COURT (PLENARY)

CASE OF BENTHEM v. THE NETHERLANDS

(Application no. 8848/80)

JUDGMENT

STRASBOURG

23 October 1985

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The European Court of Human Rights, taking its decision in plenary session in application of Rule 50 of the Rules of Court and composed of the following judges:

Mr. R. Ryssdal, President,

Mr. W. Ganshof van der Meersch,

Mr. J. Cremona,

Mr. Thór Vilhjálmsson,

Mrs. D. Bindschedler-Robert,

Mr. G. Lagergren,

Mr. F. Gölcüklü,

Mr. F. Matscher,

Mr. J. Pinheiro Farinha,

Mr. L.-E. Pettiti,

Mr. B. Walsh,

Sir Vincent Evans,

Mr. R. Macdonald,

Mr. C. Russo,

Mr. R. Bernhardt,

Mr. J. Gersing,

Mr. C. W. Dubbink, ad hoc judge,

and also of Mr. M.-A. Eissen, Registrar, and Mr. H. Petzold, Deputy Registrar,

Having deliberated in private on 28 February and 30 September 1985,

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

PROCEDURE

1. The present case was referred to the Court by the European Commission of Human Rights ("the Commission") on 20 March 1984, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). The case originated in an application (no. 8848/80) against the Kingdom of the Netherlands lodged with the Commission on 21 December 1979 under Article 25 (art. 25) by Mr. Albert Benthem, a Netherlands national.

2. 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 or not the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 para. 1 (art. 6-1).

3. In response to the inquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, Mr. Benthem stated that he wished to take part in the proceedings pending before the Court and designated the lawyer who would represent him (Rule 30).

4. The Chamber of seven judges to be constituted included, as ex officio members, Mr. G. Wiarda, the elected judge of Netherlands nationality (Article 43 of the Convention) (art. 43), and Mr. R. Ryssdal, the Vice-President of the Court (Rule 21 para. 3 (b)). On 27 March 1984, Mr. Wiarda, in his capacity as President of the Court, drew by lot, in the presence of the Registrar, the

names of the five other members, namely Mr. J. Cremona, Mr. Thór Vilhjálmsson, Mr. F. Gölcüklü, Mr. L.-E. Pettiti and Mr. C. Russo (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

Mr. Wiarda subsequently withdrew in pursuance of Rule 24 para. 2. On 17 December, the Netherlands Government ("the Government") appointed Mr. C. W. Dubbink, a former President of the Supreme Court of the Netherlands, to sit as an ad hoc judge (Article 43 of the Convention and Rule 23) (art. 43).

5. Previously, on 22 May 1984, the Chamber had unanimously decided to relinquish jurisdiction in favour of the plenary Court (Rule 50).

6. Mr. Ryssdal, who had assumed the office of President (Rule 21 para. 5 and Rule 50 para. 3), ascertained, through the Registrar, the views of the Agent of the Government, the Delegates of the Commission and the applicant's lawyer regarding the necessity for a written procedure (Rule 37 para. 1). On 24 May 1984, he directed that the Agent and the lawyer should each have until 24 August to file a memorial and that the Delegates should be entitled to reply in writing within two months from the date of the transmission to them by the Registrar of whichever of the aforesaid documents should last be filed.

The memorials were received at the registry on 23 August. By letter of 19 July 1984, the applicant's lawyer had communicated his client's claims under Article 50 (art. 50) of the Convention. By letter received on 17 October, the Secretary to the Commission informed the Registrar that the Delegates would present their observations at the hearings.

7. On 18 December 1984, after consulting, through the Registrar, the Agent of the Government, the Delegates of the Commission and the lawyer for the applicant, the President directed that the oral proceedings should open on 26 February 1985 (Rule 38).

8. On 7 and 19 February 1985, the Commission filed a certain number of documents, the production of which had been requested by the Registrar on the President's instructions.

9. The hearings were held in public at the Human Rights Building, Strasbourg, on the appointed day. Immediately before they opened, the Court had held a preparatory meeting.

