REPORT FOR THE HEARING
in Case C-172/91 *

I — Facts and procedure

1. The first and second applicants for the enforcement of a judgment are the parents of Thomas Waidmann, the third is his younger brother. Thomas Waidmann attended a State secondary school in the German *Land* of Baden-Württemberg. That school had a holiday house in Italy. Thomas Waidmann, a sixteen-year-old, went to that house with a group of schoolchildren, accompanied by the party against whom enforcement is sought, Mr Volker Sonntag. At that time, the latter was a teacher at the school and had the status of civil servant of the Land Baden-Württemberg. During a walk in the mountains when Mr Sonntag was accompanying the school group, Thomas Waidmann fell to his death.

The Italian State brought criminal proceedings against Mr Sonntag before the Bolzano court. On 22 September 1986 the parties seeking enforcement of the judgment became civil parties to those criminal proceedings.

The court document drawn up to that end was served on Mr Sonntag by 16 February 1987 at the latest. On 25 January 1988 the trial took place before the Bolzano criminal court, at which Mr Sonntag was represented by counsel. By judgment delivered on the same day the Criminal Chamber sentenced him for causing death by negligence and, in addition, pursuant to Article 489 of the Code of Criminal Procedure ordered him 'to pay damages to the civil party ..., the extent of the injury to be determined in separate proceedings; the civil party is, however, awarded the sum of LIT 20 million as a provisionally enforceable payment on account ...'. The judgment was served on Mr Sonntag and became final.

2. On application by the applicants for enforcement, the Landgericht (Regional Court) Ellwangen, on 29 September 1989, granted an order for the enforcement of the civil-law part of the judgment of the Bolzano court. Mr Sonntag lodged an appeal. In the appeal proceedings he served notice of the dispute on the Land Baden-Württemberg on the ground that if the decision in those proceedings should be unfavourable to him, he was entitled under civil-service law to be relieved by the *Land* of his obligation to pay damages. The Land Baden-Württemberg intervened in the proceedings in support of Mr Sonntag.

The Oberlandesgericht (Higher Regional Court) dismissed the appeal on the ground that, according to the applicants for enforcement, Mr Sonntag was domiciled within the territory of the Federal Republic of Germany or, in any event, owned property, namely his salary, against which enforcement might be effected. The criminal judgment of the Bolzano court related to a civil matter within the meaning of the first sentence of the first paragraph of Article 1 of the Brussels Convention. The civil claim had been served on Mr Sonntag in sufficient time.

* Language of the case: German.

3. The Oberlandesgericht granted leave to appeal on a point of law (Rechtsbeschwerde proceedings) to both Mr Sonntag and the Land Baden-Württemberg.

4. In its legal appraisal of the case, the Bundesgerichtshof first observed, with regard to the admissibility of the appeal brought by the Land Baden-Württemberg, that under the general German law of civil procedure a third party intervening in support of one party may lodge an appeal if he has a legal interest in that party's succeeding in the proceedings. According to the Land Baden-Württemberg, it had such an interest since it might have to relieve Mr Sonntag, by reason of its duty to assist its officials, of an obligation to pay damages to the applicants for enforcement by paying itself any such damages.

The national court went on to observe that the decision of the Bolzano court could be enforced only if it related to civil and commercial matters within the meaning of the first sentence of the first paragraph of Article 1 of the Brussels Convention. According to the case-law of the Court of Justice, a decision given in proceedings between a public authority and a private individual, where that authority had acted in the exercise of public powers, did not fall within the ambit of the Brussels Convention. The national court explained in that respect that under German constitutional law liability for damage caused by the culpable breach of an official duty owed to a third party attaches in principle to the State or the public body in whose service the holder of a public office acted. That State organ could then itself have recourse against that official in the case of a particularly serious fault, and that individual is not personally liable to the person suffering the damage. Irrespective of the legal position of the teacher, school pupils are covered by statutory social insurance for school-related accidents and hence teachers who do not act with the intention to cause harm are released from all liability towards, *inter alios*, the survivors of the pupil. However, in this case the persons who suffered damage brought an action for compensation in Italy against the teacher on the basis of his personal liability.

