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

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THIRD SECTION

ECHR-LE11.1R
PK/svm

10 October 2013

Application no. 9765/09
de Bruin v. the Netherlands

Dear Sir,

I write to inform you that the European Court of Human Rights decided on 17 September 2013, after having deliberated, that the above application was inadmissible. A copy of the decision is enclosed. The decision is also available on the Court's Internet site (hudoc.echr.coe.int/sites/eng).

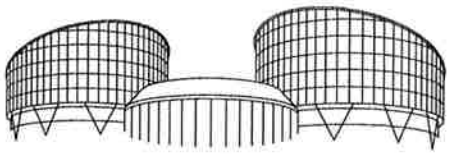
This decision is drawn up in one of the official languages of the Court (English or French). It is **final and not subject to any appeal to either the Court or any other body**. You will therefore appreciate that the Registry will be unable to provide any further details about the Chamber's deliberations or to conduct further correspondence relating to its decision in this case. A translation of the decision into another language is not available.

The present communication is made pursuant to Rule 56 § 2 of the Rules of Court.

Yours faithfully,

Marialena Tsirli
Deputy Section Registrar

Enc: Decision



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

THIRD SECTION

DECISION

Application no. 9765/09
Noel DE BRUIN
against the Netherlands

The European Court of Human Rights (Third Section), sitting on 17 September 2013 as a Chamber composed of:

Josep Casadevall, *President,*
Alvina Gyulumyan,
Corneliu Bîrsan,
Luis López Guerra,
Nona Tsotsoria,
Johannes Silvis,
Valeriu Griţco, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 12 February 2009,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Noel de Bruin, is a Netherlands national, who was born in 1957 and lives in The Hague. He is represented before the Court by Mr R.C.V. Mans, a lawyer practising in Leiden.

A. The circumstances of the case

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

1. Factual background

3. In the Netherlands, the English-language expression "coffee shop" (also spelt "coffeeshop" or "koffieshop") denotes an establishment where coffee and perhaps other beverages may be enjoyed on the premises but

where in addition certain psychoactive substances (referred to as "soft drugs") are retailed to members of the public for personal recreational use.

4. On 1 October 1999 the applicant became the landlord of a coffee shop in The Hague. This establishment had been in existence since 1989.

5. On 18 October 1995 the then owner of the coffee shop had received a written communication from the Burgomaster (*burgemeester*) of The Hague stating that that establishment would be designated as an existing retail outlet for soft drugs (*bestaand verkooppunt van softdrugs*). As relevant to the case, this meant that no administrative action would be taken against the sale of soft drugs in that coffee shop as long as the following conditions were met:

> "1. trade and/or use of hard drugs within the recreational establishment (*recreatie-inrichting*) is out of the question;
>
> 2. sale and/or use of hard drugs outside of the recreational establishment, but in direct connection therewith, is out of the question;
>
> 3. no access shall be granted, nor soft drugs sold, to minors (below the age of eighteen) in the recreational establishment;
>
> 4. there shall be no sale or delivery of soft drugs on the public highway that is found or reasonably suspected to be connected with the exploitation of the recreational establishment;
>
> 5. the sale of/trade in soft drugs inside the recreational establishment shall not cause any nuisance for the surrounding area;
>
> 6. there shall be no criminal activities or crimes of violence committed or prepared inside the recreational establishment or outside it, but connected to it; 'criminal activities' shall be understood to include, but not be limited to, the illegal possession of firearms and the receiving of, or trade in, hard drugs;
>
> 7. no alcoholic beverages shall be served in the recreational establishment; ...
>
> 8. not more than thirty grammes of soft drugs per person shall be delivered or sold in the recreational establishment;
>
> 9. the recreational establishment shall not manifest itself too explicitly [as a retail outlet for soft drugs] by too extravagantly advertising the sale of soft drugs[.]"

Express attention was drawn to the possibility that in the event that any of the above conditions were not met, the Burgomaster might be compelled to take administrative action against the sale of soft drugs in the recreational establishment. Such administrative action would consist of either the closure of the establishment for a limited period or the withdrawal of the license to exploit a recreational establishment. In the event of closure of the establishment, the sale of soft drugs would no longer be permitted after its reopening.

