AS TO THE ADMISSIBILITY OF

Application No. 14846/89
by Hubertus Johannes KRONENBURG
against the Netherlands

The European Commission of Human Rights (Second Chamber) sitting in private on 13 January 1992, the following members being present:

MM.S. TRECHSEL, President of the Second Chamber
G. JÖRUNDSSON
A. WEITZEL
J.C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs.G.H. THUNE
MM.F. MARTINEZ RUIZ
L. LOUCAIDES
J.-C. GEUS

Mr.K. ROGGE, Secretary to the Second Chamber

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

Having regard to the application introduced on 25 November 1988 by Hubertus Johannes KRONENBURG against the Netherlands and registered on 31 March 1989 under file No. 14846/89;

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 in 1930 and presently residing in Rotterdam, the Netherlands. Before the Commission, he is represented by C.A. Busquet, a lawyer practising in Rotterdam.

The facts of the case, as submitted by the applicant, may be summarised as follows.

In January 1982, the applicant bought a house in a new sub-division of Rotterdam, in the sub-municipality (deelgemeente) Prins Alexander, which house was built in the beginning of that year. According to the zoning plan, established by the Municipal Council (Gemeenteraad) of Rotterdam in 1978, and finally approved by the Crown on 8 February 1983, and according to documentation provided in January 1982 by the sub-municipality, this part of the sub-division was zoned as an up-market residential area in park-like surroundings.

However, because the market for such houses was deteriorating considerably, only one of the three major building projects in that part of the sub-division was realised. A building project for 62 houses to buy was replaced by a project for 102 relatively inexpensive houses for rent. Another project for 58 houses was stopped, and instead, in late 1981 an old people's home, consisting of 78 individual dwellings and a nursing home with 132 beds, was planned. The home was to be composed of different separate buildings of 3 to 4 floors.

Because the latter complex was not in conformity with the provisions of the zoning plan which, inter alia, only provided for buildings of 3 floors, the sub-municipality started a procedure to amend that plan in order to make the granting of a building permit possible. This procedure, inter alia, provided for the hearing of the inhabitants in this sub-division. Because the applicant's house had not yet been completed, although he had already bought it, he did not receive an invitation to attend this hearing.

By Royal Decree (Koninklijk Besluit) of 8 February 1983, the amended zoning plan became irrevocable.

On 15 February 1983, the building permit was granted. The applicant and 47 other inhabitants, united in the association of house-owners known as "E 50", filed an objection against the permit on the basis of the Administrative Jurisdiction concerning Government Decrees Act (Wet Administratieve Rechtspraak Overheidsbeschikkingen). After a rejection by the local authority (dagelijks bestuur van de deelgemeente), the association "E 50" appealed to the Judicial Division of the Council of State (Afdeling Rechtspraak van de Raad van State), which also rejected the appeal by Royal Decree of 16 November 1984.

On 5 February 1985, the applicant and the other inhabitants filed a request for compensation with the Municipal Council (gemeenteraad) of Rotterdam on the basis of Article 49 of the Town and Country Planning Act (Wet op de Ruimtelijke Ordening). The Council rejected the request on 6 March 1986. Subsequently, the inhabitants appealed to the Crown. After and in conformity with advice by the Administrative Litigation Division of the Council of State (Afdeling Geschillen van Bestuur van de Raad van State), the Crown rejec
r Artic
appeal by Royal Decree of 20 June 1988, considering that there was no damage justifying compensation under Article 49 of the Town and Country Planning Act. The Crown noted, in particular, that the amendments concerning the height of buildings were not contrary to the general orientations of the zoning plan.

In the meantime the association "E 50" had also instituted civil proceedings against the Municipality of Rotterdam with the Regional Court (Arrondissementsrechtbank) of Rotterdam on the basis of Article 1401 of the Civil Code (Burgerlijk Wetboek), claiming compensation for tort caused by the Municipality by providing false information about the building projects close to the house they planned to buy. On 26 June 1987, the Regional Court rejected the request for compensation. On the basis of a letter from their lawyer, expressing certain doubts about the chances of success of an appeal, the association decided not to lodge an appeal.

COMPLAINTS

1.The applicant complains that the decision of the Crown of 8 February 1983 amending the zoning project and modifying the type and density of the buildings near to his house affected the value of his property. He invokes Article 1 of Protocol No. 1 to the Convention.

2. He also alleges that this decision discriminated against him in the enjoyment of his rights and freedoms. He invokes Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1.

3. The applicant finally complains under Article 6 of the Convention that he did not have a fair hearing in that his case was wrongly determined. He submits that the decision of the Crown of 20 June 1988 to reject his claims for compensation did not take account of his personal interests and that the refusal to award him compensation was motivated by political considerations.

THE LAW

1.The applicant complains that the decision of the Crown of 8 February 1983 amending the zoning plan and the ensuing granting of a building permit for buildings of a different type and in a higher density than previously foreseen, in the vicinity of his house, affected the value of his property. He invokes Article 1 of Protocol No. 1 (P1-1) to the Convention of which the first paragraph provides as follows:

"Every legal or natural 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 by law and by the general principles of international law."

Under Article 26 (Art. 26) of the Convention the Commission may only deal with an application which has been introduced within a period of six months after the final national decision. The applicant complains about a decision of the Crown taken in 1983 and of a building permit in respect of which the final decision was taken in 1984 whereas he introduced his application in 1988. Therefore the applicant has not complied with the six months rule as embodied in Article 26 (Art. 26) of the Convention.

It follows that this part of the application must be rejected under Article 26 in conjunction with Article 27 para. 3 (Art. 26+27-3) of the Convention for being out of time.

2. The applicant also complains that the decision of the Crown of 8 February 1983 discriminated against him in the enjoyment of his right to peaceful enjoyment of his possessions. He invokes Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 (Art. 14+P1-1).

Article 14 (Art. 14) of the Convention provides that "the enjoyment of the rights and freedoms set forth in (the) Convention shall be secured without discrimination on any ground". It is not clear from the applicant's submissions in relation to whom he claims to have suffered discrimination.

In any event, the Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of Article 14 (Art. 14), as this complaint is also made out of time. The Commission refers in this respect to its above findings.

It follows that this part of the application must also be rejected under Article 26 in conjunction with Article 27 para. 3 (Art. 26+27-3) of the Convention for being out of time.

3. The applicant finally complains that he did not receive a fair hearing in that the Crown, in its decision of 20 June 1988, wrongly determined his case. It disregarded his personal interests and its refusal to award him compensation was motivated by political considerations.

The Commission recalls that, in accordance with Article 19 (Art. 19) of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties in the Convention. In particular, it is not competent to deal with applications alleging that errors of law or fact have been committed by domestic authorities, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention (see e.g. mutatis mutandis No. 458/59, Dec. 29.3.60, Yearbook 3 pp. 222, 236; No. 5258/71, Dec. 8.2.73, Collection 43 pp. 71, 77; No. 7987/77, Dec. 13.12.79, D.R. 18 pp. 31, 45).

It follows that this part of the application must be rejected as being 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 Second Chamber President of the Second Chamber

(K. ROGGE) (S. TRECHSEL)