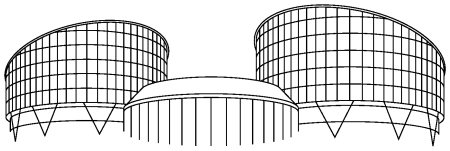

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF GARIB v. THE NETHERLANDS

(Application no. 43494/09)

JUDGMENT

STRASBOURG

23 February 2016

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 Garib v. the Netherlands,

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

Luis López Guerra, *President,*
Helena Jäderblom,
George Nicolaou,
Helen Keller,
Johannes Silvis,
Branko Lubarda,
Pere Pastor Vilanova, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 7 October 2014, on 5 January 2016 and on 26 January 2016,

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

PROCEDURE

1. The case originated in an application (no. 43494/09) 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 a Netherlands national, Ms Rohiniedevie Garib ("the applicant"), on 28 July 2009.

2. The applicant was represented by Mr R.S. Wijling, a lawyer practising in Rotterdam. The Netherlands Government ("the Government") were represented by their Agent, Mr R.A.A. Böcker of the Ministry of Foreign Affairs.

3. The applicant alleged that the restrictions to which she was subjected in choosing her place of residence were incompatible with Article 2 of Protocol No. 4 to the Convention.

4. On 7 October 2014 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1971 and now lives in Vlaardingen.

6. On 25 May 2005 the applicant moved to the city of Rotterdam. She took up residence in rented property at the address A. Street 6b. This address is located in the Tarwewijk district in South Rotterdam. The

applicant had previously resided outside the Rotterdam Metropolitan Region (*Stadsregio Rotterdam*).

7. The owner of the property asked the applicant, who by this time had two young children, to vacate the property as he wished to renovate it for his own use. He offered to let the applicant a different property at the address B. Street 72A, also in the Tarwewijk area. The applicant stated that, since it comprised three rooms and a garden, the property was far more suitable for her and her children than her A. Street dwelling which comprised a single room.

8. In the meantime, Tarwewijk had been designated under the Inner City Problems (Special Measures) Act (*Wet bijzondere maatregelen grootstedelijke problematiek*, see below) as an area in which it was not permitted to take up new residence without a housing permit (*huisvestingsvergunning*). Accordingly, on 8 March 2007 the applicant lodged a request for a housing permit with the Burgomaster and Aldermen (*burgemeester en wethouders*) of Rotterdam in order to be permitted to move to B. Street 72A.

9. On 19 March 2007 the Burgomaster and Aldermen gave a decision refusing such a permit. They found it established that the applicant had not been resident in the Rotterdam Metropolitan Region for six years immediately preceding the introduction of her request. Moreover, since she was dependent on social-security benefits under the Work and Social Assistance Act (*Wet Werk en Bijstand*), she did not meet the income requirement that would have qualified her for an exemption from the residence requirement.

10. The applicant lodged an objection (*bezwaarschrift*) with the Burgomaster and Aldermen.

11. On 15 June 2007 the Burgomaster and Aldermen gave a decision dismissing the applicant's objection. Adopting as their own an advisory opinion by the Objections Advisory Committee (*Algemene bezwaarschriftencommissie*), they referred to housing permits as an instrument to ensure the balanced and equitable distribution of housing and the possibility for the applicant to move to a dwelling not situated in a "hotspot" area.

12. The applicant lodged an appeal (*beroep*) with the Rotterdam Regional Court (*rechtbank*). As relevant to the case, she argued that the hardship clause ought to have been applied. She relied on Article 2 of Protocol No. 4 of the Convention and Article 12 of the 1966 International Covenant on Civil and Political Rights.

13. The Regional Court gave a decision dismissing the applicant's appeal on 4 April 2008. As relevant to the case before the Court, its reasoning was as follows:

> "Section 8(1) of the Inner City Problems (Special Measures) Act provides for the possibility of temporary restrictions on freedom of residence in areas to be indicated

by the Minister [sc. the Minister of Housing, Spatial Planning and the Environment (*Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer*)]. The aim of these restrictions is to reverse a process of overburdening and decreasing quality of life, particularly by striving towards districts whose composition is more mixed from a socioeconomic point of view. The restrictions are also intended actively to counteract the existing segregation of incomes throughout the city through the regulation of the supply of housing in certain districts and in so doing improve quality of life for the inhabitants of those districts (Parliamentary Documents, Lower House of Parliament (*Kamerstukken II*) 2004/2005, 30 091, no. 3, pages 11-13). In view of the aims of the law, as set out, these temporary restrictions on the freedom to choose one's residence cannot be found not to be justified by the general interest in a democratic society. Nor can it be found that, given the considerable extent of the problems noted in certain districts in Rotterdam, the said restrictions are not necessary for the maintenance of *ordre public*. The Regional Court takes the view that the legislature has sufficiently shown that in those districts the 'limits of the capacity for absorption' have been reached as regards care and support for the socioeconomically underprivileged and that moreover in those districts there is a concentration of underprivileged individuals in deprived districts as well as considerable dissatisfaction among the population about inappropriate behaviour, nuisance and crime."

14. The applicant lodged a further appeal (*hoger beroep*) with the Administrative Jurisdiction Division (*Afdeling bestuursrechtspraak*) of the Council of State (*Raad van State*).

15. On 4 February 2009 the Administrative Jurisdiction Division gave a decision dismissing the applicant's further appeal. As relevant to the case before the Court, its reasoning included the following:

"The Administrative Jurisdiction Division finds that, considering that the area in issue is one designated under section 5 of the Inner City Problems (Special Measures) Act, the Burgomaster and Aldermen were entitled to take the view that the restriction [on freedom to choose one's residence] is justified in the general interest in a democratic society within the meaning of Article 12 § 3 of the 1966 International Covenant on Civil and Political Rights. The area in issue is a so-called 'hotspot', where, as has not been disputed, quality of life is under threat. The restriction resulting from section 2.6(2) of the 2003 Housing Bye-law (*Huisvestingsverordening 2003*) is of a temporary nature, namely for up to six years. It is not established that the supply of housing outside the areas designated by the Minister in the Rotterdam Metropolitan Region is insufficient. What [the applicant] has stated about waiting times does not lead the Administrative Jurisdiction Division to reach a different finding. The Administrative Jurisdiction Division further takes into account that pursuant to section 7(1), introductory sentence and under b of the Inner City Problems (Special Measures) Act, the Minister is empowered to rescind the designation of the area if it turns out that persons seeking housing do not have sufficient possibility of finding suitable housing within the region in which the municipality is situated. In view of these facts and circumstances the Administrative Jurisdiction Division finds that the restriction in issue is not contrary to the requirements of a pressing social need and proportionality. The Administrative Jurisdiction Division therefore finds, as the Regional Court did, that section 2.6(2) of the 2003 Housing Bye-law does not violate Article 2 of Protocol No. 4 of the Convention or Article 12 of the 1966 International Covenant on Civil and Political Rights."

II. RELEVANT DOMESTIC LAW

A. The Housing Act

16. As relevant to the case before the Court, the Housing Act (*Huisvestingswet*) provides as follows:

Section 2

"1. If the local council finds it necessary to lay down rules concerning the taking into use, or permitting the use, of housing ..., or concerning changes to the housing supply ..., it shall adopt a housing bye-law (*huisvestingsverordening*).

2. For the purpose of applying the first paragraph, the local council shall investigate, in any case, the extent to which the effect can be achieved that in permitting the use of relatively low-cost housing priority is given to house-seekers who, in view of their income, are especially dependent on such housing. ..."

B. The Inner City Problems (Special Measures) Act

1. Relevant provisions

17. The Inner City Problems (Special Measures) Act applies to a number of named municipalities including Rotterdam. It empowers those municipalities to take measures in certain designated areas including the granting of partial tax exemptions to small business owners and the selecting of new residents based on their sources of income. It entered into force on 1 January 2006.

18. As in force at the relevant time, provisions of the Inner City Problems (Special Measures) Act relevant to the case were the following:

Section 5

"1. The Minister [of Housing, Spatial Planning and the Environment] can, if so requested by the local council (*gemeenteraad*), designate areas in which persons seeking housing may be made subject to requirements under sections 8 and 9 of this Act.

2. The indication referred to in the first paragraph shall be for a term of up to four years. At the request of the local council, this term can be extended once only for up to four more years. [Section 7] shall apply by analogy."

Section 6

"1. When making the request referred to in section 5(1), the local council shall satisfy the Minister of Housing, Spatial Planning and the Environment that the intended designation of the areas mentioned in the request:

(a) is necessary and appropriate to combat inner-city problems in the municipality; and

(b) meets requirements of subsidiarity and proportionality.

2. The designation referred to in section 5(1) shall be given only if the requirements of the first paragraph have been met, and if the local council has satisfied the Minister of Housing, Spatial Planning and the Environment that persons seeking housing to whom, as a result of such designation, a housing permit for taking housing in the designated areas into their use cannot be granted retain sufficient possibility to find housing suitable for them within the region in which the municipality is situated. ..."

