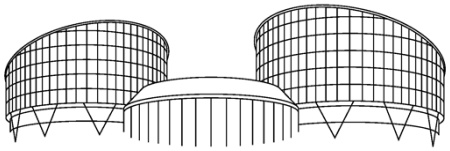

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF STICHTING LANDGOED STEENBERGEN AND OTHERS v. THE NETHERLANDS

(Application no. 19732/17)

JUDGMENT

Art 6 § 1 (civil) • Access to court • Adequate notification solely by electronic means of (draft) administrative decision potentially directly affecting third parties • Coherent system striking fair balance between interests at stake • High numbers of domestic Internet users • Pre-existing practice codified in domestic law advertised to public • Clear, practical and effective opportunity to comment and challenge the (draft) decision • Margin of appreciation not exceeded

STRASBOURG

16 February 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Stichting Landgoed Steenbergen and Others v. the Netherlands,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Yonko Grozev, *President,*
Faris Vehabović,
Iulia Antoanella Motoc,
Gabriele Kucsko-Stadlmayer,
Pere Pastor Vilanova,
Jolien Schukking,
Ana Maria Guerra Martins, *judges,*
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application (no. 19732/17) against the Kingdom of the Netherlands lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by the foundation Stichting Landgoed Steenbergen and by three Dutch nationals, Ms Hermine Sofia Maria van Veen, Mr Walter Henricus Franciscus Vendel and Mr Andreas Bottema ("the applicants"), on 2 March 2017;

the decision to give notice to the Dutch Government ("the Government") of the complaints under Articles 6, 8 and 13 of the Convention and to declare inadmissible the remainder of the application;

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

the comments submitted by third-party intervener *Asociación para la Prevención y Estudios de Delitos, Abusos y Negligencias en Informática y Comunicaciones Avanzadas* (APEDANICA), who was granted leave to intervene by the President of the Section;

Having deliberated in private on 19 January 2021,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The application concerns the publication, solely by electronic means, of the notification of a decision to extend the opening hours of a motocross track located in close proximity to the applicants' premises and land. The applicants, who rely on Articles 6, 8 and 13 of the Convention, did not see the notification and lodged their appeal against the decision when the time-limit fixed for that purpose had already expired. The appeal was declared inadmissible for having been lodged out of time. The main issue is whether the applicants' right of access to a court under Article 6 § 1 of the Convention was disproportionately restricted.

THE FACTS

2. The individual applicants were born in 1963, 1962 and 1961 respectively and live in Wapenveld. The applicant foundation has its registered address in Wapenveld and is the owner of an estate situated at that address, where it runs a study centre. The applicants were represented by Mr R.S. Wertheim, a lawyer practising in Zwolle.

3. The Government were represented by their Agent, Ms B. Koopman, of the Ministry of Foreign Affairs.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. The village of Wapenveld, where the individual applicants live and which also houses the application foundation's estate, is part of the municipality of Heerde, which is located in the Province of Gelderland.

6. A motocross track, which is operated by a motocross association ("the association"), is located in Heerde, in close proximity to the applicants' premises and land. Since 19 May 1987 the association has been operating under a permit granted by the Provincial Executive (*Gedeputeerde Staten*) of the Province of Gelderland which allows the motocross track to operate from 1 p.m. to 7 p.m. on Wednesdays and Saturdays and, from April to October, on a further two weekdays from 2 p.m. to 7 p.m.

7. The association and the applicants' premises are (partially) located within the so-called Natura 2000 area (a Special Area of Conservation, designated under the EU Habitats Directive). The applicants claim that they can hear the motocross bikes from their premises and land.

8. On 27 September 2013, the association asked the Province of Gelderland to issue it with a new permit under the 1998 Nature Conservation Act (*Natuurbeschermingswet* 1998) that would allow it to expand its activities, with a larger number of motocross bikes and extended opening hours.

