In the case of Pressos Compania Naviera S.A. and Others v. Belgium (1),

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 (2), as a Chamber composed of the following judges:

Mr R. Ryssdal, President,
Mr Thór Vilhjálmsson,
Mr C. Russo,
Mr J. De Meyer,
Mr R. Pekkanen,
Mr M.A. Lopes Rocha,
Mr L. Wildhaber,
Mr D. Gotchev,
Mr U. Lohmus,

and also of Mr H. Petzold, Registrar,

Having deliberated in private on 26 May and 28 October 1995,

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

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Notes by the Registrar

1. The case is numbered 38/1994/485/567. 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.

2. 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.

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PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") and by the Belgian Government ("the Government") respectively on 9 September and 21 October 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. 17849/91) against the Kingdom of Belgium lodged with the Commission under Article 25 (art. 25) by twenty-six applicants (see paragraph 6 below) on 4 January 1991.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Belgium recognised the compulsory jurisdiction of the Court (Article 46) (art. 46); the Government's application referred to Articles 44 and 48 (art. 44, art. 48). The object of the request and of the application 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 (art. 6-1) of the Convention and Article 1 of Protocol No. 1 (P1-1).

2. In response to the enquiry made in accordance with Rule 33

para. 3 (d) of Rules of Court A, twenty-five of the original twenty-six applicants before the Commission stated that they wished to take part in the proceedings and designated the lawyers who would represent them (Rule 30).

On 27 February 1995 the lawyers so designated submitted a memorial on behalf of those applicants. On 18 May 1995 they indicated that they had received no instructions from the sixth applicant.

3. The Chamber to be constituted included ex officio Mr J. De Meyer, the elected judge of Belgian 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 Thór Vilhjálmsson, Mr N. Valticos, Mr R. Pekkanen, Mr M.A. Lopes Rocha, Mr L. Wildhaber, Mr D. Gotchev and Mr U. Lohmus, (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Mr C. Russo, substitute judge, replaced Mr Valticos, 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 Government, the applicants' lawyers 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 and applicants' memorial on 24 and 27 February 1995 respectively.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 22 May 1995. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr J. Lathouwers, Deputy Adviser, Head of the Human Rights Section, Ministry of Justice, Agent,
Mr J.-M. Nelissen-Grade, avocat, Counsel,
Mr G. Michaux, avocat,
Mr J. Van de Velde, Head of Administration, Ministry of Communications and Infrastructure, Advisers;

(b) for the Commission

Mr I. Cabral Barreto, Delegate;

(c) for the applicants

Mr L. Simont, avocat,
Mr R.O. Dalcq, avocat, Counsel,
Mr D. Lagasse, avocat,
Mr N. Cahen, avocat, Advisers.

The Court heard addresses by Mr Cabral Barreto, Mr Simont, Mr Dalcq and Mr Nelissen-Grade, and also their answers to its questions.

AS TO THE FACTS

I. CIRCUMSTANCES OF THE CASE

A. The casualties and their legal consequences

6. The applicants are shipowners, mutual shipping insurance associations and, in one case, an insolvency administrator whose ships were involved in casualties in Belgian or Netherlands territorial waters prior to 17 September 1988.

As they considered that these casualties were the result of the negligence of the Belgian pilots on board the ships in question, they instituted legal proceedings, some of them against the Belgian State and others against a private company offering pilot services. The current state of the proceedings in these various actions is, according to the information provided to the Court, as follows:

First applicant: Pressos Compania Naviera S.A., a company incorporated under Greek law (ship: the Angeartic)

11 August 1982: collision;

24 April 1985: judgment of the court of Middelburg (Netherlands) finding the first applicant liable;

10 June 1987: action against the Belgian State in the Brussels Court of First Instance to recover damages paid.

Second applicant: Interocean Shipping Corporation, a company incorporated under Liberian law (ship: the Oswego Freedom)

13 December 1970: collision in Netherlands waters;

8 November 1972 and 16 November 1974: judgments respectively of the Middelburg court and of the Court of Appeal of The Hague finding the second applicant liable;

12 December 1972: action against the Belgian State in the Brussels Court of First Instance to recover damages paid;

9 March 1988: action declared unfounded on the ground that the pilot was not liable under Netherlands law;

7 April 1988: appeal lodged by second applicant.

Third applicant: Zephir Shipping Corporation, a company incorporated under Liberian law (ship: the Panachaikon)

27 February 1971: collision;

28 April 1977: settlement estimating the damage to be paid by the third applicant at 456,798 US dollars;

26 February 1973: action against the Belgian State in the Brussels Court of First Instance to recover damages paid;

18 March 1988: preliminary decision declaring action well-founded by virtue of the principle that the State was liable for negligence on the part of its pilots;

23 February 1994: judgment quashed by the Brussels Court of Appeal in the light of the Act of 30 August 1988 (see paragraph 18 below).

Fourth applicant: Cory Maritime Ltd, a company incorporated under English law (ship: the Pass of Brander)

6 January 1983: contact causing damage to a berth when docking;

23 July 1984: action brought against the company by the owner of the berth (BASF) in the Antwerp Commercial Court;

22 August 1984: third-party proceedings against the pilot company Brabo (see paragraph 9 below);

19 June 1986: judgment of the Antwerp Commercial Court ordering:

(1) the fourth applicant to pay damages;
(2) the Brabo company, the defendant in the third-party action, to reimburse the applicant the sums paid;

18 August 1986: appeal lodged by Brabo;

11 February 1993: settlement by the shipowner of BASF's claim, without prejudice to the outcome of the proceedings pending in the Antwerp Court of Appeal.

Fifth applicant: Malaysian International Shipping Corporation Berhad, a company incorporated under Malaysian law (ship: the Bunga Kantan)

23 November 1986: contact causing damage to the wall of a quay belonging to the Belgian State;

8 August 1988: action brought by the shipowner against the Belgian State in the Antwerp Court of First Instance seeking reparation in respect of the damage caused to the ship;

21 November 1988: action brought by the Belgian State, the owner of the quay, against the shipowner and the Brabo company in the Antwerp Court of First Instance for reparation in respect of the damage caused to the quay;

23 November 1988: action brought against the shipowner by Antwerp municipality in the Antwerp Court of First Instance to recover costs occasioned by the casualty.

