moreover, that: the *ordre public* ground being raised with regard to the request for accrued interest is not legally valid, since this request for accrued interest necessarily was tantamount to a request for interest; in the alternative, the petition requesting that the finding of liability include liability for interest is, as may be required, explicitly formulated by the present memorandum of law;

In view of the memorandum of law filed on April 5, 2006 on behalf of the Secretary of Defense, stating the same defenses, arguments and legal theories as in its prior court submissions;

In view of the memorandum of law filed on April 14, 2006, on behalf of the Prefect of Haute-Garonne, stating the same defenses, arguments and legal theories as in its prior court submissions;

In view of the memorandum of law filed on April 14, 2006, on behalf of Mr. A. and the similarly situated LIPIETZ plaintiffs, stating the same claims, damages and legal theories as in their prior court submissions;

In view of the memorandum of law filed on May 8, 2006, on behalf of Mr. A. and the similarly situated LIPIETZ plaintiffs, stating the same claims, damages and legal theories as in their prior court submissions, and, in addition, [requesting] that the Court:

1/ void the decision of April 24, 2006 by which the Secretary of Defense invoked the four-year statute of limitations against Mr. A.;

2/ principally, declare the decision from April 24, 2006 [already] to be null and void, by which the Secretary of Defense invoked the four-year statute of limitations against Mr. Georges LIPIETZ, deceased on April 18, 2003, and, in the alternative, void this decision;

3/ find the the State liable to pay to the successors in interest of Mr. Georges LIPIETZ, the sum of Euros1 in redress for the injury they suffered upon receiving notice of defendant's rejection of the request of their deceased spouse and father;

Moreover, they maintain that:

by invoking the four-year statute of limitations in decisions that it made eleven days prior to the date of the hearing, the administration ignores the principle of legal security and, more generally, the right to a fair trial guaranteed by Article 6-1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms;

the decision that was addressed to Mr. Georges LIPIETZ obviously is null and void as a result of his dying prior to the date of said decision;

the notice [of its decision] renders the State liable for a wrongful act, given that the Secretary of Defense knew that Mr. Georges LIPIETZ was deceased, and consequently, that the relevant notice breaches in an indecent way, for the purpose of winning a lawsuit, the respect that is owed to the dead, which [concept] leading cases have turned into a general principle of law;

In view of the memorandum of law filed on May 10, 2006 on behalf of the Secretary of Defense, stating the same defenses, arguments and legal theories as in its prior court submissions, and moreover, that, having failed to state a claim for interest in their previous petition of September 6, 2001, the claimants are not entitled either to claim accrued interest or to maintain that the memorandum of law in which they requested this accrual of interest in the instant proceeding was tantamount to stating a claim for interest;

In view of the letter of May 10, 2006 by which, pursuant to Article R.61-7 of the Code of Administrative Justice , the Presiding Judge of the 2nd Chamber of the Court made known to the parties that the Court was likely to raise *sua ponte* a ground of *ordre public*;

In view of the memorandum of law filed on May 11, 2006 on behalf of Mr. A. and the similarly situated LIPIETZ plaintiffs, stating the same claims, damages and legal theories as in their prior court submissions, and, in addition, that:

an appeal of a decision that invokes the four-year statute of limitations is not an appeal for abuse of power but is by its nature an appeal for this Court to adjudicate as part of the litigation;

it is of little importance that the decision to invoke the four-year statute of limitations was made after the lawsuit was brought; indeed, this decision is dissociable neither from the defense comments with which the administration already has asserted the statute of limitations [during the course of this action as a bar to plaintiffs' claims] nor from the decision to reject the [plaintiffs'] prior request, which the decision to assert the statute of limitations completes; moreover, in cases of substitution of pending decisions during the course of a suit, it is permitted to attack a new decision by way of interlocutory pleadings within the framework of the lawsuit, as is the case in the instant situation;

in the alternative, the right to a fair trial guaranteed under Article 6-1 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, which implies in particular the right to obtain a decision within a reasonable amount of time, is contrary to requiring that a separate request be filed to contest the four-year statute of limitations, which as it happens already was invoked in the initial lawsuit by filing exceptions:

In view of the letters dated September 6, 2001 with which counsel for Messrs. A.. and Georges LIPIETZ addressed the Prefect of Haute-Garonne and the SNCF for indemnification purposes;

In view of the decisions dated September 25, 2001 and October 5, 2001 by which the Secretary of Defense and the director of the SNCF rejected , respectively, those requests;

In view of the other documents of record;

In view of the Law of January 29, 1831, as amended, and the Law No. 68-1250 of December 31, 1968, as amended;

In view of the executive order of August 9, 1944;

In view of the Law No. 04-1326 of December 26, 1964;

In view of the Law No. 02-1133 of December 30, 1982, as amended;

In view of the executive decree of August 31, 1937, then in force, approving the Agreement of that same day announcing the creation of the SNCF;

In view of the executive decree No. 61-945 of August 24, 1961 publishing the Agreement between France and Germany regarding the indemnification of French nationals who had been subjected to National Socialist persecution, signed on July 15, 1960;

In view of the inter-ministerial decision of August 14, 1962 made for the enforcement of said decree;

In view of the Civil Code;

In view of the Code of Criminal Procedure;

In view of the Code of Administrative Justice;

The parties having been duly notified of the day of the hearing;

After having heard during the public hearing of May 16, 2006:

- the report of Mr. Jullière, Presiding Judge,

the comments of Mr. ROUQUETTE, attorney for Mr. A. and the similarly situated LIPIETZ plaintiffs,

the comments of Mr. BAUDELOT, attorney for the SNCF,

and the findings of Mr. Truilhé, *Commissaire du gouvernement*;

As to the indemnification request for the injuries arising from the events that took place in 1944:

Whereas Mr. Georges LIPIETZ, Mr. A., his half-brother, Mrs. A., their mother, and Mr. X., her second husband and the father of Mr. A., were arrested in Pau on the morning of May 8, 1944 by the Gestapo due to their Jewish origins; they were transferred on that same day to Toulouse under the guard of German soldiers, who handed them over to the services of the Prefecture of Haute-Garonne; whereas they were interned from the evening of May 8, 1944 until the morning of May 10, 1944 in the premises of the penal administration, were transported via railway, on the 10th and 11th of May, 1944, from Toulouse to Paris-Austerlitz, where they were transported by autobus to the *Société de transport en commun de la région parisienne (STCRP)* [Paris region mass transit transport company] in Drancy, where they were interned from May 11, 1944 to the evening of August 17, 1944 before ultimately being released; whereas Mr. A. as well as the spouse and the three children of Mr. Georges LIPIETZ, who, as his successors in interest were substituted as plaintiffs in his stead following his death on April 17, 2003, seek the liability of the State and the French National Railway Company (SNCF) by alleging wrongful acts that were committed by the prefecture and police authorities of Haute-Garonne, as well as by the railway company;

With respect to the SNCF's theory that this Court lacks jurisdiction over it:

Whereas the SNCF, then governed by the Agreement of August 31, 1937 officially endorsed in an executive decree as of the same day, in the year 1944 had the status of a company under private law; it transpires from the investigative phase of this proceeding, and notably from a report titled "*La SNCF sous l'occupation allemande, 1940-1944*" ["The SNCF Under German Occupation, 1940-1944"], which established in 1966 within the framework of a research agreement entered into between the SNCF and the CNRS, [7] that the railway company, in the board of directors of which the State, which held a majority share of its capital, was widely represented, was acting on behalf of the French State when it secured the transport of Jews bound, prior to their deportation, to camps such as Drancy, located on the national territory; that services of this kind, as evidenced by other documents introduced into the record by the petitioners as was the aforementioned report, were billed by the SNCF to the Minister of the Interior, who had ordered them; that, in these circumstances, the transports in question, requiring the [physical] restraining of the persons transported who clearly were not ordinary [SNCF] customers, can not be deemed to have been secured within the scope of operating the commercial and industrial public railway service that constituted the purpose of the SNCF by virtue of the aforementioned agreement of August 31, 1937; that these services, for whose realization prerogatives of state power had been implemented, were, on the contrary, performed in order to carry out administrative measures taken by the national government and, therefore, can not be deemed as being clearly unrelated to a power belonging to the administrative authority; that therefore the SNCF is not justified to maintain that the claims of the plaintiffs relating to the SNCF would not come within the jurisdiction of this administrative court.;

