AS TO THE ADMISSIBILITY OF

Application No. 12344/86
by Johannes BECKERS
against the Netherlands

The European Commission of Human Rights sitting in private on 25 February 1991, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
E. BUSUTTIL
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G. H. THUNE
Sir Basil HALL
MM. F. MARTINEZ RUIZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 30 June 1986 by Johannes BECKERS against the Netherlands and registered on 25 August 1986 under file No. 12344/86;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Dutch citizen, born on 23 November 1952. He is at present residing in Vlissingen, the Netherlands. In the proceedings before the Commission he is represented by Mr. C. Kool, a lawyer practising in Middelburg.

The facts, as submitted by the parties, may be summarised as follows.

Since 1981 the applicant has lived in a caravan which is equipped for permanent living accommodation. By definition, such a caravan comes within the scope of the Mobile Home Act (Woonwagenwet) of 1968.

In January 1983 the applicant was residing in his mobile home on a parking place in Vrouwenpolder in the municipality of Veere, the Netherlands. At the request of the Municipal Authorities of Veere, by letter dated 21 April 1983, the Provincial Authorities (Gedeputeerde Staten) of Zeeland advised the applicant and his companion that they intended to use their powers under Sections 32-34 of the Mobile Home Act to vacate the applicant's mobile home by force (bestuursdwang). They pointed out that the applicant and his companion were occupying

the mobile home illegally. Their occupancy could not be legalised under the Mobile Home Act because neither the applicant nor his companion fulfilled the conditions of Section 18 (1)(b) of the Mobile Home Act. This Section provides that a permit to occupy a mobile home can be granted 1) if the applicant practises one of the trades listed in a certain Decree and if he can be considered to be dependent on the occupation of a mobile home for the practice of this trade; or 2) if the applicant or his spouse or one of the persons under whose authority they have been, has had a permit to occupy a mobile home before, or if the applicant can prove that he or one of these other persons has occupied a mobile home before. In the latter case a permit granted because of the practice of a trade or occupation cannot be considered (Section 18 (2) Mobile Home Act).

The Provincial Authorities offered the applicant and his companion the opportunity to leave the mobile home of their own accord before 21 May 1983.

As they failed to do so, the Provincial Authorities communicated a decision to the applicant and his companion on 16 June 1983 to the effect that they would vacate the applicant's mobile home by force if they had not left it within thirty days.

On 1 July 1983 the applicant appealed against this decision to the Provincial Authorities. He maintained, inter alia, that the Mobile Home Act was not in conformity with Article 8 of the Convention, Article 1 of the First Protocol and Article 2 para. 1 of the Fourth Protocol and that he was discriminated against.

On the same date the applicant appealed to the President of the Judicial Division of the Council of State (Voorzitter van de Afdeling Rechtspraak van de Raad van State), requesting the suspension of the decision of the Provincial Authorities.

By decision of 22 July 1983 the President of the Judicial Division of the Council of State refused to suspend the decision of the Provincial Authorities.

By decision of 30 August 1983, sent to the applicant on 14 October 1983, the Provincial Authorities declared the applicant's appeal unfounded. They held, inter alia, that, if everyone had the right permanently to occupy a mobile home, there would be chaos. They considered, therefore, that Section 18 of the Mobile Home Act was not in violation of the Convention.

On 9 November 1983 the applicant appealed against this decision to the Judicial Division of the Council of State (Afdeling Rechtspraak van de Raad van State) which, by decision of 2 January 1986, dismissed the applicant's appeal. It held, inter alia, that the licence system which the Mobile Home Act provided for the occupation of mobile homes was necessary for the purpose of controlling this form of living and for improving the social welfare of mobile home dwellers. For that reason, it considered the permit system and the decision of the Provincial Authorities of 16 June 1983 to be necessary and appropriate for the protection of public order. Moreover, it held that the limitation of the applicant's right to respect for his home was in accordance with Article 8 para. 2 of the Convention and that the encroachment on the use of property was necessary within the meaning of Article 1, second sentence, of the First Protocol. As regards Article 14 of the Convention, the Council held that the condition embodied in Section 18 (1)(b)(2) could be considered as an objective and reasonably justifiable means to achieve the aim of improving the social welfare of mobile home dwellers; such a condition did not amount to an unjustified distinction in treatment under Article 14.