Section 7

"1. The Minister shall rescind the designation referred to in section 5 if it is apparent to him that:

...

b. persons seeking housing to whom a housing permit allowing them to take into use housing within the designated areas cannot be granted as a result of the designation referred to in section 5 have insufficient possibility to find housing suitable for them within the region in which the municipality is situated. ..."

Section 8

"1. The local council can, if it considers [such a measure] necessary and appropriate for combating inner-city problems (*grootstedelijke problematiek*) within the municipality and it meets the requirements of subsidiarity and proportionality, determine in the housing bye-law that persons seeking housing who have been resident without interruption of the region within which the municipality is situated for less than six years can only be eligible for a housing permit allowing them to take into use housing belonging to categories designated in that bye-law if they dispose of:

(a) an income from work under a contract of employment;

(b) an income from an independent profession or business;

(c) an income from an early retirement pension;

(d) an old age pension within the meaning of the General Old Age Pensions Act (*Algemene Ouderdomswet*);

(e) an old age pension or survivor's pension within the meaning of the Wages (Tax Deduction) Act 1964 (*Wet op de loonbelasting 1964*);

(f) a student grant within the meaning of the Student Grants Act 2000 (*Wet op de studiefinanciering 2000*).

2. The local council shall determine in the housing bye-law that the Burgomaster and Aldermen can grant a person seeking housing who does not meet the requirements set out in the first paragraph a housing permit allowing them to take into use housing as referred to in that paragraph if denying them that housing permit would lead to iniquity of an overriding nature (*een onbillijkheid van overwegende aard*). ..."

Section 17

"The Minister shall send a report to Parliament on the effectiveness and effects of this Act in practice to Parliament every five years after the entry into force of this Act."

2. Legislative history of the Inner City Problems (Special Measures) Act

(a) The advisory opinion of the Council of State and the Further Report

19. The Council of State scrutinised the Inner City Problems (Special Measures) Bill and submitted an advisory opinion to the Queen. The Government forwarded the opinion to Parliament, together with their comments (Advisory Opinion of the Council of State and Further Report (*Advies Raad van State en Nader Rapport*), Parliamentary Documents, Lower House of Parliament, 2004/2005, 30 091, no. 5).

20. The applicant, in her observations, draws attention to several remarks made by the Council of State. As relevant to the case before the Court, these included concerns about the unwanted side effects of regulating access to housing in inner-city areas on the availability of housing for low-income groups in surrounding municipalities and about persons with income from sources other than social welfare being compelled to accept housing in depressed neighbourhoods against their wishes; concerns about compatibility with human rights treaties, including the International Covenant on Civil and Political Rights and Protocol No. 4 to the Convention; and concerns about the implicit distinction based on income, which might lead to indirect distinctions on grounds of race, colour or national or ethnic origin.

21. The Government responded to these concerns. Side effects affecting surrounding municipalities were to be expected only if the municipality concerned could not guarantee the availability of alternative housing itself; at all events, other local authorities would be consulted before the Minister gave a decision and the number and extent of the urban areas to be designated were expected to be limited. It was normally left to those seeking housing whether to react to an offer of housing or not; there was thus no compulsion. Moreover, while the effect of designation under the Inner City Problems (Special Measures) Act might well be to shorten waiting lists and encourage persons with income from sources other than public welfare to take up residence there, this was actually an intended effect. The measures in issue were justified in terms of Article 12 § 3 of the International Covenant on Civil and Political Rights and Article 2 § 3 of Protocol No. 4 to the Convention. It could not be excluded that members of minority groups might be affected indirectly, but the aim thereby served was legitimate, the means chosen were appropriate to that aim, alternative means were not available and the requirement of proportionality had been met. In the latter connection, the Government pointed to the requirement that sufficient alternative housing be available within the region for those in need of it before an urban area could be designated under the Act; if after all this proved not to be the case, the Minister would withdraw the designation.

22. Changes were made to the Explanatory Memorandum (*Memorie van Toelichting*) reflecting the points raised.

(b) The Explanatory Memorandum

23. It is stated in the Explanatory Memorandum to the Inner City Problems (Special Measures) Bill (Parliamentary Documents, Lower House of Parliament 2004/2005, 30 091, no. 3) that it was enacted in response to a specific wish expressed by the authorities of the municipality of Rotterdam. The emergence of concentrations of "socioeconomically underprivileged" in distressed inner-city areas had been observed, with serious effects on quality of life owing to unemployment, poverty and social exclusion. Many who could afford to move elsewhere did so, which led to the further impoverishment of the areas so affected. This, together with antisocial behaviour, the influx of illegal immigrants and crime, was said to constitute the core of Rotterdam's problems. The need therefore existed to give impetus to economic improvement locally. Quick results were not expected, for which reason the Act was intended to remain in force indefinitely; however, its effects would be reviewed in five years' time.

24. In addition to the local authorities of Rotterdam, those of other cities had been asked for their input. Interest in the aims and measures of the Act had been expressed by the four major cities – Amsterdam, The Hague and Utrecht, in addition to Rotterdam – and other municipalities, large towns in particular. It would, however, be left to each municipality to choose for itself the measures to adopt in response to local needs.

25. Measures available under the Act included offering tax incentives and subsidies with a view to promoting economic activity in affected areas. Other measures were aimed at regulating access to the housing market in particular areas.

26. In the longer term, measures including the sale of rental property, the demolition of substandard housing and its replacement by higher-quality, more expensive residential property were envisaged. As a short-term temporary measure, intended to offer a "breathing space" for more permanent measures to produce their effects, it was proposed on the one hand to encourage settlement by persons with an income from employment (or past employment), professional or business activity or student grants and on the other to stem the influx of socioeconomically deprived house-seekers with a view to increasing population diversity.

27. At the same time it was recognised that those denied settlement in the areas in issue should be provided with suitable housing elsewhere in the city or region concerned. If that was not secured, the areas affected would not be designated under the legislation proposed or an existing designation would have to be withdrawn as the case might be.

28. The question of compatibility with human rights treaties, including the International Covenant on Civil and Political Rights and Protocol No. 4

to the Convention, was addressed. The measures proposed were considered to serve the interests of "public order" within the meaning of Article 12 § 3 of the Covenant and *ordre public* within the meaning of Article 2 § 3 of Protocol No. 4 to the Convention by halting the concentration in particular areas of socioeconomically deprived groups and enabling municipalities to prevent segregation on the basis of income. The influx of socioeconomically underprivileged groups, after all, led to increased reliance on social welfare, reduced what economic activity might remain and hindered the integration of immigrant communities, potentially causing social isolation of households of both native and foreign ethnic origin.

(c) Parliamentary discussions

29. The Lower House of Parliament discussed the Bill on 6, 7 and 15 September 2005. Members proposed numerous amendments. As relevant to the case before the Court, amendments adopted included a provision requiring the Minister of Housing, Spatial Planning and the Environment before designating an area within which the housing permit requirement would apply to ascertain that persons refused a housing permit retained adequate access to suitable housing elsewhere in the region (see section 6(2) of the Act, as adopted); and requiring municipalities introducing a housing permit system to adopt a hardship clause in every case (see section 8(2) of the Act, as adopted).

30. The Lower House of Parliament adopted the Act by 132 votes to 12 of the members present and voting.

31. In the Upper House of Parliament, concern was expressed about the compatibility of the Act with internationally guaranteed human rights, Article 2 of Protocol No. 4 to the Convention and Article 12 of the International Covenant on Civil and Political Rights in particular. In reply, the Government stressed the supervisory role of the Minister of Housing, Spatial Planning and the Environment and drew attention to the legal remedy constituted by proceedings before the competent administrative tribunals (Memorandum in Reply (*Memorie van Antwoord*), Parliamentary Documents, Upper House of Parliament (*Kamerstukken I*) 2005/2006, 30 091, C).

32. On 20 December 2005, after discussion, the Upper House of Parliament adopted the Act by 60 votes to 11 of the members present and voting.

B. The Housing Bye-law of the municipality of Rotterdam

1. 2003 version

33. The 2003 Housing Bye-law of the municipality of Rotterdam set rules for, among other things, the distribution of low-rent housing to

low-income households by empowering the Burgomaster and Aldermen to issue housing permits. In designated areas it was forbidden to take up residence without a housing permit if the rent was lower than a specified amount. The Bye-law set out criteria for the Burgomaster and Aldermen to apply in granting such housing permits; these criteria included a correlation between rent and income levels and another between the number of rooms in particular dwellings and the number of persons comprising a household.

34. On 1 October 2004 the municipality of Rotterdam introduced, on an experimental basis, a bye-law under which only households with an income between 120 per cent of the statutory minimum wage and the upper limit for compulsory public health insurance (*ziekenfondsgrens*; approximately double the statutory minimum wage at the time) were entitled to a housing permit allowing them to take up residence in moderate-cost rented housing.

2. 2006 version

35. In January 2006 the 2003 Housing Bye-law of the municipality of Rotterdam was amended to give detailed rules implementing the Inner City Problems (Special Measures) Act locally. As relevant to the present case, these rules echoed section 8 (1) and (2) of the Inner City Problems (Special Measures) Act (section 2.6 of the 2003 Housing Bye-law).

