



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

COURT (CHAMBER)

CASE OF TERRA WONINGEN B.V. v. THE NETHERLANDS

(Application no. 20641/92)

JUDGMENT

STRASBOURG

17 December 1996

In the case of Terra Woningen B.V. v. the Netherlands¹,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court B², as a Chamber composed of the following judges:

MM. R. BERNHARDT, *President*,

THÓR VILHJÁLMSOON,

F. GÖLCÜKLÜ,

L.-E. PETTITI,

B. WALSH,

J. DE MEYER,

N. VALTICOS,

S.K. MARTENS,

B. REPIK,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 25 April and 28 November 1996,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 29 May 1995, within the three-month period laid down by Article 32 para. 1 and Article 47 of the Convention (art. 32-1, art. 47). It originated in an application (no. 20641/92) against the Kingdom of the Netherlands lodged with the Commission under Article 25 (art. 25) on 9 September 1992 by a limited liability company possessing legal personality under Netherlands law, Terra Woningen B.V.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby the Netherlands recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 6 para. 1 and 13 of the Convention (art. 6-1, art. 13).

¹ The case is numbered 49/1995/555/641. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

² Rules of Court B, which came into force on 2 October 1994, apply to all cases concerning the States bound by Protocol No. 9 (P9).

2. In response to the enquiry made in accordance with Rule 35 para. 3 (d) of Rules of Court B, the applicant company stated that they wished to take part in the proceedings and designated the lawyer who would represent them (Rule 31).

3. The Chamber to be constituted included ex officio Mr S.K. Martens, the elected judge of Netherlands nationality (Article 43 of the Convention) (art. 43), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 para. 4 (b)). On 8 June 1995, in the presence of the Registrar, the President of the Court, Mr R. Ryssdal, drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mr F. Gölcüklü, Mr L.-E. Pettiti, Mr B. Walsh, Mr J. De Meyer, Mr N. Valticos and Mr B. Repik (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43).

4. As President of the Chamber (Rule 21 para. 6), Mr Bernhardt, acting through the Registrar, consulted the Agent of the Netherlands Government ("the Government"), the applicant company's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 39 para. 1 and 40). Pursuant to the order made in consequence, the Registrar received the Government's memorial on 5 December 1995 and the applicant company's memorial on 8 December. The Delegate of the Commission did not submit any observations in writing.

5. On 22 January and 1 February 1996 the registry received certain documents which the Registrar had sought from the applicant company and the Government on the President's instructions.

6. In accordance with the decision of the President, the hearing took place in public in the Human Rights Building, Strasbourg, on 22 April 1996. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr H. VON HEBEL, *Agent,*

Mr J.L. DE WIJKERSLOOTH DE WEERDESTEIJN,
Landsadvocaat, *Counsel,*

Mr W.J.A. VELLEKOOP,
Ms M. LUURSEMA, *Advisers;*

- for the Commission

Mr H.G. SCHERMERS, *Delegate;*

- for the applicant company

Mr W.P.M. WEERDESTEIJN, advocaat en procureur, *Counsel,*

Mr E.A. ALKEMA, *Adviser.*

The Court heard addresses by Mr Schermers, Mr Weerdesteijn, Mr Alkema and Mr de Wijkerslooth de Weerdesteijn.

AS TO THE FACTS

I. PARTICULAR CIRCUMSTANCES OF THE CASE

A. Background

7. The applicant company have their registered office in The Hague. Their business includes the development of real property.

8. The company owns 288 flats in six adjacent blocks situated on the Merellaan in Maassluis, in a neighbourhood known as the Noord-Nieuwlandsepolder-zuid. These blocks of flats were built around 1970 on land which, between 1961 and 1967, was levelled up to a height of 3-4 metres above normal Amsterdam level (Normaal Amsterdams Peil) with silt dredged up from various docks of the nearby port of Rotterdam.

9. In 1985 it was reported that a smell of mineral oil had been noticed in a garden in the Noord-Nieuwlandsepolder-zuid during digging. This and a survey by Rotterdam's Department of Works of places where harbour silt had been discharged led the Rhine Estuary Regional Authority (Openbaar Lichaam Rijnmond - a now defunct administrative body which used to exercise within the Rhine estuary region authority transferred to it from the Provincial Executive (Gedeputeerde Staten)) to include the neighbourhood in its 1985 programme of measures to be taken under the Soil Cleaning (Temporary Provisions) Act (Interimwet Bodemsanering - see paragraph 29 below) and order the Rhine Estuary Central Department for Environmental Protection (Dienst Centraal Milieubeheer Rijnmond) to undertake an exploratory inspection (oriënterend onderzoek - see paragraph 32 below) of the neighbourhood. The findings were such that in 1986 the Public Health Inspectorate (Inspectie Volksgezondheid) advised the local residents not to eat fruit and vegetables grown in their own gardens or allotments. The Provincial Executive of the province of South Holland ordered a further inspection (nader onderzoek - see paragraph 32 below) in December 1986.

In July 1990 the Rhine Estuary Central Department for Environmental Protection submitted a report on its further inspection. It found that pollution caused by the heavy metals arsenic and mercury and by "drins" (a group of compounds used as insecticides), especially dieldrin and isodrin, was severe in places; where it occurred, it was generally present up to surface level. There were also moderate cadmium and lead pollution levels. The report noted that no covering layer of clean soil had been applied. The chapter headed "Findings" ("Conclusies") included the following:

"It can be said that the additional concentration of chemicals as a result of the pollution of the soil is undesirable but not, given present (relatively limited) scientific knowledge, that it will cause noticeable or measurable harm to health." (p. 139)

The final chapter, headed "Recommendations", stated that in unfavourable circumstances young children, if exposed to the pollution found, might absorb more than the acceptable daily intake (ADI) of the pollutants concerned and that in many places the quantity of "drins" in the actual contact zone exceeded concentration level C given in the assessment tables of the Soil Cleaning Guidelines (see paragraph 31 below). It was therefore recommended that an inspection should be carried out with a view to possibly cleaning the soil (saneringsonderzoek - see paragraph 32 below) and determining

"how the detrimental effects of the soil pollution on public health and the environment can be eliminated, so as to achieve a result acceptable from the point of view of environmental hygiene" (p. 141).