There appeared before the Court:

- for the Government

Mr. S.H. Bloembergen, Assistant Legal Adviser

to the Ministry of Foreign Affairs, *Delegate of the Agent*,

Mr. E. Korthals Altes, Landsadvocaat, *Counsel*,

Mr. H.F. van Kinschot and

Mr. C.R. Niessen, Ministry of Home Affairs,

Mr. J.A. Van Angeren and

Mr. J.J. Wiarda, Ministry of Justice,

Mr. A.V. van den Berg and

Mr. G.J. Menken, Ministry of Housing, Physical Planning and

Environment, *Advisers*;

- for the Commission

Mr. H. Danelius,

Mr. M. Melchior, *Delegates*;

- for the applicant

Mr. N.S.J. Koeman, advocaat, *Counsel*.

The Court heard addresses by Mr. Korthals Altes for the Government, by Mr. Danelius and Mr. Melchior for the Commission and by Mr. Koeman for the applicant, as well as their replies to its questions.

AS TO THE FACTS

I. THE PARTICULAR CIRCUMSTANCES OF THE CASE

10. Mr. Albert Benthem, who was born in 1927, lives at Noordwolde (municipality of Weststellingwerf), where he used to own and run a garage.

11. On 5 April 1976, he applied to the municipal authorities, in accordance with the Nuisance Act 1952 (see paragraphs 19-22 below), for a licence to bring into operation an installation for the delivery of liquid petroleum gas ("LPG") to motor vehicles. The installation comprised a surface storage tank with a capacity of 8 cubic metres.

The application was made public in order to enable those wishing to object to do so. On 2 June 1976, three neighbours expressed their fear of fire and an explosion being caused by lightning.

12. On 11 August 1976, the municipal authorities granted the licence, subject to fifty-six conditions which they considered would counter the dangers in question. They referred to a letter in which an official of the Groningen Labour Inspectorate had indicated that he agreed with such a course.

13. On 9 August 1976, the Regional Health Inspector had written to the municipal authorities to advise them to refuse a licence; in his view, the proximity of houses involved excessive risks. On 17 September, he lodged an appeal with the Crown (Kroonberoep; see paragraphs 24-26 below).

The municipal authorities informed Mr. Benthem of the appeal on 6 October 1976. They stated that since it had no suspensive effect, he could erect the installation. However, they added that if he did so, they would not be liable for any financial losses he might sustain in the event of the licence being cancelled.

14. The Chairman of the Administrative Litigation Division of the Council of State (Afdeling voor Geschillen van Bestuur van de Raad van State) - to which Division it fell to investigate the matter and then advise the Crown - sought information from the Minister of Public Health and Environmental Protection (sections 26 and 32(c) of the Council of State Act; see paragraphs 24 and 25 below). This information was supplied, in a letter of 7 February 1977, by the Director General for Environmental Protection; he expressed the view that the appeal was well-founded as he considered that further conditions ought to be attached to the licence.

15. After a hearing in the presence of the parties, during which the applicant was heard on 22 December 1977, the Chairman of the Division asked the Director General for additional information.

The latter explained, in a letter of 18 May 1978, that the situation had changed: greater importance was now attached to the dangers involved in storage and delivery. He shared the view of the Chief Inspector of Public Health that, pending revision of the current officially-recommended standards, there should not be more than twenty-five houses within a radius of 150 metres from the gas tanks and dispensers, nor less than 25 metres between the installation and the nearest houses.

The Director General therefore concluded that the licence sought by Mr. Benthem should be refused, as these conditions were not satisfied.

16. At a hearing held on 12 September 1978, the applicant argued that the Chief Inspector’s "interim position", as well as being inadequately motivated, was not based on sufficiently sound technical grounds. Having been asked by the Chairman of the Division to elaborate on his opinion, the Director General

provided, on 30 November 1978, further details concerning the safety hazards; he stated that, pending the results of a study (which was being undertaken because of the many appeals outstanding), a cautious attitude should be adopted when granting licences. He thus confirmed his earlier position.

17. On 8 June 1979, the Administrative Litigation Division sent to the Minister of Public Health and Environmental Protection an opinion recommending that the licence be refused; a draft of the Decree to be adopted was attached thereto.

18. On 30 June 1979, by a Decree in the same terms as the draft, the Crown quashed the municipal authorities' decision. It considered that a different view should be taken regarding the distance between an LPG installation and the neighbouring houses and that, in the particular circumstances, the risks could not be eliminated merely by the imposition of additional conditions.