36. The 2003 Housing Bye-law was replaced, with effect from 1 January 2008, by a new Housing Bye-law (Designated Areas (Rotterdam)) (*Huisvestingsverordening aangewezen gebieden Rotterdam*). This bye-law, which remains in force, includes provisions corresponding to those outlined in the preceding paragraph.

C. The designation decisions

37. On 13 June 2006 the Minister of Housing, Spatial Planning and the Environment designated under section 5 of the said Act four Rotterdam districts, including Tarwewijk, and several streets for an initial period of four years. These designated areas are generally referred to using the English-language expression “hotspots”.

38. In 2010 the designations were extended for a second four-year term and a first designation was made for a fifth district.

D. The opinion of the Equal Treatment Commission

39. The Equal Treatment Commission (*Commissie Gelijke Behandeling*) was a Government body set up under the General Equal Treatment Act (*Algemene wet gelijke behandeling*). Its remit was to investigate alleged direct and indirect distinctions between persons. It existed until 2012 when

it was absorbed by the Netherlands Institute for Human Rights (*College voor de Rechten van de Mens*).

40. In December 2004 the Equal Treatment Commission was approached by *Regioplatform Maaskoepel* ("Maas Delta regional coordinating platform"), a federative organisation comprising social housing bodies active in the Rotterdam area, with the request to consider the experimental Rotterdam bye-law then in force (see paragraph 34 above).

41. The Equal Treatment Commission decided to include in its examination of the case the Inner City Problems (Special Measures) Bill, which at that time was still pending in the Lower House of Parliament. While recognising that the Bill did not apply to certain categories of cases covered by the experimental bye-law, the Equal Treatment Commission found it relevant given that it could be applied to entire areas of the city.

42. The Equal Treatment Commission gave its opinion on 7 July 2005. It expressed the view that persons with non-Western European immigrant roots, such as persons of Turkish, Moroccan, Surinamese or Netherlands Antilles descent (*afkomst*) and single-parent families (i.e. working mothers and mothers on social welfare) were overrepresented among the unemployed and among those earning less than 120 per cent of the statutory minimum wage. For that reason the measures in issue constituted an indirect distinction based on race in the case of persons of non-European immigrant descent and on gender in the case of working mothers. These distinctions were unjustified given the availability of alternative policy choices, such as demanding testimonials of prospective tenants; regular checks by officials; improving the quality of housing; expropriating or purchasing low-quality housing from private landlords; suppressing illegal tenancy and sub-tenancy; and actively pursuing antisocial tenants.

43. Commenting on the Inner City Problems (Special Measures) Bill, the Equal Treatment Commission added that it failed to address the said indirect distinctions and the justification given in the Explanatory Memorandum was too general.

44. The Government state that the Equal Treatment Commission wrote to the Lower House of Parliament in "more nuanced" terms on 5 September 2005. However, a copy of this document has not been submitted.

III. OTHER FACTS

A. Subsequent developments concerning the city of Rotterdam

1. The 2007 evaluation report

45. An evaluation report after the first year following the introduction of the housing permit in Rotterdam, commissioned by Rotterdam's own City Construction and Housing Service (*Dienst Stedebouw en Volkshuisvesting*),

was published on 6 December 2007 by the Centre for Research and Statistics (*Centrum voor Onderzoek en Statistiek*), a research and advice bureau collecting statistical data and carrying out research relevant to developments in Rotterdam in areas including demographics, the economy and employment (hereafter "the 2007 evaluation report").

46. The report notes a reduction of the number of new residents dependent on social-security benefits under the Work and Social Assistance Act in "hotspot" areas, though not, of course, a complete stop because Rotterdam residents of six years' standing are not prevented from moving there.

47. From July 2006 until the end of July 2007 there had been 2,835 requests for a housing permit. Of these, 2,240 had been granted; 184 had been refused; 16 had been rejected as incomplete; and 395 were still pending. The hardship clause (section 8(2) of the Inner City Problems (Special Measures) Act) had been applied in 38 cases.

48. Three-quarters of the housing permits granted concerned housing let by private landlords; the remainder – 519 – had been granted through the intermediary of social housing bodies (*woningcorporaties*). The latter selected their tenants with due regard to the official requirements, so that refusals of housing permits with regard to social housing were unheard of.

49. Of the persons refused a housing permit, 73 (40 % of all those who met with a refusal) had managed to find housing elsewhere relatively quickly.

50. The 2007 evaluation report was presented to the local council on 15 January 2008. On 24 April 2008 the local council voted to maintain the housing permit system as was and have a new evaluation report commissioned for the end of 2009.

2. The 2009 evaluation report

51. A second evaluation report, also commissioned by Rotterdam's City Construction and Housing Service, was published by the Centre for Research and Statistics on 27 November 2009. It covered the period from July 2006 until July 2009 ("the 2009 evaluation report"), during which the events complained of took place.

52. During this period, the social housing bodies had let 1,712 dwellings in the areas concerned. Since the social housing bodies could only accept tenants who qualified for a housing permit, no applications for such a permit had been rejected in this group.

53. Out of 6,469 applications for a housing permit relating to privately-let housing, 4,980 had been accepted (77%); 342 had been refused (5%); and 296 had been pending at the beginning of July 2009. Examination of a further 851 (13%) had been discontinued without a decision being taken, generally because these applications had been withdrawn or abandoned; the assumption was that many of these applications would in

any case have been rejected. It followed, therefore, that if the pending cases were not taken into account, approximately one-fifth of this category of applications had been either refused or not pursued to a conclusion.

54. The reason to reject an application for a housing permit had been related to the income requirement in 63% of cases, sometimes in combination with another ground for rejection; failure to meet the income requirement had been the sole such reason in 56% of cases.

55. Of 342 persons refused a housing permit, some two-thirds had managed to find housing elsewhere in Rotterdam (47%) or elsewhere in the Netherlands (21%).

56. The hardship clause had been applied 185 times – expressed as a percentage of applications relating to privately-let housing, 3% of the total. These had been cases of preventing squatters from taking over housing left empty (*antikraak*), illegal immigrants whose situation had been regularised by a general measure (*generaal pardon*), assisted living arrangements for vulnerable individuals (*begeleid wonen*), cooperative living arrangements (*woongroepen*), start-up enterprises, the re-housing of households forced to clear substandard housing for renovation, and foreign students. In addition, in one-third of cases the hardship clause had been applied because a decision had not been given within the prescribed time-limit.

57. The effects of the measure were considered based on four indicators: proportion of residents dependent on social-security benefits under the Work and Social Assistance Act, corrected for the supply of suitable housing; perception of safety; social quality; and potential accumulation of housing problems:

(a) It had been observed that in the areas where the housing permit requirement applied, the reduction of the number of new residents dependent on social-security benefits under the Work and Social Assistance Act had been more rapid in "hotspot" areas than in other parts of Rotterdam. In addition, the number of residents in receipt of such benefits as a proportion of the total population of those areas had also declined, although it was still greater than elsewhere.

(b) In two of the areas where the housing permit requirement had been introduced, the increase in the perception of public safety had been more rapid than the Rotterdam average. Tarwewijk had shown an increase initially, but was now back to where it had been before the measure was introduced. One other area had actually declined significantly in this respect. All of the areas where the housing permit requirement applied were perceived as considerably less safe than Rotterdam as a whole.

(c) In terms of social quality, there had been improvement in most of the parts of Rotterdam where problems existed, Tarwewijk among them. It was noted, however, that the effect of the housing permit in this respect was limited, since it only influenced the selection of new residents, not that of residents already in place.

(d) Housing problems – defined in terms of turnover, housing left unused, and house price development – had increased somewhat in the affected areas including Tarwewijk, though on the whole at a slower rate there than elsewhere. Reported reasons for the increase were an influx of immigrants of mostly non-European extraction (*nieuwe Nederlanders*, "new Netherlands nationals") and new short-term residents from Central and Eastern Europe; the latter in particular tended to stay for three months or less before moving on, and their economic activity was more difficult to keep under review as many were self-employed.

58. Social housing bodies tended to view the housing permit requirement as a nuisance because it created additional paperwork. They perceived the measure rather as an appropriate instrument to tackle abuses by private landlords, provided that it be actively enforced and administrative procedures be simplified. Others with a professional involvement in the Rotterdam housing market mentioned the dissuasive effect of the measure on would-be new residents of the affected areas.

59. The report suggested that the housing permit requirement might no longer be needed for one of the existing "hotspots" (not Tarwewijk). Conversely, five other Rotterdam districts scored high for three indicators, while a sixth exceeded critical values for all four.

3. The 2011 evaluation report

60. A third evaluation report, this time commissioned by Rotterdam's City Development Service (Housing Department), was published by the Centre for Research and Statistics in August 2012 (second revised edition). It covered the period from July 2009 until July 2011 ("the 2011 evaluation report").

61. Based on the same indicators and methodology as the previous report, it concluded that the housing permit system should be continued in Tarwewijk and two other areas (including one in which it had been introduced in the meantime, in 2010); discontinued in two others; and introduced in one area where it was not yet in force.