COMPLAINTS

1. The applicant complains of a violation of his right to respect for his private life, his family life and his home, as guaranteed by Article 8 para. 1 of the Convention.

He submits that this right presupposed that a person may decide for himself how he wished to arrange his private and family life, and his living accommodation. He wished to live in a mobile home, but, because he did not satisfy any of the conditions contained in the Mobile Home Act, he was not granted a permit to do so. The permit system was such that, even where none of the restrictions contained in para. 2 of Article 8 of the Convention applied, a permit to live in a mobile home could not be granted to persons such as himself who do not satisfy any of the conditions of Section 18 para. 1(b) of the Mobile Home Act.

2. Invoking Article 1 of Protocol No. 1, the applicant complains of an interference with his right to peaceful enjoyment of his possessions, viz. his mobile home.

3. The applicant complains that, because he is not allowed to live in his mobile home, he is denied the right to liberty of movement or freedom to choose his residence. He invokes Article 2 of Protocol No. 4.

4. The applicant complains that under the Mobile Home Act permission to occupy a mobile home can only be granted where a person belongs to a certain professional group or where a person, his spouse or one of the persons under whose authority they have been has had permission previously to reside in a mobile home or has previously resided in a mobile home. Restrictions of the right to live in a mobile home should be applied in a non-discriminatory manner. However, in the Mobile Home Act a distinction was made on the ground of birth. The applicant invokes Article 14, taken together with Article 8 of the Convention, Article 1 of Protocol No. 1 and Article 2 of Protocol No. 4.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 30 June 1986 and registered on 25 August 1986.

On 13 April 1989 the Commission decided to communicate the application to the respondent Government and invite them to submit written observations on the admissibility and the merits of the application.

The Government's observations were received by letter dated 19 July 1989 and the applicant's observations were dated 28 September 1989.

THE LAW

1. The applicant complains that, since he is not eligible for a permit to occupy a mobile home, his right to respect for his private life, his family life and his home has been violated. He invokes Article 8 para. 1 (Art. 8-1) of the Convention.

The applicant submits that the right to respect for his private life, his family life and his home presupposed the free choice for every citizen to decide how to lead his private life and how to organise his family life as well as the right to choose the type of dwelling he wished. Denying this choice to a citizen amounted to the most radical form of interference with the exercise of his rights as guaranteed by Article 8 para. 1 (Art. 8-1) of the Convention.

The Government argue that statutory limitations of the rights set out in Article 8 para. 1 (Art. 8-1) were justified under para. 2

(Art. 8-2) by certain interests, e.g. those of the traditional mobile home dwellers which were protected by the permit system under the Mobile Home Act.

The Commission notes that the essence of the applicant's complaint is directed against the requirements under the Mobile Home Act. It does not relate to the manner of execution of the law by a State authority, be it administrative or judicial. The Commission must therefore direct its attention primarily to the contested legislation itself, in order to determine whether it is compatible with Article 8 (Art. 8) of the Convention. This does not mean that it will examine the legislation in abstracto. The Commission must confine its attention, as far as possible, to the concrete case before it.

Article 8 para. 1 (Art. 8-1) of the Convention provides:

"Everyone has the right to respect for his private and family life, his home and his correspondence."

The scope of the right to respect for private life is such that it secures to the individual a sphere within which he can freely pursue the development and fulfilment of his personality. The Commission accepts that in the present case the applicant's right to respect for his private life has been interfered with, as he is not allowed to live in his mobile home.

It is true that a minority's life style may fall under the protection of private life, family life or the home (cf. No. 9278/81 & 9415/81, Dec. 3.10.83, D.R. 35 p. 30). However, in the present case, the applicant does not belong to the minority of traditional mobile home dwellers nor is there any need for him to live in a mobile home.

The Commission recalls that Article 8 para. 2 (Art. 8-2) of the Convention allows interference by a public authority with the exercise of the right to respect for private life, provided such interference is in accordance with the law and is necessary in a democratic society for the prevention of disorder.

