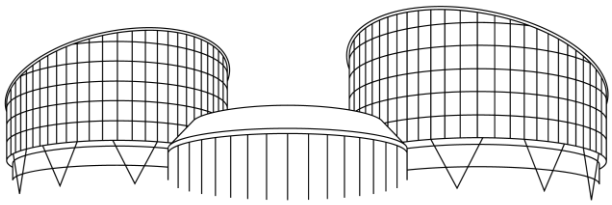

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Application no. 27126/11
Nicolaas NOBEL against the Netherlands
and 3 other applications
(see list appended)

The European Court of Human Rights (Third Section), sitting on 2 July 2013 as a Chamber composed of:

Josep Casadevall, *President*,
Corneliu Bîrsan,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria,
Johannes Silvis,
Valeriu Griţco, *judges,*
and Santiago Quesada, *Section Registrar,*

Having regard to the above applications lodged on the dates listed in the appendix,

Having deliberated, decides as follows:

THE FACTS

1. A list of the applicants is set out in the appendix. In the proceedings before the Court, the applicants are represented by Mr H.M. Hielkema, a lawyer practicing in Amsterdam.

A. The circumstances of the case

1. The first applicant (application no. 27126/11)

2. The first applicant owns, amongst other residences, a semi-basement flat at the Weesperzijde in Amsterdam. On 1 April 1984 he rented out this flat to X, for the equivalent of 354.67 euros (EUR) per month. In 2009 X was paying a monthly rent of EUR 564.75. Per 23 April 2009 the first applicant wanted to raise X's rent to EUR 835.24.

3. On 8 December 2009 the Rent Board (*Huurcommissie*) decided that the law only allowed for the rent increase of 2.5% which the first applicant had already implemented, corresponding to a monthly rent of EUR 564.75.

4. The first applicant appealed the decision. The Amsterdam Regional Court (*rechtbank*) rejected the appeal, stating that the first applicant had made a reasonable return and profit over the years so that there was no reason not to abide by the legally allowed maximum rent increase.

5. Pursuant to the Valuation of Immovable Property Act (*Wet waardering onroerende zaken* – "WOZ"), the so-called WOZ value of the flat was set at EUR 340,000 in 2010. Property tax in Amsterdam for that year was set at 0.05287% of the WOZ value, corresponding to EUR 179.76.

6. The first applicant submitted that he made EUR 626 profit per year on the flat.

2. The second applicant (application no. 28084/12)

7. The second applicant owns a building divided up into five flats at the Hemonystraat in Amsterdam. One of the flats was already rented out to Y when the second applicant bought the building on 1 January 1997. At that time Y was paying the equivalent of EUR 167.90 per month for rent and water. On 1 July 2010 Y was paying EUR 153.99 per month for rent only. Per that date the second applicant wanted to raise the rent to EUR 914.10 per month.

8. On 30 November 2010 the Rent Board decided that the law only allowed for a rent increase of 1.2% to EUR 155.84 per month. It held that, even if that meant that the second applicant would suffer a loss, he had known when he bought the building that one of the flats was rented out and at what price, so that it had been his responsibility to take that into account before deciding to go ahead with the purchase.

9. The second applicant appealed the decision. The Regional Court rejected the appeal stating the same grounds as the Rent Board.

10. The WOZ value of the flat was set at EUR 265,500 in 2011. Property tax in Amsterdam for that year was set at 0.05589% of the WOZ value, corresponding to EUR 148.39.

11. According to the second applicant, he incurred an annual loss of EUR 3,473.84 on the flat.

3. The third applicant (applications nos. 81046/12 and 81049/12)

12. The third applicant owns a building divided up into several flats at the Borgerstraat in Amsterdam. On 1 August 2006 he rented out one of the flats to Z for EUR 500.92 per month. On 1 December 2010 he rented out another flat, to Q for EUR 524.04 per month.

13. On 30 July 2010 Z requested the Rent Board to lower the rent and in January 2011 Q did the same.

14. On 25 July 2011 the Rent Board decided that the standard of the flat rented out to Z should be assessed at 107 points (see below) and lowered the rent to EUR 485.18 per month.