10. In a letter of 1 November 1990 the Provincial Executive informed the local residents that the further inspection had led them to conclude that further soil cleaning measures were necessary. The letter referred to the "undesirable situation" caused by the presence of pollutants and their proximity to the surface and reiterated the advice to residents not to eat fruit and vegetables from their gardens. The letter went on to state that the Provincial Executive had decided in principle to have the soil cleaned.

The draft of the decision was made available for public inspection for four weeks from 5 November 1990 (see paragraph 33 below).

11. In a letter dated 26 March 1991 the Provincial Executive informed the municipal authorities of Maassluis that it had decided to order an inspection with a view to possibly cleaning the soil.

The Provincial Executive's implementation programme (uitvoeringsprogramma) for soil cleaning from 1992 onwards (see paragraph 32 below) included the Noord-Nieuwlandsepolder-zuid.

B. Proceedings before the Rent Board (Huurcommissie)

12. On 18 April 1990 the applicant company let a third-floor flat in one of their blocks in the Merellaan to a Mr W. as from 1 May 1990. The agreed rent was 790.25 Netherlands guilders (NLG) a month.

13. On 9 July 1990 Mr W. applied to the Rent Board in Schiedam for a ruling as to the fairness of the rent (section 17 (1) of the Rents for Housing Accommodation (Huurprijzenwet Woonruimte) Act - see paragraph 21 below).

A report established by a Rent Board inspector on 1 October 1990 stated that there was neither serious overdue maintenance nor any "absolute or relative zero condition", i.e. ground for reducing the rent to the legal minimum (absolute of relatieve nulpunten). In the inspector's view, the standard of the flat should be assessed at 132 points under the applicable point-rating system (see paragraphs 25-26 below).

At the hearing before the Rent Board on 30 January 1991 Mr W. submitted a copy of the Provincial Executive's letter of 1 November 1990 (see paragraph 10 above) but did not contest the inspector's findings.

14. The Rent Board gave its ruling on 17 April 1991. It found that in view of factual circumstances relied on by the applicant company but overlooked by the inspector the standard of the flat should be assessed at 134 points. On that basis it concluded that the agreed rent was not fair and assessed the fair rent at NLG 783.07. It does not appear from the ruling that account was taken of the Provincial Executive's letter.

C. Proceedings in the District Court (kantonrechter)

15. On 24 June 1991 the applicant company applied to the District Court of Schiedam for a binding decision (see paragraph 22 below). They contested certain factual assumptions made by the Rent Board in regard to noise levels and argued that the Rent Board had made a miscalculation; the correct standard rating of the flat should be 142 points. On that basis they sought an order to set the rent at NLG 832.14 or, in the alternative, at the sum originally agreed (NLG 790.25).

16. In the course of the ensuing proceedings, Mr W. argued that there was an "objectionable situation" (hinderlijke situatie) that justified reducing the points rating by 20 points and setting the rent at the legal minimum, NLG 395 (point 4 of Schedule IV to the Housing Rents Ordinance (Besluit huurprijzen woonruimte) - see paragraph 28 below). He submitted the following documents:

(a) a copy of the Provincial Executive's letter of 1 November 1990 (see paragraph 10 above);

(b) a copy of a decision given by the Rotterdam District Court on 4 June 1991 in a different but similar case concerning a flat in Rotterdam;

(c) a copy of the letter of 26 March 1991 from the Provincial Executive to the municipal authorities of Maassluis (see paragraph 11 above);

(d) the Provincial Executive's implementation programme for soil cleaning from 1992 onwards (see paragraph 11 above).

The applicant company, besides adducing further argument in support of their factual allegations, argued, *inter alia*, that the soil pollution should not be taken into account. Relying on the passage from the report of the further inspection quoted at paragraph 9 above, they said that it did not appear from the report that there was "pollution of the soil under or in the immediate vicinity of the accommodation such as to cause serious danger to public health or the environment". In addition, the pollution found could not affect the standard of a third-floor flat without a garden. All things considered, there was no reason to deduct any points at all on this ground.

17. The District Court gave its decision on 10 March 1992, assessing the standard of the flat at 123 points and setting the rent at NLG 399.75 with

effect from 1 May 1990. Having regard to the fact that, after a further inspection as provided for by the Soil Cleaning (Temporary Provisions) Act, the Provincial Executive had designated the area as one where soil cleaning was required, and had set it down in its annual soil-cleaning programme for 1992 as a site to be dealt with in accordance with that Act, the court found it established that there was an "objectionable situation" that justified reducing the points rating by 20 points and setting the rent at the legal minimum. Referring to its own precedent of 5 June 1990 (see paragraph 38 below), it dismissed the applicant company's arguments that are summarised in the preceding paragraph. It did so in the following terms:

"8.3.... we consider that it is not for us to go into the question whether the Provincial Executive acted correctly in making the decision pursuant to section 2 (1), second sentence, of the Soil Cleaning (Temporary Provisions) Act, or whether that decision was well-founded. We should not even address such questions indirectly by weighing the findings of the investigation (on a case-by-case basis) when determining whether the (absolute) zero condition, as formulated under point 4 of Schedule IV to the Ordinance implementing the Rents for Housing Accommodation Act ..., is satisfied.

8.4. The 'serious danger etc.' in the polder is necessarily implied by the decision of the Provincial Executive to designate the site as one where soil cleaning is required [saneringsgeval]; consequently, it is also established that the absolute zero condition (which is formulated in identical terms) is satisfied.

8.5. It makes no difference in this connection that the accommodation in question is a third-floor flat without a garden of its own. The pollution is present 'in the immediate vicinity' of the accommodation. The [applicant company] have acknowledged that this expression is - justifiably - construed broadly in the relevant case-law."

18. The applicant company did not lodge an appeal against this decision (see paragraph 23 below).

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. The following is a statement of the relevant domestic law and practice as they stood at the time of the events complained of.

A. The Rents for Housing Accommodation (Huurprijzenwet woonruimte) Act

1. General substantive and procedural provisions

20. Rents for certain categories of housing accommodation are determined by the Minister for Housing, Planning and Environment Protection. With regard to all other housing accommodation, landlords and tenants of housing accommodation are in principle free to agree a rent

between themselves (section 3 of the Rents for Housing Accommodation Act).