As a result, the municipal authorities issued an order directing Mr. Benthem to cease operating his installation. He lodged an appeal against this decision, but it was confirmed by the Crown by a Decree of 13 June 1980. A second decision - dated 10 October 1980 and providing for the closure of the installation by the authorities themselves - was quashed, on formal grounds, by the Judicial Division (Afdeling Rechtspraak) of the Council of State on 26 July 1982. According to information which was given to the Court at the hearings and was not contested, the installation was not closed down until February 1984. At the beginning of that year, Mr. Benthem had been declared bankrupt.

II. APPLICABLE DOMESTIC LAW

1. The Nuisance Act 1952 (Hinderwet)

19. The Nuisance Act 1952 prohibits, in the absence of a licence, the erection, bringing into operation, exploitation, extension or modification of

certain installations which may be a source of danger, damage or nuisance to their surroundings (section 2 (1)).

The installations concerned are listed in a Decree, and they include those for delivering LPG.

20. Licence applications, which are submitted to the municipal authorities, are first of all notified to the public, who may make oral or written objections. Certain government bodies - such as the Regional Health Inspector - are also given an opportunity to express their views.

The decision lies with the municipal authorities (section 4). They may refuse a licence only if the erection, bringing into operation, exploitation, extension or modification of the installation would result in danger or, as regards property, industry or health, damage or serious nuisance, and if such danger, damage or nuisance could not be sufficiently averted by the imposition of conditions (section 13 (1) in the version in force at the relevant time).

Once issued, a licence covers both the original holder and his assignees (section 14). It may be granted by the municipal authorities for a limited period or subject to conditions binding upon the licensee (sections 16 and 17).

21. After the persons and authorities involved have been informed of the decision, the applicant for the licence, anyone who duly raised objections and the government bodies concerned may lodge an appeal with the Crown within a certain period (section 20, which was then in force). The Crown determines the appeal on the advice of the Administrative Litigation Division of the Council of State (section 29).

An appeal has no suspensive effect but, under section 60 (a) of the Council of State Act (Wet op de Raad van State), the appellant may ask the Chairman of the Division to defer implementation of the decision or to order interim measures.

22. At the close of the proceedings, the Crown will confirm, amend or quash the initial decision.

2. Provisions on procedure in appeals to the Crown (Kroonberoep)

23. Under the Constitution, the person of the King - or the Queen - is inviolable. The King takes his decisions on the responsibility of a Minister, who has to countersign them.

The expression "the Crown", when decision-making powers are being exercised, is commonly used to denote the King together with the Minister or Ministers.

24. The Crown gives rulings in administrative litigation which is brought before it on appeal. In carrying out this function, the Crown will not take a decision until the Administrative Litigation Division of the Council of State has investigated the matter and prepared a draft decision (section 26 (1) of the Council of State Act).

The members of the Division, whose number is fixed by the Crown but cannot be less than five including the Chairman, are chosen by the Crown from amongst the members of the Council of State and on its recommendation. The Administrative Litigation Division is to be distinguished from the Judicial Division which itself decides cases falling within its competence.

25. The Chairman of the Administrative Litigation Division calls for the necessary official reports and informs the Minister concerned thereof (section 32 (c) (1)). The interested parties may submit such documentary evidence as they consider necessary (section 34). A public hearing enables them, if they so wish, to argue their cases (section 45). Like the Chairman of the Division, they may call witnesses or experts, put questions to them and comment on any evidence given (sections 41 (4), 46 (5) and (6) and 48).

The Division deliberates in camera (section 51); it may carry out on-site inspections (section 52), ask for additional official reports, on which the

interested parties may comment (section 54), and hold further hearings (section 55).

It then draws up a draft Royal Decree, which it submits to the Crown together with its advice (section 56). The Minister concerned has six months to inform the Division of any objections he may have and ask it to reconsider the case (section 57).

