

**European Court of Human Rights, 20 November 1995, BAT v The Netherlands**



**PROPERTY – FAIR TRIAL**

**No violation of article 6 – access to civil courts of decision of Appeals Division of Patent Office**  
Consequently, if after the decision of the Appeals Division the case had been brought by the applicant company before the civil courts, and if it had been argued that the Appeals Division was not a "tribunal" offering the safeguards required by Article 6 para. 1 (art. 6-1) of the Convention, the courts would as a matter of domestic law first have had to decide whether that argument was correct. Should they have found this to be so, the civil courts would have had full jurisdiction to rule on the merits, that is, to decide whether the Appeals Division had been right to refuse to grant the patent applied for and to afford appropriate relief. The judgment of the President of the Regional Court of The Hague of 11 July 1989 (BIE 1990, p. 246 - see paragraph 60 above) provides corroboration of this analysis.

Source: [Hudoc](#)

**European Court of Human Rights, 20 November 1995**

(R. Ryssdal, F. Gölcüklü, A. Spielmann, N. Valticos, S.K. Martens, I. Foighel, Sir John Freeland, D. Gotchev, P. Jambrek)

In the case of

British-American Tobacco Company Ltd

v.

the Netherlands<sup>1</sup>,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A<sup>2</sup> (2), as a Chamber composed of the following judges: Mr R. Ryssdal, President, Mr

<sup>1</sup> Note by the Registrar: The case is numbered 46/1994/493/575. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission

<sup>2</sup> Note by the Registrar: Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

F. Gölcüklü, Mr A. Spielmann, Mr N. Valticos, Mr S.K. Martens, Mr I. Foighel, Sir John Freeland, Mr D. Gotchev, Mr P. Jambrek, and also of Mr H. Petzold, Registrar,

Having deliberated in private on 26 June and 23 October 1995, Delivers the following judgment, which was adopted on the last-mentioned date:

**PROCEDURE**

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 9 September 1994, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 19589/92) against the Kingdom of the Netherlands lodged with the Commission on 27 February 1992 under Article 25 (art. 25) by a limited liability company established under the law of the United Kingdom, the British-American Tobacco Company Ltd.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby the Netherlands recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 para. 1 of the Convention and Article 1 of Protocol No. 1 (art. 6-1, P1-1).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, the applicant company stated that they wished to take part in the proceedings and designated the lawyer who would represent them (Rule 30). The Government of the United Kingdom, having been informed by the Registrar of their right to intervene (Article 48 (b) (art. 48-b) of the Convention and Rule 33 para. 3 (b)), indicated that they did not intend to do so.

3. The Chamber to be constituted included ex officio Mr S.K. Martens, the elected judge of Netherlands nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 24 September 1994, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr A. Spielmann, Mr N. Valticos, Mr I. Foighel, Mr A.N. Loizou, Sir John Freeland, Mr D. Gotchev and Mr P. Jambrek (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently Mr F. Gölcüklü, substitute judge, replaced Mr Loizou, who was unable to take part in the further consideration of the case (Rules 22 para. 1 and 24 para. 1).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Netherlands Government ("the Government"), the applicant company's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the Government's memorial on 27 February 1995 and the applicant company's memorial on 3 March. The Delegate of the Commission did not submit any observations in writing.

5. On 15 February 1995 the Commission produced certain documents from the file on the proceedings before it, as requested by the Registrar on the President's instructions.

6. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 21 June 1995. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

**(a) for the Government**

Mr K. de Vey Mestdagh, Ministry of Foreign Affairs, Agent, Mr I.W. van der Eyk, Ministry of Economic Affairs, Adviser;

**(b) for the Commission**

Mr E. Konstantinov, Delegate;

**(c) for the applicant**

Mr I.G.F. Cath, advocaat en procureur, Counsel, Mr P. Clarke, Mr K.J.H. MacLean, Mr E.E. de Vries, patent attorney, Advisers.

The Court heard addresses by Mr Konstantinov, Mr Cath and Mr de Vey Mestdagh, and also replies to its questions.

**AS TO THE FACTS**

**I. Particular circumstances of the case**

7. The applicant company are a limited liability company established under the law of the United Kingdom. Their business includes the manufacture and sale of tobacco products.

8. On 14 May 1986 the applicant company, acting through a Netherlands patent agent, filed a patent application with the Netherlands Patent Office (Octrooiraad). They claimed priority as from 24 May 1985 on the basis of a patent application filed in the United Kingdom (Article 4 of the 1883 Paris Convention for the protection of industrial property, as revised ("the Paris Convention")) - see paragraph 18 below).

The application, which concerned a cigarette, comprised nine claims (conclusies). It was laid open to public inspection (terinzagelegging; section 22C of the Patent Act (Rijksoctrooiwet) - see paragraph 34 below) on 16 December 1988.

9. On 15 May 1987, following a request to that effect by the applicant company (section 22I of the Patent Act - see paragraph 35 below), the Patent Office sent the applicant company a search report listing four patent publications as background to the state of the art. Two of these publications had been published after the date from which priority was claimed but before the filing date in the Netherlands.

10. Following a request (section 22J of the Patent Act - see paragraph 36 below) by the applicant company for a decision as to the grant of a patent, an Examination Division (Aanvraagafdeling) consisting of one technically qualified member of the Patent Office stated in a letter dated May 1988 that in its opinion the patent claims described no patentable invention and in the same letter offered the applicant company the opportunity to refute its objections. The letter noted, inter alia, that one of the measures described in the main claim did not appear in the corresponding application filed in the United Kingdom.

11. By letter of 24 June 1988 the Examination Division agreed to publish the application for opposition purposes (openbaarmaking; section 25 of the Patent Act - see paragraph 39 below) provided certain changes were made. These changes included defining the scope of the protection claimed in a single patent claim, the wording of which was to conform to a suggestion made by the Examination Division itself. However, the Examination Division refused to recognise the priority claimed.

12. By letter of 20 September 1988 the applicant company submitted two new and independent claims, requesting recognition of the priority originally invoked only in respect of the first of these.