Sixth applicant: City Corporation, a company incorporated under Liberian law (see paragraph 2 above).

Seventh, eighth and ninth applicants: Kukje Shipping Company Ltd, a company incorporated under South Korean law, Mr Young (as the seventh applicant's trustee) and The London Steam-ship Owners' Mutual Insurance Association Ltd, a company incorporated under English law (ship: the Super star)

27 October 1985: collision;

28 January 1986: action brought against applicants in the Antwerp Court of First Instance by the owners of the other ship involved;

24 October 1986: third-party proceedings brought by the applicants against the Belgian State;

unspecified date: out-of-court settlement with subrogation of rights between the owners of the ships involved in the collision.

Tenth and eleventh applicants: Ocean Car Carriers Company Ltd, a company incorporated under Liberian law, and Kansai Kisen K.K., a company incorporated under Japanese law (ship: the Cygnus Ace)

First casualty:

1 October 1983: contact causing damage to a bridge in the Antwerp docks;

22 May 1984: action brought against the applicants by Antwerp municipality in the Antwerp Court of First Instance;

21 June 1984: third-party proceedings brought by the applicants against the pilot company Brabo;

26 September 1990: third-party proceedings brought by the applicants against the pilot.

Second casualty:

23 November 1984: contact causing damage to a lock;

27 May 1987: action brought against the applicants by Antwerp municipality in the Antwerp Court of First Instance;

16 June 1987: third-party proceedings brought by the applicants against the Belgian State;

10 September 1991: out-of-court settlement with subrogation.

Twelfth applicant: Furness Withy (Shipping) Ltd, a company incorporated under English law (ship: the Andes)

31 March 1988: contact causing damage to a lock;

29 October 1990: action brought against the applicant by Antwerp municipality in the Antwerp Court of First Instance;

19 November 1990: third-party proceedings brought by the applicant against the pilot company Brabo;

14 January 1992: payment by the applicant of damages to Antwerp municipality and subrogation.

Thirteenth and fourteenth applicants: M.H. Shipping Company Ltd and Powell Duffryn Shipping Ltd, both companies incorporated under English law (ship: the Donnington)

8 December 1984: contact causing damage to a lock;

9 December 1985: action brought against the applicants by Antwerp municipality in the Antwerp Commercial Court;

8 December 1987: third-party proceedings brought by the applicants against the Belgian State;

9 March 1989 and 31 March 1992: shipowners ordered to pay 34,841,522 Belgian francs (BEF) in the main proceedings first by the Antwerp Commercial Court and then by the Antwerp Court of Appeal;

February and June 1992: sum in question paid by the applicants, which reserved their right to seek reimbursement in the event of a judgment of the European Court declaring the Act of 30 August 1988 "void".

Fifteenth applicant: Société navale chargeurs Delmas-Vieljeux, a company incorporated under French law (ship: the Marie Delmas)

20 March 1985: contact causing damage to a lock;

27 November 1986: action brought against the applicant and the pilot company Brabo in the Antwerp Court of First Instance;

17 November 1992: damages paid by the applicant, which reserved its rights in respect of the effects of the judgment of the European Court.

Sixteenth applicant: Merit Holdings Corporation, a company incorporated under Liberian law (ship: the Leandros)

26 July 1985: major damage caused to the berthing facilities of the Eurosilo company and to the walls of a quay of Ghent harbour;

10 March 1986: action brought against the applicant by the Eurosilo company in the Ghent Court of First Instance;

18 July 1986: third-party proceedings brought by the applicant against the State;

17 September 1991: in absentia ruling ordering the shipowner, the State and the pilot to pay, jointly and severally, various amounts;

24 October 1991: application to have that decision set aside.

Seventeenth and eighteenth applicants: Petrobas Brasileiro, a company incorporated under Brazilian law, and The United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd, a company incorporated under Bermudan law (ship: the Quitauna)

30 November 1986: contact causing damage to a lock;

27 October 1987: action brought against the applicants and the Belgian State by the Roegiers company and Antwerp municipality in the Antwerp Court of First Instance;

8 June 1989: judgment of the Antwerp court;

17 June 1991: applicants ordered to pay damages by the Antwerp Court of Appeal.

Nineteenth applicant: Koçtug Gemi Isletmeçiligi ve Ticaret A.S., a company incorporated under Turkish law (ship: the Fethiye)

27 October 1984: damage caused to two other ships during mooring manoeuvres;

unspecified date: action brought against the applicant in the Ghent Commercial Court;

27 October 1986: third-party proceedings brought by the applicant against the Belgian State;

14 January 1992: judgment of the Ghent Commercial Court finding that the applicant was liable and that the pilot and the Belgian State were not;

6 May and 1 September 1993: appeal lodged by the applicant.

Twentieth applicant: Initial Maritime Corporation S.A., a company incorporated under Liberian law (ship: the Acritas)

21 March 1984: collision between three ships;

14 March 1986: action brought by the applicant against the other shipowners involved and the Belgian State in the Antwerp Court of First Instance.