9. On 4 December 2013, the Provincial Executive published a notice on its website to the effect that it intended to grant the requested permit and that the draft decision and the relevant documents could be viewed from 9 December 2013 until 20 January 2014 at the provincial government building and on its website. Interested parties (*belanghebbenden*) within the meaning of section 1:2(1) of the General Administrative Law Act (*Algemene wet bestuursrecht*; see paragraph 17 below) were given an opportunity to submit their views on the draft decision, either in writing or orally, before 20 January 2014, and more information on that matter could be found at the end of the draft decision itself.

The text of the draft decision mentioned that it would only be possible to appeal against the actual decision if the appellant had already submitted his or her views on the draft decision and he or she was an interested party.

10. No views having been received, the Provincial Executive issued the permit on 27 January 2014. It published notification of its decision on the provincial website, saying that the decision and the relevant documents could be viewed from 30 January until 13 March 2014 at the provincial government building and on the aforementioned website. Interested parties could appeal against the decision before 13 March 2014, and more information on that matter could be found at the end of the decision itself. The text of the decision also mentioned that Chapter 3.4 of the General Administrative Law Act (see paragraph 18 below) had been declared applicable to the association's request for a new permit.

11. The applicants first became aware of the decision granting the new permit on 4 November 2014. On 12 November 2014 they appealed to the Administrative Jurisdiction Division of the Council of State (*Afdeling Bestuursrechtspraak van de Raad van State* – "the Administrative Jurisdiction Division") against the decision. They stated that it was unclear whether the notifications of the draft decision and the decision had ever actually been published. In addition, they submitted that the fact that they had lodged their appeal outside the legal time-limit and that they had not submitted any views on the draft decision was excusable because publishing the notification on a provincial government website could not be regarded as publishing in "some other suitable manner" as required by section 3:12(1) of the General Administrative Law Act (see paragraph 19 below). Citizens of the Netherlands could not be expected, or might not be able, to monitor all the websites of all local and regional administrative authorities. On those grounds, the applicants argued that their right of access to a court under Article 6 of the Convention had been breached.

12. In the appeal proceedings it was argued on behalf of the Provincial Executive that the notifications of both the draft decision and the decision had been published correctly. Two screenshots were submitted, taken from an archiving website which showed the notifications of the draft decision and the decision. The Provincial Executive also argued that the electronic publication of the notifications complied with the provisions of the General Administrative Law Act and the 2012 Gelderland Province Electronic Notification Ordinance (*Verordening elektronische bekendmaking Gelderland 2012*, "the Electronic Notification Ordinance" – see paragraphs 23-25 below) which specifically provided for electronic publication. Given the accessibility of the Internet, moreover, the Provincial Executive was of the view that there had been no violation of Article 6 of the Convention.

13. The Administrative Jurisdiction Division decided on the appeal in a judgment of 7 September 2016 (ECLI:NL:RVS:2016:2421). In it, it referred to a previous judgment in which it had held that notification of a draft decision via the Internet could constitute a suitable manner of notification, but that the applicable provisions of the General Administrative Law Act

required that notification of a draft decision also be given in at least one non-electronic manner, unless a statutory provision provided otherwise (see paragraph 22 below). The applicants' argument that electronic notification was not a suitable manner of notification did not give the Administrative Jurisdiction Division cause to reconsider this case-law.

14. Furthermore, it considered that its case-law was not at odds with Article 6 of the Convention. Referring to the Court's case-law (see *Ashingdane v. the United Kingdom*, 28 May 1985, Series A no. 93), it stated that Article 6 did not entail an absolute right of access to a court and that States had a certain margin of appreciation when laying down regulations limiting access to a court, as long as such limitations did not impair the very essence of the right of access to a court, pursued a legitimate aim, and complied with the requirement of proportionality. The Administrative Jurisdiction Division acknowledged that the manner of notification of a decision could in certain circumstances restrict access to a court to an extent incompatible with Article 6; for example if notice of a decision was given in a completely inadequate manner and as a result an interested party was unable to apply to a court within the period allowed, or at all. The Administrative Jurisdiction Division held that such a situation did not arise when notification of a decision was given solely by electronic means, and it could therefore not be said that the essence of the right to a court was impaired. By allowing notification of a decision solely by electronic means, the legislator had attempted to facilitate easier and faster communication between citizens and the administrative authorities. The underlying thought behind this was that such electronic communication could significantly contribute to the objective of achieving a more accessible and better functioning administration, which was a legitimate aim.

