



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

FIRST SECTION

**CASE OF VAN VLIMMEREN AND VAN ILVERENBEEK v. THE
NETHERLANDS**

(Application no. 25989/94)

JUDGMENT

STRASBOURG

26 September 2000

In the case of Van Vlimmeren and Van Ilverenbeek v. the Netherlands,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mr L. FERRARI BRAVO *President*,

Mrs W. THOMASSEN,

Mr R. TÜRMEŖ,

Mr C. BİRSAN,

Mr J. CASADEVALL,

Mr B. ZUPANČIČ,

Mr R. MARUSTE, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 25 January 2000 and on 5 September 2000,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 5 November 1998, within the three month period laid down by former Articles 32 § 1 and 47 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). It originated in an application (no. 25989/94) against the Kingdom of the Netherlands lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention by two Netherlands nationals, Mr Adrianus H. van Vlimmeren and Mr Petrus van Ilverenbeek ("the applicants"), on 15 August 1994. The applicants were represented by Mr G.R.A.G. Goorts, a lawyer practising in Roermond, the Netherlands. The Government of the Netherlands were represented by their Agent, Mr R. Böcker, of the Netherlands Ministry of Foreign Affairs.

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

2. On 14 January 1999 the Panel of the Grand Chamber decided, pursuant to Article 5 § 4 of Protocol No. 11 to the Convention and Rules 100 § 1 and 24 § 6 of the Rules of Court, that the application would be examined by one of the Sections. It was, thereupon, assigned to the First Section.

3. The Chamber constituted within the Section included *ex officio* Mrs W. Thomassen, the judge elected in respect of the Netherlands (Article 27 § 2 of the Convention and Rule 26 § 1 (a) of the Rules of Court) and Mr L. Ferrari Bravo, President of the Section (Rules 12 and 26 § 1 (a)). The other members designated by the latter to complete the Chamber were Mr R. Türmen, Mr C. Bîrsan, Mr J. Casadevall, Mr B. Zupančič, and Mr R. Maruste.

4. In accordance with Rule 59 § 3 the President of the Chamber invited the parties to submit memorials on the issues in the application. The Registrar received the Government's memorial on 7 April 1999. No memorial was received from the applicants. The applicants' representative was requested on 8 October 1999 and 30 November 1999 to clarify whether, having not submitted a memorial, he nevertheless intended to submit claims for just satisfaction on behalf of the applicants. These letters remained unanswered.

5. On 21 September 1999 the Chamber decided to hold a hearing. On 8 October 1999 the parties were informed that the date of the hearing had been set for 25 January 2000. On 13 January 2000 the applicants' representative sought leave for the use of a non-official language of the Court during the hearing. The President of the Chamber refused this request in view of its late submission. The applicants' representative informed the Court on 19 January 2000 that in view of this refusal neither he nor the applicants would attend the hearing. Hereupon the hearing was cancelled.

6. On 19 January 2000 the Government made available to the Court the pleadings which would have served as the basis for their appearance at the hearing. The Chamber decided on 25 January 2000 to transmit these pleadings to the applicants' representative and to invite him to submit any comments he might wish to make. Such comments were received on 11 February 2000.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. Both applicants cultivate land in an area where the land consolidation project (*ruilverkaveling*) "Oud Gastel-Oudenbosch" is in progress. The area measures about 6,800 hectares and the land consolidation project concerns approximately 2,500 people. As part of the project the drainage situation on the applicants' land was changed, not only with regard to the direction of the current, but also in the way in which the water was drained off. These works were carried out in 1988 in close co-operation between the Land

Development Commission (*Landinrichtingscommissie*) and the competent water boards (*waterschappen*). From 1991 plots of land under cultivation by the applicants were regularly flooded and the yield of the plots subsequently diminished. As a result of the placement of a pump by the Land Development Commission in the course of 1994, no further flooding has occurred.

8. The applicants alleged that the flooding occurred as a result of a change in the drainage situation which, in its turn, had been caused by the works carried out in 1988. On 12 August 1991 the applicants informed the Land Development Commission that they held that Commission liable for the damage which they had suffered and would still suffer in the future. The Land Development Commission disclaimed all responsibility by letter of 21 August 1991; it submitted that the flooding had occurred as a result of the combination of very heavy rainfall within a short space of time and the poor condition of the watercourses which fell under the responsibility of the District Water Board.

9. The applicants then requested the Breda Regional Court (*Arrondissementsrechtbank*) to order a preliminary expert investigation. This request was granted on 4 December 1992, and the report was completed in March 1993. It stated that the land drainage had deteriorated as a result of the changes. By letter of 17 June 1993, the Land Development Commission informed the Regional Court that it disagreed with the expert's findings.