Twenty-first applicant: North River Overseas S.A., a company incorporated under Panamanian law (ship: the Federal Huron)

26 April 1986: collision;

14 May 1986: action brought by the applicant against the second ship's owners and the Belgian State in the Antwerp Commercial Court;

25 April 1988: action brought by the second ship's owners against the applicant and the Belgian State in the same court.

Twenty-second applicant: Federal Pacific (Liberia) Ltd, a company incorporated under Liberian law (ship: the Federal St Laurent)

29 September 1985: collision;

4 September 1986: action brought by the applicant against the second ship's owners and Belgian State in the Antwerp Court of First Instance;

10 December 1987: out-of-court settlement.

Twenty-third applicant: Conbulkships (3) Ltd, a company incorporated under Cayman Islands law (ship: the Cast Otter)

6 February 1987: ship ran aground;

6 April 1987: action brought by the applicant against the Belgian State in the Brussels Court of First Instance.

Twenty-fourth applicant: Compagnie belge d'affrètement (Cobelfret) S.A., a company incorporated under Belgian law (ships: the Belvaux and the Clervaux)

The Belvaux:

18 June 1979: ship ran aground;

10 June 1986: action brought by the applicant against the State in the Brussels Court of First Instance.

The Clervaux:

5 October 1981: ship ran aground;

10 July 1986: action brought by the applicant against the State in the Brussels Court of First Instance.

Twenty-fifth applicant: Naviera Uralar S.A., a company incorporated under Spanish law (ship: the Uralar Cuarto)

11 December 1983: contact causing damage to a jetty in Antwerp harbour;

18 July 1985: action brought against the applicant by Roegiers, the bailee of the jetty, in the Antwerp Court of First Instance;

14 August 1985: third-party proceedings brought by the applicant against the Belgian State;

26 October 1988: third-party application dismissed by the Antwerp Court of Appeal on the basis of the retrospective effect of the Act of 30 August 1988;

19 April 1991: appeal on points of law dismissed by the Court of Cassation (see paragraph 8 below).

Twenty-sixth applicant: B.P. Tanker Company Ltd, a company incorporated under English law (ship: the British Dragoon)

24 January 1977: ship ran aground in the Scheldt estuary;

21 January 1982: action brought by the applicant against the Belgian State in the Brussels Court of First Instance.

The twenty-sixth applicant did not bring legal proceedings to challenge the Act of 30 August 1988.

B. Proceedings in the Court of Arbitration and the Court of Cassation

7. In March 1989 twenty-four of the applicants applied to the Court of Arbitration (Cour d'arbitrage) to have the Act of 30 August 1988 ("the 1988 Act") "amending the Act of 3 November 1967 on the piloting of sea-going vessels" declared void, in particular on the ground of its retrospective effect (see paragraph 18 below).

The court dismissed the applications on 5 July 1990, inter alia, for the following reasons:

> "The legislature is entitled to consider that the categories to whom the impugned Act is addressed are, principally on account of their involvement in shipping, sufficiently specific to warrant special rules concerning liability.
>
> In this instance the legislature gave the Act retrospective effect. The retrospective component of the special rules on liability introduced for pilots infringes the fundamental principle of legal certainty, according to which the content of the law must in principle be foreseeable and accessible so that those subject to the law may foresee to a reasonable degree the consequences of a given action at the moment when that action is carried out.
>
> This violation of the principle is not, in the circumstances of the case, disproportionate in relation to the general objective underlying the contested legislation. The legislature intended to preserve in the legislation on pilots the rules on liability which it had not wanted to amend in 1967 and which the case-law prior to 1983 and legal writing inferred from section 5 of the Pilots Act 1967 and sections 64 and 251 of the Shipping Act (Book II, Title II, of the Commercial Code). Moreover it took into account the considerable financial implications that would result, in a way that could not have been foreseen, for the relevant public authorities from the reversal of the case-law.
>
> In the light of all these considerations, exempting from liability the organisers of a pilot service and limiting the personal liability of pilots cannot be regarded as a failure to comply with the requirements of Articles 6 and 6 bis of the Constitution, even having regard to the retrospective effect of the Act in question.
>
> ...
>
> The applicants claim that the legislation in issue introduces an unjustified distinction between, on the one hand, disputes that have reached their conclusion (causae finitae), which fall outside the scope of the legislation, and, on the other, pending disputes (causae pendentes), which are covered by the Act.
>
> Attributing retrospective effect to a legal rule means in principle that that rule applies to legal relationships that came into being and were not definitively terminated before its entry into force; such a rule can therefore apply only to pending and future disputes and cannot bear in any way on disputes that have

been concluded.

According to a fundamental principle of our legal system, a judicial decision may be varied only on appeal. By applying the contested distinction so as to limit the effect of the Act with regard to the past, the legislature sought to respect that principle and did not therefore operate a distinction contrary to Articles 6 and 6 bis of the Constitution.

The applicants relied further on the violation of Article 11 of the Constitution and of Article 1 of the First Additional Protocol to the European Convention on Human Rights (P1-1).

...

By amending rules governing compensation for damage without calling into question the existence of debts arising from judicial decisions, the legislature did not introduce any unjustified distinction, as the protection guaranteed by the above-mentioned provisions extends only to property that has already been acquired."

8. The twenty-fifth applicant appealed to the Court of Cassation against the judgment of 26 October 1988 whereby the Antwerp Court of Appeal dismissed, on the basis of the 1988 Act, its third-party application against the Belgian State (see paragraph 6 above).

On 26 January 1990 the Court of Cassation referred a question to the Court of Arbitration for a preliminary ruling on the constitutionality of the 1988 Act and in particular its retrospective effect. On 22 November 1990 that court confirmed in substance its judgment of 5 July 1990 (see paragraph 7 above).

Accordingly, on 19 April 1991, the Court of Cassation dismissed the twenty-fifth applicant's appeal on points of law. Reproducing the reply given by the Court of Arbitration to its question for a preliminary ruling, it dismissed a first submission according to which the retrospective effect of the 1988 Act infringed the former Articles 6 and 6 bis of the Constitution. It then declared inadmissible the submission based on an alleged violation of Article 1 of Protocol No. 1 (P1-1), after noting that the twenty-fifth applicant had not invoked that provision (P1-1) in the Court of Appeal. Finally, it rejected the submission that, by taking effect in respect of proceedings that were in progress, the 1988 Act prevented the courts from deciding the disputes as brought before them, contrary to the principles of the independence of the courts and equality of arms between the parties. The Court of Cassation held as follows:

"The task and duty of a judge is to apply the law to the dispute before him; the fact that that is his task and his duty has no bearing on his independence. A retrospective law applicable to pending disputes, even where the State is a party to the dispute, does not impair the judge's independence in carrying out his task and accomplishing his duty. Any pressure brought to bear on a judge by such a law is no different from the pressure that all laws exert on him. The fact that the judgment applies such a law does not constitute a violation of the right to a fair hearing of the case by an independent tribunal."