The Commission notes that under Section 14 of the Mobile Home Act a permit is required if someone wants to live in a mobile home. Under Section 18 of the Act such a permit can only be granted if the applicant for a permit practises one of the trades listed in a certain Decree and if he can be considered to be dependent on the occupation of a mobile home for the practice of this trade, or if the applicant for a permit or his spouse or one of the persons under whose authority they have been, has had a permit to occupy a mobile home before, or if the applicant for a permit can prove that he or one of these other persons has occupied a mobile home before. In the present case, as the applicant did not satisfy any one of the conditions mentioned in Section 18 of the Mobile Home Act, a permit to occupy a mobile home could not be granted to him. The interference with the exercise of the right to respect for private life is, therefore, in accordance with the law.

The Commission considers that the aim of prevention of disorder pursued by the authorities in establishing the requirements for a permit under the Mobile Home Act is a legitimate one.

The question which remains to be answered is whether or not this restriction was "necessary in a democratic society".

In determining whether an interference was "necessary in a democratic society" allowance should be made for the margin of appreciation that is left to the Contracting States (Eur. Court H.R., W. v. the United Kingdom judgment of 8 July 1987, Series A no. 121, p. 27, para. 60 (b) and (d) ; Eur. Court H.R., Olsson judgment of 24

March 1988, Series A no. 130, pp. 31-32, para. 67). In particular, in implementing social and economic policies the margin of appreciation is a wide one (Eur. Court H.R., James and Others judgment of 21 February 1986, Series A no. 98, p. 32, para. 46).

In this perspective and having regard to the Commission's above finding that the applicant cannot claim to belong to a minority entitled to specific protection under Article 8 (Art. 8) of the Convention, the Commission is of the opinion that the rules established by the Mobile Home Act are not disproportionate to the legitime aim pursued and are therefore necessary in a democratic society.

The Commisson does not find it necessary separately to examine whether, in the present case, there was also interference with the applicant's right to respect for his family life or his home, since such an interference would in any case be justified under Article 8 para. 2 (Art. 8-2) of the Convention for the same reasons.

In these circumstances the Commission finds that an examination of this complaint, as it has been submitted, does not disclose any appearance of a violation of Article 8 (Art. 8).

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant further complains that his right to the peaceful enjoyment of his possessions is infringed upon, as he is not eligible under the Mobile Home Act for a permit to occupy his mobile home. He also contends that his eviction by force from his mobile home by the authorities amounts to a violation of his right to peaceful enjoyment of his possessions. He invokes Article 1 of Protocol No. 1 (P1-1) of the Convention.

Article 1 of Protocol No. 1 (P1-1) provides as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Government submit that, in view of the shortage of suitable sites for traditional mobile home dwellers, a permit system had to be introduced. As the general interest dictated the restriction on the applicant's use of his property, the Government consider this measure to be justified under the second paragraph of Article 1 of Protocol No. 1 (P1-1).

The Commission considers that there has been an interference with the applicant's peaceful enjoyment of his possessions, within the meaning of the first sentence of the first paragraph of Article 1 of Protocol No. 1 (P1-1), since he was not granted a permit to occupy his mobile home. But the Commission does not find that the present case discloses any deprivation of the applicant's possessions, within the meaning of the second sentence of the first paragraph of that provision: the applicant has the possibility to sell his mobile home or to use it himself as a holiday caravan, i.e. on a non-permanent basis.

In examining whether an interference with property rights falls within the ambit of the second paragraph of Article 1 of Protocol No. 1 (P1-1), the Commission's task is to review the lawfulness, purpose and proportionality of the restrictions in question (Mellacher and others v. Austria, Comm. Report 11.7.88, para. 202). The principle of proportionality, which is inherent in the Convention, requires the Commission to determine whether, whilst recognising the margin of appreciation afforded to the Contracting States, a fair balance was struck between the general interest of the community and the protection of the individual's rights (Eur. Court H.R., Sporrong and Lönnroth judgment of 23 September 1982, Series A no. 52, p. 26, para. 69).

The Commission notes that the applicant is not eligible for a permit to occupy his mobile home, because he does not meet the requirements of the Mobile Home Act. The Commission therefore finds that the control of the use of property in the present case must be regarded as lawful.