6. On 3 March 2000, after he had taken over the coffee shop, the applicant was granted a licence (*vergunning*) by the Burgomaster to exploit it as a recreational establishment serving non-alcoholic beverages.

7. From March 2000 onwards the Burgomaster informed the applicant on several occasions that the police had noted the failure to comply with the conditions set out in paragraph 5 above and warned him that any further such failure might lead him to take appropriate administrative action.

8. On 24 July 2001 the Burgomaster sent the applicant a written communication informing him that the police had evidence of the repeated presence of minors in his coffee shop and the sale to minors of soft drugs, and that for that reason he had decided to order the closure of the coffee shop for a period of nine months from 1 August 2001 until 1 May 2002. The designation granted in the written communication of 18 October 1995, referred to as a "toleration decision" (*gedoogbeschikking*), was withdrawn. The Burgomaster's written communication was delivered to the applicant by the police.

2. First round of proceedings

9. The applicant lodged an objection (*bezwaarschrift*) on 30 July 2001. On the same date he lodged a request for the provisional suspension (*schorsing*) of the Burgomaster's decision with the President of the Regional Court (*arrondissementsrechtbank*) of The Hague.

10. The President of the Regional Court gave a decision dismissing the applicant's request on 23 August 2001. As relevant to the case, he found that the Burgomaster's decision was based on an accurate assessment of the facts and not disproportionate in relation to the aim of protecting the public.

11. The Objections Advisory Committee (*Adviescommissie bezwaarschriften*) of the municipality of The Hague held a hearing on 30 October 2001. The applicant did not appear, preferring to rely on the documents already contained in the file.

12. On 15 March 2002 the Objections Advisory Board submitted to the Burgomaster an advisory opinion recommending that the objection be dismissed.

13. On 21 March 2002 the Burgomaster gave a decision dismissing the applicant's objection.

14. The applicant lodged an appeal (*beroep*) with the Regional Court (now termed *rechtbank*) of The Hague. As relevant to the case before the Court, he contested the decision to order the closure of his coffee shop for nine months and argued that the Burgomaster had acted contrary to the published policy of the municipality by withdrawing the "toleration decision" before the closure order had become final.

15. On 7 October 2003 the Regional Court gave its decision. As relevant to the case, it held that the Burgomaster had been entitled to order the closure of the applicant's coffee shop for nine months. However, the Burgomaster had not stated sufficient reasons to withdraw the "toleration decision" of 18 October 1995 (see paragraph 5 above) before the closure order became final. To this extent, therefore, the applicant's appeal was

well-founded and the Burgomaster's decision to withdraw the "toleration decision" was overturned.

16. It appears from an extract from the Commercial Register (*Handelsregister*) that the applicant's coffee shop went out of business on 2 October 2001.

3. Second round of proceedings

17. On 23 March 2004 the applicant's lawyer wrote to the Burgomaster reminding him of the Regional Court's decision of 7 October 2003 and asking him to take a new decision as ordered. In particular, he asked for the withdrawal of the "toleration decision" to be reconsidered. In addition, he demanded compensation for the damage suffered by the applicant as a result of the withdrawal of the "toleration decision".

18. Receiving no reply, the applicant's lawyer wrote to the Burgomaster and Aldermen (*College van Burgemeester en Wethouders*) on 26 May 2004.

19. The Burgomaster and Aldermen construed the applicant's request as an objection against the failure to give a decision and referred the matter to the Objections Advisory Committee. On 14 July 2004, after holding a hearing, this Committee gave an advisory opinion. Referring to case-law of the Administrative Jurisdiction Division (*Afdeling bestuursrechtspraak*) of the Council of State (*Raad van State*) ("the Administrative Jurisdiction Division"), including its decision of 4 June 2002, *Landelijk Jurisprudentie Nummer* (National Jurisprudence Number, "LJN") AE8045 (see below), it took the view that a "toleration decision" as here in issue was not a "decision" within the meaning of the General Administrative Law Act (*Algemene wet bestuursrecht*) and recommended that the Burgomaster give a decision declaring the objection inadmissible on that ground. This the Burgomaster did on the same day, adopting as his own the reasons given by the Objections Advisory Board.