The Bundesgerichtshof also questioned whether the document instituting the proceedings was properly served on the defendant. It observed in this connection that the proceedings before the Bolzano court were civil proceedings before a criminal court. Mr Sonntag was represented before that court by counsel of his own choice and he did not dispute that the summons to appear at the trial in the criminal proceedings was served on him in good time and in the proper manner. The fact that civil claims would also be made against him in those proceedings was notified to him by declaration made by the applicants for enforcement on 22 September 1986, also served in good time and in the proper manner. However, the civil claims were described in that declaration only in general terms and no particulars were given of the amounts claimed.

Lastly, the national court asked whether account should be taken of the fact that Mr Sonntag entered an appearance and was not in default of appearance. It appeared that Mr Sonntag answered only to the criminal charge and not to the claim for damages made by the applicants for enforcement. That claim was made orally at the trial and placed on the record of the hearing in written form.

5. On the basis of those considerations, the Bundesgerichtshof decided to stay the proceedings and asked the Court of Justice to give a preliminary ruling on the *following questions:*

'(1) Does the second paragraph of Article 37 of the Convention preclude any appeal by interested third parties against the decision given on the appeal under Article 36 of the Convention, even where the domestic law of the State in which enforcement is sought allows such parties to appeal?

(2) (a) Where the holder of a public office who has caused injury to another person by reason of an unlawful and culpable breach of his official duties is personally sued by that person for damages, does such an action constitute a civil matter within the meaning of the first sentence of the first paragraph of Article 1 of the Convention?

(b) If the question under (a) is answered in the affirmative: is this also the case where the accident is covered by social insurance under public law?

(3) If the defendant is given notice by a procedural document that in criminal proceedings a claim will also be made against him for compensation for material and non-material damage, although the document in question gives no additional details of the civil claim which is to be made, is such a document capable of being treated as a "document which instituted the proceedings" within the meaning of Article 27(2) of the Convention?

(4) Has the defendant entered an appearance under Article 27(2) of the Convention where the case concerns a civil claim for damages in connection with charges brought before a criminal court (Article 5(4) of the Convention) and the person against whom enforcement is sought, through defence counsel of his own choice, replied to the criminal charges but not to the civil claim, which was also dealt with orally in the presence of his counsel?'

6. The order for reference was received at the Registry of the Court of Justice on 2 July 1991.

7. Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice, written observations have been submitted by the respondents in the appeal on a point of law (Rechtsbeschwerde), Hans, Elisabeth and Stefan Waidmann, represented by E. Kersten, Rechtsanwalt; by the Government of the Federal Republic of Germany, represented by C. Böhmer, acting as Agent; by the Italian Government, represented by O. Fiumara, acting as Agent; and by the Commission, represented by P. van Nuffel, acting as Agent, assisted by W. D. Krause-Ablass, Rechtsanwalt.

II — Summary of the written observations submitted to the Court

A — *The first question*

1. The *respondents* to the appeal on a point of law (Rechtsbeschwerde) take the view that the legal principles developed in the Court's case-law on the interpretation of Article 36 of the Convention, which precludes any

proceedings brought by interested third parties against an enforcement order even where such proceedings are available to third parties under the domestic law of the State in which enforcement is sought (Case 148/84 *Deutsche Genossenschaftsbank* v *Brasserie du Pêcheur* [1985] ECR 1981) also apply to a further appeal under Article 37 of the Brussels Convention. They consider that a further appeal must always be based on an appeal provided for in Article 36 of the Brussels Convention.

2. The *German Government* observes in the first place that the Court has already held in *Deutsche Genossenschaftsbank* that Article 36 of the Convention precludes remedies against an enforcement order made available under domestic law to interested parties.

It goes on to argue that it is also implicit in the grounds of that judgment that no similar proceedings may be brought under Article 37 of the Brussels Convention. The Court of Justice stated among other things that the principal objective of the Convention was to simplify procedures in the State in which enforcement was sought; in order to attain that objective the Convention established an enforcement procedure which constituted an autonomous and complete system, including the matter of appeals. Appeals also include appeals under Article 37 of the Brussels Convention.

It further appears to be contrary to the system to authorize, before a superior court, appeals which are precluded at the beginning of the proceedings, that is to say under the procedure based on Article 36 of the Convention.

In conclusion, the German Government considers that Article 37(2) of the Brussels Convention precludes any appeal available under domestic law to interested third parties against a decision given pursuant to Article 36 of the Convention.