15. The Administrative Jurisdiction Division found that the applicants' argument offered no grounds for holding that the requirement of proportionality had not been complied with when notification of a decision was given solely by electronic means. It therefore perceived no cause to hold that the possibility of giving notification of decisions solely by electronic means was, as such, contrary to Article 6.

16. Lastly, the Administrative Jurisdiction Division noted that the Electronic Notification Ordinance (see paragraphs 12 above and 23-25 below) had entered into force before the impugned decision had been taken. There had therefore existed a statutory provision providing for notification of decisions solely by electronic means. For that reason it considered that it was in principle not unacceptable that notification of the decision had been published solely on the Gelderland provincial website. Moreover, the applicants had not made a plausible case for believing that the archiving website used by the Provincial Executive and other administrative authorities was unreliable or that it did not provide a proper overview of notifications that had previously been published on the provincial website.

The Administrative Jurisdiction Division considered it sufficiently established that the notifications of both the draft decision and the decision had been published on the latter website. The applicants could therefore reasonably be considered to have been at fault for not having submitted any views on the draft decision and for having lodged their appeal too late. That appeal was accordingly inadmissible.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

17. Section 1:2(1) of the General Administrative Law Act defines "interested parties" as persons (including legal entities) whose interest is directly affected by a decision (*besluit*). That interest should be the person concerned's own, rather than an idealistic or general interest; it should also be objectively determinable, current and personal. A "decision" as referred to above is a decision in writing taken by an administrative authority (*bestuursorgaan*) constituting a legal act governed by public law (*publiekrechtelijke rechtshandeling*; section 1:3(1) of the General Administrative Law Act).

18. The rules governing the publication of draft decisions and decisions are set out in chapter 3 of the General Administrative Law Act. Sub-chapter 3.4 of that Act, which provides for public participation in decision-making by administrative authorities, applies to the preparation of decisions if this is determined by law or decided by the administrative authority concerned.

19. Section 3:11(1) of the General Administrative Law Act, which is set out in sub-chapter 3.4, provides that the administrative authority must deposit a draft decision for public inspection (*terinzagelegging*), together with the relevant documents which are reasonably necessary to assess the draft. Section 3:12(1) of sub-chapter 3.4 lays down the manner in which a deposition for inspection is to be notified to the public. It provides that, prior to such deposition, the administrative authority must give notice of the draft decision in one or more daily or weekly newspapers or free local papers or in some other suitable manner. Only the substance of the draft decision need be stated. Under section 3:15(1) of sub-chapter 3.4, interested parties within the meaning of section 1:2(1) (see paragraph 17 above) may submit their views on the draft decision to the administrative authority, either orally or in writing. An interested party who has not submitted his or her views on the draft decision, for which failure he or she can reasonably be reproached, cannot appeal to a court against the actual decision (section 6:13 of the General Administrative Law Act).

20. Section 42(3) of the 1998 Nature Conservation Act, which concerns the manner in which a decision taken under that Act is to be notified to the public, reads as follows:

> "The authority authorised to grant a permit in accordance with sections 16 and 19 shall publish the notification of a decision to grant, modify or withdraw a permit in one or more daily or weekly newspapers or free local papers or in some other suitable manner. Only the substance of the draft decision need be stated."

21. A notification of a (draft) decision is a communication within the meaning of section 2:14 of the General Administrative Law Act, according to the drafting history of this provision. The first paragraph of the provision provides that an administrative authority may send a communication which is addressed to one or more specific individual(s) by electronic means to those addressees who have indicated that they can be properly contacted in that manner. As regards communications not addressed to one or more specific persons, section 2:14(2) provides that, unless otherwise provided by law, they should not be sent solely by electronic means.