With regard to the defenses of lapse and statute of limitations:

With respect to the State:

Whereas, in the first place, pursuant to Article 9 of the Law of January 29, 1831, from which in its drafting Article 1 of the executive decree of October 30, 1935 was derived, and from which then Article 148 of the Law of December 31, 1945 was derived: "Lapsed in time and definitively extinguished to the benefit of the State (...) are all claims which, not having been paid before the end of the fiscal year to which they belong, could not (...) have been settled, approved for payment, and paid within a period of four years starting from the opening of the fiscal year (...);" and whereas under Article 1 of the Law of December 31, 1968: "Extinguished due to time-lapse to the benefit of the State (...), without prejudice to particular penalties mandated by law (...), are all claims that have not been paid within a period of four years commencing from the first day of the year following the one during which the rights were acquired."

Whereas these provisions are general and apply to all claims against the State; thus, in the absence of any legislative provision excluding monetary claims from the rule of lapse or from the four-year statute of limitations, in order to subject them to a rule of exception to the statute of limitations, the claims that petitioners can have with respect to the French State, the [defense of] lapse or of the four-year statute of limitations, as the case may be, may be asserted solely with respect to the particular relevant financial claims, contrary to the position of the Prefect of Haute-Garonne, on whom it is incumbent to represent the State in defense before the Court pursuant to Article R.431-10 of the Code of Administrative Justice inasmuch as the dispute "arises from the activity of the civil administration of the State in the region" of Haute-Garonne, which wrongfully relies on the provisions combined of Articles 2227 and 2270-1 of the Civil Code;

Whereas, secondly, pursuant to the provisions of Article 10 of the Law of January 29, 1831, from which the provisions as drafted of Article 2 of the Decree of October 30, 1935 were derived, the four-year lapse rule instituted by Article 9 of said law is not applicable to "claims for which the approval for payment and payment thereof could not have been performed within the time limits that were determined by an action of the Administration (...)"; and pursuant to the provisions of Article 3 of the Law of December 31, 1968, the four-year statute of limitations

contemplated under Article 1 of the latter "runs neither against the creditor who personally cannot act, nor [can he act] through the intermediary of his legal representative, nor due to *force majeure*, nor against anyone who can be deemed legitimately in ignorance of the existence of his claim or the claim of one whom he legally represents."

Whereas, on the first hand, under the terms of Article 1 of the executive order of August 9, 1944 pertaining to the reestablishment of Republican rule of law on the continental territory, "[t]he form of the French government is and remains the Republic. In law, it never ceased to exist;" whereas Article 2 of this executive order declared to be "null and void and of no effect all constitutional, legislative or regulatory measures (...) issued on the continental territory after June 16, 1940 and until the establishment of the provisional Government of the French Republic," such nullification needing to be "expressly stated;" this nullification was expressly stated in Article 3 of the same executive order: specifically, the nullification of "the measures emanating from the *de facto* government that called itself Government of French State" [8] "that establish or apply any discrimination whatsoever based on being Jewish;" in the *Ganascia* court judgment of June 14, 1945, the plenary assembly of the *Conseil d'État* dismissed the plaintiff's claims, deeming that the persons who had been subject to the legislation of exception contemplated by Article 3 of the aforementioned executive order of August 9, 1944, were not entitled to any monetary compensation other than that expressly provided for in the law, the retroactive repeal of the legislation of exception having had the effect, specifically, that compensable harm from the application of [such discriminatory enactments] was not imputable to the State; and given that this interpretation of the provisions of the executive order of August , 1944 [9] was not reconsidered on January 1st, 1969, the date of the entry into force of the Law of December 31, 1968 concerning the four-year statute of limitations, Messrs. A. and Georges LIPIETZ legitimately could believe, until that date, that they had no legal claim against the State; that, consequently, the Prefect of Haute-Garonne, who incorporated by reference the Secretary of Defense's legal arguments, is not entitled to invoke the four-year lapse provision instituted by the Law of January 29, 1831; furthermore, in the absence of having the capacity of principal official with power to authorize the payment that would result from a finding of liability on the part of the State, the Prefect, in the absence of specific provisions, is not entitled to invoke this lapse; that the same applies to the Secretary of the Defense, who is not the official with power to authorize the above-referenced payment; the defense of the four-year lapse therefore must be rejected;