4. Evaluation of the Inner City Problems (Special Measures) Act

62. On 18 July 2012 the Minister of the Interior and Kingdom Relations (*Minister van Binnenlandse Zaken en Koninkrijksrelaties*) sent a separate evaluation report assessing the effectiveness of the Inner City Problems (Special Measures) Act and its effects in practice to the Lower House of Parliament, as required by section 17 of that Act. The Minister's missive stated the intention of the Government to introduce legislation in order to extend the validity of the Inner City Problems (Special Measures) Act. Requests to that effect had been received from a number of affected cities. It was noted that not all of the cities concerned had made use of all of the

possibilities offered by the Act; in particular, only Rotterdam used housing permits to select new residents for particular areas. Appended to the Minister's letter was a copy of the 2009 evaluation report and a letter from the Burgomaster and Aldermen of Rotterdam in which, *inter alia*, the desirability was stated of extending beyond the first two four-year periods the indication of particular areas for applying the housing permit requirement: the measure was considered a success, and a twenty-year programme involving the large-scale improvement of housing and infrastructure (the "National Programme Quality Leap South Rotterdam" (*Nationaal Programma Kwaliteitssprong Rotterdam Zuid*, see below)) had been started in the southern parts of Rotterdam in 2011.

5. The National Programme Quality Leap South Rotterdam

63. On 19 September 2011 the Minister of the Interior and Kingdom Relations (on behalf of the Government), the Burgomaster of Rotterdam (on behalf of the municipality of Rotterdam), and the presidents of a number of South Rotterdam boroughs (*deelgemeenten*), social housing bodies and educational institutions signed the National Programme Quality Leap South Rotterdam. This document noted the social problems prevalent in South Rotterdam inner-city areas, which it was proposed to address by providing improved opportunities for education and economic activity and improving, or if need be replacing, housing and infrastructure. It was intended to terminate the programme by the year 2030.

64. On 31 October 2012 the Minister of the Interior and Kingdom Relations, Rotterdam's Alderman for housing, spatial planning, real property and the city economy (*wethouder Wonen, ruimtelijke ordening, vastgoed en stedelijke economie*) and the presidents of three social housing bodies active in Rotterdam signed an "agreement concerning a financial impulse for the benefit of the Quality Leap South Rotterdam (2012-2015))" (*Convenant betreffende een financiële impuls ten behoeve van de Kwaliteitssprong Rotterdam Zuid (2012-2015)*). This agreement provided for a review of priorities in Government financing of housing and infrastructure projects in the South Rotterdam area within existing budgets and for a once-only additional investment of 122 million euros (EUR). Of the latter sum, EUR 23 million had been reserved by the municipality of Rotterdam until 2014; another EUR 10 million would be added for the period starting in 2014. These funds would be used to refurbish or replace 2,500 homes in South Rotterdam. A further EUR 30 million would be provided by the Government. The remainder would be spent by the social housing bodies on projects within their respective remit.

B. Subsequent legislative developments

1. The Inner City Problems (Special Measures) (Extension) Act

65. On 19 November 2013 the Government introduced a Bill proposing to amend the Inner City Problems (Special Measures) Act (Parliamentary Documents, Lower House of Parliament 2013/2014, 33 797, no. 2). The Explanatory Memorandum stated that its purpose was to empower municipalities to tackle abuses in the private rented housing sector, give municipalities broader powers of enforcement and make further temporal extension of the Act possible.

66. The Inner City Problems (Special Measures) (Extension) Act (*Wet uitbreiding Wet bijzondere maatregelen grootstedelijke problematiek*) entered into force on 14 April 2014, enabling the designation of particular areas under section 8 of the Inner City Problems (Special Measures) Act to be extended the day before it was due to expire. It makes further extensions of the designation possible for successive four-year periods (section 5(2) of the Inner City Problems (Special Measures) Act, as amended).

2. Amendment of the Inner City Problems (Special Measures) Act in connection with the selective allotment of housing in order to limit nuisance and criminal behaviour

67. A further Bill was introduced on 8 October 2015 (Parliamentary Documents, Lower House of Parliament 2015/2016, 34 314, no. 2). It purports to grant municipalities powers to deny housing permits to individuals with a criminal record. According to its Explanatory Memorandum (Parliamentary Documents, Lower House of Parliament 2015/2016, 34 314, no. 3), the intention is to provide a legal basis for measures likely to constitute interferences with the right of freedom to choose one's residence, as guaranteed by Article 2 of Protocol No. 4 of the Convention and Article 12 of the International Covenant on Civil and Political Rights, and – since the measures in issue will of necessity entail the disclosure to local authorities of police information – with the right to private life as guaranteed by *inter alia* Article 8 of the Convention, Article 17 of the International Covenant on Civil and Political Rights and Article 7 of the Charter of Fundamental Rights of the European Union. It is currently pending in the Lower House of Parliament.

C. Subsequent events concerning the applicant

68. On 27 September 2010 the applicant moved to rented housing in the municipality of Vlaardingen. This municipality is part of the Rotterdam Metropolitan Region.

69. As of 25 May 2011 the applicant had been resident in the Rotterdam Metropolitan Region for more than six years. She therefore became entitled to reside in one of the areas designated under the Inner City Problems (Special Measures) Act regardless of her sources of income.

D. Other information submitted by the parties

70. The Government stated that no renovation or building permits were sought for the dwelling in A. Street inhabited by the applicant at the time of the events complained of between 2007 and 2010 and that no such permit was applied for in the period prior to 2007 either.

IV. RELEVANT INTERNATIONAL LAW

71. Article 12 of the International Covenant on Civil and Political Rights provides as follows:

> "1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
>
> 2. Everyone shall be free to leave any country, including his own.
>
> 3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
>
> 4. No one shall be arbitrarily deprived of the right to enter his own country."

THE LAW

ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 4 TO THE CONVENTION

72. The applicant complained that the Inner City Problems (Special Measures) Act and the 2003 Housing Bye-law of the municipality of Rotterdam, and in particular section 2.6 of the latter (as in force at the time), violated her rights under Article 2 of Protocol No. 4, which provides as follows:

> "1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
>
> 2. Everyone shall be free to leave any country, including his own.
>
> 3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the

prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

73. The Government disputed this.

A. Admissibility

1. The Government's preliminary objections

(a) No longer a victim

74. The Government submitted in the first place that the applicant was no longer a victim of the alleged violation. She had moved to rented housing in Vlaardingen in 2010; she had subsequently, as a resident of more than six years' standing of the Rotterdam Metropolitan Region, become eligible in normal circumstances for a housing permit allowing her to reside in one of the areas designated under the Inner City Problems (Special Measures) Act. The restrictions complained of therefore no longer applied.

75. The applicant responded that she had been forced to live in cramped and insalubrious conditions as a result of the denial of the housing permit that would have allowed her to move to housing that was both appropriate to her needs and available. She also claimed to have spent EUR 1,000 on improving the dwelling in B. Street before moving in.

76. It is the Court's constant case-law that a decision or measure favourable to the applicant may suffice to deprive him or her of the status of "victim" for the purposes of Article 34 of the Convention provided that the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, as a recent authority, *O'Keeffe v. Ireland* [GC], no. 35810/09, § 115, ECHR 2014 (extracts)).

77. In the instant case, although the applicant would now qualify for a housing permit that would permit her to reside in Tarwewijk, this is solely the result of her own decision to move to another municipality within the Rotterdam Metropolitan Area combined with the effluxion of time. There has been no decision or measure favourable to the applicant; no acknowledgment of any breach of the Convention; and, *a fortiori*, no redress offered therefor.

78. The Court therefore dismisses this objection.

(b) No significant disadvantage

79. Responding to a claim made by the applicant to the effect that she had spent EUR 1,000 improving the dwelling in B. Street, the Government argued that the applicant's decision to incur this expenditure had resulted

from a choice made by the applicant before any decision was taken by public authority. The applicant had therefore not suffered any significant disadvantage for which the respondent could be held responsible.

80. The Government noted in addition that no permits for significant construction work to be done at the applicant's former address at A. Street had been applied for while the applicant resided there and that no major renovation work had taken place after she moved out. This, and the fact that the applicant had not sought a housing permit despite now being eligible for one regardless of her income, demonstrated that receiving such a permit was of no great significance to her. In the latter connection the Government referred to *Shefer v. Russia* (dec.), no. 45175/04, 13 March 2012.

81. In response to the Government's argument, the applicant again submitted that she had been forced to live in uncongenial conditions for a protracted period. She also argued that the outlay of EUR 1,000, all of which she lost, was considerable in comparison with her income. She had thus suffered significant damage, both pecuniary and non-pecuniary.

82. In the Court's view, the issue raised by the case before it is whether or not the applicant was entitled to expect to move into the B. Street dwelling at all; her disadvantage arose from the refusal by public authority to allow her to do so as and when she wished. Considered in this light, the question of damage, whether pecuniary or non-pecuniary, has no independent significance; it can only arise if the Court finds a violation of the applicant's substantive rights.

83. The Court understands the Government's argument that there was no major renovation work done to the dwelling on A. Street at any relevant time to be that the applicant in reality did not need to move from there for reasons connected with its state of repair. However, the information available to the Court is insufficient for it to draw such an inference. At all events, the Court does not consider it necessary to establish the facts on this point.