3. The *Italian Government* considers that the answer to be given to the question whether, under the Convention, a third party may intervene in proceedings following an appeal in order to put forward autonomous grounds of appeal, should be in the negative. In that regard, it points out that if, according to the judgment in *Deutsche Genossenschaftsbank* a third party may not appeal, it would appear that there are no grounds for allowing an intervention intended to enable autonomous grounds of appeal to be put forward.

4. The *Commission* observes in the first place that according to the first paragraph of Article 36 it is the party against whom enforcement is sought who may appeal against the decision if enforcement is authorized. According to Article 37(2), in the Federal Republic of Germany the judgment given on appeal may be contested by means of a Rechtsbeschwerde. It then points out that in the judgment in *Deutsche Genossenschaftsbank* the Court has already answered in the negative the question as to whether an appeal under Article 36 may be brought by a third party to whom an appeal is available under the domestic law of the State in which enforcement is sought.

In the Commission's view, that principle should also apply to the appeal provided for

in Article 37 of the Brussels Convention. It considers that a different reasoning cannot be applied to a further appeal under Article 37 than is applied to an appeal under Article 36. To do so would conflict with the objective of the Convention, which is to simplify the procedure in the State in which enforcement is sought, for an interested party would be precluded from appealing under Article 36 yet allowed to do so at a later stage in the procedure by appealing under Article 37. Even if the appeal under Article 37(2) is limited to a review of questions of law, an interested third party, who was unable to intervene at the earlier stage in the procedure under Article 36, might thereby delay the procedure by raising new arguments.

The Commission also states that the fact that the appeal under Article 37(2) has in this case not been brought only by a third party but also by the party against whom enforcement is sought does not justify a different conclusion. In its view, the involvement of a third party in the proceedings could give rise to considerable procedural delays.

The Commission therefore proposes that the first question should be answered as follows:

'Article 37(2) of the Convention precludes any appeal by interested third parties against the decision given on the appeal under Article 36 of the Convention, even where the domestic law of the State in which enforcement is sought allows such parties to appeal.'

B — *The second question*

1. The *respondents* on a point of law consider that in the present case the requirements of the first sentence of Article 1 of the Brussels Convention are met. First, the parties seeking enforcement had the possibility in this case of bringing an action for damages against the author of the damage in Italy on the basis of his personal liability without this being precluded by any considerations connected with the German legal system. Furthermore, the present case is not an action against a State or against an administrative authority; on the contrary, only private persons are party to the proceedings.

2. The *German Government* observes in the first place that the Court has consistently held that the concept of 'civil and commercial matters' within the meaning of the first sentence of the first paragraph of Article 1 of the Brussels Convention has to be given an autonomous definition. More specifically, it adds, the Court held in Case 29/76 *LTU* v *Eurocontrol* [1976] ECR 1541 that the Brussels Convention is not applicable to a dispute between a private person and a public authority acting in the exercise of public powers.

In the German Government's opinion, such a link with the exercise of public powers exists where the outcome of proceedings between the public authority and a private person depends on the legality of an act based on public powers. The existence of the link required by the Court of Justice must therefore be held to exist where a claim for damages (action based on non-contractual liability against an official) is brought against the State following the breach of a public-service obligation.

The German Government goes on to argue that the Brussels Convention is no longer applicable where an official's personal liability is invoked on the basis of the use of public powers.

In the German Government's view, whether the Brussels Convention applies in such circumstances cannot depend in these instances on the capacity of the defendant (a private individual) or on the nature of the rule governing liability. It considers that in this area too it is the matter characterizing the proceedings which determines the question. As in the case of actions based on non-contractual liability brought against an official, it considers that it must be asked whether there was an unlawful act based on the exercise of public powers. It also maintains that the key question is identical in the case of administrative liability and personal liability on the part of an official and hence actions brought against the official directly must also be excluded from the ambit of the Convention. The close link between the personal liability of the civil servant and the liability of the State is a further argument to this effect.

The German Government considers that unitary systems of liability are involved which may provide for actions for recourse or even for joint liability on the part of the State and the holder of a public office. Where such closely linked areas are involved, it appears to the German Government expedient for there to be a uniform position with regard to the Brussels Convention. In a matter falling essentially within the ambit of public law, the result can only be that an official's personal liability should also be excluded from the ambit of the Convention.

The German Government further argues that the fact that a social insurance scheme governed by public law may exist in such cases only confirms its position.