13. On 13 October 1988 the Examination Division gave a final decision (eindbeschikking) stating that the invention might equally well be described in a single claim without loss of clarity. It considered that the use of two independent claims for the sole purpose of resolving problems relating to the recognition of the priority invoked ran counter to the requirements of fair procedure (goede procesorde) and could therefore not be allowed. It therefore refused to publish the application for opposition purposes.

14. On 11 January 1989 the applicant company lodged an appeal with the Appeals Division (Afdeling van Beroep) of the Patent Office.

In their statement of grounds of appeal (memorie van grieven), they pointed to a number of published decisions of the Appeals Division from which it appeared, in their submission, that allowing more than one independent claim in a single patent application was not unacceptable. They also expressed doubts as to how the use of two independent claims for the sole purpose of resolving problems relating to the recognition of priority could run counter to the requirements of fair procedure. While they admitted that the invention might well be covered by a single claim, they pointed out that the scope of the protection offered by the patent would thereby be limited.

They requested the Appeals Division to overrule the decision of the Examination Division and order the publication of the application for opposition purposes with the two independent claims put forward by them but with a recognition of priority only in respect of the first claim. In the alternative, they requested the publication of the application for opposition purposes with the single claim proposed by the Examination Division, the scope of which they agreed to limit further, together with recognition of the priority invoked.

15. The Appeals Division, composed of two technically qualified members and one legally qualified member, held a hearing on 7 June 1989. On 15 January 1990 it sent the applicant company a letter stating that for the time being it was of the opinion that neither the two independent claims nor the single claim proposed as an alternative described any patentable invention and setting out its reasons for that view. The Appeals Division offered the applicant company the opportunity to put forward a defence against the objections thereby raised ex officio.

The applicant company replied by a letter of 15 June 1990, giving arguments to the contrary.

After the Appeals Division had made it clear that it was not convinced by these arguments, a second hearing was held on 23 January 1991 which was attended by the applicant company's Netherlands and British patent agents. The applicant company submitted fresh claims on 28 January.

16. The Appeals Division gave a final decision on 29 August 1991.

In the view of the Appeals Division, it did not necessarily run counter to any rule of fair procedure to use two independent claims to circumvent problems relating to the recognition of priority. Since the applicant company's original appeal had been limited to this issue, it was therefore declared well-founded.

Nonetheless, the Appeals Division considered that the subject-matter of the application was not patentable since it did not involve an inventive step and refused on that ground to publish the application for opposition purposes.

## **II. Relevant domestic and treaty law and practice**

### **A. The Paris Convention for the protection of industrial property**

17. The Paris Convention of 20 March 1883 for the protection of industrial property, as subsequently revised on numerous occasions (most recently in Stockholm on 14 July 1967, [1972] 828 United Nations Treaty Series, pp. 305 et seq.), sets up a Union for the protection of industrial property. The expression "industrial property" covers patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin and the repression of unfair competition (Article 1) but not copyright.

The Paris Convention is intended to prevent discrimination against non-nationals and lays down a number of very general standards as regards procedural and substantive industrial property law.

18. Article 4 of the Paris Convention, in so far as relevant, provides:

"A. (1) Any person who has duly filed an application for a patent ... in one of the countries of the Union, or his successor in title, shall enjoy, for the purpose of filing in the other countries, a right of priority for the periods hereinafter fixed. ...

B. Consequently, any subsequent filing in any of the other countries of the Union before the expiration of the periods referred to above shall not be invalidated by reason of any acts accomplished in the interval, in particular, another filing, the publication or exploitation of the invention ... and such acts cannot give rise to any third-party right or any right of personal possession ...

C. (1) The [period] of priority shall be twelve months for patents ... .."

19. Article 12, in so far as relevant, reads:

"(1) Each country of the Union undertakes to establish a special industrial property service and a central office for the communication to the public of patents, utility models, industrial designs, and trademarks. ..."

### **B. Netherlands patent law**

20. Patent law, both substantive and procedural, is governed by the Patent Act (Act of 7 November 1910, Official Gazette (Staatsblad) 1910, no. 313, as subsequently amended). Certain procedural details are dealt with in delegated legislation made by the Minister for Economic Affairs under the Patent Act.

#### **1. Substantive patent law**

##### **(a) Substantive requirements**

21. Section 1A of the Patent Act provides as follows:

"A patent shall be granted, on his application, to a person who has invented a novel product or method."

A patent must be granted unless the invention is either already known or an obvious development, given the current state of the art (sections 2-2A).

To be patentable, the invention must lead to a result in the field of industry or agriculture (section 3 (1)). However, no patent may be granted for new varieties of plants or animals, or for essentially biological processes for producing plants or animals, except for processes involving micro-organisms (section 3 (2)).

A patent application may only relate to a single invention or to a group of inventions based on a single inventive idea (section 5A).

##### **(b) Rights under a patent**

22. A patent remains valid for twenty years from the filing date of the originating application, subject to payment of an annual fee (sections 47 and 35 (1) of the Patent Act).

23. Subject to the provisions of the Patent Act, a patent confers on the patentee the exclusive right, *inter alia*, to make, use, market, resell, hire out, deliver, import or stock the patented product or, when applicable, to apply the patented process commercially or to make, use, market, resell, hire out, deliver, import or stock the product obtained directly from the application of the patented process (section 30 of the Patent Act).

The patentee may enforce his exclusive rights against any person (section 43); this may involve, for instance, obtaining an injunction or (if an infringement is knowingly committed (*desbewust*)) damages through the civil courts.

Until the application matures into a patent, the applicant whose application has been published for opposition purposes in accordance with section 25 (see paragraph 39 below) has an inchoate right: he may only take measures to facilitate the eventual exercise of the right he hopes to obtain. Once the patent is granted, however, the patentee may enforce his rights retrospectively with regard to actions committed between the date of publication for opposition purposes and the date on which the application matured into a patent; such actions become retrospectively unlawful (section 44). Actions prior to publication for opposition purposes remain lawful in principle, although the patentee is entitled to reasonable remuneration on a royalty basis if such actions were committed by a person who was aware that they were covered by the patent application (section 43A).

24. Pursuant to section 33, the right to perform acts prohibited to any person other than the patentee may be acquired from the patentee by means of a licence.