84. Nor is it immediately apparent from the applicant's decision to take up residence in Vlaardingen and her subsequent failure to lodge a new request for a Rotterdam housing permit that the applicant had no real interest in obtaining such a permit at the time of the events complained of. After all, by the time the applicant moved out of Rotterdam she had exhausted the domestic remedies and lodged an application with the Court. The comparison with the case of *Shefer v. Russia*, which concerned the non-enforcement of a domestic judgment with a relatively minor financial interest and was characterised by that applicant's inaction for seven years before she took any serious further steps, is inapposite.

85. Since therefore it does not appear that the applicant has suffered "no significant disadvantage", the Court dismisses this objection also.

(c) *Actio popularis*

86. The Government submitted that the application was intended to oblige the respondent to provide a "structural solution to a perceived problem". It was therefore in the nature of an *actio popularis*, to be declared inadmissible on that ground.

87. The applicant recognised that she considered the problem raised in the application a structural one. However, she had had a personal interest at the time when she applied to the Court, having not yet moved to Vlaardingen.

88. The Court reiterates that, in order to be able to lodge a petition in pursuance of Article 34, a person, non-governmental organisation or group of individuals must be able to claim "to be the victim of a violation ... of the rights set forth in the Convention ..." In order to claim to be a victim of a violation, a person must be directly affected by the impugned measure. The Convention does not, therefore, envisage the bringing of an *actio popularis* for the interpretation of the rights set out therein or permit individuals to complain about a provision of national law simply because they consider, without having been directly affected by it, that it may contravene the Convention (see, among other authorities, *Burden v. the United Kingdom* [GC], no. 13378/05, § 33, ECHR 2008, and *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 101, ECHR 2014).

89. It may well be that the applicant's wish is to address a structural phenomenon. Even so, provided that the applicant can herself claim to be, or to have been, a "victim" of the violation alleged, that is not enough to deny her standing before the Court. It should be remembered that the Court does not exist merely to protect rights of individuals, important though that be. The Court's task, as set by Article 19 of the Convention, is to ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto. This it does by giving judgments and decisions interpreting the provisions of the Convention in specific cases on the basis of applications submitted under Articles 33 and 34 of the Convention by High Contracting Parties and persons, non-governmental organisations or groups of individuals claiming to be victims of violations of their rights, respectively, and by giving advisory opinions on questions within its competence under Article 47 of the Convention at the request of the Committee of Ministers (see, in particular, *Salah v. the Netherlands*, no. 8196/02, § 69, ECHR 2006-IX (extracts); see also *Loizidou v. Turkey* (preliminary objections), 23 March 1995, § 70, Series A no. 310).

90. In the present case there can be no doubt that the applicant was directly and personally affected by the denial of a housing permit that would have enabled her to take up residence in what, at the time, was the dwelling of her choice. It follows that the applicant can claim to be a "victim" of the

violation alleged and has standing to bring her case before the Court, and that this objection must likewise be dismissed.

2. Conclusion as to admissibility

91. The Court considers that the application raises questions of fact and law which are sufficiently serious that its determination should depend on an examination of the merits. No other grounds for declaring it inadmissible have been established. The Court therefore declares it admissible.

B. Merits

1. Argument before the Court

(a) The Government

92. The Government accepted that there had been a restriction of the applicant's right freely to choose her residence.

93. The restriction in issue was "in accordance with the law" in that it had a basis in statute and duly published delegated legislation. The submission by the Minister of Housing, Spatial Planning and the Environment to Parliament of an order to designate an area as falling under the Inner City Problems (Special Measures) Act was in the form of a parliamentary paper and thus also accessible to the public. Moreover, not only the debates in Parliament that had led to the Inner City Problems (Special Measures) Act but also its implementation in Rotterdam had been given regular media attention. The requirements of accessibility and foreseeability were therefore amply satisfied.

94. The legitimate aim pursued by the measure was the maintenance of *ordre public*. This was served by regulating access to the housing market so as to prevent an increase in the concentration of socioeconomically disadvantaged groups – or, in the Government's words, "income-based segregation" – in particular areas as a result of selective migration. The inflow of underprivileged groups placed a correspondingly greater demand on social security structures, reduced support for economic activities and services, hampered integration, threatened public safety and security, and led to increased crime. Temporary restrictions on such inflow were indicated to allow other measures that had already been implemented to make sustainable improvements to bear fruit.

95. The other measures referred to included tackling illegal overcrowding and rogue property owners, joint initiatives between youth workers and the police, additional schooling and care for school-aged children involving integrated community police teams, additional investment to improve substandard housing, and a personalised approach to addicts, the homeless and those who partook of antisocial behaviour.

96. The local authorities of the municipality of Rotterdam were required to satisfy the Minister that the areas listed in their application presented an accumulation of problems to the point where designation was necessary. In the event, the Minister had been satisfied that the municipality was doing all it could to tackle the problems before it, but that despite this, additional measures were needed that were tailored to the particular neighbourhoods.

97. The impugned measures were temporary, since they were ordered for a maximum of four years at a time. While they might be extended for further four-year periods, this implied that the situation and the continued necessity of the measures were assessed, in detail, every four years.

98. Finally, it needed to be established that there was still enough housing in the region to satisfy the needs of those seeking housing to whom a housing permit could not be granted for a particular area as a result of an area designation under the Act.

99. With regard to the particular circumstances of the applicant, the Government observed that the applicant had not qualified for a housing permit allowing her to take up residence in B. Street at the relevant time because she had no income from employment and had not yet lived in the Rotterdam region for at least six years. She had not put forward sufficiently compelling circumstances to receive a housing permit on the basis of the hardship clause, such as a medical urgency or a situation involving violence for example. Nor had it been shown that the applicant's dwelling in A. Street was in especially poor condition, since no planning permission for major renovation work had been requested at any relevant time.

100. Finally, the mere fact that the applicant had been already resident in Tarwewijk when the Inner City Problems (Special Measures) Act and implementing measures entered into force did not *per se* entitle her to a housing permit to move to a different dwelling within Tarwewijk. Persons already residing in the designated areas who wished to move and did not fulfil the requirements were free to move to what the Government termed "one of the many suitable dwellings available outside these areas"; this would contribute to achieving the aims of the Act.

(b) The applicant

101. The applicant submitted that the measures complained of were not appropriate to the problems which they were supposed to solve. The aim was to improve quality of life in certain parts of Rotterdam by preventing the socioeconomically deprived from taking up residence there. However, it was reflected in the 2007 evaluation report that between July 2006 and the end of July 2007 only 184 requests for housing permits had been refused, out of a total of 2,835 (see paragraph 47 above); this suggested that there was no causal link between any reduction in quality of life in the areas concerned and any increase in the number of socioeconomically underprivileged residents. Similarly, according to the 2009 evaluation

report, which covered the time of the events complained of, out of "nearly 6,000" applications for a housing permit only 342 had been turned down, 215 of them based on the income requirement. Of the persons concerned, fewer than half had found other accommodation elsewhere in Rotterdam.

102. Responding to the suggestion implicit in the Government's argument that the legislative process had been painstaking and democratically legitimised, the applicant countered that disapproval had in fact been expressed by two authoritative Government bodies. She pointed to the criticism contained in the report of the Equal Treatment Commission (see paragraph 43 above) and the opinion of the Council of State (see paragraph 20 above).

103. More generally, the applicant questioned the connection between low income and disorder. In her submission, the small proportion of rejected applications for a housing permit, if taken together with the deterioration of the quality of life noted by the evaluation reports in Tarwewijk, suggested that such a link did not exist. Moreover, persons with a low income from sources other than social-security benefits related to unemployment, for example some old-age pensioners, were not refused residence in the areas concerned. Finally, other reasons for the decrease in the quality of life in the areas in issue suggested by the evaluation reports included the influx of new residents from Central and Eastern Europe and of non-European extraction.

104. With regard to her own situation, the applicant argued that she had no criminal record and no history of misbehaviour. Moreover, she had already been living in Tarwewijk when she applied for a housing permit, so that her taking up residence at a new address in the same area would not have added to the social problems there.

2. The Court's assessment

(a) Applicability of Article 2 of Protocol No. 4

105. The Court notes at the outset that the applicant – who, as a Netherlands national, was lawfully within the territory of the State – was refused a housing permit that would have allowed her to take up residence with her family in a property of her choice. It is implicit that this property was actually available to her on conditions she was willing and able to meet. There has therefore undoubtedly been a "restriction" on her "freedom to choose her residence", within the meaning of Article 2 of Protocol No. 4. That provision will accordingly have been violated unless the "restriction" in issue is justified under its third or fourth paragraph.

106. The restriction complained of affects only the applicant's right to choose her residence, not her right to liberty of movement or her right to leave the country. It does not target any particular individual or individuals but is of general application in discrete areas (namely, circumscribed areas within the city of Rotterdam). The Court will therefore consider it under the

fourth paragraph of Article 2 of Protocol No. 4, which relates directly to the first paragraph, rather than the third.