21. However, section 17 (1) entitles both the landlord and the tenant, within three months of entering into the tenancy agreement, to apply to the Rent Board for a ruling on the fairness of the agreed rent.

22. Parties are deemed to have agreed the rent found by the Rent Board to be fair unless within two months one of them applies to the District Court for a different decision (section 17 (8)).

23. By section 28 (3) of the Rents for Housing Accommodation Act, no appeal lies against the decision of the District Court other than an appeal on points of law "in the interests of the law" (cassatie "in het belang der wet" - see paragraph 37 below).

2. Assessment of the fairness of the rent

24. Detailed substantive provisions for the implementation of the Rents for Housing Accommodation Act are to be found in the Housing Rents Ordinance ("the Ordinance"). The Ordinance is binding on the Rent Board and the District Court (sections 15 (1) and 28 (1) of the Rents for Housing Accommodation Act).

25. According to section 5 (1) (a) of the Ordinance, the fairness of the rent for self-contained accommodation (zelfstandige woonruimte) such as the flat let to Mr W. by the applicant company must be assessed in accordance with the point-rating system set out in Schedule I to the Ordinance.

26. Under Schedule I, points are awarded for features relating to the standard of the accommodation itself - such as the type of dwelling (house or flat), the size of the rooms, bathroom facilities and the standard of heating installations - and for features relating to the surroundings (such as the proximity of public transport, schools and shops). Up to thirty points are deducted for the age of the accommodation and up to twenty for "objectionable situations" (such as persistent noise or pollution).

The "zero condition" system is succinctly explained in the explanatory memorandum to the Ordinance as follows:

"In the Government's view, certain deficiencies of a technical or residential nature [technische en woontechnische gebreken] are so serious that they ipso facto stand in the way of rent increases. Section 6 (3) refers in this connection to the serious deficiencies listed in Schedule IV to this Ordinance. These deficiencies are commonly referred to as 'zero conditions'. If there is such a deficiency, the Rent Board need not assess the seriousness of the situation [hinder] but must find without more ado that it is not reasonable to raise the rent. It must so hold even if the tenant does not explicitly rely on this deficiency.

The presence of a deficiency of the type referred to is considered unacceptable in view of the danger it presents. The deficiency ought therefore to be cured as soon as possible or the accommodation ought no longer to be occupied. However, as long as

the accommodation continues to be occupied despite the unacceptable situation, it is not fair to raise the rent."

27. The range within which the rent is fair is calculated according to the resultant points rating. As a rule, the rent determined by the Rent Board and by the District Court will be at the higher end of the range (section 7 (1) of the Ordinance); however, the rent may be reduced if one of the "very serious deficiencies" or "absolute zero conditions" set out in Schedule IV to the Ordinance is established.

28. Schedule IV originally listed deficiencies relating to the accommodation itself, such as lack of a flush lavatory or cooking facilities, lack of main drainage, or gas pipes or electricity cables so dangerous that the public utility companies were not prepared to supply gas or electricity. Another such "absolute zero condition" was if accommodation was in such a poor state of repair that it was unsafe and therefore unfit for habitation. As of 1 July 1986, and without any separate explanatory memorandum, a fourth point was added to Schedule IV:

"The further inspection under the Soil Cleaning (Temporary Provisions) Act has indicated pollution of the soil under or in the immediate vicinity of the accommodation such as to cause serious danger to public health or the environment."

B. The Soil Cleaning (Temporary Provisions) Act and the Soil Cleaning Guidelines (Leidraad Bodemsanering)

1. Administrative preliminaries to soil cleaning

29. In 1982, partly owing to the discovery in 1980 of cases of very extensive soil pollution, the Soil Cleaning (Temporary Provisions) Act (of 29 December 1982) was enacted. It entered into force on 15 April 1983. Its purpose was to set rules "aimed at eliminating within a short time or preventing soil pollution and its harmful effects where existing or potential pollution of the soil is such that there is a serious danger to public health or the environment".

Section 2 (1) of this Act provided as follows:

"Over a period of five consecutive years, the Provincial Executive shall each year draw up a programme for cleaning polluted soil. The programme shall indicate the cases within the territory of the province in which existing or potential pollution of the soil is such that there is a serious danger to public health or to the environment. The programme shall also indicate the cases in respect of which it must be determined whether such circumstances apply."

30. An explanation of various expressions used in the interim Act and directions as to the manner in which the Act was to be implemented were given in the Soil Cleaning Guidelines.

31. According to the Soil Cleaning Guidelines, in the seventh revised version (December 1991), the possible danger had to be assessed as follows:

"During the parliamentary discussions of the bill [which eventually entered into force as the interim Act] this criterion was given the following construction. Direct and frequent contact between human beings or plant or animal life and the pollutants must either be present or imminent and it must be either certain or likely that such contact will be potentially detrimental to public health or the environment. On this construction, stress must be laid on the imminence of such contact and the probability of such detrimental effects. The expression 'serious danger' therefore indicates an unacceptably increased risk rather than an acute threat ... [Part II of the Guidelines] mentions three aspects which fall to be considered, namely the nature and concentration of the pollutants, the local pollution situation and the use made of the soil. The nature and concentration of the pollutants give an impression of the extent of the pollution and its possible effects. The local pollution situation gives an idea of the extent to which spreading or contact may occur. The use of the soil determines the likelihood of exposure to the pollutants and the resulting risks. A consideration of these three aspects taken together [integrale afweging] must lead to an answer to the question whether cleaning is at all necessary or required as a matter of urgency ..." (paragraph 1.6 of Part I of the Soil Cleaning Guidelines)

To assist in assessing the nature and concentration of the pollution, tables were drawn up listing the concentrations of various pollutants which, if exceeded, made action necessary. Concentration level A was the reference level below which no action was required. Concentration level B was the level indicating the need for a further inspection. Concentration level C necessitated an inspection with a view to possibly cleaning the soil as a matter of urgency.