22. In a judgment of 15 August 2012 (ECLI:NL:RVS:2012:BX4676), the Administrative Jurisdiction Division held that notifying a draft decision via the Internet constituted a suitable manner of notification within the meaning of section 3:12(1) of the General Administrative Law Act. However, it followed from section 2:14(2) of that Act that draft decisions had also to be notified in at least one non-electronic manner, unless a statutory provision providing otherwise was in force.

23. On a proposal from the Provincial Executive, the Electronic Notification Ordinance was adopted by the Gelderland Provincial Council (*Provinciale Staten*) on 26 September 2012 in order to provide a statutory basis for the practice, which had been in existence since 1 October 2011, of publishing notifications of decisions taken by an administrative authority of Gelderland Province solely by electronic means. The explanatory notes (*toelichting*) to the proposal stated, *inter alia*, that this new method of publication of notifications had been brought to the attention of the public through various advertisements in local newspapers in the second half of 2011. In view of the level of computer ownership in the Netherlands, the explanatory notes concluded that the reach of electronic publication was likely to be larger than that of traditional publication on paper in free local newspapers. Notification by electronic means would, in practice, mean that notifications not addressed to one or more specific individuals would be made available for consultation on the Internet, for example via the website of Gelderland Province.

24. Notification of the adoption of the Electronic Notification Ordinance, as well as the text of the Ordinance, was published in the Gelderland Provincial Bulletin (*Provinciaal blad van Gelderland*) of 27 September 2012. Notification of that adoption was also published in the Official Gazette (*Staatscourant*) of 10 October 2012. That publication pointed out that the text of the Ordinance could be found on the Gelderland provincial website and that the Ordinance provided a legal basis for the practice, in force since 1 October 2011, of publishing notifications relating

to provincial decision-making solely by electronic means and no longer in local newspapers.

25. Section 2(1) of the Electronic Notification Ordinance provides that it is permissible for notifications of announcements (*meldingen*), applications (*aanvragen*), draft decisions (*ontwerpbesluiten*) and decisions (*besluiten*) to be published solely by electronic means.

26. Pursuant to section 6:11 of the General Administrative Law Act an objection (*bezwaar*) or appeal which is lodged after the expiry of the time-limit set for that purpose will not be declared inadmissible for that reason if it cannot reasonably be held that the person who lodged it was at fault.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

27. The applicants complained that the publication of the notifications of both the draft decision and the decision of the Provincial Executive solely by electronic means had breached their right of access to a court as provided in Article 6 § 1 of the Convention, the relevant parts of which provide:

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

A. Admissibility

28. In their submissions, the Government accepted the applicability of Article 6 of the Convention, as the outcome of the domestic proceedings had affected the applicants' civil rights, notably their rights deriving from the right to property.

29. The applicants maintained that their civil rights had been at issue, as the decision had disrupted their quality of life, *inter alia* as a result of the noise pollution. It had also reduced the value of their properties and had thus had pecuniary consequences for them. Lastly, they submitted that their right to a healthy environment had been affected.

30. The Court considers that the applicants' claims relating to general environmental harm do not concern their "civil rights" within the meaning of Article 6 of the Convention. However, other issues raised by the applicants, in particular the effects of the expansion of the activities at the motocross track on their properties and land, do relate to their "civil rights". Furthermore, the domestic proceedings initiated by the applicants concerned the authorities' decision to permit the expansion of those activities and were decisive for those rights (see *Karin Andersson and Others v. Sweden*, no. 29878/09, § 46, 25 September 2014). The Government did not dispute

this. Moreover, it cannot be said that the aforementioned effects on their property and land were mere remote consequences (see, *a contrario*, *Athanassoglou and Others v. Switzerland* [GC], no. 27644/95, §§ 43 and 46-55, 6 April 2000).

31. Having regard to the above considerations, the Court finds that Article 6 applies to the present case under its civil limb.