107. To comply with Article 2 § 4 of Protocol No. 4, the restriction in issue must have been imposed "in accordance with law" and "justified by the public interest in a democratic society".

(b) Whether the restriction in issue was "in accordance with law"

108. There is no doubt that the imposition of a housing permit requirement in the areas concerned was in accordance with domestic law, to wit, the Inner City Problems (Special Measures) Act and the 2003 Housing Bye-law of the municipality of Rotterdam (2006 version, as in force at the time).

(c) Whether the restriction in issue was "justified by the public interest in a democratic society"

109. It remains to be decided whether the restriction in issue was "justified by the public interest in a democratic society". For this to be the case, it must pursue a "legitimate aim" and there must be a "reasonable relationship of proportionality between the means employed and the aim sought to be realised".

i. Legitimate aim

110. The restriction here in issue was intended to reverse the decline of impoverished inner-city areas and to improve quality of life generally. There can be no doubt that this is an aim which it is legitimate for legislatures and city planners to pursue. Indeed, the applicant does not suggest otherwise.

ii. Proportionality

α Applicable principles

111. The present case requires the Court to weigh the individual's right to choose his or her residence against the implementation of a public policy that purposely overrides it.

112. It is recalled that a State can, consistently with the Convention, adopt general measures which apply to pre-defined situations regardless of the individual facts of each case even if this might result in individual hard cases (see *Žd*anoka *v. Latvia* [GC], no. 58278/00, §§ 112-115, ECHR 2006-IV, and *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 106, ECHR 2013 (extracts)).

113. In order to determine the proportionality of a general measure, the Court must primarily assess the legislative choices underlying it. The quality of the parliamentary and judicial review of the necessity of the measure is of particular importance in this respect, including to the

operation of the relevant margin of appreciation. It is also relevant to take into account the risk of abuse if a general measure were to be relaxed, that being a risk which is primarily for the State to assess. The application of the general measure to the facts of the case remains, however, illustrative of its impact in practice and is thus material to its proportionality (see *Animal Defenders*, cited above, § 108, with further references). It follows that the more convincing the general justifications for the general measure are, the less importance the Court will attach to its impact in the particular case (*Animal Defenders*, § 109).

114. Turning now to Article 2 of Protocol No. 4 in particular, the Court first notes the obvious interplay between the freedom to choose one's residence and the right to respect for one's home (Article 8 of the Convention). Indeed, the Court has on a previous occasion directly applied reasoning concerning the right to respect for one's home to a complaint under Article 2 of Protocol No. 4 (see *Noack and Others v. Germany* (dec.), ECHR 2000-VI). The Court will therefore primarily have regard to its case-law under that Article.

115. It should be pointed out, however, that it is not possible to apply the same test under Article 2 § 4 of Protocol No. 4 as under Article 8 § 2, the interrelation between the two provisions notwithstanding. The Court has held that Article 8 cannot be construed as conferring a right to live in a particular location (see *Ward v. the United Kingdom*, (dec.) no. 31888/03, 9 November 2004, and *Codona v. United Kingdom* (dec.), no. 485/05, 7 February 2006). In contrast, freedom to choose one's residence is at the heart of Article 2 § 1 of Protocol No. 4, which provision would be voided of all significance if it did not in principle require Contracting States to accommodate individual preferences in the matter. Accordingly, any exceptions to this principle must be dictated by the public interest in a democratic society.

116. The applicable principles are to be found in the Court's case-law; although developed under Articles 8 of the Convention and 1 of Protocol No. 1 respectively, they transcend those particular Articles. These principles are the following:

(a) The Court has held in the context of Article 1 of Protocol No. 1 that spheres such as housing, which modern societies consider a prime social need and which plays a central role in the welfare and economic policies of Contracting States, may often call for some form of regulation by the State. In that sphere decisions as to whether, and if so when, it may fully be left to the play of free-market forces or whether it should be subject to State control, as well as the choice of measures for securing the housing needs of the community and of the timing for their implementation, necessarily involve consideration of complex social, economic and political issues. Finding it natural that the

margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, the Court has on many occasions declared that it will respect the legislature's judgment as to what is in the "public" or "general" interest unless that judgment is manifestly without reasonable foundation (see, *mutatis mutandis*, *Hutten-Czapska v. Poland* [GC], no. 35014/97, § 166, ECHR 2006-VIII, with further references). More specifically, the Court has recognised that in an area as complex and difficult as that of the development of large cities, the State enjoys a wide margin of appreciation in order to implement their town-planning policy (see *Ayangil and Others v. Turkey*, no. 33294/03, § 50, 6 December 2011).

(b) Where general social and economic policy considerations have arisen in the context of Article 8, which concerns rights of central importance to the individual's identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community, the scope of the margin of appreciation has depended on the context of the case, with particular significance attaching to the extent of the intrusion into the personal sphere of the applicant (see *Connors v. the United Kingdom*, no. 66746/01, § 82, 27 May 2004; *McCann v. the United Kingdom*, no. 19009/04, § 49, ECHR 2008; and *Zehentner v. Austria*, no. 20082/02, § 57, 16 July 2009).

(c) Whenever discretion capable of interfering with the enjoyment of a Convention right such as the one in issue in the present case is conferred on national authorities, the procedural safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation. Indeed it is settled case-law that, whilst Article 8 contains no explicit procedural requirements, the decision-making process leading to measures of interference must be fair and such as to afford due respect to the interests safeguarded to the individual by Article 8 (see, among other authorities, *Buckley v. the United Kingdom*, 25 September 1996, § 76, *Reports of Judgments and Decisions* 1996-IV; *Chapman*, cited above, § 92; *Connors*, cited above, § 83; and *Zehentner*, cited above, § 58).

(d) It is also appropriate, in order to assess the proportionality of the interference, to examine the possibilities of alternative housing that exist (see *Winterstein and Others v. France*, no. 27013/07, § 159, 17 October 2013).

117. It is within the lines thus drawn that the Court will consider the facts of the present case.

β. Application of the above principles in the present case

118. In cases arising from individual applications the Court's task is not to review the relevant legislation or practice in the abstract; it must as far as possible confine itself, without overlooking the general context, to examining the issues raised by the case before it (see, among other authorities, *Guincho v. Portugal*, 10 July 1984, § 39, Series A no. 81; *Pisano v. Italy* (striking out) [GC], no. 36732/97, § 48, 24 October 2002; *Van Anraat v. the Netherlands* (dec.), no. 65389/09, § 75, 6 July 2010; and *S.H. and Others v. Austria* [GC], no. 57813/00, § 92, ECHR 2011). Consequently, the Court's task is not to substitute itself for the competent national authorities in determining the most appropriate policy for regulating access to housing.

119. It is also important to emphasise the fundamentally subsidiary role of the Convention mechanism. The national authorities have direct democratic legitimation and are, as the Court has held on many occasions, in principle better placed than an international court to evaluate local needs and conditions. In matters of general policy, on which opinions within a democratic society may reasonably differ widely, the role of the domestic policy-maker should be given special weight (see, for example, *Maurice v. France* [GC], no. 11810/03, § 117, ECHR 2005‑IX, and *S.A.S. v. France* [GC], no. 43835/11, § 129, ECHR 2014 (extracts)).

120. The State's margin in principle extends both to its decision to intervene in the subject area and, once having intervened, to the detailed rules it lays down in order to achieve a balance between the competing public and private interests. However, this does not mean that the solutions reached by the legislature are beyond the scrutiny of the Court. It falls to the Court to examine carefully the arguments taken into consideration during the legislative process and leading to the choices that have been made by the legislature and to determine whether a fair balance has been struck between the competing interests of the State and those directly affected by those legislative choices (see, *mutatis mutandis*, *S.H. and Others v. Austria*, cited above, § 97, and *Parrillo v. Italy* [GC], no. 46470/11, § 170, 27 August 2015).

121. As to the legislative and policy background of the case, the Court first observes that the domestic authorities found themselves called upon to address increasing social problems in particular inner-city areas of Rotterdam resulting from impoverishment caused by unemployment and a tendency for gainful economic activity to be transferred elsewhere. They sought to reverse these trends by favouring new residents whose income was related to gainful economic activity of their own, past or present (see paragraphs 21 and 23 above). It is for this purpose that the Inner City Problems (Special Measures) Act was called into existence.

122. The competent Minister is required by section 17 of that Act to report to Parliament every five years on the effectiveness of the Act and its

effects in practice, as was in fact done on 18 July 2012 (see paragraph 62 above).

123. Considering the measures adopted to have brought success, the domestic authorities have since extended them, later actually linking them to a twenty-year programme which involves considerable public investment (see paragraphs 63-64 above).

124. The restriction in issue remains subject to temporal as well as geographical limitation, the designation of particular areas being valid for no more than four years at a time (see section 5(2) of the Inner City Problems (Special Measures) Act; paragraph 18 above).

125. At the same time, the entitlement of individuals unable to find suitable housing has been recognised by safeguard clauses enshrined in the Inner City Problems (Special Measures) Act itself: firstly, section 5(1), which requires the Local Council to satisfy the Minister that sufficient housing remains available locally for those who do not qualify for a housing permit; secondly, section 7(2), which provides that the designation of an area under that Act shall be revoked if insufficient alternative housing is available locally for those affected; and thirdly, the individual hardship clause prescribed by section 8(2) (see paragraph 18 above).