15. On 25 August 2011 the Rent Board decided that the standard of the flat rented out to Q should be assessed at 92 points and lowered the rent to EUR 412.30.

16. The third applicant appealed both decisions. In Z's case he claimed primarily that the rent should be determined at EUR 975 and in the alternative that the Rent Board had wrongly assessed the standard of the flat at 107 points. In Q's case he claimed primarily that the rent should be determined at EUR 850 and in the alternative that the Rent Board should have assessed the standard of the flat at 111 points.

17. On 11 July 2012 the Regional Court decided on both cases in two separate judgments. It declared the primary ground of appeal in both cases inadmissible because the third applicant had not advanced it in the proceedings before the Rent Board as required by law and held that, in any event, he had failed to substantiate that the rent paid by Z and Q left him with such a small return that the Rent Board's decision impaired the very essence of his right of property. As to the alternative grounds of appeal the Regional Court held in both judgments that the Rent Board had assessed the standard of the flats correctly.

18. The WOZ value of the flat rented out to Z was set at EUR 195,000 in 2010. Property tax for that year corresponded to EUR 103.10.

19. The WOZ value of the flat rented out to Q was set at EUR 170,000 in 2010. Property tax for that year corresponded to EUR 89.88.

20. The third applicant submitted that he only received 2.9% of the WOZ value in annual rent for both flats.

B. Relevant domestic law

21. The landlord and the tenant are in principle free to agree a rent between them (section 7:246 of the Civil Code (*Burgerlijk Wetboek*)), however in certain circumstances the landlord and the tenant can apply to the Rent Board for a ruling on the fairness of the (proposed) rent (sections 7:249, 7:253 and 7:254 of the Civil Code). The Rent Board's decision can be appealed to the Regional Court in second and final instance

(section 37 (4) of the Housing Rents Implementation Act (*Uitvoeringswet huurprijzen woonruimte*; "the Implementation Act") read in conjunction with section 7:262 of the Civil Code).

22. According to section 10 (1) of the Implementation Act, rules regarding the assessment of the quality of self-contained accommodation (*zelfstandige woonruimte*) and the fairness of and change in the rent for self-contained accommodation must be determined by ministerial decree (*algemene maatregel van bestuur*). This has been done in the form of a point-rating system set out in Appendix I under A to the Rent Decree (*Besluit huurprijzen woonruimte*) read in conjunction with Schedule I to the Housing Rents Implementation Ordinance (*Uitvoeringsregeling huurprijzen woonruimte*).

23. Under Appendix I under A to the Rent Decree, points are awarded for features relating to the standard of the accommodation itself – such as the type of dwelling (house or flat), the size of the rooms, bathroom facilities and the standard of heating installations – and for features relating to the surroundings (such as the proximity of public transport, schools and shops). Points may be deducted for the age of the accommodation and for "objectionable situations" (such as persistent noise or pollution).

24. The range within which a rent is considered fair is calculated according to the resultant points rating. As a rule, the rent determined by the Rent Board and by the Regional Court will be at the higher end of the range (sections 11 (1), 13 (1) and 14 (1) of the Implementation Act).

25. In addition, section 13 (3) read together with section 10 (2) of the Implementation Act determines that the yearly rent increase may not exceed the percentage determined by ministerial decree. There are two exceptions to this rule, one of which concerns the situation where the landlord, for a reason other than to remedy defects, has altered or added to the rental property, as a result of which the residential comfort is considered to have been improved. In this case the rent may be increased by an amount which is in reasonable proportion to the costs of these alterations or additions made by the landlord, on the understanding that the total rent cannot be higher than the rent which under section 10 (1) of the Implementation Act is regarded as reasonable (section 7:255 § 2 of the Civil Code).

COMPLAINTS

26. All three applicants complained that the Dutch laws on rent control had violated their rights under Article 1 of Protocol No. 1 to the Convention. These laws had been enacted in view of the housing shortage in the period after the Second World War. The applicants argued that, since this situation no longer pertained, the rules at issue did not pursue a

legitimate aim. In the alternative they claimed that the domestic authorities had failed to strike a fair balance between the demands of the general interests of the community and the requirements of their protection. They claimed that the very essence of their right of property had been impaired because they were unable to derive any decent profit from their property. The third applicant specified that, according to him, the annual rent would have to equal at least 6% of the WOZ value of a property to assume that a decent profit could be made.