Whereas, on the other hand, the claim was not, as just has been said, tainted by lapse on January 1st, 1969, it is appropriate to apply the Law of December 31, 1968 pertaining to the four-year statute of limitations, in accordance with the provisions of Article 9 of that law; the aforementioned interpretation of the above-referenced provisions of the executive order of August 9, 1944 prevailed until its invalidation by court judgments, including the one in *Pelletier*, rendered on April 6, 2001 by the Conseil d'État meeting in assembly session, before the Papon [10] judgment of April 12, 2002 by the same body very [i.e., more] explicitly confirmed the possibility of the State's incurring liability for circumstances or wrongful acts committed between June 16, 1940 and the restoration of the Republican rule of law on the continental territory by the French Administration, in applying the [discriminatory] legislation of exception with respect to persons of Jewish origin; consequently, Messrs. A. and Georges LIPIETZ must be deemed to have legitimately ignored the existence of a claim that they might have against the State until the date of the publication [11] of this first of these two court judgments; in these circumstances, the statute of limitations had not run on the date of receipt by the Prefect of Haute-Garonne of the request for compensation that Messrs. A. and Georges LIPIETZ addressed to him on September 6, 2001; it therefore is appropriate to reject the defense of the four-year statute of limitations;

With respect to the SNCF :

Whereas in its Article 18, the abovementioned Law of December 30, 1982 endowed the SNCF with the status of commercial and industrial public establishment commencing from January 1, 1983; if, by virtue of the second paragraph of Article 1 of the Law of December 31, 1969 , claims over public establishments are subject to the four-year statute of limitations, it is subject to the condition, according to the same paragraph, that the establishment be provided with a government accountant; this is not the case for the SNCF, which, by virtue of Article 25 of the

above-referenced Law of December 30, 1982, "is subject in matters of accounting and financial management to the rules applicable to commercial companies"; it ensues from this that the SNCF in any event is not in entitled to a defense based on the four-year statute of limitations;

Whereas, consequently, the claim brought by Mr. A. and the similarly situated LIPIETZ plaintiffs is subject to the ten-year statute of limitations provided for by Article 2270-1 of the Civil Code, of which the SNCF can avail itself by virtue of Article 2227 of the same Code; this statute of limitations, however, could only have begun to run on the day when Messrs. A. and George LIPIETZ actually had the ability to act; that is, when they [could have] had sufficient information as to the existence of their claim, which in this case meant sufficiently precise understanding of the role played by the SNCF in the transport of Jews bound for camps such as that of Drancy with a view to their deportation and the terms and conditions of the organization of such transports;

Whereas such items of information were not effectively available until starting in the mid-1990s, more specifically when the report referenced earlier which petitioners entered into evidence, became available to the public, which [report] was completed in 1996 by Mr. Bachelier, a researcher at CNRS, at the request of the SNCF, who provided for the first time precise and incontestable historical data; under these circumstances, and given that the investigative phase of this proceeding reflects, as do the SNCF's references to various works without any explanation of their content, that sufficient information was unavailable before the date of publication of the above-referenced report, Mr. A. and the similarly situated LIPIETZ plaintiffs were entitled to argue that the ten-year statute of limitations had not expired on the date on which the SNCF received their prior compensation request of September 6, 2001;