10. In October 1993 the applicants instigated proceedings pursuant to Article 129 § 2 of the Land Development Act (*Landinrichtingswet*) with the Breda Regional Court. They requested the Court to order the Land Development Commission to execute the works as advised by the expert in his report to prevent further flooding and to compensate the applicants for the damage they had suffered.

11. Following a hearing on 5 November 1993, the Regional Court, in a departure from earlier case-law, declared the applicants' claims inadmissible on 10 May 1994. It pointed out that the damage referred to in Article 129 § 2 of the Land Development Act was confined to direct damage caused to the immovable property itself by the execution of works and losses directly caused by the works or by the way in which they had been executed. Therefore, in proceedings pursuant to this provision only disputes in respect of the amount of damages might be examined but the system of the Land Development Act left no room for the examination in these proceedings of the question of liability. Instead, the damage alleged by the applicants fell within the ambit of Article 212 § 1 (b) sub-paragraph 4 of the Land Development Act, which concerns the compensation for damage under the terms of the list of financial settlements (*lijst der geldelijke regelingen*). As the Regional Court anticipated that the applicants would raise the issue of compensation again once the list of financial settlements had been deposited

for inspection (*terinzagelegging*), it submitted as its provisional view that it might be desirable for the applicants to instigate a preliminary hearing of witnesses (*voorlopig getuigenverhoor*) in view of the fact that the opinions of the expert and the Land Development Commission as to the reasons for the flooding were diametrically opposed.

12. The applicants' subsequent request for a preliminary hearing of witnesses was granted by the Regional Court on 14 June 1994. On 28 June 1994 ten witnesses were heard.

13. The list of financial settlements was deposited for inspection between 9 October 1995 and 8 November 1995, and on 20 November 1995 the applicants submitted their objections to it with the Land Development Commission. They sought compensation for damage as a result of flooding in 1991, 1992, 1993 and 1994, reimbursement of legal costs, of the costs incurred in the preliminary expert investigation and of the costs incurred in the determination of their damages, as well as legal interest. In support of the claim of the first applicant, it was further submitted that he had only narrowly escaped bankruptcy. For this reason the applicants, by letter of 29 November 1995, requested the Land Development Commission to give their objections priority and, if no agreement could be reached, to transfer the objections to the Investigating Judge (*Rechter-Commissaris*) expeditiously.

14. On 5 June 1996 the Land Development Commission addressed the applicants' objections in a hearing. No agreement having been reached, the objections were subsequently addressed by the Investigating Judge at the Breda Regional Court on 23 October 1996. Again it proved impossible to reach an agreement, after which the Regional Court heard the applicants' objections on 3 December 1996.

15. In interlocutory judgments of 14 and 28 January 1997 the Regional Court considered that the drainage on the applicants' land had deteriorated as a result of the land consolidation works and it held the Land Development Commission liable for the damage. It requested the Land Development Commission to submit certain data and announced the appointment of experts in order to determine the extent of the damage. As it proved impossible to produce the requested data, the Land Development Commission, having consulted the Investigating Judge, suggested to the applicants in March 1997 that the damage resulting from the deterioration in land drainage be determined differently. In the absence of a response to this proposal from the applicants the Land Development Commission requested the Regional Court, at the end of 1997, to order the personal appearance of the parties in order to determine how the disputes should be resolved. The parties appeared on 27 January 1998 and the Regional Court announced the appointment of experts and ordered the Land Development Commission to formulate the scope of the expert's inquiry in the case of the first applicant.

16. On 9 June 1998 the Regional Court appointed the experts in the case of the second applicant. By letter of 24 June 1998 the Land Development Commission informed the Regional Court that the experts had been assigned too narrow a field of inquiry. Counsel for the second applicant submitted his comments on this matter to the Regional Court on 1 September 1998, and on 28 September 1998 the Regional Court clarified the scope of the experts' inquiry.

17. In the case of the first applicant the Regional Court appointed two experts and determined the precise scope of their inquiry on 30 June 1998. A draft of the experts' report was sent to the first applicant for comment on 31 August 1999. No such comment having been received from either the first applicant or his counsel, a finalised version of the report was sent to the Regional Court in December 1999, after which, on 29 December 1999, counsel requested to comment on the draft report.

18. According to the latest information available to the Court, the proceedings have not yet been terminated.

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. Pursuant to the provisions of the Land Development Act (*Landinrichtingswet*), which provides for land consolidation to be carried out in the interest of the development of rural areas, land consolidation projects are carried out by local Land Development Commissions.