20. The applicant lodged an appeal with the Regional Court of The Hague on 13 August 2004.

21. On 5 November 2004 the Burgomaster replied to the applicant's demand for compensation, stating his refusal on the ground that a causal link between the action concerned and the damage claimed did not exist.

22. The Regional Court gave its decision on 7 April 2005. It noted that no appeal had been brought against the Regional Court's decision of 7 October 2003, which meant that that decision had become enforceable and binding on the Burgomaster. Yet the Burgomaster had declared the applicant's objection inadmissible on grounds that he could have stated in the first round of proceedings before the Regional Court, i.e. those leading up to the decision of 7 October 2003, and had thus offended against legal certainty. This meant that the Burgomaster's decision of 14 July 2004 had to be annulled, and the Burgomaster had to decide on the merits anew in the light of the Regional Court's decision.

4. Proceedings for damages

23. On 29 October 2004, having received no decision from the Burgomaster on his demand for damages (see paragraph 17 above), the applicant summoned the municipality of The Hague before the Regional Court of The Hague (civil division). He alleged a tort in that the Burgomaster had wrongly withdrawn the "toleration decision", the unlawful nature of the Burgomaster's action having been established by the Regional Court itself in a final and binding decision.

24. The civil division of the Regional Court ordered the personal appearance (*comparitie*) of the applicant and the representatives of the Burgomaster. This took place on 25 March 2005. According to the Regional Court's official record, a friendly settlement was reached in the following terms:

> "In order to put an end to the dispute ... the parties agree as follows:
>
> 1. The municipality recognises that the partial decision annulled by the administrative jurisdiction on 7 October 2003 must, in view of the case-law concerning torts committed by government bodies (*onrechtmatige overheidsdaad*), be qualified as a tort committed by a government body.
>
> 2. De Bruin recognises that the damage which he has suffered by not having resumed the sale of soft drugs after the period of forced closure cannot be imputed to the municipality as a consequence of the tort referred to under 1.
>
> 3. The parties shall each bear their own costs and expenses.
>
> 4. The parties ask that the case be struck out of the list as of today."

25. The case was duly struck out of the list.

5. Third round of proceedings

(a) Proceedings before the Regional Court

26. On 15 July 2005 the Objections Advisory Board wrote to the applicant's representative informing him that the Burgomaster would take a new decision after first obtaining its advice.

27. The Objections Advisory Board, having held a hearing on 31 October 2005, gave its advisory opinion on 31 January 2006. As relevant to the case, it recommended that the "partial decision" consisting of the withdrawal of the "toleration decision" be revoked and replaced by the statement that once the applicant's recreational establishment was reopened after the period of forced closure action to prevent the resumption of the sale of soft drugs in and from that establishment would be taken in enforcement of the law (*dat het "deelbesluit" bestaande uit de intrekking van de gedoogbeschikking komt te vervallen en voorts toe te voegen de mededeling dat, na heropening van de recreatie-inrichting, na afloop van de tijdelijke sluiting handhavend wordt opgetreden tegen de voortzetting van de verkoop van softdrugs in en vanuit de recreatie-inrichting*).

28. The Burgomaster gave a decision entirely in conformity with the advisory opinion of the Objections Advisory Board.

29. On 14 March 2006 the applicant lodged an appeal with the Regional Court of The Hague.

30. Following a hearing held on 16 February 2007, the Regional Court gave a decision on 10 July 2007 to reopen the proceedings in order to obtain clarity on certain points related to the applicant's administrative-law claim for damages (see paragraph 17 above). The applicant and the Burgomaster submitted their arguments in writing.