II. RELEVANT DOMESTIC LAW

A. The piloting of sea-going vessels

9. In Belgium the piloting of sea-going vessels is a public service organised by the State in the interests of shipping. It is governed

by the Act of 3 November 1967 on the piloting of sea-going vessels ("the 1967 Act"). In practice pilot services are provided either directly by the State itself, for maritime and river navigation, or by private companies acting under licence, such as the Brabo company, which has a monopoly of pilot services within the port of Antwerp.

10. Pursuant to the 1967 Act and the treaties concluded between Belgium and the Netherlands, merchant ships that enter the Scheldt estuary must have on board a pilot with a licence issued by the Belgian or Netherlands authorities. However, the only sanction that may be imposed on the master of a ship who fails to comply with this obligation is that he be required to pay the pilot's fee, which is payable in any event.

11. Under section 5 (1) of the 1967 Act:

> "... piloting consists in the assistance given to the masters of sea-going vessels by pilots appointed by the Minister whose responsibilities include the pilot service. The pilot shall advise the master. The latter shall be in sole command as regards the course to be steered and the manoeuvres of the vessel."

12. In relation to that provision the explanatory memorandum for the bill that formed the basis of the 1967 Act states as follows:

> "Section 5 defines piloting and, accordingly, the nature of the role of the pilot in this operation. It therefore settles an important legal question. As the pilot's role is one of assistance, he does not replace the master, who remains in sole command of the steering of his ship and its manoeuvres. The pilot simply advises on the route to be taken. This is confirmation of the rule which is currently in force and which is to be found, inter alia, in a judgment [of the Court of Cassation] of 19 March 1896 ..."

13. In its opinion on the draft, the Conseil d'Etat took the view that the latter instrument "gave express effect to a long-standing interpretation according to which the pilot acts merely as the master's adviser". As the provision in the draft initially read "the master has sole responsibility for steering the ship and its manoeuvres", the Conseil d'Etat suggested that the word "responsibility" be replaced by the term "in command" since it seemed that "the Government's intention [was] not to depart in this provision from the general law of tort".

14. Section 64 of the Shipping Act (Book II, Title II, of the Commercial Code) provides that "the master is required to be present in person on board his ship when it enters or leaves ports, harbours or rivers".

B. Liability in the event of a collision

15. According to section 251 of the Shipping Act:

> "...
>
> If the collision is caused by the fault of one of the vessels, liability to make good the damages attaches to the one which has committed the fault.
>
> ...
>
> The liability imposed by the preceding article[s] attaches in cases where the collision is caused by the fault of a pilot even when the pilot is carried by compulsion of law."

16. According to two judgments delivered by the Court of Cassation respectively on 24 April 1840 (Pasicrisie, 1839-1840, I, 375) and 19 March 1896 (Pasicrisie, 1896, I, 132), the pilot was to be regarded as the agent (préposé) of the master, the owner or the charterer. This meant that Article 1384 of the Civil Code was applicable to him. That Article provides as follows:

> "A person shall be liable not only for the damage caused by his own action, but also for that which is caused by the actions of those for whom he is responsible or by things which are in his care.
>
> Fathers and mothers shall be liable for the damage caused by their minor children.
>
> Masters and principals shall be liable for the damage caused by their servants and agents in the exercise of the duties for which they are employed.
>
> ..."

It followed that the State was not liable for the negligence of pilots. Pilots were liable solely for negligent acts committed without the master's knowledge.

17. By a judgment of 15 December 1983 the Court of Cassation (Pasicrisie, 1983, I, 418), endorsing the opinion of Mrs Liekendael, the advocate general, brought an end to this situation, holding, inter alia, in relation to the two above-mentioned paragraphs (see paragraph 15 above) of section 251 of the Shipping Act:

> "It follows from these statutory provisions that, in the event of a collision caused by the negligence of a ship, the owner of that ship is required to make good the damage caused by that negligence to the victims of the collision. It cannot, however, be inferred either from section 251 of the Shipping Act or from section 64 of that Act, according to which the master is required to be present in person on board his ship on entering and leaving ports, harbours and rivers, that the owner is precluded from instituting proceedings against third parties, who may have incurred liability under other statutory provisions, notably Articles 1382 or 1384 of the Civil Code.
>
> The master, who is in sole command of the ship's course and manoeuvres by virtue of section 5 of the Act of 3 November 1967 on the piloting of sea-going vessels, is not vested with any authority in regard to the pilot who, according to the same provision, acts as his adviser.
>
> In so far as it failed to examine whether the pilot of a ship that caused the collision had been negligent, however slightly, in a way which had contributed to occasioning the damage resulting from that collision, and excluded, in the event that that had been the case, the possibility that the State could have incurred liability, although the pilot belonged to a service organised by the State and was under the latter's exclusive authority, the judgment lacked a proper reasoning in law."

It followed that the pilot could no longer be regarded as the master's agent and his acts were therefore capable of incurring his own liability and that of the organiser of the pilot service.

This new case-law, which was confirmed shortly afterwards by a judgment of 17 May 1985 (Pasicrisie, 1985, I, 1159), followed the line

taken in the "La Flandria" judgment of 5 November 1920 (Pasicrisie, 1920, I, 193), in which the Court of Cassation had recognised that the State and other public-law bodies were subject to the general law of tort.