26. After receiving the Division's advice or further advice, the Crown issues a Royal Decree within six months. This time-limit may be extended by three months (section 58 (1)). After it has expired, the Crown must decide in accordance with the Division's advice (section 58 (a)). Prior to that, it may depart from the advice, but only if the Minister concerned has first consulted the Minister of Justice or, where the latter is himself concerned, if he has first consulted the Prime Minister (sections 57 and 58 (2) (a) and (b)). In practice, the Crown very rarely takes this course.

The Crown's decision, against which no further appeal is available, may be based on considerations of law or of expediency.

The Decree, which incorporates the reasons therefor, is immediately sent to the interested parties and the Division. It is then made available for one month for public inspection at the Secretariat of the Council of State (section 59 (2)). If the Decree departs from the advice, it is published in the Official Gazette (Staatsblad) together with the Minister's report, which contains the Division's draft and the Minister's correspondence with the Division and with the Minister of Justice or the Prime Minister (section 58 (3)).

PROCEEDINGS BEFORE THE COMMISSION

27. Mr. Benthem filed his application (no. 8848/80) with the Commission on 21 December 1979. He claimed that a dispute over civil rights and obligations was involved and that, contrary to the requirements of Article 6 para. 1 (art. 6-1) of the Convention, his case had not been heard by an independent and impartial tribunal.

28. The Commission declared the application admissible on 10 March 1982.

In its report of 8 October 1983 (Article 31) (art. 31), the Commission expressed the opinion that Article 6 para. 1 (art. 6-1) was not applicable in the present case (nine votes against eight), that it was not necessary to determine whether the proceedings complained of were in conformity with the requirements of that provision and that there had been no breach thereof (eleven votes against six).

The full text of the Commission's opinion and of the separate opinions contained in the report is reproduced as an annex to the present judgment.

FINAL SUBMISSIONS MADE TO THE COURT

29. In the respective memorials of 23 August 1984, the Court was requested, by the Government, "to hold that there has been no violation of the Convention in the present case" and, by the applicant, to find on the contrary that there had been and to grant him reasonable redress.

AS TO THE LAW

I. APPLICABILITY OF ARTICLE 6 PARA. 1 (art. 6-1)

30. According to Mr. Benthem, there was a serious dispute as to whether the issue of the licence he had sought, or on the contrary the refusal of his application, was in conformity with the Nuisance Act and, more generally, with the requirements of the rule of law.

In his view, both the initial grant of the licence by the municipal authorities and its subsequent refusal by the Crown had decisively and directly affected professional activities and contractual relations, and hence civil rights and obligations, within the meaning of Article 6 para. 1 (art. 6-1). This paragraph provides as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ..."

31. The Government, for their part, argued as follows. To come within the scope of Article 6 (art. 6), a decision by a public authority had to relate directly, if not to the conclusion of private-law contracts, at least to an activity involving such contracts. In addition, the person concerned had to be carrying on his business by virtue of an irrevocable licence. However, this was not so here. Nor could Mr. Benthem pray in aid his right to the full and free enjoyment of his property, since that right was circumscribed by legal regulations. Again, this was not a case where a right previously granted had been withdrawn or suspended, but one where the creation of a new right by means of a licence was in question. Finally, the right to carry on a garage business was not at stake; nothing would have prevented Mr. Benthem from continuing it and, notably, from selling LPG at a site where there was no risk for the neighbourhood.

In the alternative, the Government maintained that the right claimed by the applicant did not exist prior to the municipal authorities' decision; even thereafter, the right was only provisional until such time as the decision was reversed by the Crown.

In the Government's submission, Article 6 para. 1 (art. 6-1) was therefore not applicable in the present case.

By nine votes to eight, the Commission arrived at the same conclusion.

A. Existence of a "contestation" (dispute) concerning a right

1. Principles adopted by the Court in its case-law

32. The principles that emerge from the Court's case-law include the following:

(a) Conformity with the spirit of the Convention requires that the word "contestation" (dispute) should not be "construed too technically" and should be "given a substantive rather than a formal meaning" (see the Le Compte, Van Leuven and De Meyere judgment of 23 June 1981, Series A no. 43, p. 20, para. 45).