126. It is in the nature of things that the legislative process involves criticism of legislative proposals. The applicant drew the Court's attention to criticism by the Equal Treatment Commission of an earlier version of the Rotterdam Housing Bye-law (which, the Court observes, is not in issue in the present case) and by the Council of State of the first version of the Government's legislative proposal. Perusal of the legislative history of the Inner City Problems (Special Measures) Act shows that the objections raised were addressed by the Government, and that Parliament itself was concerned to limit any detrimental effects. In fact, the safeguard clauses alluded to in the preceding paragraph owe much to direct Parliamentary intervention.

127. In these circumstances, the Court cannot find that the policy decisions taken by the domestic authorities are manifestly without reasonable foundation. Certainly the differences between the numbers of housing permits granted and refused (see paragraphs 47 and 53 above), which in the applicant's submission showed up the measure in issue as ineffective, could not of itself justify such a finding, if only because her interpretation of these would appear to ignore the role of the social housing bodies in the allocation of housing (see paragraphs 48 and 52 above) and the number of applications for a housing permit that were not pursued to their conclusion (see paragraph 53 above).

128. The availability of alternative solutions does not in itself render the measure in issue unjustified; it constitutes one factor, among others, that is relevant for determining whether the means chosen may be regarded as reasonable and suited to achieving the legitimate aim being pursued.

Provided the interference remained within these bounds – which the Court, in view of its above considerations, is satisfied it did – it is not for the Court to say whether the measure complained of represented the best solution for dealing with the problem or whether the State's discretion should have been exercised in another way (see, *mutatis mutandis*, *James and Others v. the United Kingdom*, 21 February 1986, § 51, Series A no. 98; *Mellacher and Others v. Austria*, 19 December 1989, § 53, Series A no. 169; *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006-III; and *Animal Defenders*, cited above, § 110).

129. Having thus concluded that the respondent Party was, in principle, entitled to adopt the legislation and policy here in issue, the Court now turns to their application in the case in hand.

130. The applicant moved to Rotterdam in May 2005; she had therefore not completed six years' residence in the Rotterdam Metropolitan Area by the time of the decisions complained of. Her income consisted exclusively of social welfare benefits. She failed to satisfy the Burgomaster and Aldermen of Rotterdam and the administrative tribunals that her personal situation was such as to trigger the application of the hardship clause. The refusal of a housing permit that would have allowed her to move to the dwelling in B. Street was therefore consonant with the applicable law and policy.

131. The applicant's stated reason for seeking to move to the dwelling in B. Street offered her by her landlord was that it was better suited to her housing needs than her dwelling in A. Street: it was more spacious, had a garden and apparently was in a better state of repair. The applicant was at no time prevented from taking up residence in areas of Rotterdam not covered by the legislation here in issue. She has however stated no reason, cogent or otherwise, for wishing to live in Tarwewijk rather than in other areas of the city of Rotterdam or the Rotterdam Metropolitan Area where suitable housing might have been available.

132. It is significant that the applicant has qualified for a housing permit under the legislation here under discussion since May 2011, having completed six years' uninterrupted residence in the Metropolitan Region of Rotterdam (see paragraphs 68 and 69 above). Nonetheless, she has remained in her present dwelling in Vlaardingen.

133. The Court has no reason to doubt that the applicant was of good behaviour and constituted no threat to public order; indeed the Government do not contradict the applicant on this point. That, however, cannot by itself suffice to outweigh the public interest which is served by the consistent application of legitimate public policy.

134. In the circumstances, therefore, the Court cannot find that the Burgomaster and Aldermen were under an obligation to accommodate the applicant's preferences.

135. Finally, the Court notes that the applicant does not allege any lack of adequate safeguards in the decision-making process in her case.

136. There has accordingly been no violation of Article 2 of Protocol No. 4.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the application admissible;

2. *Holds*, by five votes to two, that there has been no violation of Article 2 of Protocol No. 4 to the Convention.

Done in English, and notified in writing on 23 February 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Luis López Guerra
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges López Guerra and Keller is annexed to this judgment.

L.L.G.
J.S.P.

JOINT DISSENTING OPINION OF JUDGES LÓPEZ GUERRA AND KELLER

1. To our regret, we cannot agree with the majority's finding that there has been no violation of Article 2 of Protocol No. 4 to the Convention in the present case, which is one of very few applications raising fundamental issues concerning the right of nationals to choose their residence freely to have come before the Court to date. We consider that the question of which paragraph of Article 2 of Protocol No. 4 – paragraph 3 or paragraph 4 – applies to the present case deserves a more elaborate answer than the one given by the majority (I.). Furthermore, the case raises a fundamental question, namely that of which level of scrutiny the Court should apply in examining an individual restriction on the right to choose one's residence freely (II.). On both accounts, we are unable to follow the majority's reasoning and therefore conclude that the applicant's right under Article 2 of Protocol No. 4 has been violated (III.).

2. The facts of the present case are particularly striking. The applicant – a Netherlands national who is a single mother with two minor children – lived from 2005 in a one-room apartment in Tarwewijk, a designated "hotspot" area according to the Inner City Problems (Special Measures) Act. She has no criminal record, is not known for any sort of disruptive behaviour and never caused any housing problems. However, she is poor and living on social welfare benefits. She belongs to the socioeconomically underprivileged – a "flaw" in and of itself that, according to section 8 of the Inner City Problems (Special Measures) Act, is seen as sufficient to restrict her right freely to choose her residence as long as she has not yet been living in the Rotterdam Metropolitan Region for six years.

3. It goes without saying that the fact that the applicant lived in a single room with her two children was a cause of distress with tangible consequences for both the applicant and her children; for this reason, she sought to move to a more suitable three-room apartment with a garden in Tarwewijk. Her request for a housing permit was, however, refused in March 2007 for the reasons mentioned above. A restriction of the applicant's freedom to choose her residence was thus considered necessary by the State because the applicant, or more specifically the applicant's poverty, constituted a threat to *ordre public* or to another "public interest in a democratic society" within the meaning of paragraphs 3 and 4 respectively of Article 2 of Protocol No. 4.

4. Before we go on to examine whether the measure at issue in the case in hand was necessary in a democratic society, we would first like to address the distinction between paragraphs 3 and 4 of Article 2 of Protocol No. 4, taking into account both the *travaux préparatoires* in respect of that Article and the interpretation of its sister Article in the International

Covenant on Civil and Political Rights of the United Nations (Article 12 ICCPR – see paragraph 71 of the judgment).

I. The distinction between paragraphs 3 and 4 of Article 2 of Protocol No. 4

5. In paragraph 106 of the judgment, the Court argues that the fourth paragraph of Article 2 of Protocol No. 4 is applicable to the case in hand. This argument is premised on the fact that the restriction in section 8 of the Inner City Problems (Special Measures) Act does not target individuals, but is of general application "in discrete areas". Therefore, the majority consider that the facts of the present case are to be analysed under the "public interest" criterion enshrined in paragraph 4 of Article 2 of Protocol No. 4. The applicability of either paragraphs 3 or 4 is, however, not triggered by such a distinction. The restrictions in paragraph 4 concern *particular areas* where "it might be necessary, for legitimate reasons, and solely in the public interest in a democratic society, to impose restrictions which it might not always be possible to bring within the concept of '*ordre public*'" (see the Explanatory Report on Article 2 of Protocol No. 4, § 18).

6. The inclusion of paragraph 4 in Article 2 of Protocol No. 4 came about because the Council of Europe Committee of Experts on Human Rights refused to include a clause in the provision permitting restrictions on the grounds of economic welfare out of concern that such a clause would allow abuse by States (ibid., § 15 (a) and 18). Members of the Committee considered it a retrograde step to permit restrictions based purely on economic grounds (ibid., § 15 (f)), which means that a restriction on the right to choose one's residence based solely on income cannot be justified in any case under this provision (contrast the wording of paragraph 2 of Article 8 of the Convention, where the "economic well-being of the country" is explicitly mentioned; see also paragraph 22 below).

7. In order to understand the meaning of Article 2 of Protocol No. 4, one must also take into account the changes made during the drafting process by the Committee of Experts. The provision was drafted with the intention of using "words in their widest possible sense when laying down regulations equivalent to broad general principles of law", such as the freedom to choose one's residence (ibid., § 9). This means that, in order to prevent abuse by States, the freedoms guaranteed in paragraph 1 of Article 2 of Protocol No. 4 should have the widest possible meaning and should only rarely be the subject of restrictions.

8. Paragraph 4 of Article 2 of Protocol No. 4 is thus solely applicable if a restriction concerns *particular areas*. However, since interferences should be applied restrictively, it is questionable whether this criterion is sufficient on its own. One could argue, on the basis of the Article's drafting history and the fact that *nationals* of States Parties have a *de facto* absolute right of

residence in the territory of their State under Article 12 ICCPR,[1] that a restriction under paragraph 4 is only possible in particular areas during *emergency situations*, by analogy with restrictions to the liberty of movement (see *Landvreugd v. the Netherlands*, no. 37331/97, § 71, 4 June 2002, and *Olivieira v. the Netherlands*, no. 33129/96, § 56, ECHR 2002-IV).