27. The first and second applicants also complained that their rights under Article 1 of Protocol No. 12 and under Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1 to the Convention had been violated. They claimed that there was no justification for the difference in treatment between them – as landlords with existing tenancy agreements that they were unable to terminate – and landlords with newly concluded tenancy agreements. Whilst the applicants could not charge the maximum rent allowed within the Dutch points system because they were restricted to the maximum allowed annual rent increase, landlords who concluded a new tenancy agreement on housing with the same standard as the accommodation owned by the applicants were able to charge the maximum rent allowed within the Dutch points system.

THE LAW

A. Joinder of the applications

28. Given their similar factual and legal background, the Court decides that the four applications should be joined pursuant to Rule 42 § 1 of the Rules of Court.

B. Complaint under Article 1 of Protocol No. 1

29. The applicants complained that their rights under Article 1 of Protocol No. 1 had been violated since they were unable to derive any decent profit from their properties. This provision reads 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 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."

1. Whether there was an interference

30. As the Court has stated on multiple occasions, Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, *inter alia*, to control the use of property in accordance with the general interest. The three rules are not, however, distinct in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to the peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, among other authorities, *James and Others v. the United Kingdom*, 21 February 1986, § 37, Series A no. 98; *Beyeler v. Italy* [GC], no. 33202/96, § 98, ECHR 2000-I; and *Saliba v. Malta*, no. 4251/02, § 31, 8 November 2005).

31. Turning to the facts of the present cases the Court observes that the rules at issue restrict the applicants' right freely to negotiate a level of rent for their properties and it accepts therefore that there has been an interference with their rights under Article 1 of Protocol No. 1. However, it notes that the applicants remain the owners of the properties, that they are free to dispose of those properties and that they continue to receive rent from the tenants. For this reason the Court considers that the interference at issue constitutes a means of State control of the use of property. It follows that the case should be examined under the second paragraph of Article 1 of Protocol No. 1 (see *Hutten-Czapska v. Poland* [GC], no. 35014/97, §§ 160-61, ECHR 2006-VIII).

32. The Court will therefore next examine whether the Dutch authorities observed the principle of lawfulness, whether the interference at issue pursued a legitimate aim in the general interest and whether a fair balance was struck (see *Amato Gauci v. Malta*, no. 47045/06, § 52, 15 September 2009).

2. Whether the Dutch authorities observed the principle of lawfulness and pursued a "legitimate aim in the general interest"

33. The first requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions be lawful. In particular, the second paragraph of Article 1, while recognising that States have the right to control the use of property, subjects that right to the condition that it be exercised by enforcing "laws". Moreover, the principle of lawfulness presupposes that the applicable provisions of domestic law are sufficiently accessible, precise and

foreseeable in their application (see, *mutatis mutandis*, *Broniowski v. Poland* [GC], no. 31443/96, § 147, ECHR 2004-V, and *Saliba*, cited above, § 37).

34. Furthermore, a measure aimed at controlling the use of property can only be justified if it is shown, *inter alia*, to be "in accordance with the general interest". Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the "general" or "public" interest. The notion of "public" or "general" interest is necessarily extensive. In particular, spheres such as housing of the population, which modern societies consider a prime social need and which plays a central role in the welfare and economic policies of Contracting States, may often call for some form of regulation by the State. In that sphere decisions as to whether, and if so when, it may fully be left to the play of free market forces or whether it should be subject to State control, as well as the choice of measures for securing the housing needs of the community and of the timing for their implementation, necessarily involve consideration of complex social, economic and political issues. Finding it appropriate that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, the Court has on many occasions declared that it will respect the legislature's judgment as to what is in the "public" or "general" interest unless that judgment is manifestly without reasonable foundation (see *Hutten-Czapska*, cited above, §§ 165-166).

35. That the interference at issue in the present cases was lawful is a matter not disputed by the applicants. The Court finds that the restrictions were imposed by the Implementation Act, the Rent Decree and the Housing Rents Implementation Ordinance, and were therefore "lawful" within the meaning of Article 1 of Protocol No. 1. The Court further considers that the legislation at issue in the present case pursued a legitimate social policy aim, namely the social protection of tenants.