32. The Court further notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

33. The applicants submitted that, as they had been unaware of the decision to extend the opening hours of the motocross track, they had been deprived of the possibility to appeal in time to the domestic courts. They argued that the publication of the notification solely by electronic means had impaired the essence of the right to appeal, because not all citizens had access to a computer or the Internet. Electronic publication did not have the same reach as printed publication. Citizens who did have access to the Internet could not be expected to monitor all governmental websites on a regular basis. The applicants pointed out that citizens had to search actively for electronic notifications, which was not the case for notifications published in local and national newspapers.

34. In addition, they submitted that the Dutch system of electronic publication of notifications was highly opaque and arbitrary and that there was an insufficiently clear basis in law for electronic publication. In that regard, they pointed out that the Electronic Notification Ordinance (see paragraphs 23-25 above) did not determine where electronic notifications were to be published and did not clarify whether or not the Provincial Executive would opt for this method of publication for all their (draft) decisions. The applicants also submitted that they had provided screenshots showing that the notifications of the draft decision and the actual decision had been published not on the Gelderland provincial website, as indicated by the Government, but on an entirely different website.

35. The applicants submitted, furthermore, that the restriction of their right of access to a court had not served a legitimate aim. Electronic publication of notifications made the Government less accessible for citizens and thus had the opposite effect to that aimed for.

36. Lastly, the applicants argued that in general there was no proportionality between the complete abandonment of publication of notifications on paper and the aim pursued by the Government. Instead of

completely abandoning notifications in local or national newspapers, less far-reaching measures were conceivable to facilitate easier and faster communication between citizens and the administrative authorities. In the specific circumstances of the present case, the restriction had thus also been disproportionate.

(b) The Government

37. The Government argued that the right of access to a court had not been limited, because the rules governing the procedure that applied to legal remedies were intended to ensure the proper administration of justice and compliance with the principle of legal certainty. Pursuant to the legal framework in force, the notification of both the draft and the final decision had been published on the provincial website and had provided relevant information relating, *inter alia*, to the possibilities for submitting views and lodging an appeal. Given the high level of computer ownership and Internet penetration in the Netherlands – in 2013, according to the national statistical office, Statistics Netherlands (*Centraal Bureau voor de Statistiek*), 92.8% of citizens over the age of 12 had had access to the Internet – electronic publication could reach a far larger audience than publication in a local or national newspaper or on official notice boards. While it was true that the Internet did not provide 100% coverage, the same held true for local newspapers or notices posted at provincial offices.

38. Even if publishing notifications exclusively on the Internet were to be considered as a limitation of the right of access to a court, this means of publication did not impair the very essence of the right, for the reasons set out in the previous paragraph. It also pursued a legitimate aim in that it ensured easier and faster communication between citizens and administrative authorities. In that context the Government were of the opinion that electronic communication between citizens and administrative authorities could contribute substantially to ensuring more accessible and more effective governance. Furthermore, electronic publication complied with the requirement of proportionality, both in general and in the instant case. While it did not differ from other means of publication in that there was always a risk of information not being seen by everyone or not being seen in time, electronic publication actually offered particular advantages, as it allowed citizens to access notifications at any time and from almost anywhere. People who did not have an Internet connection at home could access the Internet in public spaces, such as provincial or municipal offices or libraries.

39. As regards the present case, the Government submitted that it had been foreseeable for the applicants that notifications of decisions of the Gelderland Provincial Executive would be published solely on the Internet. Since 2011 the Province of Gelderland had exclusively used electronic publication to notify decisions, and this new method of publication had been

made public. The notification of the adoption of the Electronic Notification Ordinance had been published in the Official Gazette and the Gelderland Provincial Bulletin (see paragraph 24 above). The Government further explained that until 2016 all publications had appeared on the Gelderland provincial website. As regards the applicant foundation, the Government noted that it could not be considered a vulnerable party without access to the Internet and that, in order to be informed of decisions affecting its living area, it only needed to monitor the electronic publication of notifications by the municipality of Heerde, the Province of Gelderland and the District Water Board (*waterschap*).