It therefore suggests that the Court should answer the second question as follows:

'Where the holder of a public office who has caused injury to another person through an unlawful and culpable breach of his official duties is personally sued by that person for damages, such an action does not constitute a civil matter within the meaning of the first sentence of the first paragraph of Article 1 of the Convention.'

The German Government considers as a result that there is no need to answer the other questions, since the Convention is not applicable.

3. The *Italian Government*, after observing that the Brussels Convention applies exclusively to civil and commercial matters, states that it follows from the case-law of the Court that, in order to interpret the concept of 'civil and commercial matters', reference has to be made, first, to the objectives and scheme of the Convention and, secondly, to the general principles which stem from the corpus of the national legal systems (judgment in *LTU* v *Eurocontrol*, cited above).

In its view, it is manifest that, as the Court has held, a decision given in a case between a public administrative authority and a private individual falls outside the scope of the Convention where the public authority is acting in the exercise of public powers (*LTU* v *Eurocontrol*, cited above). However, it is equally manifest that, in all the Member States' legal systems, a dispute in which an injured party seeks redress from a public administrative authority or one of its officials, or both, on the ground of his liability *ex delicto* does fall within the ambit of the Convention, since the important factor is not the public-law relationship but, rather, the breach of the general principle *neminem laedere*.

According to the Italian Government, this case is concerned precisely with a judgment in an action for damages brought against a public authority for the breach of the aforementioned general principle, and relationships providing for an indemnity between the public administrative authority and the public official concerned or the existence of any insurance cover are irrelevant, as are also the limits of the personal liability of the public official in his State, since the civil action brought relates exclusively to liability *ex delicto* on account of an event which occurred in another Member State. According to the common rules of private international law 'non-contractual obligations shall be governed by the law of the place in which the event which gave rise to them took place' (Article 25(2) of the provisions relating to the law in general which precede the Italian Civil Code; see also, as regards jurisdiction, Article 5(3) of the Brussels Convention).

4. The *Commission* observes *in limine* that, according to the Court's case-law, the concept of 'civil and commercial matters' has to be given an autonomous interpretation. In order to interpret that concept, reference has to be made, first, to the objectives and scheme of the Convention and, secondly, to the general principles which stem from the corpus of the national legal systems (judgment in *LTU* v *Eurocontrol*, cited above). Moreover for the purposes of establishing a demarcation line between private-law disputes and public-law disputes, the Court stated that, although certain judgments given in actions between a public authority and a person governed by private law may fall within the area of application of the Convention, this is not so where the public authority acts in the exercise of its powers (judgment in *LTU* v *Eurocontrol*, cited above).

In the light of that case-law, the Commission considers that the answer to the preliminary question depends on whether the dispute, in so far as it consists of an action for damages brought by the parties seeking enforcement against the party against whom enforcement is sought, relates to the exercise of public powers by the person against whom enforcement is sought, in his capacity as a teacher in a State school with the status of civil servant.

The Commission observes in this regard that the accident at the origin of the main proceedings did not occur in the territory of the Federal Republic of Germany but in Italy. In the Commission's view, even if in performing his duties *vis-à-vis* his pupils the teacher is deemed under German law to have been exercising public powers, by virtue of the principle of territoriality, he can only have so acted in the territory of the Federal Republic

of Germany, not in another State. Therefore, it considers it necessary to start from the principle that the legal relationship between the teacher and his pupils at the place where the accident occurred, in Italy, should be assessed in accordance with the principles of private law. The Commission also states that, in accordance with the principle of the *lex loci delicti*, the question of the liability of the person against whom enforcement is sought falls within the ambit of Italian criminal law.

The Commission, considering next the school system in the Federal Republic of Germany, observes that in this case the person against whom enforcement is sought, as a teacher with the status of civil servant in a State school, was responsible for the pupils whom he was accompanying on the trip to Italy. He was therefore carrying out public duties as understood in the German legal system, which means that he was not personally liable, liability attaching to the State or to the body by which he was employed.