3. Whether the Dutch authorities struck a fair balance

36. Any interference with property must also satisfy the requirement of proportionality. As the Court has repeatedly stated, a fair balance must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights, the search for such a fair balance being inherent in the whole of the Convention. The requisite balance will not be struck where the person concerned bears an individual and excessive burden (see *Sporrong and Lönnroth v. Sweden*, 23 September 1982, §§ 69-74 Series A no. 52, and *Brumărescu v. Romania* [GC], no. 28342/95, § 78, ECHR 1999-VII).

37. The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole. In each case involving an alleged

violation of that Article the Court must therefore ascertain whether by reason of the State's interference the person concerned had to bear a disproportionate and excessive burden (see *James and Others*, cited above; *Mellacher and Others v. Austria*, 19 December 1989, § 48, Series A no. 169; and *Spadea and Scalabrino v. Italy*, judgment of 28 September 1995, § 33, Series A no. 315-B).

38. In the cases at hand, the Court observes that it has not been shown that the first and third applicants – who rely only on general data to substantiate their claims – do not receive a decent profit from their rental income. What is clear is that these applicants receive levels of rent well above the level of property tax chargeable on the flats, contrary to the situation in *Lindheim and Others v. Norway* (nos. 13221/08 and 2139/10, § 129, 12 June 2012). Also, there is no indication that the rental income does not cover the necessary maintenance costs and taxes as in *Hutten-Czapska* (cited above). There are also no other indications that the first and third applicants have had to bear a disproportionate and excessive burden.

39. As to the second applicant it is noted that, even assuming that the rent paid by Y does not cover all costs associated with the flat, it cannot be said that the decision of the Regional Court was disproportional. The applicant willingly bought the building, aware of the amount of rent being paid by Y. In addition, it can be assumed that a person buying a building in order to rent it out is aware of the restrictions imposed by domestic law as to the maximum amount of rent chargeable for a certain standard and the maximum allowed yearly rent increases. The Court agrees with the domestic authorities that it was the second applicant's responsibility to incorporate this knowledge in the price negotiations when he bought the building.

40. In these circumstances, the Court finds that, bearing in mind the wide margin of appreciation afforded to Contracting States in regulating housing problems, the control of the use of property in the present cases can be considered to be justified within the meaning of the second paragraph of Article 1 of Protocol No. 1 to the Convention. It follows that this part of the applications of the first and the second applicant and the application of the third applicant are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

C. Complaint under Article 1 of Protocol No. 12 and under Article 14 read in conjunction with Article 1 of Protocol No. 1

41. The first and the second applicants complained under Article 1 of Protocol No. 12 and under Article 14 read in conjunction with Article 1 of Protocol No. 1 that they, as landlords with existing tenancy agreements, had been treated differently than landlords with newly concluded tenancy

agreements, since the latter were allowed to charge more rent even if the apartments were similar to theirs. The invoked provisions read as follows:

Article 14 of the Convention

"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

"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.

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

42. Even if it is to be assumed that landlords such as the applicants on the one hand, and landlords who have newly concluded a tenancy agreement on the other, find themselves in a relevantly similar situation and that they are, directly or indirectly, treated differently, the Court finds, in the light of all the material in its possession, that such difference in treatment is justified by the interests of the social protection of tenants.

43. It follows that these parts of the applications of the first and the second applicant are also 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

Decides to join the applications;

Declares the applications inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President

APPENDIX

No	Application No	Lodged on	Applicant Date of birth Place of residence
1.	27126/11	18/04/2011	**Nicolaas NOBEL** 12/05/1933 Noordwijk
2.	28084/12	21/04/2012	**Nicolaas Pieter Adrianus Maria DOESWIJK** 18/05/1952 Amsterdam
3.	81046/12	05/12/2012	**Simon Ernst VAN HOUWELINGEN** 02/05/1944 Zandvoort
4.	81049/12	05/12/2012	**Simon Ernst VAN HOUWELINGEN** 02/05/1944 Zandvoort