25. Both a patent and the entitlement to a patent pursuant to sections 1 and following of the Patent Act are assignable and otherwise transferable in whole or in part (section 37 of the Patent Act).

26. A patent may be declared null and void (nietig) ab initio if it does not conform to the substantive requirements laid down by the Patent Act (section 51). It may also be claimed (opeising) by any person who alleges that he, not the patentee, is entitled to it (section 53).

27. A compulsory licence under a patent may be claimed either by the holder of a patent based on a subsequent patent application if he requires it to make proper use of his own patent (section 34 (4) of the Patent Act) or by the Minister for Economic Affairs together with any Minister directly concerned if the interests of the State so require (section 34A).

In either case, the patentee is entitled to a reasonable remuneration.

## 2. Procedural patent law

28. Patent applications must be filed with, and patents are granted by, the Patent Office (section 13 of the Patent Act).

29. It appears from the explanatory memorandum to the bill which eventually became the Patent Act (Annex to Parliamentary Documents, Lower Chamber of Parliament, 1904-1905 197, no. 3, p. 16) that the intention was to prevent as far as possible the granting of patents "for which no good reasons exist[ed]". It was therefore decided to establish a system involving an examination of patent applications by a State agency which was "entitled, though not obliged," to extend its examination to "all points which [might] be of relevance to the validity of the patent", and in which "during the examination the opportunity [should] be offered for entering objections". An expert body was created for this purpose, the Patent Office. It was observed that only by creating such a body "[could] the technical experts, who [were] quite indispensable, obtain an independence befitting them" and "[could] the required guarantee be provided for the quality of the decisions which, although they [might] not quite be judicial decisions in the strict sense of the word, [came] very close to being so".

30. The legal provisions governing the procedure before the Patent Office are very summary, so that over the years the Patent Office has had to develop a number of procedural rules through its case-law to fill in gaps. For present purposes it is of interest to note that, in accordance with the aims recorded in the drafting history of the Patent Act adverted to above, the Patent Office does not consider itself bound by the facts as submitted to it by parties and by what is requested by applicants, but establishes the facts itself, of its own motion if need be.

The following is a summary rendering of the principal rules of patent application procedure.

### (a) Patent applications

31. Formal requirements relating to patent applications are to be found in the Patent Act itself and in

delegated legislation known as the Patent Rules (Octrooireglement).

32. A patent application must comprise, inter alia, a general description of the invention, and the scope of the exclusive rights desired must be set forth in one or more claims appended to the description (section 22A (1) (e) of the Patent Act). The description (which may include drawings or graphs) must be such as to enable the person skilled in the art to understand and apply the invention, and the claims must be detailed (section 22B (1)). The claims must enumerate separately and in detail the novel features of the invention for which exclusive rights are claimed (Rule 24 para. 2 of the Patent Rules).

In practice the first claim generally describes the main inventive idea and other claims, dependent thereon, describe particular embodiments of the invention.

33. The priority right created by Article 4 of the Paris Convention (see paragraph 18 above) must be expressly invoked (section 7).

### (b) Patent application procedure

34. As soon as possible after eighteen months have passed from the date of filing, or after the date from which priority is claimed if that is earlier, the application is laid open to public inspection (section 22C (1) of the Patent Act). It then becomes part of the state of the art, to be considered in relation to subsequent applications as regards the requirement of novelty (section 2 (3)).

35. The applicant, or - after the application has been laid open to public inspection - any other person, may ask the Patent Office for a search report listing published documents which it considers relevant as descriptions of the state of the art (section 22I (1) of the Patent Act).

In practice these search reports are prepared not by the Netherlands Patent Office itself but by the European Patent Office (pursuant to section 22 (8)).

Documents mentioned in the search report are usually other patent applications filed in the Netherlands and in other countries.

36. After the search report has been issued, the applicant or any other person may request a decision as to the grant of a patent (section 22J (1) of the Patent Act).

At this point the Patent Office makes known any objections which it may have to the grant of a patent. In response to these the applicant may then file arguments in writing or amend the application (section 23 (2)).

The application is then placed in the hands of the Examination Division (see paragraph 58 below) (section 23 (3)). The Examination Division must offer the applicant the opportunity to be heard and give a decision as soon as possible thereafter (section 23 (4)).

37. Section 24 (1) of the Patent Act provides as follows:

"If the Examination Division finds that no patent should be granted for all or part of the matter covered by the application, it shall give a decision not to publish the application for opposition purposes; if it finds the opposite, it shall give a decision to publish the applica-

tion [or the part which it considers patentable] for opposition purposes."

38. The applicant may appeal to the Appeals Division, within three months, against a decision not to publish the application for opposition purposes, or to publish it only in part. This is done by filing a written statement of grounds of appeal (section 24A (1) of the Patent Act).

Like the proceedings before the Examination Division, those before the Appeals Division are not adversarial. The Appeals Division must hear only the applicant, or at least offer him the opportunity to be heard. It may order a supplementary search report (section 24A (3)). The decision of the Appeals Division is reasoned (section 24A (5)).

39. If the application is considered patentable in whole or in part, either in the initial stage by the Examination Division or on appeal by the Appeals Division, the application is published for opposition purposes (section 25 (1) of the Patent Act).

40. Within four months following publication of the application for opposition purposes, any person may oppose the grant of a patent (section 25 (3) of the Patent Act). If no opposition is filed within that time, or if the opposition is held to be unfounded, the application becomes a patent and the exclusive rights of the patentee are established (section 28 (1) of the Patent Act).

41. Oppositions are heard by the Examination Division which decided on the publication of the application for opposition purposes (section 26 (1)). If the original Examination Division consisted of only one member, its membership is extended to three.

Opposition proceedings are fully adversarial: both the opposing party and the applicant are heard (or offered the opportunity to be heard) (section 26 (1)). The Examination Division must give a reasoned decision (section 26 (1)).

Either party may appeal to the Appeals Division against the outcome of the opposition proceedings. Except for the fact that the appeal proceedings are also adversarial, the same rules apply to these appeals as to appeals against the decision of the Examination Division not to publish the application for opposition purposes (section 27).