40. Finally, the Government described a number of subsequent developments in the Netherlands. Since 2016 all notifications had been published on the national governmental website, which provided information on services for persons and businesses, official publications and national, local and regional legislation. It also offered an alert service for notifications of administrative authorities' activities to which citizens could subscribe.

(c) The third-party intervener

41. The third-party intervener APEDANICA – an NGO set up in Madrid in 1992 which strives to improve citizens' lives across Europe and the Americas as regards their relationship with information and communication technology and to safeguard them against dangers brought about by misuse of such technologies – submitted that digitalisation, in principle, improved the participation of citizens in decision-making. However, according to this NGO, the results concerning e-participation in the Netherlands were unsatisfactory. In that context APEDANICA drew attention to the fact that although not all citizens in the Netherlands had Internet access, nor were they legally obliged to have such access, the Government published legally binding decisions on the Internet without also using other non-electronic means.

2. The Court's assessment

(a) General principles

42. The relevant principles concerning the right of access to a court – that is, the right to institute proceedings before the courts in civil matters – were summarised in the case of *Naït-Liman v. Switzerland* ([GC], no. 51357/07, §§ 112-16, 15 March 2018).

43. The Court has held that the right of access to court under Article 6 § 1 of the Convention entails the entitlement to receive adequate notification of administrative and judicial decisions, which is of particular importance in cases where an appeal may be sought within a specified

time-limit (see, *mutatis mutandis*, *Šild v. Slovenia* (dec.), no. 59284/08, § 30, 17 September 2013).

44. According to the Court's established case-law, however, the right of access to a court may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State, which enjoys a certain margin of appreciation in this regard. However, those limitations must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 of the Convention if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Naït-Liman*, cited above, §§ 114-15). The Court has further held that the right of access to a court is impaired when the rules cease to serve the aims of legal certainty and the proper administration of justice and form a sort of barrier preventing the litigant from having his or her case determined on the merits by the competent court (see *Zubac v. Croatia* [GC], no. 40160/12, § 98, 5 April 2018).

45. The task of the Court is not to review the relevant law and practice *in abstracto*, but to determine whether the manner in which the law and practice were applied to or affected an applicant amounted to a denial of access to a court in the circumstances of the case (see, amongst other authorities, *Zavodnik v. Slovenia*, no. 53723/13, § 74, 21 May 2015). Its role in cases such as the present is to determine whether the applicants were able to count on a coherent system that struck a fair balance between the authorities' interests and their own. The Court must ascertain whether the applicants had a clear, practical and effective opportunity to challenge the administrative act concerned (see *Geffre v. France* (dec.), no. 51307/99, ECHR 2003-I (extracts), and *Lay Lay Company Limited v. Malta*, no. 30633/11, § 56, 23 July 2013).

(b) Application of those principles in the present case

46. The Court notes that notification of both the intention of the Provincial Executive to issue a new permit to the motocross association and of its decision to that effect was given solely by electronic means. It was possible for interested parties within the meaning of Section 1:2(1) of the General Administrative Law Act (see paragraph 17 above) to lodge an appeal against that decision, provided they had first submitted their views on the draft decision (see paragraph 19 above). Both the submission of views and the lodging of an appeal were subject to a time-limit (see paragraphs 9-10 above).

47. While it is not for the Court to determine the manner in which notifications of the type at issue are to be published, it follows from the abovementioned principles that where an appeal lies against a decision by

an administrative authority which may be to the detriment of directly affected third parties, a system needs to be in place enabling those parties to take cognisance of such a decision in a timely fashion. This requires that the decision, or relevant information about it, be made available in a pre-determined and publicised manner that is easily accessible to all potentially directly affected third parties. Provided sufficient safeguards are in place to achieve such accessibility, it falls in principle within the State's margin of appreciation to opt for a system of publication solely by electronic means.