(b) The "contestation" (dispute) may relate not only to "the actual existence of a ... right" but also to its scope or the manner in which it may be exercised (see the same judgment, loc. cit., p. 22, para. 49). It may concern both "questions of fact" and "questions of law" (see the same judgment, loc. cit., p. 23, para. 51 in fine, and the Albert and Le Compte judgment of 10 February 1983, Series A no. 58, p. 16, para. 29 in fine, and p. 19, para. 36).

(c) The "contestation" (dispute) must be genuine and of a serious nature (see the Sporrong and Lönnroth judgment of 23 September 1982, Series A no. 52, p. 30, para. 81).

(d) According to the Ringeisen judgment of 16 July 1971, "the ... expression ‘contestations sur (des) droits et obligations de caractère civil’ [disputes over civil rights and obligations] covers all proceedings the result of which is decisive for [such] rights and obligations" (Series A no. 13, p. 39, para. 94). However, "a tenuous connection or remote consequences do not suffice for Article 6 para. 1 (art. 6-1) ...: civil rights and obligations must be the object - or one of the objects - of the ‘contestation’ (dispute); the result of the proceedings must be directly decisive for such a right" (see the above-mentioned Le Compte, Van Leuven and De Meyere judgment, Series A no. 43, p. 21, para. 47).

2. Application of these principles in the present case

33. The Court considers that a "genuine and serious" contestation (dispute) as to the "actual existence" of the right to a licence claimed by the applicant arose between him and the Netherlands authorities at least after the Regional Inspector’s appeal against the decision of the Weststellingwerf municipal authorities. This is shown especially by the fact that, from 11 August 1976 to

30 June 1979, Mr. Benthem was able, without contravening the law, to exploit his installation by virtue of the licence granted by the latter authorities (see paragraph 13, sub-paragraph 2, above). In addition, the result of the proceedings complained of, which could - and in fact did - lead to a reversal of the decision under appeal, was directly decisive for the right at issue.

The Crown thus had to determine a contestation (dispute) concerning a right claimed by Mr. Benthem.

B. Civil character of the right at issue

1. Principles adopted by the Court in its case-law

34. According to the Court's case-law, "... the concept of 'civil rights and obligations' cannot be interpreted solely by reference to the domestic law of the respondent State" (see the König judgment of 28 June 1978, Series A no. 27, pp. 29-30, paras. 88-89).

Furthermore, Article 6 (art. 6) does not cover only "private-law disputes in the traditional sense, that is disputes between individuals or between an individual and the State to the extent that the latter had been acting as a private person, subject to private law," and not "in its sovereign capacity" (see the same judgment, loc. cit., p. 30, para. 90). Accordingly, "the character of the legislation which governs how the matter is to be determined ... and that of the authority which is invested with jurisdiction in the matter ... are ... of little consequence": the latter may be an "ordinary court, [an] administrative body, etc." (see the above-mentioned Ringeisen judgment, Series A no. 13, p. 39, para. 94). "Only the character of the right at issue is relevant" (see the above-mentioned König judgment, Series A no. 27, p. 30, para. 90).

35. The Court does not consider that it has to give on this occasion an abstract definition of the concept of "civil rights and obligations". In its view, the proper course is to apply to the present case the principles set out above.

2. Application of these principles in the present case

36. The grant of the licence to which the applicant claimed to be entitled was one of the conditions for the exercise of part of his activities as a businessman. It was closely associated with the right to use one's possessions in conformity with the law's requirements. In addition, a licence of this kind has a proprietary character, as is shown, inter alia, by the fact that it can be assigned to third parties.

According to the Government, Mr. Benthem was prevented only from exploiting an LPG installation on a site of his own choosing, and could have obtained a licence for another locality. The Court is not persuaded by this argument: a change of this kind - which anyway would have involved an element of chance since it would have required a fresh application whose success was in no way guaranteed in advance - might have had adverse effects on the value of the business and of the goodwill and also on Mr. Benthem's contractual relations with his customers and his suppliers. This confirms the existence of direct links between the grant of the licence and the entirety of the applicant's commercial activities.

In consequence, what was at stake was a "civil" right, within the meaning of Article 6 para. 1 (art. 6-1). That provision was therefore applicable to the proceedings in the appeal to the Crown.