42. Hearings of the Patent Office are not open to the public, nor are its decisions delivered in public.

43. Until 1 January 1991, various provisions in the Patent Act specified the documents to which the applicant for a patent and other interested parties were to be given access (objections (*bezwaarschriften*), requests and statements of grounds of appeal concerning them). Some, but not all, of these documents were also required to be made available to the public once the patent application had been laid open to public inspection.

On 1 January 1991, a new provision (section 28A of the Patent Act) entered into force which provides that once the patent application has been laid open to public inspection (or published for opposition purposes, whichever is the sooner), any person may inspect all

documents relating to the patent application which have been received by the Patent Office or which the Patent Office has sent to the applicant for a patent or to third parties pursuant to the provisions of the Patent Act. As long as the patent application has not been laid open to public inspection, these documents may be inspected by third parties only with the permission of the applicant for a patent unless the third party concerned proves that the applicant for a patent has invoked the patent application against him.

#### **C. Competent authorities in contentious matters**

44. Proceedings relating to the enforcement of a patent, for the revocation of a patent (*nietigverklaring*) and for challenging the entitlement of the patentee (*opeisen*) are brought before an ordinary civil court, the Regional Court (*arrondissementsrechtbank*) of The Hague (section 54 of the Patent Act), whose competence in such matters is exclusive. An appeal lies to the Hague Court of Appeal (*gerechtshof*) and a further appeal on points of law (*cassatie*) to the Supreme Court.

45. Proceedings for claiming a compulsory licence are brought before the Patent Office if the claimant is a private person (section 34 (6) of the Patent Act); the granting of a compulsory licence in the interests of the State may simply be ordered by the Ministers concerned (see paragraph 27 above).

The remuneration in such cases is set by the Patent Office, if both parties agree to make a request to that effect; if the parties cannot agree either on the amount of the remuneration or to submit the matter to the Patent Office, the patentee may file a claim before the Hague Regional Court (section 34 (9)).

46. There is no statutory provision which either allows or expressly bars access to the civil courts to challenge a decision of the Appeals Division of the Patent Office.

It appears, however, that the legislature intended the competence of the Appeals Division to be an exclusive one. The explanatory memorandum to the bill which eventually became the Patent Act states (Annex to Parliamentary Documents, Lower Chamber of Parliament, 1904-1905 197, no. 3, p. 25):

"The decision of the Patent Office taken at final instance that an application [for a patent] should not be granted ought not to be subject to appeal. It should be assumed that when the Patent Office, which is the expert body par excellence, considers that the law does not allow it the freedom to grant the patent applied for, that opinion is based on solid ground. In any case, the wording of a patent could hardly be left to any other body than the Patent Office, which has the required expert knowledge."

The competence of the administrative tribunals is expressly excluded by statute (at the material time, section 1 (f) of the Act concerning administrative jurisdiction as to decisions of the administration (*Wet administratieve rechtspraak overheidsbeschikkingen - "AROB Act"*)).

#### **D. The Patent Office**

##### **1. Position of the President and members of the Patent Office**

47. In the Netherlands, the industrial property service referred to in Article 12 of the Paris Convention is the Industrial Property Bureau (Bureau voor de Industriële Eigendom).

The Patent Office is part of the Industrial Property Bureau (section 14 of the Patent Act; Article 1 of the Industrial Property Bureau Ordinance (Besluit Bureau industriële eigendom)).

48. The President of the Patent Office is also Director of the Industrial Property Bureau (Article 2 para. 2 of the Industrial Property Bureau Ordinance). All officials and other staff - an expression which includes the members of the Patent Office - are subordinate to him; he may, acting on the instructions of the Minister for Economic Affairs, lay down regulations for the day-to-day running of the Bureau; these are, however, subject to the Minister's approval (Article 5 of the Industrial Property Bureau Ordinance). The Director must submit an annual report on the Bureau's activities to the Minister for Economic Affairs (Article 8 of the Industrial Property Bureau Ordinance).

49. In taking its decisions the Patent Office is not bound by instructions from any other administrative authority.

50. Officials and other staff of the Bureau may not have any other remunerated position without the permission of the Minister for Economic Affairs. They may not be practising lawyers or patent attorneys, nor may they be involved even in an advisory capacity in an enterprise involving the filing of patent applications or the registering of trademarks, designs or semiconductor masks. They are forbidden to apply for a patent themselves (Article 3 of the Industrial Property Bureau Ordinance).

51. The Patent Office consists of up to ninety ordinary members and substitute members, divided into legally qualified and technically qualified members, and of at least twelve extraordinary members (Rule 2 of the Patent Rules).

52. The President and all members of the Patent Office are appointed, and may be dismissed, by the Crown (that is the Monarch together with the responsible Minister) (section 14 (3) of the Patent Act). Before taking up their duties they must take a pledge worded as follows (section 14 (3) of the Patent Act and Rule 4 of the Patent Rules):

"I promise that I will diligently, meticulously and impartially discharge the duties required by the office of President [or Vice-President, ordinary member, extraordinary member or substitute member] of the Patent Office, and especially that I will participate in the decisions to be taken by the Divisions according to my own convictions and keep secret that which is known to me through my duties regarding patent applications in so far as these have not been laid open to public inspection or published for opposition purposes and that I will help to implement with precision the appropriate acts and ordinances (algemene maatregelen van bestuur) and that I will not accept any promise or any gift, whether directly or indirectly, to do or omit anything in the discharge of my duties ..."

53. No member of the Patent Office may take part in proceedings in which he has a direct or indirect interest or in which he is in any way involved (Rule 3 of the Patent Rules).

54. The appointment of the President and ordinary members remains valid until their retirement.

The extraordinary members are appointed for a five-year period, which may be extended for five years at a time (Rule 2 para. 2 of the Patent Rules). They are recruited on the basis of expertise in a particular technical field and, in general, are university professors in one of the technical or applied sciences.

There are no specific rules protecting the President or members of the Patent Office against dismissal. They enjoy the same protection as other permanently appointed civil servants, who may be dismissed involuntarily only on certain limited grounds laid down by law and may contest their dismissal before the Civil Service Tribunal (ambtenarenrechter).