As for the purpose of the Dutch policy in respect of mobile homes of which the Mobile Home Act forms a part, the Commission accepts that this policy is in pursuance of the prevention of disorder. It is thus, prima facie, in accordance with the general interest.

Concerning the proportionality of the measure taken against the applicant, the Commission takes into account the fact that the applicant had never sought a permit to occupy a mobile home and that he knew, or could have known, that he was not eligible for such a permit. Furthermore, the applicant has not submitted that, in his case, special circumstances existed which would warrant a departure from the legitimate policy of the Dutch authorities in respect of mobile homes.

In the light of these considerations, the Commission finds that a proper balance has been struck between the applicant's personal interest and the general interest. The control of the applicant's property, which prevents him from using his mobile home as a permanent living accommodation, is, therefore, in accordance with the requirements of Article 1 of Protocol No. 1 (P1-1).

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant complains that he was denied liberty of movement or freedom to choose his residence. He contends in particular that the permit system, according to which he has been denied a permit, as well as his subsequent eviction from his mobile home constitute a violation of Article 2 of Protocol No. 4 (P4-2) of the Convention.

In the Government's submissions, the limitations of the applicant's rights as guaranteed by Article 2 of Protocol No. 4 (P4-2) are in accordance with the law and necessary in a democratic society, since the population density in the Netherlands as well as the housing shortage required regulating measures such as the Mobile Home Act with its permit system. The Government therefore consider the restrictions of the applicant's rights to be justified under para. 3 of Article 2 of Protocol No. 4 (P4-2-3).

The Commission is of the opinion that there has been no interference with the applicant's right to move and to take up residence. The applicant is only restricted from living in a mobile home, but he is free to buy or rent a house wherever he wants in the Netherlands.

It follows that this part of the application is manifestly

ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. Finally, the applicant complains of discrimination in respect of his right to respect for his private life, his family life and his home, his right to peaceful enjoyment of his possessions and his right to liberty of movement or freedom to choose his residence. In particular, the applicant observes that the birth criterion set out in Section 18 of the Mobile Home Act made a discriminatory distinction between traditional home dwellers and the rest of the population, as only the former were entitled to a permit to live in a mobile home. The applicant invokes Article 14 (Art. 14) of the Convention in conjunction with Article 8 (Art. 8) of the Convention, Article 1 of Protocol No. 1 (P1-1) and Article 2 of Protocol No. 4 (P4-2).

The applicant argues that the social aim pursued by the Mobile Home Act, especially the birth criterion set out in Section 18, provided no objective and reasonable justification, as the Government could and should adopt another, non discriminatory, response to the social needs of traditional mobile home dwellers. The applicant concludes that the invoked violations have no justification.

The Government contend that the distinction drawn between the group of traditional mobile home dwellers and the rest of the population had an objective and reasonable justification. As the traditional mobile home dwellers constituted a socially disadvantaged group, the Dutch Authorities had pursued a socio-economic policy aimed at integrating this group into society. The Mobile Home Act with its permit system implemented this policy by offering them a certain protection, which takes into consideration the needs of a special group. Since the applicant does not belong to this group, there was no discrimination within the meaning of Article 14 (Art. 14) of the Convention.

The Commission refers to the case-law of the European Court of Human Rights (Belgian Linguistic cases judgment of 23 July 1968, Series A no. 6, p. 34, para. 10), according to which a difference of treatment in respect of the enjoyment of a Convention right constitutes discrimination contrary to Article 14 (Art. 14) of the Convention only if it has no objective and reasonable justification, or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised.

It is true that a difference of treatment exists between persons who satisfy one of the conditions mentioned in Section 18 of the Mobile Home Act, on the one hand, and persons who do not, on the other.

However, the Commission considers that this difference in treatment has an objective and reasonable justification since it seeks to protect those who are dependent on a mobile home for the practice of their trade as well as those who have habitually lived in mobile homes. There is no indication, in the circumstances of the present case, of a lack of proportionality between the policy of social integration and the means employed to implement this policy.

The Commission concludes that the examination of the applicant's complaint on this point does not reveal any appearance of discrimination at variance with Article 14 (Art. 14) of the Convention. This part of the application is consequently manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission by a majority

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission	President of the Commission
(H.C. KRÜGER)	(C.A. NØRGAARD)