32. The stages in the preliminaries to soil cleaning, as they appeared from the Guidelines, were the following:

a) preliminary measures, not laid down in the soil-cleaning programme:

(i) a survey of the places where soil pollution might be expected (inventarisatie). This might be based on complaints from individuals, as in the present case (see paragraph 9 above), an inspection of documents relating to land use or dumping, reports submitted by municipalities, or any other relevant information;

(ii) an exploratory inspection, the purpose of which was to gain a general idea of the nature, location and concentration of pollutants. This inspection was a limited one;

b) further measures, laid down in the soil cleaning programme:

(iii) a further inspection, more extensive than the exploratory one, to obtain information which would make it possible to assess the dangers to public health and the environment, and hence to judge the necessity and urgency of cleaning the soil;

(iv) an inspection with a view to possibly cleaning the soil, the purpose of which was to enable a decision to be made on the necessary measures in the light of the budgetary and technical possibilities;

(v) the drawing up of a plan for actually cleaning the soil.

2. Objections to the soil-cleaning programme

33. Section 5 of the Soil Cleaning (Temporary Provisions) Act provided as follows:

"1. Before finally adopting a cleaning programme, the Provincial Executive shall make the draft available for public inspection with the reports of the inspections on which it is based. They shall at the same time send the draft to the Provincial Council [Provinciale Staten], the municipalities in their province and the Inspector [of Public Health].

2. Before doing so, they shall give notice of the fact of making the draft available for public inspection in the Government Bulletin [Nederlandse Staatscourant] and in one or more daily papers or newspapers distributed in the province. These announcements shall also mention that members of the public are entitled to lodge objections in accordance with subsection (4) below.

3. For a period of one month from the day on which the draft of a programme is made available for public inspection, anyone may inspect free of charge the documents thus made available.

4. During the period referred to in subsection (3) above, may lodge written objections to the draft, stating their reasons, with the Provincial Executive."

34. Paragraph 2.2.7 of Part I of the Soil Cleaning Guidelines made it clear that the final programme had to set out the Provincial Executive's views on any objections received and that such objections were to be appended to the final programme. Although the Act did not provide for any form of appeal against the adoption of the programme, the objections were brought to the attention of the Minister, who was empowered to modify the provincial programme in a reasoned decision.

35. The Soil Cleaning (Temporary Provisions) Act was significantly amended by the Act of 2 July 1992. A number of its provisions, including sections 2 and 5, were repealed.

The interim Act as a whole was repealed by the Act of 10 May 1994 (Official Gazette (Staatsblad) 1994, no. 331), its provisions being incorporated into the Soil Protection Act (Wet bodembescherming).

C. The Judicial Organisation Act (Wet op de rechterlijke organisatie)

36. Section 100 of the Judicial Organisation Act provides as follows:

"1. Except for an appeal on points of law [filed by the Procurator-General with the Supreme Court] 'in the interests of the law', an appeal on points of law against a judgment delivered by a district court in a civil case shall be allowed only:

- on the ground that the judgment did not state the reasons on which it was based;
- on the ground that the judgment was not delivered in public;

- on the ground of want of competence;

on the ground that the district court exceeded its jurisdiction.

2. Except for an appeal on points of law 'in the interests of the law', appeals on points of law against a decision [beschikking] delivered [following proceedings in camera where that is required by law] by a district court in a civil case shall be allowed only on the grounds set out in paragraphs 1, 3 and 4 of subsection (1) above."

37. An appeal on points of law "in the interests of the law" may be lodged with the Supreme Court (Hoge Raad) by its Procurator-General (procureur-generaal) at his discretion and does not affect the parties' rights and obligations as determined in the judgment or decision appealed against (sections 95 and 98 of the Judicial Organisation Act).

D. Domestic case-law

38. As mentioned in paragraph 28 above, no explanation was given for introducing point 4 of Schedule IV to the Ordinance. This situation has contributed to uncertainty as to how that provision is to be construed.

The first problem relates to the construction of the expression "under or in the immediate vicinity of the accommodation". It is usually assumed in legal writing and the relevant case-law that this expression should be interpreted broadly.

The second problem relates to the question that was also at issue in the instant case: whether courts should themselves decide whether the "further inspection under the Soil Cleaning (Temporary Provisions) Act" justifies the conclusion that "pollution of the soil" is "such as to cause serious danger to public health or the environment", or alternatively assume that such serious danger is present when the competent authorities have decided on the basis of a further inspection in a particular case that soil cleaning measures are required.

There is a difference of opinion on the latter point. A number of district courts have adopted the first view - see the following decisions: Amsterdam District Court, 14 December 1990, *Woonrecht* (Housing Law Reports) 1991, nos. 23 and 24; Zaandam District Court, 26 September 1991, *Woonrecht* 1991, no. 63. Others have adopted the alternative view - see the following decisions: Dordrecht District Court, 23 March 1989, *Nederlandse Jurisprudentie* (Netherlands Law Reports - NJ) 1989, no. 874, *Woonrecht* 1990, no. 1; Schiedam District Court, 5 June 1990, *Woonrecht* 1990, no. 87; Rotterdam District Court, 5 June 1990, *Woonrecht* 1990, no. 88; Zutphen District Court, 22 December 1992, *Woonrecht* 1992, no. 30; Assen District Court, 30 August 1993, *Woonrecht* 1993, no. 80.

It would appear that the latter view is also that of the Deputy Minister (Staatssecretaris) for Housing, Planning and Environment Protection (who sets the rents for certain categories of housing accommodation and in so

doing has regard to Schedule IV to the Ordinance), in the light of his letter of 15 June 1990, published in *Woonrecht* 1990 at p. 212. This letter includes the following statement:

"Your view is that one may conclude from the drafting history and the wording of the fourth absolute zero condition in Schedule IV that this condition should always apply automatically in those cases in which the Provincial Executive has decided that the situation is as set out in section 2 (1), second sentence, of the Soil Cleaning (Temporary Provisions) Act. I can agree with your conclusion, while pointing out that the area in question should have been included in the soil-cleaning programme on the basis of the findings of a further inspection."