55. There is one case on record of dismissal of a member of the Patent Office.

That case concerned a member of the Patent Office who had refused an order by the President to carry out preparatory work on patent applications consisting of checking them for compliance with formal requirements. This was work normally done by lower-ranking civil servants but occasionally by members of the Patent Office on a voluntary basis; the assistance of the members of the Patent Office had become necessary due to a growing backlog of work. When the member concerned refused to give his assistance voluntarily even after consultation, he was officially ordered to do so by the President. The member refused to obey and was dismissed on that ground.

He unsuccessfully contested his dismissal before both the Civil Service Tribunal and on appeal before the Central Appeals Tribunal (Centrale Raad van Beroep). The member had not contested the order itself. For that reason the tribunals had to assume that he could only have been dismissed without justification if the order had manifestly been given without proper authority. In the particular case, the order was capable of being based on Rule 11A of the Industrial Property Rules (Reglement Industriële Eigendom), a provision introduced in 1957, according to which duties incumbent on the Patent Office but not assigned specifically to any Division were to be carried out by the President, who was empowered to delegate them to ordinary members of the Patent Office. The Central Appeals Tribunal quoted the explanatory memorandum to the Order of 1957 introducing the above Rule 11A, from which it appeared that the competent Minister had assumed that members of the Patent Office were subordinate to the President except in relation to decisions relating to patent applications. With regard to such decisions they could act only in accordance with their own convictions (see the judgment of the Central Appeals Tribunal of 17 February 1971, no. 1970/B 12, unpublished).

## 2. Organisation of the Patent Office

56. The Patent Office comprises one Central Division as well as Examination Divisions, Appeals Divisions and Special Divisions (section 14 (2) of the Patent Act).

57. The Central Division has five members. It is presided over ex officio by the President of the Patent Office; the other four members are appointed by the Minister for Economic Affairs (Rule 5 of the Patent Rules).

The Central Division decides on the composition of the other Divisions.

58. Examination Divisions, Appeals Divisions and Special Divisions are set up for each individual case as necessary.

Examination Divisions, consisting of either one member (who must then be technically qualified) or three members (one or two of whom must be legally qualified), decide whether a patent application may be published for opposition purposes and hear oppositions (see paragraphs 39 and 41 above) (Rules 6 para. 1 and 7 of the Patent Rules). Examination Divisions which hear oppositions are always made up of three Members, even if the application itself was dealt with by an Examination Division consisting of a single member (section 26 (1) of the Patent Act).

Special Divisions, consisting of either one member (who must then be legally qualified) or three members (one or two of whom must be legally qualified), deal at first instance with all other matters coming within the jurisdiction of the Patent Office (Rules 6 para. 2 and 9 of the Patent Rules).

Appeals Divisions, consisting of either three members (one or two of whom must be legally qualified) or five members (two or three of whom must be legally qualified) depending on the nature and complexity of the case, hear appeals against decisions of other Divisions (Rules 6 para. 1 and 8 of the Patent Rules). The President of the Patent Office presides over Appeals Divisions ex officio but he may be replaced in his absence by a Vice-President (Rules 8 para. 3 and 12 of the Patent Rules).

An Appeals Division may not include members who have been involved in drafting the search report or who have taken part in the decision appealed against as members of an Examination Division (section 24A (4) of the Patent Act).

There are no statutory provisions allowing applicants to challenge either individual members of a Division or an entire Division.

#### **E. Domestic case-law relating to Article 6 para. 1 (art. 6-1) of the Convention**

59. Article 112 of the Netherlands Constitution provides as follows:

"The judiciary shall judge all disputes relating to civil rights and claims for payment."

According to the settled case-law of the Supreme Court, this provision should be interpreted so as to encompass practically all disputes between individuals and government authorities. The civil courts are thus said to constitute a "safety net" as regards the protection of the individual against actions by the authorities. This means that although the civil courts must decide

for themselves when to exercise their jurisdiction, they must declare an action inadmissible if they find that another legal remedy exists which offers sufficient procedural guarantees. On the other hand, if they find that no such remedy exists or that the existing remedy offers insufficient guarantees, they must deal with the merits of the case.

As regards actions brought by individuals against government authorities it is the established case-law of the Supreme Court since the European Court's *Bentham v. the Netherlands* judgment of 23 October 1985 (Series A no. 97) that the civil courts must take into account the requirements of Article 6 (art. 6) of the Convention. (For a detailed discussion of the relevant legal developments and of the influence of the *Bentham* judgment, see the Court's *Oerlemans v. the Netherlands* judgment of 27 November 1991, Series A no. 219.)

60. The question whether proceedings before the Patent Office offer sufficient guarantees has only twice been submitted to the civil courts. On neither occasion was it answered conclusively.

The first time the issue was raised before a civil jurisdiction was in summary proceedings (*kort geding*) before the President of the Regional Court of The Hague (judgment of 11 July 1989, *Bijblad bij De Industriële Eigendom* (Industrial Property Law Review, BIE) 1990, p. 246). In that case the plaintiff, against whom an injunction had been issued in earlier summary proceedings restraining it from infringing a patent owned by the defendant, asked for a declaration that this injunction applied only to the period between the issuing of the injunction and the date on which the plaintiff had requested the Patent Office to grant a compulsory licence under the patent. The defendant pleaded that the proceedings relating to compulsory licences were not binding on it as the Patent Office, in deciding on compulsory licences (which in the defendant's view amounted to the determination of civil rights and obligations as understood by Article 6 (art. 6) of the Convention), was not an "independent and impartial tribunal". The President of the Regional Court declined to give a ruling on this issue. Even if its assumption were correct, the defendant could, after the grant of the compulsory licence, address itself to the civil courts, which would then decide whether the compulsory licence had been properly granted. The defendant's objection to the arrangement for the grant of a compulsory licence could therefore in no way warrant the conclusion that such a licence should never be granted to the plaintiff, which had been the thinking underlying the defence plea.