20. The list of financial settlements is drawn up by the local Land Development Commission pursuant to Article 211 of the Land Development Act and is subject to approval by the Central Land Development Commission (*Centrale Landinrichtingscommissie*) (Article 213 § 1). The list is deposited for inspection at a locality chosen by the Land Development Commission for a period of one month. There is no possibility in law of splitting up the list: it must be submitted as a whole. Interested parties may lodge objections with the Land Development Commission against the list of financial settlements, within fourteen days from the last day on which the list was open to inspection (Article 214). In case no objections are received, the list is final (Article 215). Alternatively, the Land Development Commission examines the objections and tries to achieve a settlement (Article 174 § 1). If these attempts fail, the Land Development Commission transmits the objections and the minutes it has drawn up of the objection proceedings to the Investigating Judge (Article 174).

21. The Investigating Judge will also attempt to reach a settlement (Article 176 § 1). To this effect he determines the date of a hearing as soon as possible and summons the interested persons (Article 175 §§ 1 and 2). If agreement is reached, the list of settlements becomes final. Otherwise the

case is referred to the Regional Court by the Investigating Judge (Article 178 § 2).

22. The Regional Court gives matters concerning the list of financial settlements priority over all other cases, except those concerning expropriation (Article 179). No appeal lies from this decision (Article 186). The list of financial settlements does not become final until all disputes concerning the list have been determined by the Regional Court (Article 217).

23. According to Article 129 § 2 of the Land Development Act damage resulting from preparatory land consolidation works shall be compensated. This provision reads as follows:

“Compensation shall be paid for any damage arising from the application of articles 124-128. Claims for compensation shall be submitted to the Land Development Commissions. Where a dispute arises concerning the extent of damage, and following an application by either party, the dispute shall be settled by judgment of the Regional Court, after the other party has had an opportunity to defend its interests. No legal remedy shall lie from the judgment.”

24. Article 212 § 1 (c) sub-paragraph 4 provides for the compensation of damage, which is not covered by Article 129 § 2, to be included in the list of financial settlements.

25. In the present case, the decision of the Regional Court of Breda of 10 May 1994 constituted a departure from case-law to date. Until then the courts had always dealt with requests for application of Article 129 § 2 of the Land Development Act even when they involved issues of liability.

PROCEEDINGS BEFORE THE COMMISSION

26. The applicants applied to the Commission on 15 August 1994. They complained that, contrary to Article 6 § 1 of the Convention, they were unable to obtain a determination of their civil rights within a reasonable time.

27. On 22 October 1997 the Commission declared the application admissible.

28. In its report of 20 May 1998, the Commission expressed the unanimous opinion that there had been a violation of Article 6 § 1 of the Convention. The full text of the Commission’s opinion is reproduced as an annex to this judgment¹.

¹ *Note by the Registrar.* For practical reasons this annex will appear only with the printed version of the judgment (in the official reports of selected judgments and decisions of the Court), but a copy of the Commission’s report is obtainable from the Registry.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

29. The applicants complained that they had to await the list of financial settlements, which was deposited for inspection in 1996, before they were able to put their claims for compensation of damage which had first occurred in 1991 to a court. They had thus been deprived of their right to a fair hearing within a reasonable time as prescribed by Article 6 § 1 of the Convention, which provides:

“1. In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by a ... tribunal”

30. While the Government admitted that the Breda Regional Court’s departure from previous case-law constituted an unexpected turn of events, they submitted that the facts of the case and subsequent developments rendered that court’s judgment all the more intelligible. The scope of Article 129 § 2 Land Development Act was a limited one as it only concerned damage caused by preparatory land consolidation works, and only the amount of such damage and not the question of liability. In the instant case, the damage occurred more than two years after completion of preparatory works and the question thus arose whether it had been caused by those works. Furthermore, the factual and legal complexity of the case, militating against applicability of the remedy of Article 129 § 2, was demonstrated by the need for specialist expertise and the difficulties in the assignment of the exact scope of the experts’ inquiry in the course of the proceedings before the Regional Court relating to the applicants’ objections against the list of financial settlements.

In addition, the period which had elapsed since the applicants first held the Land Development Commission liable had been characterised by a constant stream of procedural activities. However, the conduct of the applicants had not always given the impression that they were endeavouring to expedite the proceedings.

Finally, account should also be taken of the special nature of land consolidation projects. If those who believed that they had suffered damage would be able to submit claims of unlimited scope before the completion of the project, the result would either be chaos or the process would take even longer.