In a case in which the Judicial Division (*Afdeling Rechtspraak*) of the Raad van State had to consider a rent decision of the Secretary of State in which point 4 of Schedule IV had been applied to accommodation in the Steendijkpolder in Maassluis (see next paragraph), it held that the Secretary of State "[had] not erred in considering it relevant that the Provincial Executive of the province of South Holland, in applying section 2 of the Soil Cleaning (Temporary Provisions) Act, [had] established on the basis of the report of the further inspection that there was a serious danger as referred to above" (judgment of 1 November 1991, *Woonrecht* 1991, no. 32).

39. As indicated in the previous paragraph, a number of the above-mentioned decisions and judgments relate to the Steendijkpolder, a polder adjoining the Noord-Nieuwlandsepolder-zuid which the municipal authorities of Maassluis had had levelled up with polluted harbour silt and then sold as building land. Point 4 of Schedule IV has consistently been held to be applicable to rents in that area: see the Schiedam District Court's decision of 5 June 1990, *Woonrecht* 1990, no. 87, and the judgment of the Judicial Division of the Raad van State of 1 November 1991, *Woonrecht* 1991, no. 32.

Mention may be made in passing of a judgment of the Hague Court of Appeal which seems also to adopt the alternative view. In its judgments of 6 December 1990 (cases nos. 14,668, 14,669 and 14,670, cited in the report of the Supreme Court's judgment of 9 October 1992, NJ 1994, no. 286), the Hague Court of Appeal established that the municipality (*gemeente*) of Maassluis was liable in tort for the sale of the Steendijkpolder as building land. The Court of Appeal's reasoning included the following:

"With regard to the liability of [the municipality of] Maassluis, the Court of Appeal notes first of all that as the Government [*rijksoverheid*] has decided in accordance with section 2 et seq. of the Soil Cleaning (Temporary Provisions) Act that the soil should be cleaned, it must be held to have been established that there is in the present case a 'serious danger to public health or to the environment' within the meaning of that Act (section 2 (1))."

No submissions challenging this reasoning were made in the ensuing appeals on points of law. In any event, the Supreme Court in its

above-mentioned judgment of 9 October 1992 held the appeals to be unfounded and so allowed the judgment of the Court of Appeal to stand.

PROCEEDINGS BEFORE THE COMMISSION

40. In their application (no. 20641/92) to the Commission of 9 September 1992 the applicant company alleged a violation of Article 6 para. 1 of the Convention (art. 6-1) in that they had not had the benefit of effective judicial review in the determination of their civil rights as the District Court had considered itself bound by the Provincial Executive's finding in respect of the soil pollution and its effects on public health and the environment and had thus denied them a judicial ruling on an important part of their case. They also claimed under Article 13 of the Convention (art. 13) that they had had no effective remedy against the decision of the Provincial Executive, which affected their property rights. In addition, they alleged violations of Article 1 of Protocol No. 1 (P1-1), of Article 14 of the Convention taken both alone and together with Article 1 of Protocol No. 1 (art. 14, art. 14+P1-1) and of Articles 17 and 18 of the Convention taken together with Article 1 of Protocol No. 1 (art. 17+P1-1, art. 18+P1-1).

41. On 5 July 1994 the Commission declared the application admissible in so far as it concerned Article 6 para. 1 and Article 13 of the Convention (art. 6-1, art. 13) and inadmissible as to the remainder.

In its report of 5 April 1995 (Article 31) (art. 31), it expressed the opinion by twelve votes to one that there had been a violation of Article 6 para. 1 (art. 6-1) and that it was not necessary to examine whether there had also been a violation of Article 13 (art. 13). The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment³.

FINAL SUBMISSIONS TO THE COURT

42. The Government concluded their memorial by expressing the opinion that there had been no violation of the applicant company's right to access to court, as guaranteed by Article 6 para. 1 (art. 6-1), nor of Article 13 (art. 13).

43. The applicant company, in their memorial, submitted that there had been a violation of Article 6 para. 1 (art. 6-1). They also requested the Court

³ For practical reasons this annex will appear only with the printed version of the judgment (in Reports of Judgments and Decisions 1996-VI), but a copy of the Commission's report is obtainable from the registry.

to "declare admissible" their complaints under Article 1 of Protocol No. 1 taken together with Articles 14, 17 and 18 of the Convention (art. 14+P1-1, art. 17+P1-1, art. 18+P1-1) and find that these provisions (art. 14+P1-1, art. 17+P1-1, art. 18+P1-1) had been violated, and to award them just satisfaction.

AS TO THE LAW

I. SCOPE OF THE CASE BEFORE THE COURT

44. In their memorial and again at the hearing, the applicant company requested the Court also to consider those of their complaints which the Commission had declared inadmissible, namely their allegations of violation of Article 1 of Protocol No. 1 taken together with Articles 14, 17 and 18 of the Convention (art. 14+P1-1, art. 17+P1-1, art. 18+P1-1). In their contention, these were based on the same facts declared admissible in the context of Article 6 para. 1 (art. 6-1).

45. As the Court has frequently held, the compass of the case before it is delimited by the Commission's decision on admissibility.

In the present case, the application as declared admissible relates solely to an alleged deficiency of a procedural nature. Whether or not the outcome of the proceedings in question was affected by this alleged deficiency, the scope of the case before the Court does not extend to the substance of the issues involved.

Accordingly, the Court finds that it has no jurisdiction to examine the complaints which the Commission declared inadmissible (see the *Masson and Van Zon v. the Netherlands* judgment of 28 September 1995, Series A no. 327-A, p. 16, paras. 39-40).

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION (art. 6)

46. The applicant company complained that they had not had access to a tribunal possessing jurisdiction to make an assessment of the relevance of the soil pollution (see paragraph 16 above). They alleged a violation of Article 6 para. 1 of the Convention (art. 6-1), which provides:

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

The Government contested this allegation, whereas the Commission accepted it.

A. The Government's preliminary objection

47. In their memorial and again at the Court's hearing, the Government, relying particularly on the Court's judgment in the case of *British-American Tobacco Company Ltd v. the Netherlands* (judgment of 20 November 1995, Series A no. 331), stated that it would have been open to the applicant company to file an appeal on points of law to the Supreme Court. Quoting a judgment of that court of 29 March 1986, (NJ 1986, no. 242) they stated that a statutory bar on appeals on points of law had to be set aside if it appeared that the court below had failed to observe fundamental principles of fair procedure as guaranteed by Article 6 of the Convention (art. 6).