With respect to liability:

Whereas Mr. A. and the similarly situated LIPIETZ plaintiffs, successors in interest to Mr. Georges LIPIETZ, argue liability on the part of the State and the SNCF for the conduct of the Prefecture and police authorities of Haute-Garonne as well as the railway company in the course of the period from May 8 to August 17, 1944 during which time Mrs. A. as well as Messrs. X, A and Georges LIPIETZ, as has been stated above, were confined in Toulouse in penitentiary premises, [then] were transported by train to Paris-Austerlitz, [and] then were interned in the camp of Drancy for approximately three months, before ultimately being liberated;

Whereas the acts or conduct thus invoked by the petitioners are imputable to agents of differing state authorities and were not implemented simultaneously; consequently, there is reason to determine separately the liabilities caused by them, in order to reach, if so justified, separate findings of liability against the State and the SNCF, rather than joint ones as plaintiffs request;

With respect to the State:

Whereas the Prefect of Haute-Garonne does not dispute that Mrs. A., Mr. X, Mrs. A. and Mr. Georges LIPIETZ were, after having been arrested by the Gestapo in Pau and handed over by German soldiers to the Prefecture authorities of Haute-Garonne, interned in Toulouse in the premises of the French penitentiary administration, under the supervision of agents of that administration, with no attempt [on the part of the French authorities even] to negotiate with the German authorities for their release, although such a step might have seemed not to be devoid of a chance of succeeding, the parties concerned having false baptismal certificates, with the exception of Mr. Georges LIPIETZ who, however, was not circumcised [12]; the parties concerned were then forced to board a car which was part of a train that the SNCF had assembled at the request of the Ministry of the Interior; thus, the French Administration, which obviously could not but have known that their transfer was organized with Drancy as their destination, permitted and facilitated an operation that normally would have been the prelude to the deportation of the parties concerned; [13] the conduct thus described constitutes a wrongful act of state conduct that entails the liability of the State;

With respect to the SNCF:

Whereas the SNCF relies in its defense on the Armistice Agreement of June 22, 1940 and on its having acted in compliance with requisitions from the French authorities, the investigative phase of this proceeding reveals, and in particular from the above-referenced report, that the management of the company, although informed about the nature and the destination of the convoys such as the one that transported the parties concerned to Paris-Austerlitz with a view to their internment in Drancy, [and] then of their deportation [from France to a German concentration camp in the East], never set forth any objection or protest about the performance of these transports, effectuated as just has been said at the request of the Ministry of the Interior; even though it systematically billed these performances of transport services to the State as "transports of the Ministry of the Interior" at the 3rd class train tariff rate, and continued to demand payment for such bills after the Liberation; the SNCF used for the transport of A. and the similarly situated LIPIETZ plaintiffs from Toulouse to Paris-Austerlitz, train cars intended for the transportation of merchandise or animals, for which its own [SNCF] agents had obstructed the openings themselves, without providing to the persons transported any water, food, or minimal hygienic conditions; since the documents filed on behalf of the SNCF did not demonstrate any duress whatsoever that might have excused such acts, they reflect a wrongful nature and entail its full and total liability;

With respect to the harm:

Whereas the injury suffered by the persons who were the victims of the above-related facts, whose [legal] right[s] [are] transmitted to their heirs with regard to those who are deceased, without their having instituted their own action for compensation, [the injury] does as much from their internment in the penitentiary premises of Toulouse for one day and two nights, the conditions incompatible with the dignity of human beings of their train transport from Toulouse to Austerlitz, which was of a duration of about thirty hours, and their internment at the camp of Drancy for a duration of about three months, as it does [i.e, as the injury arises] from their permanent fear of deportation, the permanent trauma associated with the memory of the events of which they were the victims; a fair assessment of the mental and emotional distress and the[ir] corresponding difficulties in life , in all their components, will be made by setting at Euros15,000 per victim the amount of compensation to allocate, without it being necessary to deduct the sums received in 1964 pursuant to the Ministerial Order of August 14, 1962 in fulfillment of the above-referenced executive decree of August 24, 1961 publishing the Franco-German agreement of July 15, 1960, since the latter related to the indemnification of persons who "have been subjected to National Socialist persecution"; it is appropriate in these circumstances to set the compensation at Euros37,500 for Mr. A (Euros15 000 individually; Euros15,000 for his father, Mr. X.; Euros7,500 for his mother, Mrs. A.) and at Euros22,5000 for the successors in interest of Mr. Georges LIPIETZ (Euros15,000 for Mr. Georges LIPIETZ himself; Euros7,500 for his mother, Mrs. A.); these findings of liability under the instant circumstances shall be apportioned as follows: the State shall be liable in the proportion of two thirds and the SNCF for the remaining third; therefore, the State, on the first hand, shall pay to Mr. A. as well as to Mrs. Colette LIPIETZ, Mr. Alain LIPIETZ, Mrs. Hélène LIPIETZ and Mrs. Catherine LIPIETZ, the successors in interest of Mr. Georges LIPIETZ, respectively, the amounts of Euros25,000 and Euros15,000, the SNCF on the other hand, shall pay to the same persons, respectively, the amounts of Euros12,500 and Euros7,500.

With regard to interest, and interest on interest:

Whereas, on the one hand, Mr. A. and the successors in interest to Mr. Georges LIPIETZ are entitled to interest at the legal rate pertaining to the respective amounts of Euros25,000 and Euros15,000, commencing on the day when the Prefect of Haute-Garonne received the letter of September 6, 2001 in which the State was requested to grant compensation; the respective amounts of Euros12,5000 and Euros7,500 owed by the SNCF shall bear interest at the legal rate commencing also on the day that the latter received the letter of September 6, 2001, in which it was requested to grant compensation;

Whereas, on the other hand, the accrual of interest was requested in a memorandum of law of September 14, 2002; on that date, interests was owing for at least an entire year; consequently, it is appropriate to grant the request for the accrual of interest on that date as on each annual maturity date counting from said date;

With respect to the remainder of the claims set forth in the complaint:

With respect to the theories for voiding the decisions of April 24, 2006:

Whereas, in these decisions that were served, respectively, on Mr. A. and Mr. Georges LIPIETZ, the Secretary of the Defense invoked the four-year lapse on the basis of the Law of January 29, 1831; these decisions, which in the event have the same effect as the defense argument of lapse previously raised pursuant to the same text, are disputed by Mr. A. and the successors in interest to Mr. Georges LIPIETZ on the same legal theories as those which they assert in opposition to that previously raised defense argument; the plaintiffs consequently are justified, without it being necessary to analyze the other theories they adduce in support of their position with respect to this matter, in requesting the voiding of the decisions at issue, which shall be granted on the same legal bases as those on which the defense of the four-year lapse was rejected;

With respect to the request for damages and interest presented by the successors in interest of Mr. Georges LIPIETZ:

Whereas by limiting their argument to alleging an intentional character to the notice made by the Secretary of Defense to Mr. Georges LIPIETZ, after he was deceased, of its decision of April 24, 2006 invoking the four-year lapse, the similarly situated LIPIETZ parties do not establish the reality of the mental distress for which they request compensation from the State in the form of the symbolic euro; their claims for the State to be found liable to pay them that amount therefore must be denied;

With respect to the legal arguments for the application of the provisions of Article 161-1 of the Code of Administrative Justice:

Whereas it is appropriate in the instant circumstances to find the State and the SNCF each liable to pay Mr. A., on the one hand, and, on the other, the successors in interest of Mr. Georges LIPIETZ, a sum of Euros1,000 for the expenses incurred which they have set forth and which are not included in the costs;