31. The applicants did not dispute the complexity of the matter and they accepted that where, as in the present case, the cause and extent of damage was contested it might be necessary to have recourse to expert opinion even if that protracted the proceedings. However, their complaint centred on the

fact that they had been unable to put their case before an independent tribunal the moment it had appeared that the Land Development Commission did not accept liability for the damage they had suffered. To their mind, no reason existed why the question of liability could not be examined within a procedure based on Article 129 § 2 Land Development Act. If imbedded properly in the administrative processing of land consolidation projects an expanded field of application of that provision need not lead to chaos.

32. The Commission found that the period of time during which the applicants were denied access to a tribunal was such as to render the determination of their civil rights within a reasonable time impossible.

33. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and that of the relevant authorities, and the importance of what was at stake for the applicant in the litigation (see, among many other authorities, the *Styranowski v. Poland* judgment of 30 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3376, § 47). At the same time, the Court observes, as did the Commission, that apart from the right to have civil rights determined within a reasonable time the instant case is also concerned with the right, equally guaranteed by Article 6 § 1, of access to court (cf. the *Golder v. the United Kingdom* judgment of 21 February 1975, Series A no. 18, p. 18, § 36). Even if proceedings are dealt with as expeditiously as possible once they get underway, a reasonable time may still have been exceeded if an individual was unable for a considerable time to put his claims before a tribunal without sufficiently weighty and pertinent reasons for that delay.

34. The Court notes that it is not in dispute between the parties that the period relevant to the examination of the present case commenced on 12 August 1991 when the applicants first stated that they held the Land Development Commission liable for their damage (see paragraph 8 above), and that, more than nine years later, the proceedings have not yet come to an end. When the applicants' claims were not examined in the proceedings they instituted pursuant to Article 129 § 2 Land Development Act in October 1993 with the Breda Regional Court, access to court became dependent on the moment at which the list of financial settlements would be deposited for inspection, an event beyond the control of the applicants. In the event, the list was deposited for inspection in October 1995 (see paragraph 13 above) and the applicants' objections containing their claims for compensation were referred to a tribunal within the meaning of Article 6 § 1 after the Investigating Judge had failed to bring about a settlement on 23 October 1996 - over five years and two months after the applicants had first held the Land Development Commission liable.

35. The Court is not persuaded by the Government's arguments to the effect that the nature of a land consolidation project prevented an earlier examination of the applicants' claims. It notes in this respect that prior to the decision of the Breda Regional Court of 10 May 1994, petitions submitted pursuant to Article 129 § 2 Land Development Act had been dealt with by the courts even if they concerned the question of liability for damage (see paragraph 25 above). In addition, it would appear that in the present case it was the extent of the damage suffered by the applicants which proved the more complex matter to determine rather than the question of liability: this latter issue was decided by the Breda Regional Court in its interlocutory decisions of 14 and 28 January 1997, i.e. less than two months after the hearing before that court on 3 December 1996.

36. Some of the delays which have occurred in the proceedings relating to the applicants' objections against the list of financial settlements should be attributed to the applicants (see paragraphs 15 and 17 above). However, the Court considers that these delays are not of such a nature as to detract from the fact that the applicants had to wait until the end of 1996 before they were able to put their claims for compensation for damage which first occurred in 1991 before a court. The Court finds that this situation is hard to reconcile with the need to render justice with the effectiveness and credibility required by the Convention (see the *Papageorgiou v. Greece* judgment of 22 October 1997, *Reports* 1997-VI, p. 2291, § 48).

37. The Court concludes that the applicants' cases were not heard within a reasonable time and that there has therefore been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

39. In their comments of 11 February 2000 on the Government's pleadings (see paragraph 6 above), the applicants requested the Court to make an award of just satisfaction in their favour. The Government submitted that the mere finding of a violation would constitute adequate just satisfaction.

40. The Court notes that Rule 60 § 1 of the Rules of Court provides, in so far as relevant: "any claim which the ... applicant may wish to make for just satisfaction under Article 41 of the Convention shall ... be set out in the written observations on the merits ...". However, no memorial was submitted on behalf of the applicants and neither, despite repeated reminders by the registry, were any claims for just satisfaction until, as

mentioned above, the applicants were invited to comment on the document which would have served as the basis for the Government's address to the Court had the hearing not been cancelled (see paragraphs 4-6 above).

The time allowed in this case for submission of these claims appears sufficiently long in view of the above; they must be dismissed as being out of time (cf. the *Paccione v. Italy* judgment of 27 April 1995, Series A no. 315-A, p. 9, § 25).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Dismisses* the claim for just satisfaction.

Done in English, and notified in writing on 26 September 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Luigi FERRARI BRAVO,
President