18. By an Act of 30 August 1988, published in the Moniteur belge on 17 September 1988, the legislature inserted in the 1967 Act section 3 bis, which reads as follows:

> "para. 1. The organiser of a pilot service cannot be held directly or indirectly liable for damage sustained or caused by the ship under pilotage, where such damage is the result of the negligence of the organiser himself or one of his staff acting in the performance of his duties, irrespective of whether the negligence in question consists of an act or omission.
>
> Nor can the organiser of a pilot service be held directly or indirectly liable for damage caused by a malfunction or defect in the equipment owned or used by the pilot service for the purpose of supplying information or instructions to the sea-going vessels.
>
> For the purposes of the present Article, the following definitions shall apply:
>
> 1° organiser: the public authorities and port authorities that organise the pilot service or grant a licence to operate the service, together with the licensee;
>
> 2° pilot service:
>
> (a) the service which provides the master of a sea-going ship with a pilot who acts as adviser to the master;
>
> (b) any service which, in particular by means of radar observations or by sounding the waters accessible to sea-going ships, provides information or instructions to a sea-going ship, even where there is no pilot on board;
>
> 3° ship under pilotage: any sea-going ship which makes use of the pilot service within the meaning of 2° (a) and/or (b) above.
>
> The ship shall be liable for the damage referred to in the first paragraph.
>
> A member of staff [of the pilot service] who, by his act or omission, caused the damage referred to in the first paragraph above shall be liable only in the event of a deliberately tortious act or gross negligence.
>
> The liability of a member of staff for damage caused by his gross negligence shall be limited to five hundred thousand francs for each incident giving rise to such damage. The Crown may adjust that amount in the light of the economic situation.
>
> para. 2. The foregoing subsection shall enter into force on the date of publication in the Moniteur belge. It shall apply with retrospective effect for a period of thirty years from that date."

C. Jurisdiction of the Court of Arbitration

19. By virtue of Article 107 ter (as it was formerly, now Article 142) of the Constitution and sections 1 and 26 of the Special Act on the Court of Arbitration of 6 January 1989, that court has

jurisdiction to hear:

(1) applications to have statutes, decrees or orders declared void for breach either of the rules governing the distribution of powers between the State, the communities and the regions, or of Articles 6 and 6 bis (as they were formerly, now Articles 10 and 11) of the Constitution, which provide for equality before the law and prohibit discrimination in the exercise of rights and freedoms;

(2) requests for preliminary rulings on questions concerning the breach of the said rules or Articles by statutes, decrees or orders.

PROCEEDINGS BEFORE THE COMMISSION

20. The applicants lodged their application with the Commission on 4 January 1991. They maintained that the rules governing liability introduced by the Act of 30 August 1988 infringed Article 1 of Protocol No. 1, Article 6 para. 1 (P1-1, art. 6-1) of the Convention and Article 14 of the Convention taken together with Article 1 of Protocol No. 1 (art. 14+P1-1).

21. On 6 September 1993 the Commission declared the complaints concerning Article 1 of Protocol No. 1 and Article 6 para. 1 of the Convention (P1-1, art. 6-1) admissible; it found the remainder of the application (no. 17849/91) inadmissible. In its report of 4 July 1994 (Article 31) (art. 31), the Commission expressed the opinion that there had been no violation of Article 1 of Protocol No. 1 (P1-1) (unanimously), but that there had been a violation of Article 6 para. 1 (art. 6-1) of the Convention (eleven votes to six), except as regards the second (fourteen votes to three) and twelfth applicants (sixteen votes to one).

The full text of the Commission's opinion and of the five separate opinions contained in the report is reproduced as an appendix to this judgment (1).

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1. Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 332 of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

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FINAL SUBMISSIONS TO THE COURT

22. In their memorial the Government asked the Court

"by way of primary submission, to declare application no. 17849/91 inadmissible and, in the alternative, to hold that the facts of the present case do not disclose any breach on the part of the Belgian State of its obligations under the European Convention on Human Rights."

23. The applicants invited the Court to

"1. hold that the Act of 30 August 1988 infringed Article 6 para. 1 of the Convention and Article 1 of Protocol No. 1 (art. 6-1, P1-1);
2. hold that the Belgian State is to reimburse in respect of costs and expenses the sum of BEF 51,380,253;
3. hold that the question of the just satisfaction owed to the applicants should be reserved."

AS TO THE LAW

I. THE SIXTH APPLICANT

24. The Court notes that of the original twenty-six applicants before the Commission twenty-five were represented before it. The lawyers appointed by the applicants received no instructions from the sixth applicant (see paragraphs 1 and 2 above). The Court considers that this circumstance warrants the conclusion that the sixth applicant did not intend to pursue its complaints (second sub-paragraph of Rule 49 para. 2 of Rules of Court A).

In addition, it discerns no public policy reason for continuing the proceedings in respect of the sixth applicant, whose complaints are similar to those of the other applicants (Rule 49 para. 4).

Accordingly, the complaints lodged by City Corporation should be severed from those of the other applicants and struck out of the list.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 (P1-1)

25. The applicants' complaint was directed against the Act of 30 August 1988 amending the Act of 3 November 1967 on the piloting of sea-going ships (see paragraphs 9 and 18 above). They maintained that the Act in question breached Article 1 of Protocol No. 1 (P1-1), which is worded 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."

A. The Government's preliminary objection

26. As they had done before the Commission, the Government contended that the application was inadmissible for failure to exhaust domestic remedies. In their view, the first twenty-four applicants ought to have raised the question of the compatibility of the contested Act with Article 1 of Protocol No. 1 (P1-1) also in the ordinary courts. The application to have the Act declared void lodged with the Court of Arbitration had not rendered such proceedings superfluous, because complaints based on the violation of provisions of international law taken separately fell outside the jurisdiction of that court (see paragraph 19 above). It followed that the Court of Arbitration's judgment of 5 July 1990 (see paragraph 7 above) was not binding on the ordinary courts, which could therefore have refused to apply the 1988 Act if they had found it to be in breach of the Convention.

Nor could the twenty-fifth and twenty-sixth applicants be regarded as having exhausted domestic remedies. The twenty-fifth applicant had neglected to raise before the first-instance court and the Court of Appeal the submission based on the incompatibility of the 1988 Act with Article 1 of Protocol No. 1 (P1-1), which had made it impossible for the Court of Cassation to take cognisance thereof. The twenty-sixth applicant had not taken any legal proceedings to challenge the 1988 Act.