In the Commission's opinion, that assessment under German law cannot, however, be taken over as it stands for the purposes of the concept of 'civil and commercial matters' within the meaning of the first paragraph of Article 1 of the Convention, since the conditions under which the Convention is applicable have to be interpreted autonomously so as to ensure uniform interpretation in the all the Contracting States. The Commission considers that only disputes in which the State or a public body clearly acted in the exercise of public powers can be excluded from the field of application of the Convention. In State schools this may occur, for instance, where there have been decisions relating to examinations, disciplinary measures taken against pupils and other measures stemming directly from the exercise of public powers in the scholastic field. The situation is different if the school or a teacher carries out the same duties as a private individual, for example in the sphere of road safety or the organization of a school excursion or a school trip, as in this case. The Commission takes the view that in such cases the duties on the school and teacher do not differ from the duties of private individuals. Supervision of pupils during a school trip are subject, in its view, to the same rules as those applying to private individuals in the case of similar events, such as organized trips, excursions in the mountains, etc. A teacher supervising pupils has the same duty of care as the private organizer of a trip or a mountain guide, who are all subject to a duty of care under private law.

The Commission further considers that the fact that under German law a teacher is not generally personally liable for a breach of his duty of supervision and it is the State or the body employing the teacher to which liability attaches can have no bearing on the assessment of the present case. According to the Commission, such exoneration from liability does not necessarily signify that the teacher who has thus been freed from liability acted in the exercise of public powers. This is evidenced by the existence of similar provisions on exoneration from civil liability in the provisions governing statutory accident insurance in the insurance code.

The Commission goes on to state that if accidents connected with school activities are

integrated under German law into the statutory accident insurance scheme and are therefore subject to the same exonerations from liability as industrial accidents, this proves that the legal relations between a teacher and his pupils are not covered by public law, but by civil law.

Lastly, the Commission considers that, in exercising his duty of supervision in Italy *vis-à-vis* the pupils under his care, the person against whom enforcement is sought was not acting 'in the exercise of public powers' simply because it was not possible for him to exercise his public powers at the place where the accident occurred in Italy. In any event, regardless of the place where the accident took place, the Commission considers that the teacher's duty of supervision constitutes, in the context of the Brussels Convention, a private-law obligation as a matter of principle, since he, in common with all individuals (a tourist guide, for instance), was subject to the duty of care imposed by civil law. According to the Commission, the fact that school accidents are covered in Germany by statutory accident insurance and that the rules governing the exoneration of employers and members of staff from their civil liability also apply to teacher-pupil relations constitutes additional proof of the civil nature of the obligation. The action for damages brought before the Bolzano court, is therefore a civil dispute governed by the provisions of the Brussels Convention.

Consequently, the Commission suggests that the following answer should be given to the national court's second question:

'Where a teacher who is a civil servant in a German State school is sued in the courts of another Contracting State on account of an accident sustained by a pupil under his supervision during a school trip in the territory of that State for damages by the pupil's family by reason of the material and non-material damage caused by that accident, that constitutes a dispute in civil matters within the meaning of the first sentence of the first paragraph of Article 1 of the Convention, even where, under German law, liability attaches as a matter of principle to the State or to the public educational body and even where the accident is covered by social insurance scheme governed by public law.'

C — *The third question*

1. According to the *respondents* to the appeal on a point of law, the circumstances of the case should be sufficient to satisfy the requirements of Article 27(2), *a fortiori* because the person against whom enforcement is sought was represented by counsel of his choice. In their view, the document of 22 September 1986 which instituted the proceedings did not necessarily have to include indications as to the amounts claimed, since those amounts were notified in any event in the course of the main proceedings.

2. The *Italian Government* observes that in its third question the national court is simply asking whether a document instituting proceedings which does not precisely specify the amount of the claim for damages may be regarded as satisfying the minimum requirements implicitly laid down in Article 27(2) of the Brussels Convention.

The Italian Government considers that the third question should be answered in the affirmative. It adverts in that connection to the rules of Italian law governing civil claims in criminal proceedings, from which it appears that a civil claim may be introduced only in order to obtain compensation for pecuniary or non-pecuniary damage flowing from the wrongful act which is the subject of the proceedings and that the civil party is bound to set forth, even if only in summary form, the grounds for his claim and to specify his claims: the *quantum debeatur* does not have to be specified precisely (similarly, moreover, that is not a requirement in an ordinary civil action before a civil court), since the determination of what is due constitutes a consequence and its amount has to be determined within the limits of what is actually due in the light of the action brought and precisely specified.