IT HAS BEEN DECIDED

Article 1: The State shall pay to Mr. A. and to the successors in interest of Mr. Georges LIPIETZ the respective amounts of Euros25,000 (twenty-five thousand euros) and Euros15,000 (fifteen thousand euros), along with legal interest thereon starting from the date on which the prior request for compensation of September 6, 2001 was received by the Prefecture of Haute-Garonne. The interest owing as of the date of September 14, 2002, and subsequently on each annual maturity date commencing from that date, shall accrue as of each of these dates in order that it produce compound interest.

Article 2: The SNCF shall pay to Mr. A. and to the successors in interest of Mr. Georges LIPIETZ the respective amounts of Euros12,500 (twelve thousand five hundred euros) and Euros7,500 (seven thousand five hundred euros), along with legal interest thereon starting from the date on which the prior request for compensation of September 6, 2001 was received by the SNCF. The interest owing as of the date of September 14, 2002, and subsequently on each annual maturity date commencing from that date, shall accrue as of each of these dates in order that it produce

compound interest.

Article 3: The decisions of the Secretary of Defense dated April 24, 2006 are voided.

Article 4: The State and the SNCF each shall pay a sum of Euros1,000 (one thousand euros) to Mr. A. and to the successors in interest of Mr. Georges LIPIETZ inclusively.

Article 5: The remainder of the claims stated in the complaint are dismissed.

Article 6: This judgment shall be served on

Mr. A;

Mrs. Colette LIPIETZ, Mr. Alain LIPIETZ, Mrs. Hélène LIPIETZ and Mrs. Catherine LIPIETZ, the successors in interest of Mr. Georges LIPIETZ,

the Minister of the Interior and National and Regional Development,

the SNCF.

(Copies shall be sent, for informational purposes, to the Prefect of Haute-Garonne and to the Secretary of Defense).

Deliberations took place at the conclusion of the hearing of May 16, 2006, with:
Mr. Jullière, Reporting-Presiding Judge,
Mr. Torelli and Mrs. BENLAFQUILL, first Judges of the Court of Appeals.

Judgment delivered in open hearing on June 6, 2005.

The Reporting-Presiding Judge, the most senior *assesseur* [i.e., the most senior judge of the two judges other than the presiding judge]

J.P. JULLIÈRE M. TORELLI F. DEGLOS

The Republic orders and commands the Ministry of the Interior and National and Regional Development, in the matters relevant to it, and all marshals subject to this order, as to matters involving the ways that are those of our general rules of law against private parties, to fulfill the execution of this judgment.

Certified True Copy:
The Chief Clerk

This Judgment translated by Anne Witt-Greenberg, JD, Mr. Georges Lipietz's beloved niece, a legal translator and human rights activist in the United States.

[1] Translator's Note: The *Commissaire du gouvernement* is a French expert in administrative law and independent magistrate who enjoys official status in administrative courts, conferring with the lead judge throughout the case, and offering his or her opinion as to the case's resolution in court at the trial. Until the end of 2005, the *Commissaire du gouvernement* took part in the judges' deliberations after the trial, although he or she did not have a vote in the final outcome. While the court is not bound to follow the positions taken by the *Commissaire du gouvernement*, generally they are influential, in part because they result from ongoing prior discussions about the case with the lead judge, a mutually influential interaction. In France, there are three types of supreme courts: the *Conseil d'État* for administrative law matters, the Conseil constitutionnel for constitutional law matters and the *Cour de cassation* for private and criminal law.

[2] Translator's note: The SNCF from 1937 until 1982 was a company in which the State held the majority of shares, before becoming in 1982 a commercial and industrial public corporation.

[3] Translator's note: Under French law, crimes against humanity are not subject to any statute of limitations.