31. The Regional Court gave its decision on 7 November 2007. It held that the Burgomaster had still failed adequately to comply with the Regional Court's decision of 7 October 2003, because stating that "once the applicant's recreational establishment was reopened after the period of forced closure action to prevent the resumption of the sale of soft drugs in and from that establishment would be taken in enforcement of the law" was in substance the same as withdrawing the "toleration decision". However, there was no need to annul the decision of 31 January 2006 on this point, given that the Burgomaster had in fact revoked his decision of 24 July 2001 in so far as it comprised the withdrawal of the "toleration decision".

There remained the claim for damages. The Regional Court found that, as argued by the applicant, the friendly settlement of 25 March 2005 did not relate to the legal costs incurred in the administrative proceedings. The Burgomaster was ordered to take a new decision, on this point only, within six weeks.

(b) Proceedings before the Administrative Jurisdiction Division of the Council of State

32. The Burgomaster lodged a further appeal (*hoger beroep*) with the Administrative Jurisdiction Division, at the same time seeking a provisional measure dispensing him from having to give a new decision within six weeks from the Regional Court's decision.

33. On 30 January 2008 the President of the Administrative Jurisdiction Division ordered a provisional measure to the effect that the Burgomaster need not take a new decision on the applicant's objection before the Administrative Jurisdiction Division itself gave a decision on the merits of the case.

34. The Administrative Jurisdiction Division held a hearing in the case on 29 July 2008. In the course of this hearing the applicant, invoking Article 6 of the Convention, complained about the length of the proceedings.

35. On 13 August 2008 the Administrative Jurisdiction Division gave its decision on the merits. As relevant to the case before the Court, it read as follows:

"2.2. The Administrative Jurisdiction Division, *ex officio*, finds as follows:

2.3. The Regional Court has gone outside the scope of the case (*is buiten het geding getreden*) by annulling the decision of 22 February 2006 inasmuch as it dismissed the request for compensation for damage, given that that decision concerns neither the request for compensation nor its rejection but only the objection against the withdrawal of the 'toleration decision'. The appeal is well-founded and the decision appealed against will have to be overturned.

2.4. The appeal is directed against the decision taken on De Bruin's objection against the withdrawal of the 'toleration decision'. As the Administrative Jurisdiction Division has held in an earlier case (decision of 4 July 2002, [see paragraph 45 below]), the withdrawal of a 'toleration decision' is not a decision against which an objection lies. The fact that the Regional Court has overlooked this in its decisions of 7 October 2003 and 7 April 2005 aforementioned and these decisions have not been appealed against does not have the significance De Bruin would wish to see attributed to it, because it must be examined *ex officio* whether an objection has been lodged against a decision against which an objection is possible. Acting as the Regional Court ought to have done, the Administrative Jurisdiction Division will declare the appeal well-founded, overturn the decision of 22 February 2006, and substituting its own decision, declare the objection inadmissible."

B. Relevant domestic law and practice

1. Criminal law and prosecution policy

(a) The Opium Act

36. As relevant to the case before the Court, the Opium Act (*Opiumwet*) provided as follows:

Section 3

"It shall be illegal to perform any of the following with respect to a substance listed on List II appended to this Act ...:

A. its import or export onto or out of Netherlands territory;

B. the growing, preparing, modifying, processing, selling, delivering, supplying or transporting [of such a substance];

C. its possession (*aanwezig hebben*);

D. its production."

Section 13b

"The Burgomaster shall be empowered to take enforcement action under administrative law (*bestuursdwang*) if, in spaces open to the public and appurtenant premises, a substance as referred to in ... List II is sold, delivered or supplied, or is present for such purpose. ..."

37. List II appended to the Opium Act includes, among many other substances, "hashish" (*hasjiesj*), defined as "a common solid mixture of the separated resin obtained from plants of the genus *Cannabis* (hemp), with vegetable elements of these plants", and "hemp" (*hennep*), defined as "any

part of the plant of the genus *Cannabis* (hemp), from which the resin has not been separated, with the exception of the seeds".