3. The *Commission* states that, according to the Court's case-law, Article 27(2) is intended to protect the defendant's right to be heard and points out that, in order for the defendant to be able to defend himself properly, he must be informed in sufficient time, by the document instituting the proceedings, of the claim which is made against him. He must therefore have at least a general idea of the nature of the claim made and of the proceedings brought.

In that connection, it observes that where criminal proceedings have been brought, the defendant generally does not have to expect that a decision on a civil claim will be given against him in those proceedings. In order to take into account the requirements of Article 27(2) of the Convention, the Commission considers that where a civil action is joined to criminal proceedings the defendant should be informed, not only that criminal proceedings have been instituted, but also that a civil claim has been made.

On the other hand, the Commission considers that the defendant cannot always expect the document instituting the proceedings to provide him with further particulars of the basis or of the amount of the claim. In the Commission's view, it is sufficient for that document to give the defendant a general idea of the nature of the claim and of the proceedings brought.

The Commission therefore considers that the national court's third question should be answered as follows:

'Written notice to the defendant that criminal proceedings have been brought against him is to be regarded as a "document which instituted the proceedings" within the meaning of Article 27(2) of the Convention provided that the defendant is also informed that a claim will also be made against him in the criminal proceedings for compensation for material and non-material damage, even though the document in question gives no more precise details of the magnitude of the civil claim made against him.'

D — *The fourth question*

1. The *respondents* argue that where a defendant is represented by counsel of his choice in criminal proceedings and as regards the concomitant claim for damages and the injured parties have entered claims for damages on the basis of a document duly served,

it must be regarded as sufficient that he entered an appearance in any event. In their view, the fact that he answered solely to the criminal charges should therefore be enough, without his having also expressly answered to the claim for damages. They state that one such approach essentially includes the other automatically.

2. As regards the national court's fourth question, the *Italian Government* observes first that according to the first paragraph of Article II of the Protocol to the Convention persons domiciled in a Contracting State who are being prosecuted in the criminal courts of another Contracting State of which they are not nationals for an offence which was not intentionally committed may be defended by persons qualified to do so, even if they do not appear in person.

It further points out that, under the Italian legal system, the accused is defended in all cases, even if he is in default of appearance and/or fails to appoint counsel of his choice. Secondly, where a party has duly filed a claim as a civil party, there is no requirement for the defendant to enter a specific defence to the civil claim and hence counsel of his choice or counsel appointed by the court conducts his defence as regards both his criminal-law interests and, *ipso facto*, his civil interests, without counsel having to have been given a specific mandate as respects the latter aspect.

The Italian Government also observes that, as the defendant had the legal possibly of duly defending himself during the criminal proceedings even as regards the civil claim brought against him, the fact that in reality his counsel did not adopt a specific defence against that civil action does not seem to be capable to assuming any importance for the purposes of the order for enforcement.

3. The *Commission* states in the first place that according to Article II of the Protocol to the Convention persons domiciled in a Contracting State who are being prosecuted in the criminal courts of another Contracting State of which they are not nationals for an offence which was not intentionally committed may be defended by persons qualified to do so, even if they do not appear in person.

The Commission goes on to refer to the concept of appearance in Article 27(2) of the Convention. In its view, in order to interpret that concept account must be taken of the aim of the provision, which is to guarantee the defendant's right to be heard. In this context, it considers that any discussion from which it follows that the defendant has been put on notice of the proceedings brought against him and wishes to defend himself against the applicant's complaints must be regarded as constituting an appearance, unless his argument is confined to contesting the continuance of the proceedings on the ground that service was improperly made or late.

Lastly, the Commission states that where a defendant, through his counsel, answers at the hearing to the complaints made against

him in full knowledge of the civil claim brought against him in the criminal proceedings, that reply must in principle be regarded as constituting an appearance in the proceedings as a whole, without its being necessary to draw a distinction between the criminal proceedings and the civil claim.

Consequently, the Commission suggests that the Court should answer the national court's fourth question as follows:

'Where a case concerns a claim for damages joined to criminal proceedings (Article 5(4) of the Convention), the defendant is to be regarded as having entered an appearance under Article 27(2) of the Convention if, at the trial, he is represented by counsel who answers to the criminal charges but not to the civil claim, and that claim was also the subject of oral proceedings in the defendant's presence, unless the defendant expressly refused to enter an appearance to the civil action on the ground that service was not effected correctly and in good time.'

M. Diez de Velasco

Judge-Rapporteur