48. The Government's argument amounts to a preliminary objection of non-exhaustion of domestic remedies.

49. This objection was formulated for the first time before the Court. Yet there was nothing to preclude the Government from doing so at the stage of the Commission's examination of the admissibility of the application. There is therefore estoppel.

B. As to the merits

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

50. It was not contested that the rent-determination proceedings in question constituted the "determination of civil rights and obligations".

The Court, for its part, sees no reason to hold otherwise. Article 6 para. 1 (art. 6-1) is therefore applicable.

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

51. The applicant company relied on the fact that the District Court had held that the decision of the Provincial Executive to include the Noord-Nieuwlandsempolder-zuid in its implementation programme for soil cleaning in itself amounted to proof that the legal provision triggering the application of the minimum rent provision was satisfied (see paragraph 17 above). The District Court had not itself examined the report of the further inspection, although, in the applicant company's contention, it did not appear from that report that the pollution found in any way affected the standard of the flat let to Mr W.

The Government relied on the argument already outlined in paragraph 47 above.

The Commission considered that the District Court had refused to make an independent assessment of the issue that was at the heart of the dispute. In so doing it had denied the applicant company effective judicial review of the substance of their claims.

52. The Court recalls that for the determination of civil rights and obligations by a "tribunal" to satisfy Article 6 para. 1 (art. 6-1), it is required that the "tribunal" in question have jurisdiction to examine all questions of fact and law relevant to the dispute before it (see, *inter alia* and *mutatis mutandis*, the *Le Compte, Van Leuven and De Meyere v. Belgium* judgment of 23 June 1981, Series A no. 43, p. 23, para. 51 under (b); the *Fischer v. Austria* judgment of 26 April 1995, Series A no. 312, p. 17, para. 29; the *British-American Tobacco Company Ltd* judgment cited above, p. 25, para. 78; the *Bryan v. the United Kingdom* judgment of 22 November 1995, Series A no. 335-A, p. 17, paras. 44-45).

53. As noted above (see paragraph 38), there was uncertainty at the relevant time as to whether district courts should themselves decide whether the "further inspection under the Soil Cleaning (Temporary Provisions) Act" justified the conclusion that "pollution of the soil" was "such as to cause serious danger to public health or the environment", or in the alternative accept without question or examination of their own the determination by the competent authorities that soil-cleaning measures were required. However, the Schiedam District Court, in its judgment in the present case, held that such risk was "necessarily implied" by the Provincial Executive's decision.

54. In so doing the Schiedam District Court, a "tribunal" satisfying the requirements of Article 6 para. 1 (art. 6-1) (as was not contested), deprived itself of jurisdiction to examine facts which were crucial for the determination of the dispute.

55. In these circumstances the applicant company cannot be considered to have had access to a tribunal invested with sufficient jurisdiction to decide the case before it. There has accordingly been a violation of Article 6 para. 1 (art. 6-1).

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION (art. 13)

56. The applicant company alleged that, contrary to Article 13 of the Convention (art. 13), they had had no effective remedy against the decision of the Provincial Executive that soil-cleaning measures were required, a decision which affected the peaceful enjoyment of their possessions.

Article 13 provides as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

57. It was not argued before the Court that in the present case a violation of this provision (art. 13) might be found in the absence of a violation of Article 6 para. 1 (art. 6-1). In any event, in view of its

conclusion as to Article 6 para. 1 (art. 6-1), the Court does not find it necessary to examine this allegation.

IV. APPLICATION OF ARTICLE 50 OF THE CONVENTION (art. 50)

58. Article 50 of the Convention (art. 50) provides as follows:

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

A. Damage

59. The applicant company claimed NLG 56,200 for loss of rent from the flat in question over ten years as from 1 May 1990.

60. The Government and the Commission concurred in stating that it was far from clear that the decision of the District Court would have been any different had the violation in question not taken place.

61. The Court agrees with the Government and the Commission. No causal link between the violation found and the damage allegedly suffered having been established, no award can be made under this head.

B. Costs and expenses

62. The applicant company claimed a lump sum of NLG 75,000 for costs and expenses incurred in the domestic proceedings and in Strasbourg. They did not specify their claim.

63. In the opinion of the Government, with which the Commission largely agreed, the costs incurred in the domestic proceedings were "ineligible for compensation". As far as the Strasbourg proceedings were concerned, they considered NLG 20,000 "a generous sum in compensation".

64. The Court considers that no award can be made in respect of the costs and expenses incurred in the domestic proceedings for the same reasons set out in paragraph 61 above. For costs and expenses incurred in the Strasbourg proceedings, the Court awards NLG 30,000 plus any value-added tax that may be payable.

C. Default interest

65. According to the information available to the Court, the statutory rate of interest applicable in the Netherlands at the date of adoption of the present judgment is 5% per annum.

FOR THESE REASONS, THE COURT

1. Holds by eight votes to one that it has no jurisdiction to rule on the allegations of violation of Article 1 of Protocol No. 1 taken together with Articles 14, 17 and 18 of the Convention (art. 14+P1-1, art. 17+P1-1, art. 18+P1-1);
2. Dismisses unanimously the Government's preliminary objection;
3. Holds by five votes to four that there has been a violation of Article 6 para. 1 of the Convention (art. 6-1);
4. Holds unanimously that it is not necessary to examine the applicant company's allegation of a violation of Article 13 of the Convention (art. 13);
5. Holds unanimously
 - (a) that the respondent State is to pay to the applicant company, within three months, 30,000 (thirty thousand) Netherlands guilders, plus any value-added tax that may be payable;
 - (b) that simple interest at an annual rate of 5% shall be payable from the expiry of the above-mentioned three months until settlement;
6. Dismisses unanimously the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights building, Strasbourg, on 17 December 1996.

Rudolf BERNHARDT
President

Herbert PETZOLD
Registrar

In accordance with Article 51 para. 2 of the Convention (art. 51-2) and Rule 55 para. 2 of Rules of Court B, the following separate opinions are annexed to this judgment:

- partly dissenting opinion of Mr De Meyer;
- dissenting opinion of Mr Martens, joined by Mr Gölcüklü, Mr Pettiti and Mr Valticos.

