

Below is the text of the preliminary application submitted to the Registry of the European Court of Human Rights in Strasbourg on 30th June 2009 by counsel Paul Baakman on behalf of and by order of the inhabitants of Houtwijk, The Hague. The proceedings will be in English (in due course, if necessary) and will fall within the European Convention secrecy rules.

At the request of the editors (department of civil law) of Stopumts.nl, counsel Baakman gave a short explanation: Environmental safety management in The Netherlands has concentrated on reducing and monitoring the risks of activities to the environment and to individuals. It assesses safety risks related to the installation and functioning of equipment generating electromagnetic radiation/EMFs on Dutch territory, in this case within the municipal area of The Hague.

The residents of The Hague do not want to be exposed against their will to the abovementioned electromagnetic fields. The present clients feel that the Dutch environmental safety authorities pay insufficient attention to the prevention of health risks, with regard to the effects of long-term exposure of people to pulsed and non-pulsed non-ionizing radiation (electromagnetic radiation/fields). Also, the appropriate Dutch legal procedures (under Administrative law) do not provide for adequate examination under the constitution (Art. 120 of the constitution is a barrier) and health factors cannot be considered in building permit proceedings.

Judicial Practice BAWA
Haaksbergen, 7 August 2009

Preliminary application filed at the European Court of Human Rights in Strasbourg

Council of Europe

67075 Strasbourg – France

Haaksbergen (NL) 30th June 2009

Our Reference: 07.2009.0024/22

Re: Plaintiffs mentioned hereunder, all inhabitants of The Hague, The Netherlands

Counsel J.P.E. Baakman, office situated in Haaksbergen (NL)

Inhabitants of Houtwijk, The Hague
Representative J.P.E. Baakman (counsel)

Versus

The Dutch government
Representative Ministry of Foreign Affairs (NL)

RESPECTFULLY DECLARES:

Aforementioned clients, all living in The Hague (The Netherlands), hereby authorise me to represent them in the proceedings before the European Commission of Human Rights, and in any subsequent proceedings under the European Commission of Human Rights, concerning my application introduced under Art.25 of the Convention concerning The Netherlands.

Aforementioned clients all feel aggrieved at the decree of the justice department of the Council of State dated 14th January 2009, allocated case number 200800497/1. It concerns the decree of the supreme national Authorities, in the case of the appeal by plaintiffs to the application of the working of, amongst others, art. 8 of the ECRM to ensure protection from compulsory exposure to non-ionizing radiation (electromagnetic radiation/fields), both outside and inside, and where the appeal to application Art. 174 par. 2 EG was not honoured. Through these proceedings, plaintiffs want to lodge a complaint against The Netherlands for violation of the Convention.

The Dutch government as well as the justice department of the Council of State (the aforementioned department does not belong to the judiciary of The Netherlands) are guided by, amongst others, the Health Council (Electromagnetic Fields Commission). Aforementioned Health Council does not make its own investigations but advises/informs the Dutch government after reading the investigation reports as selected by the Health Council. The criteria for this selection are not known to the plaintiffs. In the proceedings which have been laid before your Court and Commission, a summary will be given regarding the composition of the Electromagnetic Fields Commission of the Health Council, regarding the literature studied by this Commission and regarding the literature that has not been studied as far as is known to the plaintiffs.

Plaintiffs will request the Dutch and Belgian organizations Stopumts (The Netherlands) and Restrict radiation (Belgium) to release their files after which these will be brought before the registry as procedural documents within the list of documents.

Dutch and foreign scientists will make further submissions in accordance with my clients' request.

In the opinion of plaintiffs, the justice department of the Council of State is not competent with regard to health risks and compensatory law.

Though the aforementioned department has appointed a so-called expert (STAB - Dutch abbreviation for the Consultancy Administrative Law Foundation), it turns out that this expert is not in the opinion of plaintiffs competent to provide advice to the aforementioned department or to investigate whether or not the advice given is based on incorrect assumptions.

The STAB report states that it has been revealed, from worldwide investigations into the effects of the radio frequency electromagnetic fields which are applicable to this situation because of the frequency of digital broadcasting, that radio frequency electromagnetic radiation can be harmful to one's health. In these investigations, a distinction is made between the thermal effects, namely heating, and the biological effects of induced current, namely stimulating muscles and nerves by electric current.

STAB continues by stating that, as far as the long term is concerned, the conclusion of investigations is that there is no evidence that radio frequency electromagnetic fields will cause cancer or any other long-term effects.

Aforementioned report will be filed as a procedural document.

Grounds for appeal

The justice department of the Council of State of the EU member state The Netherlands does not indicate which scientific studies have been consulted by STAB. Officially this should have been done, yet it is not possible to appeal in cassation against the judgment of the justice department of the Council of State. The financial interests of the Dutch government are great.

Plaintiffs therefore claim a violation of art. 6 of the European Convention of Human Rights ratified by the Dutch government. The violations of the convention will be filed (in Dutch and only if necessary in English) on forms to be submitted to your Court within the time stipulated by your Court.

In making a decision on the decree contested by the plaintiffs (the applicable Dutch law is The Environmental Management Act), the Dutch government has been guided by the aforementioned Health Council (publication no. 1997/01) and the Recommendation of the Council of the European Union dated 12th July 1999, no. 1999/519/EG on limitation of the exposure of the public to electromagnetic fields from 0 Hz – 300 GHz.

Neither the aforementioned advisory report of the Health Council nor the aforementioned recommendation has any force of law. A possible appeal by the Dutch government to the authority of the findings of the ICNIRP (International Commission on Non-Ionizing Radiation Protection) should be refused because, besides the fact that it is not known which doctors have participated in producing the findings of the ICNIRP, plaintiffs also state that the ICNIRP is a private organization which is not responsible to any government of a EU member state.

The Dutch government, in this case the justice department of the Council of State, has not made any investigation into the medical-professional level and the legal status of the ICNIRP since the 1990s.

Adding the fact that the WRO (Town Planning Law) and the appropriate Administrative Law give no opportunity for Dutch citizens seeking justice to have health risks to be considered as grounds for appeal, a violation of art. 13 ECRM occurs (no effective plea).

The appeal procedure(s) with regard to the judging state councils of the justice department of the Council of State (a full education in Dutch Law is not obligatory for an appointment to these councils) is not sufficiently guaranteed: an adequate court procedure does not exist. In the proceedings before your Court plaintiffs will further make known the effects of tests of reasonability within the Dutch Administrative Law System. The Netherlands has not sufficiently amended acts after the Decree Benthem vs The Netherlands and the case concerning the Council of State of Luxembourg.

The conclusion of the above should be that the implementation of ECHR law was improperly done, that no fair trial has taken place, and that the decision-making with regard to the decree of the supreme national authorities is not based on an independent and impartial legal authority, while a sufficiently guaranteed court procedure is not available (and has never been available).

In many ways – as already indicated briefly – plaintiffs have not had a fair trial.

For this reason plaintiffs apply to your Court with the respectful request to deal with their complaint and to judge their complaints well-grounded, to order the Dutch government to reverse the violation(s) of the Convention with the provision that, in case complaints are judged well-grounded, a fair settlement will be given to the plaintiffs by the Dutch government under art. 50 ECRM.

In confirmation of the aforementioned and awaiting allocation of case number, signing with due respect,

Yours sincerely,

Your obliging,

J.P.E. Baakman

(Counsel)

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