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THE NEW DUTCH MINING LAW: HOW TO SUCCEED IN LAW WITHOUT REALY TRYING
Compensation of soil subsidence damage and the burden of proof

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Abstract

The new Dutch Mining Law of 2002 is already outdated at its enactment: at the most, by the introduction of strict liability, it is an up-date of the former Napoleonic Law of 1810, as it was applied in Belgium and France during the past century. The presumption of the causal connection, however, as accepted in German law (1982), U.K. law (1991, 1994) and in French law (1994, 1999, and before), is missing in the new Law. The same holds for state liability (the licence Authority being the Ministry of Economic Affairs), and furthermore, joint and several liability, area of responsibility, and other modern concepts found in several jurisdictions. The influence of the mining industry in the Dutch legislative process was conspicuous. Soil subsidence may have tremendous consequences for private parties, which in practice encounter great difficulteis in obtaining compensation for damage to their property from mining concession holders. The potential danger to the environment at large, finally, in an area bordering on one of Europe's foremost Habitat grounds (the Wadden Sea), is too close for comfort.

1. Introduction

In 2002 a new Mining Law was enacted in The Netherlands, replacing the old Napoleonic Mining Law of 1810, which until recently also governed mining law in the neighbouring countries, Belgium and France. In the Low Countries the mining industry, after the closure of coal mines in the early 1970's, found new fields of operation in mineral gas and salt mining, on a great scale. The Groningen gas field, discovered in 1959, is of enormous dimensions, and will be exploited into the 2030's; it was followed by other important finds in Frisia, North-Holland, and in between: the Wadden Sea. The latter area is a commons of great, European importance as a bird habitat, especially as a stop-over for migrating birds from Scandinavia and Northern Russia on their way to West-Africa.

At some sites, large scale mining activities take place only a few hundred yards from a dyke on the North Sea coast. If the dyke would collapse by subsidence, large scale inundation of the 'polder' land it is meant to protect, is inevitable. In addition to prospects of a steadily rising sea level, it is a major cause of worries to inhabitants of the area, and understandably so.

From times immemorable, mining may cause soil subsidence problems. That was also the case in The Netherlands, originally in the coal mining district, Limburg (Southern Netherlands) and currently in the new gas and salt mining area's in the North of the country. In the province Groningen, gas mining over the last three decades has caused a soil subsidence of about 35 cm in its centre, the city of Groningen. In the Western part of Frisia, the envisaged total subsidence of 25 cm, to be reached in 10 years, already was realised in 3 years of salt mining (which, incidentally, occurs at 3 km depth). During the last decades, hundreds of cases of property damage due to soil subsidence, mainly to civilian owners, have remained without compensation. A compensation fund, created in 1983 and containing about € 350 million, in practice is only used to honour compensation claims of local governments, when works of infra-structure are damaged (quay-walls, water works, etc.). A comparable fund for Frisia was set up in 1999.

Furthermore, earthquakes increasingly occur, and its relation to mining activities is no longer denied by the industry, after some decades of stubborn negation. The intensity of the quakes also increased over the years, passing the 3.3 Richter Scale, the threshold of danger to property, in the late 1990's; a mark that was never to be realised, according to previous, reassuring statements of the mining industry.

Therefore, the Mining Law Bill that was published in 1998 raised considerable interest in political and societal circles, in particular the paragraph on liability of the mining industry for damage caused to property on the surface. All political parties in Parliament actively participated in the legislative process, following the government with critical, at times tumultuous, attention. The outcome, the new Mining Law of 31 October 2002, tight of compromise (a typical Dutch custom: the *Polder model*), in many respects is quite disappointing, as far as the interests of property owners and the environment in general, is concerned. In comparison with current mining law in other European countries, it lacks a state of the art approach to the matter, in fact it is a step backwards compared to what the Napoleonic Mining Law had to offer some centuries ago, the main lines of which still are part of current French and Belgian mining law. It also lags far behind the new mining law in the U.K., of the early 1990's, a quite modern approach to the subject.[1]

In this paper, I will analyse the new Dutch Mining Law, concentrating on the issues mentioned: liability for damage caused by soil subsidence to private property and the environment. The analysis will be done on a comparative basis, with special attention to modern French, German and U.K. mining law. Since the European Commission has expressed an interest in a harmonisation of mining law in the EU, the following may also serve as a pilot study how to deal with the liability involved. In the view of the author, the Dutch Mining Law, unfortunately, cannot serve as an example of best legislative practice. It comes down to a story of: 'How not to do it', therefore. This is too often the case when lawyers step in to solve societal problems, especially when immense interests are involved, of both government and industry.