(b) Prosecution policy

38. At the relevant time, the Public Prosecution Service's (*openbaar ministerie*) Guidelines on the Investigation and Criminal-Proceedings Policy Relating to Offences under the Opium Act (*Richtlijnen opsporings- en strafvorderingsbeleid strafbare feiten Opiumwet*), issued by the Board of Procurators General (*College van procureurs-generaal*) and published in the Official Gazette (*Staatscourant*; 1996, nr. 187) included the following:

"3.3 Coffee shops

'Coffee shops' are catering establishments (*horecagelegenheden*) where soft drugs are traded and used. These establishments may have other names, such as reggae bar, coffee house, tea house, shoarma house, juice bar, and suchlike. The choice has been made to use the collective noun coffee shop, because it is the most current.

The number of coffee shops has risen enormously in recent years. Because of the nuisance thereby caused, among other reasons, the urgent need has arisen in many places to reduce their number.

...

The Public Prosecution Service works together with the local authorities in creating and maintaining local policies with regard to coffee shops.

...

In examining the question whether it is necessary to take action under criminal law against a coffee shop – a situation forbidden by law –, the following criteria apply:

A: No advertising (*affichering*): This means no advertisements other than a summary indication on the premises concerned;

H: No hard drugs (*hard drugs*): This means that there shall be no hard drugs present or sold;

O: No nuisance (*overlast*): nuisance can mean obstruction by parked vehicles around the coffee shop, noise, littering and/or clients loitering in front of or near the coffee shop;

J: No sale to juveniles (*jeugdigen*) and no entry to a coffeeshop to be allowed to juveniles: in view of the rise of cannabis use among juveniles the choice has been made to maintain a strict age limit of 18 years;

G: No sale of large quantities (*grote hoeveelheden*) per transaction: that means quantities greater than appropriate for personal use (= 5 grammes).

The expression 'transaction' means all purchases and sales in one coffee shop on the same day relating to the same purchaser.

These prohibitions are directed to the coffee shop landlord. ..."

The above criteria are usually referred to as the "AHOJG-criteria", the acronym being formed from the first letter of the expression defining the pertinent concept.

2. The Drink and Recreational Establishments Act

39. At the relevant time, section 3 of the Drink and Recreational Establishments Act (*Drank- en Horecawet*) prohibited the retail sale of alcoholic drink without a licence issued by the Burgomaster and Aldermen.

3. Administrative law and procedure

(a) The General Administrative Law Act

40. Section 1.3 of the General Administrative Law Act provides as follows:

> "1. The expression 'decision' (*besluit*) means a decision in writing (*schriftelijke beslissing*) of an administrative authority (*bestuursorgaan*) comprising a legal act under public law (*publiekrechtelijke rechtshandeling*). ..."

(b) Relevant procedure

41. Section 7:1 of the General Administrative Law Act provides that, save in exceptional situations not relevant to the present case, whoever is entitled to lodge an appeal against a decision must first lodge an objection.

42. Section 8:72(1) of the General Administrative Law Act provides that if the Regional Court declares an appeal well-founded, it shall annul the decision appealed against in whole or in part. It may then order the administrative organ concerned to decide anew, taking into account its own decision, or alternatively substitute its own decision for that of the administrative organ (section 8:72(4)).

43. Section 8:72(4) of the General Administrative Law Act applies by analogy to further appeal proceedings before the Administrative Jurisdiction Division by virtue of section 36(1) of the Council of State Act (*Wet op de Raad van State*).

(c) Relevant case-law of the Administrative Jurisdiction Division

44. In its decision of 22 July 1999 (*Administratiefrechtelijke Beslissingen* (Administrative Law Reports, "AB") 1999/340), a case in which an individual appellant sought an exemption from a local zoning plan (*bestemmingsplan*), the Administrative Jurisdiction Division held that the written refusal to tolerate a situation could not normally be deemed a decision within the meaning of section 1:3(1) of the General Administrative Law Act. Such a refusal comprised no more than a statement confirming that an illegal situation could not be tolerated. Legal remedies would only become available if the competent authority proceeded to take enforcement action under administrative law. The Administrative Jurisdiction Division added that the Burgomaster and Aldermen were not at liberty to adopt a policy of toleration that ran counter to a zoning plan adopted by the local council (*gemeenteraad*); toleration was acceptable only if, after a careful

weighing of the interests involved, the interests of the beneficiary of toleration (*gedoogde*) outweighed the general interest in enforcing the zoning plan. At most, a general policy of toleration might be permissible in anticipation of the adoption of a revised zoning plan.