The President of the Regional Court commented, as an obiter dictum, that as matters stood - given the way in which the duties of the Patent Office were stipulated by law and given the way in which the legal provisions governing proceedings relating to compulsory licences were stipulated and implemented in practice - the likelihood that in full civil proceedings (*bodemprocedure*) the Netherlands civil courts, or alternatively the European Commission or Court of Human Rights, would hold the Patent Office or the procedure relating to

compulsory licences to fall foul of Article 6 (art. 6) of the Convention was not sufficiently strong for him to base his decision in summary proceedings on such a hypothesis.

According to information provided by the Government, the issue was raised a second time in 1990, when a company brought a case against the State before the Regional Court of The Hague also based on a complaint about the grant of a compulsory licence under a patent which it owned. The court was asked to declare the decision of the Appeals Division unlawful, one of the reasons given being that the Patent Office allegedly did not meet the standards of Article 6 (art. 6) of the Convention. The Government has stated before this Court that they did not raise any objection as to the admissibility of these allegations but, on the contrary, put forward defences on the merits of the question. It appears that the company decided not to pursue the case to a conclusion; consequently, it did not result in any ruling by the Hague Regional Court.

#### **F. The 1995 Patent Act**

61. As from 1 April 1995 the 1910 Patent Act has been replaced by an entirely new Act, the 1995 Patent Act (Act of 15 December 1994, Official Gazette (Staatsblad) 1995, no. 51). However, patent applications filed before 1 April 1995, patents granted on the basis of such applications and licences under such patents continue to be governed by the 1910 Patent Act. The 1910 Patent Act will ultimately be repealed.

The new Patent Act has abolished the system of substantive examination of patent applications before the grant of a patent. Following the Belgian example in particular, the new system involves the registration of patents after an examination for compliance with formal requirements only. Substantive examination is left to the civil courts, upon which it is incumbent to judge whether the requirements of patentability, particularly as regards inventive step, have been complied with. Oppositions must be brought directly before the civil courts.

Under the new system the Patent Office in its present form will ultimately cease to exist.

#### **PROCEEDINGS BEFORE THE COMMISSION**

62. The applicant company lodged their application (no. 19589/92) with the Commission on 27 February 1992. They complained under Article 6 para. 1 (art. 6-1) of the Convention that they had not had a fair hearing before an independent and impartial tribunal and under Article 1 of Protocol No. 1 (P1-1) that they had been deprived of their possessions without an examination by an independent and impartial tribunal.

63. The Commission declared the application admissible on 15 October 1993. In its report of 19 May 1994 (Article 31) (art. 31), it expressed the opinion that there had been a violation of Article 6 para. 1 (art. 6-1) (by twenty-two votes to one) and that there had been no violation of Article 1 of Protocol No. 1 (P1-1) (unanimously).

The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment<sup>3</sup>.

#### **FINAL SUBMISSIONS TO THE COURT**

64. In their memorial, the applicant company requested the Court to confirm the findings of the Commission, on the basis of different reasoning if necessary, to establish the other violations of the Convention alleged by them but not found by the Commission and to afford them just satisfaction.

65. The Government concluded their memorial by reiterating their opinion that there had been no violation of Article 6 para. 1 (art. 6-1).

#### **AS TO THE LAW**

##### **I. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 (art. 6-1) OF THE CONVENTION**

66. The applicant company alleged violations of Article 6 para. 1 (art. 6-1) of the Convention, which provides:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal ... Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

In the submission of the applicant company, the patent application proceedings which they had brought in the Netherlands had not involved a "fair and public hearing" before an "independent and impartial tribunal".

The Government contested this allegation, whereas the Commission came to the conclusion that a violation of Article 6 para. 1 (art. 6-1) had occurred.

##### **A. Applicability of Article 6 para. 1 (art. 6-1)**

67. It was accepted by those appearing before the Court that the patent application proceedings in question concerned "the determination of civil rights and obligations".

The Court sees no reason to differ and, accordingly, finds that Article 6 para. 1 (art. 6-1) is applicable.

##### **B. Compliance with Article 6 para. 1 (art. 6-1)**

###### **1. The Appeals Division of the Patent Office**

###### **(a) Arguments before the Court**

###### **(i) "Independent and impartial tribunal"**

68. In the view of the applicant company the Patent Office, and more particularly its Appeals Division, could not be considered to be an "independent and impartial" tribunal.

They accepted that there was no reason to doubt that the Appeals Division examined their case without being influenced by any external sources and without any personal bias. They did not deny that the Patent

<sup>3</sup> Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 331 of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry



Office as such was "independent" in so far as it was not subject to formal Government directives. However, they raised several objections to the institutional structure within which the Patent Office operated and to certain aspects of its internal organisation.

They pointed to the fact that the members of the Patent Office were employed on the same conditions as the other civil servants of the Industrial Property Bureau. This meant that, like those other civil servants, they were under the orders of the President of the Patent Office in his capacity of Director of the Industrial Property Bureau (see paragraph 48 above) and that there were no formal guarantees against dismissal of members of the Patent Office (see paragraph 54 above).

Furthermore, in their view, the fact that Examination Divisions and Appeals Divisions were composed for each case by the Central Division from a single pool of members all belonging to the same administrative body (see paragraph 58 above) cast doubt on their independence and impartiality.

69. The Commission endorsed the applicant company's views.

70. In the submission of the Government there were sufficient guarantees against the arbitrary or improper dismissal of members of the Patent Office. Members were appointed, and could be dismissed, by the Crown (see paragraph 52 above). While it was true that the Director of the Industrial Property Bureau was empowered to issue orders and instructions and the failure to obey these might constitute grounds for dismissal, this did not mean that the President or Vice-Presidents of the Patent Office might influence members' decisions on individual applications. Members were under a statutory obligation to be guided only by the dictates of their own conscience and by their sense of honour (see paragraph 52 above). Nor could they be dismissed for decisions taken by them in what the Government termed their "judicial" capacity.

Finally, with regard to the apprehension that members deciding on a patent application in an Appeals Division might be predisposed towards the views expressed by their colleagues in the relevant Examination Division, the Government contended that any such fears were not objectively justified. This was borne out by the facts of the present case. In the event, the Appeals Division had actually set aside the decision of the Examination Division and gone on to refuse the grant of a patent on wholly different grounds (see paragraphs 13 and 16 above).