2. Legal issues of liability for mining damage, under the old Mining Law of 1810. Deficiencies in the drafts of the new Mining Law

[1] At the outset, my role in the legislative discussion may be clarified. As will referred to below, I wrote several studies on the subject at the request of the Northern Provinces and NGO's in the period 1996-1999, and was consulted also when the Bill came out.

Over the last decades, several deficiencies of the old mining law came to surface, and were discussed with the government at the initiative of provincial authorities of the Northern Netherlands, in the context of new mining licenses that were to be issued to the mining industry. Bottlenecks, as encountered by the local administration, were amongst others the difficulties in realising soil subsidence damage claims, due to hurdles in establishing evidence of the causal connection, and also the lack of financial guarantees or funds from the mine operators. The first issue led to an urgent request regarding the introduction of the reversal of the burden of proof, the second to the request to have warranty funds installed, both issues to be part of the provisions of the mining concession (license) issued.

These requests, also made by members of Parliament and citizens in administrative applications, over the years, routinely were denied by the department in charge of mining activities, the Ministry of Economic Affairs. The arguments given, were that such private law instruments did not fit properly into a public law device as a concession, and that such petitions could be better realised in the new Mining Bill, which was on its way. Therefore, comfort had to be sought in the legislation to come.

The arguments used, however, were far from convincing. In research that I did in 1996 for the Northern Provinces and some environmental NGO's (owners of large properties in the region), I found that already before World War II licences held clauses with the contents as requested by the local administration. Moreover, under the old Mining Law of 1810, the establishment of a guarantee or security fund is explicitly dealt with, and even obligatory for mine operators (Article 15), which apparently was unknown to the institutions involved in the matter. Another comfort given by the Ministry was that soil subsidence caused by mining activities only could be on a gradual and steady basis, making damage to buildings and infra-structure highly unlikely. If damage would occur, contrary to reasonable expectation, the well-established rules of private law would be there to govern the handling of claims, if necessary, before the civil courts.

Citizens, however, are not always as obedient and docile as civil servants want them to be, and a group of inhabitants of the village Barradeel, Frisia, went to court requesting a security fund to be installed at the occasion of a new salt mining concession in that area, and succeeded therein. The President of the District Court Leeuwarden simply applied Article 15 of the Mining Law of 1810, and held that the mining operator was obliged to give a guarantee; its realisation, however, took several years.[2] The security requested was no luxury, a few years later the mining company, a small firm in building equipment, went bankrupt (thereupon taken over by a large German mining company). In 1998, the Province of Frisia, together with some Water Boards, had to arrange the creation of a security fund with the NAM, a large player in the field (subsidiary of two blue chip oil companies), which was not found in the conditions of its gas mining concession.

The above developments illustrate the keen interest that existed in the mining provinces of The Netherlands in regard to the new mining legislation that was prepared at the Ministry of Economic Affairs. The consequences of several decades of gas mining in the Provinces of Groningen and Drenthe already were visible. The soil subsidence in the centre of Groningen, where the city of that name is located, had created a situation on the surface which is comparable to a soup plate, and concern

[2] President District Court Leeuwarden 22 August 1997, *De Vroe v Ministry of Economic Affairs* (and another case).

was growing that buildings situated on the plate's rim, might be confronted with subsidence that was not so gradual in nature as predicted by the Ministry and its spokesmen. Furthermore, the combination with fluctuations in groundwater level, often required by the soil subsidence at large, made things even more complicated, also as regards the causal connection between mining activities and damage to buildings. In addition, inherent defects in older buildings might be triggered by even minor subsidence, which would made a refusal of compensation likely, as already was found in practice. That occurred even in the case of new buildings, 7 years old, where deficient design or construction was blamed for large cracks in walls; in one case, I remember that the 'neutral' expert sent by the mining company, who came to that conclusion, had also been the company's long-time architect.

In the Province of Drenthe, the subsidence caused a problem with a river that could no longer run freely into the North Sea, which change in water currents led to a diversion of the flora and fauna of adjacent territory, a nature park owned by a foundation. How to assess the damage involved? At the river's estuary, where a dam was built, eel could no longer swim up-stream to its spawning grounds, which caused damage to fishermen. At the cost of the gas mining compensation fund, fish stairs were built on the dam, apparently with success.