45. In decisions of 4 June 2002, LJN AE8045 (AB 2002/219), and 24 March 2004, LJN AO6089, the Administrative Jurisdiction Division held that the withdrawal of a "toleration decision" was not a "decision" within the meaning of section 1.3(1) of the General Administrative Law Act, since it merely implied the possibility that the administrative body concerned might take action to enforce the law; this possibility would materialise only if such action was actually taken.

46. In its decision of 30 July 2008, the Administrative Jurisdiction Division distinguished its decision of 22 July 1999 (see paragraph 44 above), holding that if a "toleration decision" was taken against which an objection or an appeal was possible, it should be possible for all interested parties (i.e. including interested third parties) to pursue the proceedings to their conclusion. It could not make any difference in this respect that a "toleration decision" was revoked in objection proceedings, given that a decision on an objection was in itself a legal act under public law.

4. Local legislation and policy of the municipality of The Hague

47. At the relevant time, section 57 of the General Municipality Bye-law of 1982 (*Algemene plaatselijke verordening 1982*) of The Hague empowered the Burgomaster to grant, refuse or withdraw licenses for catering establishments.

48. Local policy with respect to coffee shops was defined in a document submitted by the Burgomaster and Aldermen to the local council on 10 June 1997 and approved by the latter of 19 June 1997 (document reference RIS020089_991126). This document brought the policy of the municipality into line with the "AHOJG-criteria" set out in the guidelines of the Board of Procurators General (see paragraph 38 above). As relevant to the case before the Court, it reads as follows:

> **"7.1. Rules concerning the closure of retail outlets for soft drugs**
>
> In accordance with [the relevant provisions of the General Municipality Bye-law] the Burgomaster can order the closure of a recreational establishment in the interest of the protection of local amenity (*woon- en leefklimaat*) and public order, if:
>
> ...
>
> B. [in the case of] existing retail outlets:
>
> ...
>
> 3. minors (juveniles below the age of 18) are admitted into the establishment;
>
> 4. soft drugs are sold to minors in the establishment;
>
> ...

D. Duration of closure

...

2. Closure of an existing retail outlet shall be for a duration not exceeding

a. nine months, if grounded on [among other things, the admission of minors to the establishment or the sale to them of soft drugs];

...

F. Striking off the list

In accordance with [the relevant provisions of the General Municipality Bye-law] the Burgomaster can strike an existing retail outlet for soft drugs off the list appended to this proposal to the Local Council in the interest of the protection of local amenity and public order, if:

1. the closure decision pursuant to D.2. has become final; ..."

COMPLAINTS

49. The applicant made five separate complaints under Article 6 § 1 of the Convention.

Firstly, he complained that the Administrative Jurisdiction Division had failed to respect the finality of the decisions given by the Regional Court on 7 October 2003 and 7 April 2005.

Secondly, he complained that the Regional Court had remitted his case to the Burgomaster three times, after which the Burgomaster had each time taken a new decision in the same sense as that which the Regional Court had annulled.

Thirdly, he complained of excessive formalism on the part of the Administrative Jurisdiction Division, which had bypassed all his substantive complaints and arguments including those based on Article 6 of the Convention.

Fourthly, he complained that both the Burgomaster and the Administrative Jurisdiction Division had decided to his disadvantage after the Regional Court's decisions (*reformatio in peius*).

Fifthly, he complained that the proceedings had not been brought to a close within a "reasonable time".

50. The applicant complained under Article 13 of the Convention (as the Court understands it, taken together with Article 6) that the Administrative Jurisdiction Division had denied him an effective remedy in failing to rule on his complaint based on Article 6.

51. The applicant made two complaints of discrimination, under Article 14 of the Convention (as the Court understands it, taken together with Articles 6 and 13) and under Article 1 of Protocol No. 12.