**(ii) "Public hearing"**

71. The applicant company complained that the hearings of the Appeals Division were not held in public and submitted that its decisions were not given in public either (see paragraph 42 above).

72. Having arrived at the conclusion that the Appeals Division lacked the requisite independence, the Commission did not find it necessary to express an opinion on this issue.

73. The Government argued that, whilst the law did not require hearings to be held in camera, it was as a

rule in the interests of those applying for patents that patent application procedure should be confidential.

As to the public nature of decisions, they stated that the Patent Office gave reasoned decisions in writing and that these decisions were available to the public. Furthermore, decisions which were of importance for the development of case-law were reported.

**(iii) "Fair hearing"**

74. Finally, the applicant company submitted that on three different grounds the proceedings before the Appeals Division of the Patent Office had not been "fair".

Firstly, they argued that the Appeals Division had been both "opponent" and "deciding body"; this was borne out by the fact that the Appeals Division had of its own motion raised the issue of a possible lack of an "inventive step" and gone on to dismiss the patent application on that ground (see paragraph 16 above).

Secondly, they complained about the fact that the Appeals Division had formulated objections to the grant of a patent on grounds not raised by "either party" - namely the Examination Division or themselves.

Thirdly, they asserted that they had had no access to certain documents kept in the Patent Office's files and used by the Appeals Division in arriving at its decision.

75. For the reason given in paragraph 72 above, the Commission did not consider it necessary to express an opinion on any of the above complaints.

76. In the submission of the Government the first and second complaints were unfounded, it being the duty of the Patent Office to ensure in the public interest that exclusive rights were not wrongly granted. In addition, in cases where the Appeals Division raised objections not raised by the Examination Division, the applicant for a patent was allowed a reasonable period to submit his own views and if necessary was even granted a second hearing; indeed the applicant company had had available to it, and actually made use of, these facilities (see paragraph 15 above).

As to the third complaint, the Government stated that all documents exchanged during the appeal proceedings formed part of the case file which was accessible to the applicant for a patent save for certain internal notes and draft decisions (see paragraph 43 above).

**(b) The Court's assessment**

77. The Court recognises that in a domain as technical as that of the granting of patents there may be good reasons for opting for an adjudicatory body other than a court of the classic kind integrated within the standard judicial machinery of the country (see, among other authorities and *mutatis mutandis*, the *Campbell and Fell v. the United Kingdom* judgment of 28 June 1984, Series A no. 80, p. 39, para. 76; more recently, the *McMichael v. the United Kingdom* judgment of 24 February 1995, Series A no. 307-B, p. 53, para. 80). However, the Court does not judge it necessary in the instant case to rule on the various complaints submitted under this head, having regard to its conclusion as to the applicant company's possible access to the ordinary civil courts in the event of the Appeals Division not being considered to meet the requirements of Article 6

para. 1 (art. 6-1) (see below, and especially paragraphs 78 and 82-87).

**2. Whether any possible failure to comply with Article 6 para. 1 (art. 6-1) is remedied by access to the civil courts**

78. Even if the proceedings before the Appeals Division of the Patent Office were considered not to comply with Article 6 para. 1 (art. 6-1) in one way or another, no violation of the Convention could be found if there was available to the applicant company a remedy ensuring the determination of their asserted civil right by an independent judicial body that did have sufficient jurisdiction and did itself provide the safeguards required by Article 6 para. 1 (art. 6-1) (see, among other authorities, the *Fischer v. Austria* judgment of 26 April 1995, Series A no. 312, p. 17, para. 28).

79. The Government argued that under well-established principles of Netherlands law it was open to the applicant company to bring their case before the civil courts.

In its *Oerlemans v. the Netherlands* judgment of 27 November 1991 (Series A no. 219) the Court had recognised that under Netherlands law it was clearly established that, where an administrative appeal to a higher authority was not considered to offer sufficient guarantees as to a fair procedure, it was possible to have recourse to the civil courts for a full review of the administrative decision. In their submission, although the *Oerlemans* judgment, like the *Benthem* judgment, concerned only proceedings of "appeal to the Crown", this finding encompassed other proceedings of an administrative nature. The decisive issue was whether in determining civil rights and obligations the body which had given the contested decision fulfilled the requirements of Article 6 para. 1 (art. 6-1).

80. Before the Commission the Government had argued at the admissibility stage that the applicant company had not exhausted domestic remedies, having failed to bring their case before the civil courts. The Commission found that the application concerned the right of "access to a tribunal", and the question whether or not it was possible to submit a patent application to the civil courts was therefore not a matter of exhaustion of domestic remedies but went to the merits of the case.

However, the Commission was of the opinion that it could not base any conclusion on the possibility of bringing civil proceedings, since it had not been demonstrated that any civil court had ever considered itself competent to review decisions of the Appeals Division of the Patent Office.

81. In the view of the applicant company there was nothing to suggest that access to the civil courts, or for that matter any other tribunal satisfying the requirements of Article 6 para. 1 (art. 6-1), could have been obtained.

They pointed to the fact that at the relevant time access to the administrative tribunal that would otherwise have been the appropriate forum, namely the Litigation Division (*Afdeling Rechtspraak*) of the Council of State, was barred by section 1 (f) of the AROB Act. In addition, they contended that section 54

of the Patent Act gave a limitative enumeration of the cases in which the civil courts had jurisdiction to decide questions relating to patent applications or patents (see paragraphs 44-46 above). Consequently, any tribunal satisfying the requirements of Article 6 para. 1 (art. 6-1) would, if asked to review a decision of the Appeals Division rejecting a patent application, have to decline jurisdiction.

In addition, they called into question the Court's analysis of the relevant domestic law in its *Oerlemans* judgment. Their arguments may be summarised as follows. Firstly, close examination of domestic "post-Benthem" case-law revealed that the cases in question were decided on grounds of national law on which the above-cited *Benthem* judgment had no bearing. Secondly, that case-law had left intact the obligation, in "appeal-to-the-Crown" proceedings, to appeal first to the competent administrative bodies before review by the civil courts was possible. Thirdly, the Supreme Court had in their view done its utmost to limit as far as possible the effects of the *Benthem* judgment.