II. COMPLIANCE WITH ARTICLE 6 PARA. 1 (art. 6-1)

37. In order to determine whether the proceedings complained of were in conformity with Article 6 para. 1 (art. 6-1), two institutions fall to be considered, namely the Administrative Litigation Division of the Council of State and the Crown.

A. The Administrative Litigation Division of the Council of State

38. The applicant relied on the fact that the Division merely tendered an advice, which had no binding force; in addition, it did not, in his submission, constitute an independent and impartial tribunal. On technical matters, it consulted the department of the competent Minister; the latter could request

the Division to reconsider its draft Decree and was entitled, as a last resort, not to approve it. Moreover, the Division was not obliged to give its views within a specified time-limit and the text of its advice remained secret, being communicated neither to the appellant nor to the licence-holder nor to the issuing authority.

39. According to the Government, one had to look beyond the appearances in order to determine whether the proceedings in appeals to the Crown satisfied the requirements of Article 6 para. 1 (art. 6-1). Although the Division was not empowered to determine the dispute, it took cognisance of all the aspects of the case and not only of questions of law; in fact, it acted like a court, and only very rarely did the competent Minister not follow the Division's proposals to the letter.

40. The Court does not agree with this argument. It is true that, in order to decide whether the Convention rights have been infringed, one must frequently look beyond the appearances and the language used and concentrate on the realities of the situation (see, inter alia, as regards Article 5 para. 1 (art. 5-1), the Van Droogenbroeck judgment of 24 June 1982, Series A no. 50, p. 20, para. 38). However, a power of decision is inherent in the very notion of "tribunal" within the meaning of the Convention (see the Sramek judgment of 22 October 1984, Series A no. 84, p. 17, para. 36). Yet the Division tenders only an advice. Admittedly, that advice is - as happened on the present occasion - followed in the great majority of cases, but this is only a practice of no binding force, from which the Crown can depart at any moment (see notably, mutatis mutandis, the de Jong, Baljet and van den Brink judgment of 22 May 1984, Series A no. 77, pp. 23-24, para. 48). The proceedings before the Administrative Litigation Division of the Council of State thus do not provide the "determination by a tribunal of the matters in dispute" which is required by Article 6 para. 1 (art. 6-1) (see notably the above-mentioned Albert and Le Compte judgment, Series A no. 58, p. 16, para. 29 in fine).

B. The Crown

41. According to the applicant, the proceedings in appeals to the Crown were of an administrative and not of a judicial nature, since there was a review not only of the lawfulness but also of the expediency of the decisions challenged.

In the present case, the appellant was the Regional Health Inspector; his superior was the Director General for Environmental Protection, and that official was also responsible for the department dealing with appeals to the Crown. Again, the technical opinion on which the Royal Decree was based reflected the provisional view of the Ministry and not of independent and impartial experts.

42. For the Government, on the other hand, the Crown was here exercising a function of an essentially judicial nature. Save very exceptionally, it followed the advice tendered by the Administrative Litigation Division of the Council of State and, indeed, had done so on this occasion. As for the Regional Inspector, he acted independently of the Minister where the entering of appeals was concerned.

43. It is true that the Crown, unlike the Administrative Litigation Division, is empowered to determine the dispute, but the Convention requires more than this: by the word "tribunal", it denotes "bodies which exhibit ... common fundamental features", of which the most important are independence and impartiality, and "the guarantees of judicial procedure". The Court refers on this point to its established case-law, and notably to its De Wilde, Ooms and Versyp judgment of 18 June 1971 (Series A no. 12, p. 41, para. 78).

However, the Royal Decree by which the Crown, as head of the executive, rendered its decision constituted, from the formal point of view, an administrative act and it emanated from a Minister who was responsible to Parliament therefor. Moreover, the Minister was the hierarchical superior of the Regional Health Inspector, who had lodged the appeal, and of the Ministry’s Director General, who had submitted the technical report to the Division.

Finally, the Royal Decree was not susceptible to review by a judicial body as required by Article 6 para. 1 (art. 6-1).

C. Conclusion

44. There was accordingly a violation of Article 6 para. 1 (art. 6-1).

III. APPLICATION OF ARTICLE 50 (art. 50)

45. Article 50 (art. 50) of the Convention reads 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."

Mr. Benthem alleged that his bankruptcy and his divorce were directly attributable to the cancellation of the licence granted to him by the Weststellingwerf municipal authorities. Under these two heads, he sought 2,500,000 Guilders and 1,500,000 Guilders for pecuniary and non-pecuniary damage, respectively.