Firstly, he complained that the case-law of the Administrative Jurisdiction Division considered the grant of a "toleration decision" a "decision" within the meaning of section 1:3(1) of the General Administrative Law Act but not its withdrawal.

Secondly, he complained that retail outlets selling alcoholic beverages were treated differently from retail outlets for soft drugs in that the withdrawal of the right to retail the substances in issue could be appealed against in the former case but not in the latter.

THE LAW

A. Complaints under Article 6 § 1 of the Convention

52. The applicant made various complaints under Article 6 § 1 of the Convention, which, in its relevant part, provides as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

The Court considers that it must first determine whether that provision is applicable to the case in hand.

53. The Court reiterates that for Article 6 § 1 in its "civil" limb to be applicable, there must be a dispute ("*contestation*" in the French text) over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether it is protected under the Convention. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, finally, the result of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see, among other authorities, *Le Compte, Van Leuven and De Meyere v. Belgium*, 23 June 1981, § 47, Series A no. 43; *Neigel v. France*, 17 March 1997, § 38, *Reports of Judgments and Decisions* 1997-II; *Micallef v. Malta* [GC], no. 17056/06, § 74, 15 October 2009; and *Boulois v. Luxembourg* [GC], no. 37575/04, § 90, ECHR 2012).

54. Article 6 § 1 does not guarantee any particular content for (civil) "rights and obligations" in the substantive law of the Contracting States: the Court may not create by way of interpretation of Article 6 § 1 a substantive right which has no legal basis in the State concerned (see, for example, *Fayed v. the United Kingdom*, 21 September 1994, § 65, Series A no. 294-B; *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 98, ECHR 2001-V; *Roche v. the United Kingdom* [GC], no. 32555/96, § 119, ECHR 2005-X; *Boulois*, cited above, § 91; and *Stichting Mothers of*

Srebrenica and Others v. the Netherlands (dec.), no. 65542/12, § 168, 11 June 2013). The starting-point must be the provisions of the relevant domestic law and their interpretation by the domestic courts (see *Masson and Van Zon v. the Netherlands*, 28 September 1995, § 49, Series A no. 327-A; *Roche*, cited above, § 120; and *Boulois*, *loc. cit.*). This Court would need strong reasons to differ from the conclusions reached by the superior national courts by finding, contrary to their view, that there was arguably a right recognised by domestic law (*Boulois, ibid.*).

55. In carrying out this assessment, it is necessary to look beyond the appearances and the language used and to concentrate on the realities of the situation (see *Van Droogenbroeck v. Belgium*, 24 June 1982, § 38, Series A no. 50; *Roche*, cited above, § 121; and *Boulois*, § 92).

56. The Court takes note in the instant case of section 3 of the Opium Act, by virtue of which the retail of soft drugs is, *per se*, illegal (see paragraphs 36-37 above). This does not, in itself, raise any issue under the Convention: it should be recalled that the Convention leaves States free to designate as a criminal offence an act or omission not constituting the normal exercise of one of the rights that it protects (see, for example, *Engel and Others v. the Netherlands*, 8 June 1976, § 81, Series A no. 22; *Salabiaku v. France*, 7 October 1988, § 27, Series A no. 141-A; and *M.M. v. the Netherlands* (dec.), no. 39339/98, 21 May 2002).

57. It may well be that public authority tolerates transgressions of that prohibition to a certain extent, or subject to certain conditions. In this connection, it should be recalled that, save in so far as substantive provisions of the Convention may require the active prosecution of individuals reasonably suspected of being responsible for serious violations thereof (see, for example, *M.C. v. Bulgaria*, no. 39272/98, § 153, ECHR 2003-XII; *Siliadin v. France*, no. 73316/01, § 112, ECHR 2005-VII; and *Opuz v. Turkey*, no. 33401/02, *passim*, ECHR 2009), the decision whether or not to prosecute is not within the Court's remit (see *M.M.* (dec.), cited above).