R.B.

H.P.

PARTLY DISSENTING OPINION OF JUDGE DE MEYER
(CONCERNING ARTICLE 1 OF PROTOCOL No. 1 (P1-1))

(Translation)

I do not think that the Court has "no jurisdiction to examine the complaints which the Commission declared inadmissible"¹.

In the present case the facts established by the Commission constituted an infringement of both the applicant company's right "to the peaceful enjoyment" of their possessions² and their right of "access to a tribunal invested with sufficient jurisdiction to decide the case before it"³.

Although the "deficiency of a procedural nature" that the Court found to have occurred did not necessarily affect "the outcome of the proceedings in question"⁴, it is very artificial to separate these two aspects of the case. Depriving someone of the possibility of asserting a right in a court of law simultaneously infringes the right itself.

¹ See paragraph 45 of the judgment; see also on this subject my dissenting opinion in the case of *W. v. the United Kingdom*, judgment of 8 July 1987, Series A no. 121, p. 42.

² Article 1 of Protocol No. 1 (P1-1).

³ See paragraph 55 of the judgment.

⁴ See paragraph 45 of the judgment.

DISSENTING OPINION OF JUDGE MARTENS, JOINED BY
JUDGES GÖLCÜKLÜ, PETTITI AND VALTICOS

1. To my regret I am unable to agree with the Court's judgment.

I.

2. Unlike the majority, I find that the applicant company had access to a court - the Schiedam District Court - which was fully competent to decide all questions of fact and of law which were material under the relevant substantive norm - point 4 of Schedule IV (see paragraph 27 of the judgment) - as construed by that court.

3. Admittedly the District Court refused to examine an issue raised by the applicant company in their defence. However, contrary to what the Court seems to suggest (see paragraph 53 in fine and paragraph 54 of its judgment), the District Court did not base its refusal on the finding that it lacked competence to decide that issue, but on the finding that the issue was immaterial for determining the maximum rent allowed.

4. Thus, what the Court qualifies as "facts which were crucial for the determination of the issue" was found to be immaterial for that determination by the District Court. This demonstrates that the question in the present case is one of (interpretation of) substantive national law and not one of access to a court or of fair process. Or, to put it another way, not a question under Article 6 (art. 6) but, at most, a question under Article 1 of Protocol No. 1 (P1-1).

II.

5. In order to elucidate this proposition, let me first make some general remarks on the characteristics of the relevant legislation.

Under this legislation (see paragraphs 20 to 28 of the judgment) landlords and tenants are in principle free to agree a rent, but in practice housing rents are subject to a rather strict administrative price-control regime. Whether the rent agreed upon is to be corrected either by the Rent Board or by the District Court essentially depends on the quality of the housing accommodation in question. There are detailed, substantive provisions for rating that quality. These provisions all contain norms of the very simple, classic type: if A, then B - the A always being plain, straightforward facts concerning the accommodation. These provisions thus leave practically no room for judicial assessment.

The rationale for using this type of norm is obvious: the system is designed to be applied throughout the Netherlands, by petty officials - the local rent boards - who will have to deal with a great many cases a year, in

simple and inexpensive proceedings, which should not require legal assistance; yet the system should yield results that are consistent all over the country.

These characteristics are highlighted by the fact that, although there is a form of judicial review of the Rent Board's decision, that review lies only to the District Court - the lowest civil court in the hierarchy, the only one where legal assistance is not required - the legislature having denied the parties any possibility of appeal from the decisions of that court.

III.

6. Against this background let me try to elucidate the proposition advanced above in paragraph 4 by means of an example taken from point 1 of Schedule IV, which gives a list of quite serious deficiencies relating to the accommodation, deficiencies which, if established, entail compulsory reduction of the rent to the minimum level (see paragraphs 25 and 26 of the judgment).

One of these deficiencies is:

"the gas pipes or electricity cables are so dangerous that the public utility company is no longer prepared to supply gas or electricity."

Suppose that a tenant, relying on the public utility company's having cut the gas supply on the ground that the pipes are dangerous, requests that the District Court accordingly reduce his rent to the minimum level. Suppose further that the landlord does not deny that that company has decided to cut the gas supply on this ground, but argues that this fact does not justify a rent reduction since the company acted on an erroneous assessment of the dangerousness of the pipes. Suppose, finally, that the District Court rules that it will not go into the issue of the actual justification of the decision taken by the public utility company (which is not a party to the proceedings); making it clear that in its opinion the wording of point 1 of Schedule IV demonstrates that the mere fact that the public utility company has cut the gas supply on the ground that it judges the pipes dangerous constitutes a "deficiency" which entails compulsory reduction of the rent to the legal minimum and that, consequently, the question whether or not the public utility company's judgment on the pipes was correct is immaterial and therefore does not fall to be decided.

In this fictitious case too, the correctness or not of the public company's verdict on the pipes is "crucial" to the landlord's line of argument, but here also the District Court refuses to give the ruling sought on this issue on the ground that it is immaterial under the substantive rule as construed by that court on the basis of its wording and (I would add) in conformity with the characteristics of the relevant legislation as a whole (see paragraph 5 above).

Such refusal does not constitute a violation of Article 6 (art. 6). Article 6 (art. 6) does not imply an obligation to decide whatever issues may be raised by one or other of the parties. Issues which are irrelevant need not be decided (see, a contrario, the Ruiz Torija v. Spain judgment of 9 December 1994, Series A no. 303-A, p. 12, para. 30). Nor does Article 6 (art. 6) enable the Convention organs to review the domestic courts' interpretation of substantive rules of their national law, not even when any such interpretation carries the implication that a certain issue raised in proceedings coming under Article 6 (art. 6) is immaterial.

IV.

7. Moving from this fictitious case to the actual case before the Court, the deficiency which, if established, entails compulsory reduction of the rent to the minimum level reads (point 4 of Schedule IV, see paragraph 28 of the judgment):

"the further inspection under the Soil Cleaning (Temporary Provisions) Act has indicated pollution of the soil under or in the immediate vicinity of the accommodation such as to cause serious danger to public health or the environment".