27. The Court reiterates that under Article 26 (art. 26) of the Convention the only remedies required to be exhausted are those that are effective and capable of redressing the alleged violation (see, among other authorities, the Keegan v. Ireland judgment of 26 May 1994,

Series A no. 290, p. 17, para. 39).

It notes that, in the Court of Arbitration, the first twenty-four applicants relied in substance, with reference to the (former) Articles 6 and 6 bis of the Belgian Constitution, on arguments that were virtually identical to those adduced before the Convention institutions and expressly invoked the violation of Article 11 (as it was formerly, now Article 16) of the Constitution and Article 1 of Protocol No. 1 (P1-1). The Court of Arbitration held that the protection afforded by those provisions extended only to property that had already been acquired (see paragraph 7 above).

In the opinion of the European Court, all the applicants were entitled to consider on the basis of that reasoning that, in the Court of Arbitration's view, the facts of which twenty-four of them had complained before that court fell outside the scope of Article 1 of Protocol No. 1 (P1-1). Regard being had to the rank and authority of the Court of Arbitration in the judicial system of the Kingdom of Belgium, it could, in the light of that court's reasoning, be assumed that any other remedy of which the applicants could have availed themselves would have been bound to fail (see, mutatis mutandis, the Hauschildt v. Denmark judgment of 24 May 1989, Series A no. 154, p. 19, para. 41, and the Holy Monasteries v. Greece judgment of 9 December 1994, Series A no. 301-A, p. 29, para. 51).

The objection must accordingly be dismissed.

B. Merits of the complaint

28. The applicants complained about the 1988 Act in two respects.

By exempting the organiser of a pilot service from liability for negligence on the part of its staff and limiting the liability of the latter, it imposed on the applicants an excessive burden which upset the fair balance between the demands of the general interest and the requirements of the protection of their right to the peaceful enjoyment of their possessions. Thus it infringed the second paragraph of Article 1 of Protocol No. 1 (P1-1), or at least the first sentence of the first paragraph thereof (P1-1).

In addition the retrospective effect of the Act deprived the applicants of their claims for compensation in respect of the damage sustained and therefore infringed the second sentence of the first paragraph of that Article (P1-1).

1. Whether there was a "possession" within the meaning of Article 1 (P1-1)

29. According to the Government, the applicants' alleged claims could not be regarded as "possessions" within the meaning of Article 1 (P1-1). None of them had been recognised and determined by a judicial decision having final effect. Yet that was the condition for a claim to be certain, current, enforceable and, accordingly, protected by Article 1 (P1-1).

Nor, in view of the unexpected and manifestly disputable character of the approach adopted by the Court of Cassation in its judgment of 15 December 1983 (see paragraph 17 above), could the applicants rely on a "legitimate expectation" that they would obtain compensation from the State (see the Pine Valley Developments Ltd and Others v. Ireland judgment of 29 November 1991, Series A no. 222, p. 23, para. 51). That would be to confuse the right of property with a right to property.

The Commission accepted this argument in substance.

30. The applicants pointed out that under the ordinary Belgian law of tort a claim for damages was in principle generated when the damage occurred, as the judicial decision merely confirmed its existence and determined the relevant amount.

The Government replied that the terms "possession" and "property" within the meaning of Article 1 (P1-1) had an autonomous meaning that was not dependent on the classifications applicable in the domestic law of the State in question.

31. In order to determine whether in this instance there was a "possession", the Court may have regard to the domestic law in force at the time of the alleged interference, as there is nothing to suggest that that law ran counter to the object and purpose of Article 1 of Protocol No. 1 (P1-1).

The rules in question are rules of tort, under which claims for compensation come into existence as soon as the damage occurs.

A claim of this nature "constituted an asset" and therefore amounted to "a possession within the meaning of the first sentence of Article 1 (P1-1). This provision (P1-1) was accordingly applicable in the present case" (see, mutatis mutandis, the Van Marle and Others v. the Netherlands judgment of 26 June 1986, Series A no. 101, p. 13, para. 41).

On the basis of the judgments of the Court of Cassation of 5 November 1920, 15 December 1983 and 17 May 1985 (see paragraph 17 above), the applicants could argue that they had a "legitimate expectation" that their claims deriving from the accidents in question would be determined in accordance with the general law of tort (see, mutatis mutandis, the Pine Valley Developments Ltd and Others judgment cited above, loc. cit.).

32. That was the position with regard to the accidents in issue, which all occurred before 17 September 1988, the date of the entry into force of the 1988 Act (see paragraphs 6 and 18 above).

2. Whether there was an interference

33. According to the Court's case-law, Article 1 (P1-1), which guarantees in substance the right of property, comprises three distinct rules. The first, which is expressed in the first sentence of the first paragraph (P1-1) and is of a general nature, lays down the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph (P1-1), covers deprivation of possessions and subjects it to certain conditions. The third, contained in the second paragraph (P1-1), recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, are to be construed in the light of the general principle laid down in the first rule (see, among other authorities, the Holy Monasteries judgment cited above, p. 31, para. 56).

34. The Court notes that the 1988 Act exempted the State and other organisers of pilot services from their liability for negligent acts for which they could have been answerable. It resulted in an interference with the exercise of rights deriving from claims for damages which could have been asserted in domestic law up to that point and, accordingly, with the right that everyone, including each of the applicants, has to the peaceful enjoyment of his or her possessions (see paragraph 31 above).

In so far as that Act concerns the accidents that occurred before 17 September 1988, the only ones in issue in the present proceedings, that interference amounted to a deprivation of property within the meaning of the second sentence of the first paragraph of Article 1 (P1-1).

3. Whether the interference was justified

35. The Court must now consider whether that interference was "in the public interest" and whether it satisfied the requirements of proportionality.

(a) "In the public interest"

36. In order to justify the impugned interference, the Government put forward three different "major considerations linked to the general interest". These were the need to protect the State's financial interests, the need to re-establish legal certainty in the field of tort and the need to bring the relevant Belgian legislation into line with that of neighbouring countries and notably that of the Netherlands.