48. Turning to the facts of the present case, the Court finds, firstly, that the Provincial Executive's use of electronic means for publishing notifications was sufficiently coherent and clear for the purpose of allowing third parties to become aware of decisions that could potentially directly affect them. Thus, at the relevant time, a statutory provision – section 2(1) of the Electronic Notification Ordinance – provided for the possibility of notifying the Provincial Executive's (draft) decisions solely by electronic means (see paragraph 25 above). The notification of the adoption of the Ordinance had been published in the Official Gazette, and the text of the Ordinance had been published in the Gelderland Provincial Bulletin as well as on the provincial website (see paragraph 24 above). Moreover, the Electronic Notification Ordinance codified a practice which had been in place since 1 October 2011, and to which the attention of the public had been drawn by means of advertisements in local newspapers at the time (see paragraph 23 above).

49. It is further noted that the text of the Electronic Notification Ordinance did not explicitly indicate where notifications were to be published online; however, the explanatory notes to the Ordinance stated that notifications could be published on the Gelderland provincial website (see paragraph 23 above) and, as submitted by the Government (see paragraph 39 above), notifications of the type at issue had indeed been published on that website until 2016. Although the applicants disputed, both at the domestic level and before this Court, whether the notifications of the draft decision and of the actual decision had been published on the provincial website (see paragraphs 11 and 34 above), the Court notes that the Administrative Judicial Division had found it sufficiently established, in the light of the arguments and evidence submitted to it, that the notifications had been published on that website (see paragraph 16 above). In this connection the Court reiterates that, in accordance with Article 19 of the Convention, its sole duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact allegedly committed by a national court or to substitute its own assessment for that of the national courts unless and in so far as they may have infringed rights and freedoms protected by the Convention. Accordingly, the Court cannot question the

assessment of the domestic courts on this issue unless there is clear evidence of arbitrariness, of which there is no appearance in the instant case (see, among many other authorities, *Sisojeva and Others v. Latvia* (striking out) [GC], no. 60654/00, § 89, ECHR 2007-I, and *Kononov v. Latvia* [GC], no. 36376/04, § 189, ECHR 2010).

50. The Court accepts the Government's submission that electronic communication between the administrative authorities and citizens may contribute to the aim of a more accessible and better functioning administration (see paragraph 38 above). It must ascertain whether, given the facts of the case, a fair balance was struck between, on the one hand, the interest of the community as a whole in having a more modern and efficient administration and, on the other hand, the interests of the applicants.

51. The Court observes that, under Dutch law, notifications that are addressed to specific individuals may only be published solely by electronic means when the individuals concerned have indicated that they can be adequately reached in that manner (see section 2 (14)(1), quoted in paragraph 21 above). Given that decisions of administrative authorities may, in addition, potentially concern a large number of interested parties who it may not be possible to identify in advance, the Court agrees with the Government that electronic notification of administrative authorities' decisions by electronic means may enable a large proportion of the general public to become acquainted with those decisions. In that regard, the Court observes that Dutch law specifies that restricting the publication of notifications that are not addressed to specific individuals exclusively by electronic means is only permitted when a statutory basis exists for it (see section 2 (14)(2), also quoted paragraph 21 above).

52. The Court considers that it must nevertheless be borne in mind that a practice of notifying the public solely by electronic means of decisions that may potentially affect them and against which they may wish to object or appeal runs the risk of not reaching citizens who do not have access to the Internet or who are computer illiterate. It can, however, not be overlooked that in 2013 the Internet penetration rate in the Netherlands was high, with more than 92 percent of citizens over the age of 12 having access to it (see paragraph 37 above). Moreover, the applicants in the present case have not argued that they themselves did not have access to a computer or to the Internet or that they were computer illiterate and that they were, for that or those reasons, unable to find the (draft) decisions online (see, in contrast, *Zavodnik*, cited above, § 79). In those circumstances, the Court is not persuaded by the applicants' argument to the effect that publishing the notifications of the draft decision and the decision in a free local newspaper would have provided better safeguards of reaching potentially affected parties than publishing on the Gelderland provincial website (see paragraph 33 above). In that context it notes once more that notifications of this type have already been published solely by electronic means since