The applicant made no other claim, for example in respect of costs and expenses incurred in the proceedings. And "in the context of Article 50 (art. 50), the Court normally looks only to the items actually claimed ... and, since no question of public policy is involved, will not of its own motion consider whether the applicant has been otherwise prejudiced" (see the Sunday Times judgment of 6 November 1980, Series A no. 38, p. 9, para. 14).

46. The Court observes that, as the Government pointed out, the LPG installation was in use until the beginning of 1984 (see paragraph 18 in fine above). There is nothing to prove that it was the Royal Decree at issue which occasioned Mr. Benthem’s bankruptcy and divorce. In these circumstances,

the finding of a breach of Article 6 para. 1 (art. 6-1) constitutes of itself, in the present case, sufficient just satisfaction.

FOR THESE REASONS, THE COURT

1. Holds by eleven votes to six that Article 6 para. 1 (art. 6-1) was applicable in the present case;

2. Holds by eleven votes to six that Article 6 para. 1 (art. 6-1) has been violated;

3. Holds unanimously that the foregoing finding constitutes of itself sufficient just satisfaction for the purposes of Article 50 (art. 50).

Done in English and in French, and delivered at a public hearing at the Human Rights Building, Strasbourg, on 23 October 1985.

Rolv RYSSDAL

President

Marc-André EISSEN

Registrar

A declaration by Mr. Dubbink and, in accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 52 para. 2 of the Rules of Court, the joint dissenting opinion of Mrs. Bindschedler-Robert, Mr. Gölcüklü, Mr. Matscher, Mr. Pinheiro Farinha, Sir Vincent Evans and Mr. Dubbink are annexed to the present judgment.

R.R.

M.-A.E.

DECLARATION BY JUDGE DUBBINK

I have joined Judges Bindschedler-Robert, Gölcüklü, Matscher, Pinheiro Farinha and Sir Vincent Evans in the dissenting opinion set out below, but I wish to add a word about the way in which I voted.

I voted against point 1 of the operative provisions of the judgment because, in my opinion, no "civil right" of Mr. Benthem had been at stake. As a consequence of this, I also had to vote against point 2. However, I would have voted in favour of point 2 if I had been convinced that a "civil right" had been at stake.

JOINT DISSENTING OPINION OF JUDGES BINDSCHEDLER-ROBERT, GÖLCÜKLÜ, MATSCHER, PINHEIRO FARINHA, SIR VINCENT EVANS AND DUBBINK

(Translation)

As regards the delimitation of the Convention's field of application, we agree with the approach adopted by the majority of the Court. The essence of this approach is that, for Article 6 para. 1 (art. 6-1) to be applicable, "civil rights and obligations" (an expression which, according to the Court's case-law, refers to rights and obligations of a private nature) must be the object - or one of the objects - of the contestation (dispute) and the result of the proceedings must be directly decisive for such a right; in this respect, a tenuous connection or remote consequences do not suffice.

However, that was not the situation in the present case : the contestation (dispute) in question did not have as its object a civil right or obligation at all; the sole object of the proceedings was to determine whether or not the grant to Mr. Benthem of a licence to exploit an LPG installation was compatible with the interests of the community, interests whose protection is a typical function of administrative law; the result of those proceedings was no more than indirectly decisive for his civil rights and had only remote consequences as regards such rights. Accordingly, Article 6 para. 1 (art. 6-1) is not applicable in the present case.

In view of the foregoing, we consider that it is not necessary for us to comment on other arguments which served as a further basis for the majority's conclusion that Article 6 para. 1 (art. 6-1) of the Convention is applicable (for example, the alleged proprietary character of the right concerned, or Mr. Benthem's position as a businessman).

* Note by the Registrar: The case is numbered 1/1984/73/111. The second figure indicates the year in which the case was referred to the Court, and the first figure its place on the list of cases referred in that year; the last two figures indicate, respectively, the case's order on the list of cases and of originating applications (to the Commission) referred to the Court since its creation.