They further argued that the *Oerlemans* judgment applied only to the possibility of review by the civil courts of decisions given with regard to appeals to the Administrative Disputes Division of the Council of State; the Court's findings in that judgment, "if and to the extent correct", could not be extrapolated to other "administrative appeals to a higher authority" such as the Appeals Division of the Patent Office. Finally, the *Oerlemans* judgment was to be considered as a decision in a case standing by itself, based on very specific circumstances, and had no value as precedent in the present case.

82. The Court notes, as did the Commission, that no Netherlands civil court has ever held itself competent to review decisions of any Division of the Patent Office regarding patent applications. However, the Court cannot accept that the remedy offered by civil proceedings must for that reason be regarded as "ineffective"; it is equally true that no civil proceedings directed against a decision of the Appeals Division of the Patent Office have ever resulted in a ruling that the Appeals Division in fact offered sufficient procedural safeguards (see paragraph 60 above). In this respect the present case is to be distinguished from that of *Van de Hurk v. the Netherlands*, where the civil courts had actually held the administrative tribunal in question to afford sufficient safeguards (judgment of 19 April 1994, Series A no. 288, p. 18, para. 54).

83. Unlike the applicant company, the Court considers its *Oerlemans* judgment as a pertinent precedent since, far from being based on the particular circumstances, that judgment was grounded on the finding of "well-established principles of Netherlands law" which were applicable in the specific case. After a comprehensive examination of the pertinent case-law of the Netherlands Supreme Court as well as the opinions of learned legal commentators in the Netherlands, the Court found it established that "where an administrative appeal to a higher authority [was] not considered to offer sufficient guarantees as to a fair procedure it [was] possible to

have recourse to the civil courts for a full review of the lawfulness of the administrative decision" (p. 21, para. 53). The applicant company has not convinced the Court that this conclusion was based on an erroneous interpretation of Netherlands law and the Court therefore sees no reason in the present case to revise its earlier finding as to the state of Netherlands law. The "well-established principles" relied on by the Court in arriving at its conclusion predate the dispute which was at the root of the Oerlemans case and were gleaned from domestic case-law relating to forms of "administrative appeal" other than an "appeal to the Crown" (see the Oerlemans judgment, p. 21, paras. 53-54). It follows, therefore, that the Court's finding as to Netherlands law relates generally to all instances where the civil courts do not consider an administrative procedure to afford sufficient procedural safeguards.

84. Consequently, if after the decision of the Appeals Division the case had been brought by the applicant company before the civil courts, and if it had been argued that the Appeals Division was not a "tribunal" offering the safeguards required by Article 6 para. 1 (art. 6-1) of the Convention, the courts would as a matter of domestic law first have had to decide whether that argument was correct. Should they have found this to be so, the civil courts would have had full jurisdiction to rule on the merits, that is, to decide whether the Appeals Division had been right to refuse to grant the patent applied for and to afford appropriate relief. The judgment of the President of the Regional Court of The Hague of 11 July 1989 (BIE 1990, p. 246 - see paragraph 60 above) provides corroboration of this analysis.

85. It is not for this Court to prejudge whether the Netherlands civil courts would have held the Appeals Division to fall short of the standards of Article 6 para. 1 (art. 6-1), which would entail that they had full jurisdiction on the merits. Had the civil courts come to such a decision, a judicial remedy of the classic kind providing the safeguards required by Article 6 para. 1 (art. 6-1) would have been available to the applicant company, albeit subject to the condition under Netherlands law that they would only have access to the civil courts after having brought an appeal before the Appeals Division.

86. While, therefore, the applicant company could have submitted their claim to the civil courts for examination, they chose, for whatever reason, not to do so. In these circumstances the Court cannot find in the abstract that the remedies available to the applicant company under Netherlands law for vindicating their asserted right to a patent did not meet the requirements of Article 6 para. 1 (art. 6-1) (see, *mutatis mutandis*, the *Air Canada v. the United Kingdom* judgment of 5 May 1995, Series A no. 316-A, p. 21, para. 62).

87. Accordingly, there has been no violation of Article 6 para. 1 (art. 6-1).

## **II. ALLEGED VIOLATION OF ARTICLE 13 (art. 13) OF THE CONVENTION**

88. In the view of the applicant company, the alleged lack of access to a tribunal also constituted a breach of

Article 13 (art. 13) of the Convention, which provides as follows:

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

89. The Court does not consider it necessary to rule on this submission. The applicant company has not adduced any argument to the effect that a violation of Article 13 (art. 13) might be found even in the absence of a finding of a violation of Article 6 para. 1 (art. 6-1). In any event, the requirements of Article 13 (art. 13) are less strict than, and are here absorbed by, those of Article 6 para. 1 (art. 6-1) (see, as a recent authority, the *Hentrich v. France* judgment of 22 September 1994, Series A no. 296-A, p. 24, para. 65).

## **III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 (P1-1)**

90. The applicant company submitted that they had also been the victim of a violation of Article 1 of Protocol No. 1 (P1-1), which 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 (P1-1) 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 applicant company argued that the denial of access to an independent and impartial tribunal for the determination of its entitlement to a patent meant that they had been deprived of a "possession" without any judicial examination.

Neither the Commission nor the Government concurred with this view.

91. In the Court's opinion, there is no call in the instant case to decide, as the Commission did, whether or not the patent application lodged by the applicant company constituted a "possession" coming within the scope of the protection afforded by Article 1 of Protocol No. 1 (P1-1). The complaint under this head, namely the denial of a judicial remedy, is in substance identical to that already examined and rejected in the context of Article 6 para. 1 (art. 6-1) of the Convention (see paragraphs 68 to 87 above). The Court considers that no separate issue arises under Article 1 of Protocol No. 1 (P1-1) in relation to the matters complained of.

## **FOR THESE REASONS, THE COURT UNANIMOUSLY**

1. Holds that there has been no violation of Article 6 para. 1 (art. 6-1) of the Convention;
2. Holds that it is not necessary to rule on the allegation of a violation of Article 13 (art. 13) of the Convention;
3. Holds that no separate issue arises under Article 1 of Protocol No. 1 (P1-1).

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 20 November 1995.

---