37. The Court recalls that the national authorities enjoy a certain margin of appreciation in determining what is "in the public interest", because under the Convention system it is for them to make the initial assessment both of the existence of a problem of public concern warranting measures of deprivation of property and of the remedial action to be taken.

Furthermore, the notion of "public interest" is necessarily extensive. In particular, the decision to enact laws expropriating property will commonly involve consideration of political, economic and social issues on which opinion in a democratic society may reasonably differ widely. The Court, finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, will respect the legislature's judgment as to what is "in the public interest" unless that judgment be manifestly without reasonable foundation (see, mutatis mutandis, the James and Others v. the United Kingdom judgment of 21 February 1986, Series A no. 98-B, p. 32, para. 46), which is clearly not the case in this instance.

(b) Proportionality of the interference

38. An interference with the peaceful enjoyment of possessions must strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 (P1-1) as a whole, including therefore the second sentence, which is to be read in the light of the general principle enunciated in the first sentence (see paragraph 33 above). In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measure depriving a person of his possessions.

Compensation terms under the relevant legislation are material to the assessment whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate burden on the applicants. In this connection, the taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference and a total lack of compensation can be considered justifiable under Article 1 (P1-1) only in exceptional circumstances (see, as the most recent authority, the Holy Monasteries judgment cited above, pp. 34-35, paras. 70-71).

39. In the present case the 1988 Act quite simply extinguished, with retrospective effect going back thirty years and without compensation, claims for very high damages that the victims of the pilot accidents could have pursued against the Belgian State or against the private companies concerned, and in some cases even in proceedings that were already pending.

40. The Government invoked the financial implications, which were both enormous and unforeseeable, of the Court of Cassation's judgment of 15 December 1983. During preparatory work on the 1988 Act, the financial impact of the actions then pending against the Belgian State had been assessed at 3.5 thousand million Belgian francs. The legislature had been entitled to protect the public purse from this expense, because it stemmed from a construction placed on the relevant provisions that was so disputable and unforeseeable that the applicants could not reasonably have believed that it would be endorsed by the legislature. Indeed this had been confirmed in substance by the Court of Arbitration (see paragraph 7 above).

The Government also stressed that it had been necessary to put an end to the "lack of legal certainty" generated by the judgment of 15 December 1983. In their view, the legislature in 1988 had had to reaffirm a principle that had been recognised under Belgian law for nearly one hundred and fifty years and had been overturned by a questionable interpretation on the part of the Court of Cassation.

Finally the Government contended that the 1988 Act was also intended to bring the Belgian legislation into line with that of neighbouring countries.

41. The applicants observed in the first place that the 1988 Act benefited not only the Belgian State, but also the private pilot company that was involved in several disputes (see paragraph 6 above). They then submitted that the financial reasons cited by the Government could not justify such a massive violation of their fundamental rights, in particular in view of the fact that, far from being unforeseeable, the Court of Cassation's judgment of 15 December 1983 was entirely consistent with its "La Flandria" judgment of 1920 (see paragraph 17 above). The State had had ample time to take measures in conformity with the Convention so as to anticipate a ruling that merely developed a particular line of case-law, which had been initiated much earlier. Instead it had not only annulled retrospectively claims that were already in existence, but it had waited until 1988 before doing so, thereby aggravating the frustration of the applicants' expectations, many of whom had delayed instituting proceedings against the State until 1986 or later.

42. The Court recalls that the Court of Cassation had recognised in its "La Flandria" judgment of 5 November 1920 that the State and the other public-law bodies were subject to the general law of tort (see paragraph 17 above).

Since then the Court of Cassation had admittedly not had occasion to hear cases relating to the State's liability concerning pilot services, but it was certainly not unforeseeable that it would apply to this type of case, at the first opportunity, the principles that it had defined in general terms in the judgment of 1920. This was especially true in view of the fact that a reading of the 1967 Act in the light of the Conseil d'Etat's opinion could reasonably support the conclusion that the Act did not depart from the general law of tort (see paragraphs 11-13 above).

The 1983 judgment did not therefore undermine legal certainty.

43. The financial considerations cited by the Government and their concern to bring Belgian law into line with the law of neighbouring countries could warrant prospective legislation in this area to derogate from the general law of tort.

Such considerations could not justify legislating with retrospective effect with the aim and consequence of depriving the applicants of their claims for compensation.

Such a fundamental interference with the applicants' rights is inconsistent with preserving a fair balance between the interests at stake.

44. It follows that in so far as the 1988 Act concerned events prior to 17 September 1988, the date of its publication and its entry into force, it breached Article 1 of Protocol No. 1 (P1-1).

III. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 (art. 6-1) OF THE CONVENTION

45. The applicants also complained of a violation of Article 6 para. 1 (art. 6-1) of the Convention.

46. The Court notes that their complaints in this respect overlap with those that they raised under Article 1 of Protocol No. 1 (P1-1). Having regard to its conclusion in paragraph 44 above, it does not consider it necessary to examine them separately under Article 6 para. 1 (art. 6-1).

IV. APPLICATION OF ARTICLE 50 (art. 50) OF THE CONVENTION

47. Under Article 50 (art. 50) of the Convention,

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Pecuniary damage

48. The applicants claimed full reparation for the accumulated pecuniary damage, estimated at BEF 1,598,367,385 (one thousand five hundred and ninety-eight million, three hundred and sixty-seven thousand, three hundred and eighty-five). However, they requested the Court to reserve this question in order to enable them to examine, if need be in concert with the Government, the possibilities for obtaining compensation under domestic law.

49. The Government indicated their agreement on that last point and stated their opinion that it was in the first instance for the Belgian courts to establish the damage sustained and liability in each of the disputes concerned.

50. The Delegate of the Commission did not express a view on this matter.

51. In the circumstances of the case, the Court finds that the question is not ready for decision. It is indeed for the national courts to determine the beneficiaries and amounts of the damages claims generated by the accidents that lay at the origin of the case (see paragraph 6 above). It is accordingly necessary to reserve the matter

of pecuniary damage, account being taken of the possibility of an agreement being reached between the respondent State and the applicants (see Rule 54 paras. 1 and 4 of Rules of Court A).