The tenant in the domestic proceedings

a) submitted that "the accommodation" (his flat) was situated in an area (the Noord-Nieuwlandse polder-zuid) which had, already since 1985, been reputed to be polluted and, consequently, had been inspected under the Soil Cleaning (Temporary Provisions) Act (SCTP);

b) submitted that a "further inspection" under that Act had indicated that the area was so polluted "as to cause serious danger to public health or the environment" and requested that the District Court accordingly reduce his rent to the minimum level.

In support of his submission under (b) above, the tenant produced a letter from the competent authorities under the SCTP which showed that "the further inspection had led them to conclude that further soil-cleaning measures were necessary" in the area (see paragraph 10 of the judgment).

The landlord - the applicant company - did not deny allegation (a) or that there had been a "further inspection" which had led the competent authorities to mandate the next step under the SCTP. The landlord's argument was rather that the latter fact did not justify a rent reduction since those authorities had acted on an erroneous assessment of the dangerousness of the pollution: the landlord contended that the report of the "further inspection" had made it clear that the pollution was not such "as to cause serious danger to public health or the environment".

The Schiedam District Court construed point 4 of Schedule IV as meaning that the mere fact that the "further inspection" had led the competent authorities under the SCTP to mandate the next step under that

Act - that is to designate the site as one where soil cleaning was required (saneringsgeval) (see paragraph 17 of the judgment) - constituted a "deficiency" which entailed compulsory reduction of the rent to the legal minimum; and that, consequently, the question whether or not the authorities' judgment on the dangerousness of the pollution was correct, far from being "crucial", was immaterial in the rent-control proceedings and therefore not an issue to be decided in those proceedings.

In this actual case, too, the conclusion cannot be other than that reached under section III above, namely that the District Court's refusal to go into the issue pleaded by the defendant landlord does not constitute a violation of Article 6 (art. 6) since Article 6 (art. 6) implies neither an obligation to decide whatever issues may be raised by one or other of the parties nor a yardstick to gauge a domestic court's interpretation of a substantive rule of national law to the effect that a certain issue is immaterial for the decision to be given.

V.

8. The analysis of the present case set out in section IV confirms what is said in paragraphs 2 and 3 above, notably my proposition that the question in the present case is primarily one of substantive (national) law or, to be more precise, a question of interpretation of substantive (national) law. As I have, I hope, demonstrated, the crux of the matter is the District Court's interpretation of point 4 of Schedule IV.

Normally it is for the domestic courts to interpret national law, but since the European Court of Human Rights reserves itself a certain power of review, notably as to the reasonableness of such interpretations (see, for example, the *Casado Coca v. Spain* judgment of 24 February 1994, Series A no. 285-A, p. 18, para. 43, and the *Bulut v. Austria* judgment of 22 February 1996, Reports of Judgments and Decisions 1996-II, pp. 355-56, para. 29), I will conclude with a few remarks on the District Court's interpretation, or rather on the interpretation adopted by various other district courts which in the present case was followed by the Schiedam District Court (see paragraph 38 of the Court's judgment).

9. A first point to make is that this interpretation is in harmony with the text of the norm (see paragraph 7 above): that text does not specify how or in what manner it should be established that "the further inspection" has indicated the required degree of pollution. In particular, the text does not refer to the report of the experts who have conducted "the further inspection". Thus, the district courts in question were free to establish that "the further inspection" had indicated the required degree of pollution by deeming the opinion of the competent authorities to be decisive in this respect.

Secondly, these district courts had good grounds for doing so. The "further inspection" is only one of the stages in the preliminaries to soil cleaning under the SCTP (see paragraph 32 of the judgment) and under that Act the competent authorities are allowed to authorise the next stage only if they are satisfied that the "further inspection" has (sufficiently) indicated a pollution of the soil in the relevant area "such as to cause serious danger to public health or the environment". Consequently, for the purposes of applying point 4 of Schedule IV the fact that the competent authorities have authorised the next stage may very well be taken as establishing that "the further inspection under the Soil Cleaning (Temporary Provisions) Act has [indeed] indicated pollution of the soil under or in the immediate vicinity of the accommodation such as to cause serious danger to public health or the environment".

Thirdly, this interpretation brings the application of point 4 of Schedule IV into line with that of the other points of that Schedule (see paragraph 5 above). It does so by reducing that application to a simple question of fact: what did the competent authorities under the SCTP do when they were confronted with the results of the "further inspection"? It avoids, moreover, difficult technical debates which would become unavoidable if the rent boards and the district courts had to decide themselves whether or not the report of the experts who conducted "the further inspection" sufficiently indicated the required degree of soil pollution: such debates are not consonant with the character of the proceedings in question as set out in paragraph 5 above.

In sum, this interpretation - which seems to be that of the competent Minister, which is followed by what I believe is a majority of district courts, and which also appears to be supported by the Judicial Division of the Raad van State (see paragraph 38 of the judgment) - is reasonable and should therefore have been taken into account by the European Court. It is this interpretation of point 4 of Schedule IV which underlies the decision of the Schiedam District Court in the case before us: its wording makes that perfectly clear (see paragraph 17 of the judgment).

VI.

10. In paragraph 4 above I said that the question in the present case is not one under Article 6 (art. 6) but, at most, one under Article 1 of Protocol No. 1 (P1-1). I think that I have sufficiently elucidated the first part of that proposition. I will therefore end this opinion by making a short remark on the last part of the proposition.

Under the above-discussed interpretation of point 4 of Schedule IV the decision of the competent authorities under the SCTP indirectly has consequences for the rent, since under this interpretation the mere fact that those authorities have decided to take further cleaning measures involves so

serious a "deficiency" that the rent cannot but be the minimum rent allowed. Under that interpretation the landlords cannot contest that decision in the rent proceedings. It is, however, far from certain that landlords have the possibility of bringing administrative proceedings against the competent authorities under the SCTP in order to challenge their decision. It might, therefore, be argued that the relevant rule of substantive national law lays a disproportionate burden on landlords and, consequently, is incompatible with Article 1 of Protocol No. 1 (P1-1). However, that complaint was not before the Court, since the Commission ruled that it was manifestly ill-founded and therefore declared it inadmissible.