9. For these reasons, we have doubts as to the applicability of paragraph 4 to the case in hand and consider the reasoning of the Court insufficiently justified in this regard. The distinction is a relevant one given that paragraph 4 covers restrictions, in certain areas, aimed at the "public interest in a democratic society", whereas paragraph 3 allows only for restrictions for the maintenance of *ordre public*. The latter notion is narrower than the former. However, even if one should come to the conclusion that paragraph 4 is applicable, it is necessary to answer a second question regarding the test to be applied by the Court.

II. The necessity test

10. The central question raised by the present case concerns the proportionality of the interference with the applicant's rights under Article 2 of Protocol No. 4, that is, the justification of this measure by the public interest in a democratic society. The restriction of the applicant's freedom to choose her residence in the case in hand strikes at the very heart of Article 2 of Protocol No. 4. This fact alone means that strict scrutiny by the Court is required.

11. Nonetheless, in paragraph 113 of the judgment, the majority find that the more convincing the general justification for a measure is, the less importance the Court will attach to its impact in a particular case, thus granting the State a wider margin of appreciation. We respectfully disagree with this reasoning. Why should a restriction be more "justified" or "necessary" solely because the restrictive measure is of a general nature? In our opinion, the decisive question should rather be whether the individual application of the restriction – be it based on a general or an individual measure – conflicts with the core of the rights guaranteed by the Convention. It is important to bear in mind that even where States enjoy a wide margin of appreciation, "the final evaluation of whether the interference is necessary remains subject to review by the Court for conformity with the requirements of the Convention" (see *Winterstein and Others v. France*, no. 27013/07, §§ 147-148, 17 October 2013) and that States must be able to put forward "relevant and sufficient reasons"

[1] Manfred Nowak, *UN Covenant on Civil and Political Rights. CCPR Commentary*, Kehl, Strasbourg, Arlington 1993, Article 12, paragraph 8.

justifying the restriction (see *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, §§ 101-102, ECHR 2008).

12. The majority go on to state in paragraphs 114–117 of the judgment that the principles developed in the pertinent case-law under Article 8 of the Convention and Article 1 of Protocol No. 1 are applicable to the right to choose one's residence. However, the applicant never raised an issue concerning housing or social welfare. This fact renders it dogmatically inappropriate to apply the aforementioned case-law to the case in hand by way of analogy.

13. On the basis of the case-law cited, the majority afford the domestic legislature a wide margin of appreciation in implementing social and economic policies and determining what is in the "public" or "general" interest (see paragraphs 116, 118 and 120 of the judgment). However, the State's scope of action to adopt policy decisions and implement them is not at stake here; nor are the various policy measures under the Inner City Problems (Special Measures) Act being questioned in general. Rather, the Court is called upon to clarify whether the individual measure regarding the applicant was in conformity with Article 2 of Protocol No. 4.

14. In order to determine whether a measure was necessary in a democratic society, it is important to bear in mind that restricting the free choice of residence of persons who present a threat to the public can only be justified in the interests of the rights of others when such a restriction is necessary, proportionate and not discriminatory.[2] We are of the opinion that, since the measure is linked to source of income and is thus implicitly connected to the social origin and gender of the persons concerned, the applicable test is the necessity test provided for under Article 14 of the Convention. If the Court wishes to borrow some inspiration from existing case-law in order to decide the present case, the applicable principles concerning discrimination should have been considered relevant. As stated in *Vrountou v. Cyprus* (no. 33631/06, § 75, 13 October 2015), "advancement of gender equality is today a major goal in the member States of the Council of Europe and very weighty reasons would have to be put forward before such a difference in treatment could be regarded as compatible with the Convention". In general, it can also be argued that the poor are a vulnerable group in and of themselves,[3] and that restrictions applied to this group must ensure a "reasonable relationship of proportionality between the means employed and the aim sought to be realised" (see *I.B. v. Greece*, § 78, no. 552/10, ECHR 2014); the State's margin of appreciation must accordingly also be narrower in this context (*Kiyutin v. Russia*, no. 2700/10, § 63, ECHR 2011).

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[2].Manfred Nowak, *op.cit.*, paragraph 48.

[3] Laurens Lavrysen, "Strengthening the Protection of Human Rights of Persons Living in Poverty under the ECHR", 33(3) *Netherlands Quarterly of Human Rights* (2015), 293–325.

15. We therefore conclude that "the principle of proportionality does not merely require the measure chosen to be suitable in principle for achievement of the aim sought. It must also be shown that it was necessary, in order to achieve that aim, to exclude certain categories of people ... from the scope of application of the provisions in issue" (see *Vallianatos and Others v. Greece*, nos. 29381/09 and 32684/09, § 85, ECHR 2013).

III. Application to the case in hand

16. The only question raised in the case in hand is whether the refusal of a residence permit based on the grounds that the applicant had not lived in Tarwewijk for a minimum of six years and depends on social welfare was necessary in a democratic society.

17. Making the freedom to choose one's residence dependent on how many years one has previously lived in a designated area has a very harsh impact on the person concerned. Being prevented from moving within a familiar area because one has not yet lived there for six years is particularly difficult for families. The majority omitted even to address this question. In our view, residents already living in a "hotspot" area should therefore not be forced to move out, especially since the aim pursued – preventing an increase in the number of poor people needing care and social support in a "hotspot" area – can certainly be achieved by other means (see paragraph 23 below). In addition, there seems to be no convincing justification for the six-year requirement. Especially for young children, this time span is very long. It is equally debatable why such a requirement should apply to anyone who is not a new resident of the area.

18. Of much greater concern, however, is the income-based restriction. It not only leads to stigmatisation of the poor, but it indirectly creates discrimination based on race and gender, since the people most gravely affected by unemployment are immigrants and single mothers. In our opinion, therefore, the contested measure does not qualify as necessary in a democratic society. The poor do not *per se* pose a threat to public security, nor are they systematically the cause of crime, and the legitimate aim of the Inner City Problems (Special Measures) Act – the need to reverse the decline of impoverished inner-city areas – can be achieved through other policy measures not tied to personal characteristics.

19. In the case in hand, the restriction has even had the paradoxical consequence of preventing the applicant from improving her personal living conditions. The majority's argument in paragraph 131 of the judgment that the applicant failed to put forward reasons other than her desire to move to a more spacious apartment is misplaced – the applicant has the right to choose her residence, and she is not obliged to justify this choice. Contrary to the majority, we consider it comprehensible that the applicant did not move back to Tarwewijk after having moved to Vlaardingen (see paragraph 132

of the judgment). It is not even known to the Court whether the apartment in Tarwewijk would still have been available, and it is also clear that moving generates costs and is stressful, especially for children.

20. It is equally incomprehensible why the Court refused to take into consideration the fact that the applicant, the mother of two young children, did not represent a threat to public order (see paragraph 133 of the judgment). This is central in determining the proportionality of the measure at issue. We thus come to the conclusion that it was disproportionate to refuse the applicant her housing permit, and that in her case the hardship clause should have been applied.

21. Moreover, the United Nations Human Rights Committee's General Comment No. 27 on Article 12 of the ICCPR explicitly states that "the Committee has criticised provisions requiring individuals to apply for permission to change their residence or to seek the approval of the local authorities of the place of destination".[4] We therefore consider that a restriction on choosing one's residence based on income does not fulfil the test of necessity and the requirements of proportionality. This line of argument is also supported by the fact that the Council of Europe Committee of Experts on Human Rights removed the express provision for restrictions that were necessary for the economic welfare of the country (see paragraph 7 above), which clearly distinguishes Article 2 of Protocol No. 4 from Article 8 § 2 of the Convention (for the strict conditions in relation to the latter Article, see *Hasanbasic v. Switzerland*, no. 52166/09, § 59, 11 June 2013).

IV. Conclusion

22. In our opinion, for the reasons mentioned above, the applicant's right to choose her residence has been violated in the present case.

23. However, our opinion should not be misunderstood. We accept that the problems facing impoverished areas are real and serious. It is unquestionably legitimate to strive to improve those areas, and it is of primary importance to avoid ghettoisation. However, such policies should not be linked to personal characteristics. The aforementioned aims can also be achieved through measures such as tax reductions for small businesses, urban planning favouring more luxurious apartments, renovation of abandoned housing, eliminating illegal tenancies, purchasing low-quality housing, and providing for more teachers and care in schools.

24. Any stereotyping legislation, especially where it involves stigmatisation of the poor, is *per se* problematic. Equally dangerous are

[4] UN Human Rights Committee (HRC), CCPR General Comment No. 27: Article 12 (Freedom of Movement), 2 November 1999, CCPR/C/21/Rev.1/Add.9, paragraphs 14 and 16.

restrictions based on such grounds as criminal records (see paragraph 67 of the judgment), illness or race. The present judgment fails to recognise that the exclusion of vulnerable groups on the basis of personal characteristics that individuals cannot easily amend is most problematic, given its stigmatising effect.