[4] Translator's note (based on Maître Rouquette's kind explanation): the reference here is to a rule, no longer applied in current French law, pursuant to which veterans, among others, were not entitled to receive compensation for work injuries if they already received a disability pension from the military. In 1944, after the Liberation of France, those who had been interned or deported were deemed to come within the definition of disabled veterans and consequently received a government pension. In the instant case, the State argued that plaintiffs' receipt of the above-referenced pension precluded their right to seek compensation even for harms other than physical injury.

[5] Translator's note: In France, a private plaintiff may bring a civil-law action as a *partie civile* , or "civil party," in a criminal action. For a discussion of this feature of French law in the context of the trial of Maurice Papon, see Vivian Grosswald Curran, The Legalization of Racism in a Constitutional State: Democracy's Suicide in Vichy France, 50 Hastings L. J. 1 (1998).

[6] Translator's note: See id.

[7] Translator's note: CNRS stands for *Centre national de la recherche scientifique*, National Research Center.

[8] Translator's note: The French collaborationist government led by Pétain changed the name of the government from the French Republic (*la République française*) to the French State (*l'État français*)

[9] Translator's note: The executive order of August 1944 , as with nearly all *ordonnances* and *décrets*, was an enactment stemming from the executive branch of the government. The *ordonnance* is a measure enacted by the executive branch in the absence of an elected legislative body. At the time in question, shortly after the Liberation of France, a new parliament had not been elected yet.

[10] Translator's note: The Papon judgment in question was a ruling rendered by the *Conseil d'État*, in April of 2002, but it was published in the Recueil Lebon only in 2003, as was the Pelletier decision. Convicted of complicity in crimes against humanity for his role in the deportation of Jews from France, Papon also was ordered by a lower court to pay over 700,000Euros to victims. On appeal, the Conseil d'État held that the French government was liable for a substantial part of that amount, thus establishing for the first time the legal liability of the government of the Fifth Republic for events which had transpired under the collaborationsist regime of Pétain. For an account of the numerous earlier court proceedings and history of the case against Maurice Papon for his contribution to the deportation of Jews from France, see Curran, supra; and Vivian Grosswald Curran, Politicizing the Crime Against Humanity: the French Example, 78 Notre Dame L. Rev.677 (2003).

[11] Translator's note: The statute of limitations at issue expires at the end of four calendar years starting from the date of publication of the case which should have alerted plaintiffs to their cause of action. If one interprets "publication" to mean the date on which the court's decision appeared in the official journal of the *Conseil d'État*, then the statute of limitations would expire on December 31, 2007 irrespective of which of the two cases were deemed the relevant one for a plaintiff's discovery of his or her cause of action, because both were published in 2003 in the *Recueil Lebon*. If, however, the term "publication" should be interpreted to mean the more widely read, but unofficial, press, then the four-year statute of limitations would have expired on December 31, 2005 if the *Pelletier* case is deemed to have marked the date of reasonable discovery by the plaintiffs of their cause of action, although it should be noted that the French legal standard is phrased in terms of the legitimacy of a plaintiff's ignorance of a cause of action rather than his or her reasonable discovery of it; alternatively, if the unofficial publication of the *Papon* case is deemed the relevant date to have triggered the statute of limitations, the plaintiffs' cause of action could have been brought up toDecember 31, 2006.

[12] Translator's note: In France, and more generally throughout Europe, circumcision traditionally was not performed on Christian babies. Consequently, when the Nazis attempted to verify claims that someone was not Jewish, they frequently used circumcision as conclusive evidence that a person was a Jew and therefore deportable , since being Jewish or "non-Aryan" racially, to use Nazi terminology, was the determinative criterion for deportability.

[13] Translator's note: Indeed, the plaintiffs survived due to the fortuitous circumstance that they were arrested so late in the war that Paris had been liberated before they were deported, and the train in which they were scheduled to be deported was commandeered by the Nazi Alois Brunner in order to avoid capture and to escape with loot. For more information on the plaintiffs' experiences, see, e.g., *La Plaidoirie de Rémi Rouquette*.