B. Costs and expenses

52. The applicants also sought the sum of BEF 51,380,253 (fifty-one million, three hundred and eighty thousand, two hundred and fifty-three) in respect of the costs and expenses incurred in the proceedings in the national courts and before the Convention institutions.

53. According to the Government, the proceedings in the first-instance courts did not concern directly the Convention so that the relevant costs could not be claimed under Article 50 (art. 50). As regards those incurred in the Court of Arbitration and the Court of Cassation and at Strasbourg, they related to matters which, in the Government's opinion, proved to be identical, apart from some minor points. The applicants were therefore not entitled to claim more than BEF 2,000,000 under this head.

54. The Delegate of the Commission did not express a view.

55. The Court notes that until 17 September 1988 the rights guaranteed under the Convention were not in issue in the first-instance and appeal courts, and that, of the BEF 38,017,101 sought under this head, more than 22 million were claimed in respect of the services of the firm of damage assessors, Langlois & Co.

As to the BEF 13,363,152 claimed for the proceedings in the Court of Arbitration and the Court of Cassation and before the Convention institutions, the Court observes that more than 9.5 million were sought in respect of costs and expenses for Langlois & Co.

Making an assessment on an equitable basis, the Court awards BEF 8,000,000 for costs and expenses.

FOR THESE REASONS, THE COURT

1. Severs unanimously the sixth applicant's complaints from those of the other applicants and decides to strike them out of the list;

2. Dismisses unanimously the Government's preliminary objection;

3. Holds by eight votes to one that there has been a violation of Article 1 of Protocol No. 1 (P1-1);

4. Holds by eight votes to one that it is not necessary to examine the case also under Article 6 para. 1 (art. 6-1) of the Convention;

5. Holds unanimously that the respondent State is to pay to the applicants, within three months, 8,000,000 (eight million) Belgian francs in respect of costs and expenses;

6. Holds unanimously that the question of the application of Article 50 (art. 50) of the Convention as regards pecuniary damage is not ready for decision; and

   consequently,

   (a) reserves the said question;

   (b) invites the Government and the applicants to submit, within

the forthcoming six months, their written observations on the matter and, in particular, to notify the Court of any agreement they may reach;

(c) reserves the further procedure and delegates to the President the power to fix the same if need be.

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

Signed: Rolv RYSSDAL
President

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of Rules of Court A, the following separate opinions are annexed to this judgment:

(a) dissenting opinion of Mr Thór Vilhjálmsson;
(b) separate opinion of Mr De Meyer.

Initialled: R. R.

Initialled: H. P.

DISSENTING OPINION OF JUDGE THÓR VILHJÁLMSSON

I voted for a non-violation of Article 1 of Protocol No. 1 (P1-1) to the Convention. I agree with the majority of the Court that the claims presented by the applicants were possessions within the meaning of this provision (P1-1). On the other hand, I disagree with the conclusion drawn from applying the proportionality test.

In my view, it is significant that maritime law - and its rules on damages - is a branch of law in which many specific considerations apply. Very high sums of money are often involved in disputes in this field and insurance cover plays a major role. Shipowners are also protected by rules on limited liability. Generally speaking there is nothing unusual or oppressive in promulgating legal rules according to which the liability for negligent piloting, even if it is provided or authorised by the State, is imposed on the shipowners. Therefore the only problem in this case concerning Article 1 of Protocol No. 1 (P1-1) is the retroactivity clause in the 1988 Act.

It seems that the Court of Cassation did not give any judgments on the liability of pilots from 1896 to 1983. The "La Flandria" judgment, delivered in 1920, concerned the general rules on State liability under the law of tort. It has not been shown that at the time of those of the accidents in this case that took place before 1983, the shipowners could rely on a legal rule in Belgium on State liability for the actions of pilots. Between 1983 and 1988 the situation was not the same. Nevertheless, it needs to be demonstrated that this led to changes in insurance clauses and thereby deprived the shipowners of the possibility of suing the insurance companies. This has not been done. The rules promulgated in 1988 did not, moreover, deprive the shipowners of all possibility of having their losses covered by others because in many cases they could rely on the liability of other shipowners. It is accordingly not clear in what way serious burdens were in fact imposed on the applicants as a result of the accidents in respect of which they claim, less still that any such burdens were individual and excessive. To this it may be added, in my opinion, that a general ban on retroactivity of measures in the field of civil law cannot be read into our Convention. The exact limits of

the guarantees set out in Article 1 of Protocol No. 1 (P1-1) are difficult to draw and the claims in the possession of the applicants had not been finally determined. In these circumstances I find the Government's arguments, which are summarised in paragraph 40 of the judgment, relevant and convincing. Accordingly, I do not find that the fact that the national legislature enacted rules with retroactive effect such as those promulgated in Belgium in 1988, amounts, on the basis of a proportionality test, to a violation.

For these reasons I find no violation of Article 1 of Protocol No. 1 (P1-1).

SEPARATE OPINION OF JUDGE DE MEYER

(Translation)

In my view, the reasons which led the Court to find a violation of the applicants' right to the peaceful enjoyment of their possessions apply equally to their right to a fair trial.

The retrospective effect of the 1988 Act had, as is stated in the judgment, the aim and consequence of depriving the applicants of their claims for compensation (1). But it was also intended to thwart legal actions that had already been brought against the State or against another organiser of pilot services (2), and any other claim of the same type concerning events that occurred prior to the entry into force of the new legislation (3).

____

1. Paragraph 43 of the judgment.

2. This was the case of all the applicants except the twelfth (see paragraph 6 of the judgment).

3. This was the case of the twelfth applicant and, as regards Brabo, the fifth (see the same paragraph).

____

I therefore consider that there has been a violation of Article 6 (art. 6) of the Convention quite as much as there has been of Article 1 of Protocol No. 1 (P1-1).