1 October 2011, and that this practice was publicised in local newspapers at the time of its introduction (see paragraph 23 above). The fact that this announcement had apparently escaped the applicants' attention supports the Government's contention that publications in local newspapers also do not constitute an infallible method of reaching every potentially affected party (see paragraph 37 above). The Court considers that it was not unrealistic to expect the applicants to consult the provincial website regularly for notifications of (draft) decisions that might affect them (see, *mutatis mutandis* and to converse effect, *Zavodnik*, cited above, § 80).

53. In the present case, the Court is therefore satisfied that the system of electronic publication used by the Gelderland Provincial Executive constituted a coherent system that struck a fair balance between the interests of the community as a whole and the applicants. The applicants have not put forward any arguments that would allow the Court to conclude that they were not afforded a clear, practical and effective opportunity to comment on the draft decision and to challenge the decision given by the Provincial Executive. In the light of all the circumstances of the case and the safeguards identified, the Court finds that the national authorities did not exceed the margin of appreciation afforded to the State under the Convention (see paragraph 47 above) and that the applicants have not suffered a disproportionate restriction of their right of access to a court.

54. There has accordingly been no violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

55. The applicants complained that publishing the notifications exclusively by electronic means had been in breach of Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

56. The Government submitted that the applicants had not complied with the requirement of exhaustion of domestic remedies as they had failed to submit any views on the draft decision and had lodged their appeal against the decision out of time. They argued that in order to meet the requirements of Article 35 § 1 of the Convention, an applicant must comply with the applicable rules and procedures of domestic law.

57. The applicants argued that in the national proceedings they had implicitly relied on the protection of Article 8 and had thus exhausted domestic remedies.

58. The Court considers that it is not necessary to examine whether Article 8 of the Convention applies to the present case as this complaint is in any event inadmissible for the following reasons.

59. The Court reiterates that under Article 35 of the Convention, it may only deal with applications after all domestic remedies have been exhausted (see, for a recollection of the general principles in this respect, *Vučković and Others v. Serbia* [GC] (preliminary objection), nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014). According to its consistent case-law, that condition is not satisfied if a remedy has been declared inadmissible for failure to comply with a formal requirement (see *Barbara Wiśniewska v. Poland*, no. 9072/02, § 76, 29 November 2011, and *Ben Salah Adraqui and Dhaime v. Spain* (dec.), no. 45023/98, 27 April 2000).

60. The Court observes that the applicants' appeal to the Administrative Jurisdiction Division was declared inadmissible for having been lodged out of time (see paragraph 16 above). The applicants thus failed to comply with the formal requirements for introducing a relevant remedy concerning their complaint under Article 8, which they then brought before this Court. Accordingly, the Government's objection of failure to exhaust domestic remedies must be upheld.

61. It follows that this part of the application must be rejected as inadmissible pursuant to Article 35 §§ 1 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

62. Lastly, the applicants complained that, as regards their complaint under Article 6, they had not had an effective remedy within the meaning of Article 13 of the Convention, which provides:

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

63. The Court reiterates that where the right claimed is a civil right, the role of Article 6 § 1 in relation to Article 13 is that of a *lex specialis*, the requirements of Article 13 being absorbed by those of Article 6 § 1 (see, among other authorities, *British-American Tobacco Company Ltd v. the Netherlands*, 20 November 1995, § 89, Series A no. 331, and *Berger-Krall and Others v. Slovenia*, no. 14717/04, § 327, 12 June 2014). Consequently, it is not necessary to examine separately the admissibility and merits of the complaint under Article 13.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the right of access to a court admissible and the complaint under Article 8 of the Convention inadmissible;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention;

3. *Holds* that it is not necessary to examine separately the admissibility and merits of the applicants' complaint under Article 13 of the Convention.

Done in English, and notified in writing on 16 February 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Yonko Grozev
Registrar	President