58. It cannot follow, however, that a "right" to commit acts prohibited by law can arise from the absence of sanctions, not even if public authority renounces the right to prosecute. Such renunciation, even if delivered in writing to a particular individual, is not to be equated with a licence granted in accordance with the law (compare and contrast *Benthem v. the Netherlands*, 23 October 1985, § 33, Series A no. 97).

59. The "dispute", though undoubtedly genuine and serious, was therefore not about a "right" which could be said, at least on arguable grounds, to be recognised under domestic law. It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

B. Complaint under Article 13 of the Convention taken together with Article 6

60. The applicant complained that the Administrative Jurisdiction Division had denied him an "effective remedy" for his complaints under Article 6 by failing to consider these. He relied on Article 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."

61. Article 13 cannot reasonably be interpreted so as to require a remedy in domestic law in respect of any supposed grievance under the Convention that an individual may have, no matter how unmeritorious his complaint may be: the grievance must be an arguable one in terms of the Convention (see, among many other authorities, *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 54, Series A no. 131, and *Athanassoglou and Others v. Switzerland* [GC], no. 27644/95, § 58, ECHR 2000-IV).

62. The Court has already found Article 6 to be inapplicable. It therefore reaches the same conclusion with respect to Article 13 (see, *mutatis mutandis*, *Athanassoglou and Others*, cited above, § 59). It follows that this part of the application too is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

C. Complaints under Article 14 of the Convention taken together with Articles 6 and 13 and under Article 1 of Protocol No. 12

63. The applicant considered himself a victim of discrimination on two accounts.

64. Firstly, he submitted that the case-law of the Administrative Jurisdiction Division considered the grant of a "toleration decision" a "decision" within the meaning of section 1:3(1) of the General Administrative Law Act but not its withdrawal.

65. Secondly, he argued that retail outlets selling alcoholic beverages were treated differently from retail outlets for soft drugs in that the withdrawal of the right to retail the substances in issue could be appealed against in the former case but not in the latter.

66. He relied on Article 14 of the Convention taken together with Articles 6 and 13 and on Article 1 of Protocol No. 12. These provisions read as follows:

Article 14

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language,

religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 1 of Protocol No. 12

"1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or § other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."

1. Article 14

67. As the Court has frequently stated, Article 14 complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. The application of Article 14 does not necessarily presuppose the violation of one of the substantive rights guaranteed by the Convention. It is necessary but it is also sufficient for the facts of the case to fall "within the ambit" of one or more of the provisions in question. The prohibition of discrimination in Article 14 thus extends beyond the enjoyment of the rights and freedoms which the Convention and its Protocols require each State to guarantee. It applies also to those additional rights, falling within the general scope of any Article of the Convention, for which the State has voluntarily decided to provide (see, as a recent authority among many others, *Ramaer and Van Willigen v. the Netherlands* (dec.), no. 34880/12, § 86, 23 October 2012).

68. The Court has already found Articles 6 and 13 of the Convention inapplicable; it follows that Article 14 cannot apply in combination with those Articles either (see, *mutatis mutandis*, *Ramaer and Van Willigen* (dec.), cited above, § 87). To the extent that the application is based on Article 14, it is therefore likewise incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

2. Article 1 of Protocol No. 12

69. It remains for the Court to consider the applicant's complaints under Article 1 of Protocol No. 12. Unlike Article 14, this Article does not apply solely in combination with rights or freedoms safeguarded elsewhere in the Convention or its Protocols. The Court must, however, apply the same substantive test as if Article 14 were applicable (see *Ramaer and Van Willigen* (dec.), cited above, §§ 89-90).

70. As to the first complaint, the Court understands the pertinent case-law of the Administrative Jurisdiction Division (see paragraph 46 above) to mean that a "toleration decision" can be contested by a person to whom it is

not addressed but whose interests are inimical to its grant. Such a situation is fundamentally different from that in which the applicant finds himself.

71. As to the second complaint, the Court points out that the sale of alcoholic drink is not *per se* unlawful in the Netherlands whereas the sale of soft drugs is.

72. The applicant is thus not in a "relevantly similar situation" to those with whom he compares himself. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Marialena Tsirli
Deputy Registrar

Josep Casadevall
President