Great expectations, therefore, from all quarters, as regards the new Mining Law, to give assistance in finding solutions for the above problems, which created considerable financial losses. Were they fulfilled?

3 The Mining Bill in Parliament

The Mining Bill was presented to Parliament in 1998 (No. 26 219). Its reception can be described as a kind of general bewilderment: the only change introduced, contrary to all former promises made by the government, was the introduction of strict liability, replacing fault liability as assumed by the courts in the past, on the basis of the 1810 Mining Law. In that respect, it is noted, The Netherlands stood alone, compared to countries as France and Belgium, having exactly the same law, as introduced by Napoleon two centuries before, where according to 19th century case law, strict liability, if not absolute liability, was found to be statutory law. Article 15 of the 1810 Law, reads that a mining operator is to pay 'all damages to houses in case of accidents', which is to be done out of a guarantee given in advance (a sufficient financial position to that end, is to be established also, Article 14).[3]

The introduction of strict liability for the mine operator in 1998, was a kind of window dressing which amazed spectators. Firstly, the step from fault liability to strict liability in modern law is a matter of degree only, and in practice hardly distinguishable (as it is in German law, where as a friend and colleague of mine once explained, one needs a magnifying glass to see the difference in practice), making such issue a *red herring*. A fish used as bait to distract the attention from more important matters. In The Netherlands, application of the 1810 Mining Law since 1920, although based on fault liability, in combination with presumption of fault (and

[3] A nice story is that the wording of the article has been spoken by Napoleon himself, and written down, when he was attending a meeting of the Drafting committee, its 7th or so, out of impatience that the mining law took so long. As a general, interested in coal and steel for warfare, the mining law was his love baby. The article's wording reminds the reader of military law, straightforward as it is ('you damage, you pay!').

causal connection with it) in a r*es ipsa loquitur* setting, indeed is hard to distinguish from strict liability.[4]

Incidentally, strict liability for mining activities also in other jurisdictions is a common feature. In Russia it is known since the Mining Law of 1903, in Italy since the Law of 1927, and case law in that sense was established in the U.K. in 1939, and in the U.S.A. in the 1920's. Nothing new under the sun, therefore.

What the new law did not bring, unexpectedly, was reversal of the burden of proof in case of subsidence damage, and furthermore, a compulsory warranty or compensation fund for the mine operator. Parliament was not amused, and a number of amendments were proposed, sometimes in a combined effort of all parties, of the government alliance (Christian Democrats, Conservatives and Liberal Democrats) and the opposition as well (Labour Party, Socialist en Green Parties, Small Christian Parties). The following subjects were addressed in the amendments:

- The role of the envisaged Technical Committee should be extended, including advising in individual civil damage claims; accepted by the government (Article 114);
- the institution of compensation fund (Labour Party and Liberal Democrats) accepted by the government (Articles 134 ff.);
- state liability in case of bankruptcy of concession holder (Conservative Party) and general state liability (Christian Democrats); amendments withdrawn after acceptance of compensation fund;
- reversal of burden of proof (Labour Party), lacked support; strongly rejected by the government.

A revised Bill was made, and the Mining Law was finally accepted by House and Senate on 31 October 2002 and enacted in the same year.[5] Was the result worth the effort put into it from so many sides? In my opinion, one can wonder what progress was made.

In many respects, the new Dutch Mining Law was already outdated at its enactment. Basically, with the introduction of strict liability, it stops short of an up-date of the former mining act of 1810, as it was applied in Belgium and France during the past century. However, the presumption of the causal connection, as accepted in French case law for a considerable time already under the old act, is conspicuously missing in the new Dutch law. The same holds for state liability, in case no compensation can be obtained from a mine operator by civil parties, where the concession Authority, responsible for the fair and efficient administration of mining claims, is the Ministry of Economic Affairs. Furthermore, joint and several liability, and the area of responsibility, and comparable topics, have not found a place in the new law. Under present conditions, which are common knowledge, such legal instruments should have been in installed in a modern law, in my opinion. Critical ground conditions and sub-

[4] Hoge Raad 31 December 1920, *NJ* 1921, 230, *Castle Strythagen*.

[5] For an overview of the at times turbulent parliamentary history of the Bill, see my article: 'Mijn en dijn in de ontwerp-Mijnbouwwet. De noodzaak van bewijslastomkering en aansprakelijkheid van de staat bij mijnbouwschade van particulieren als gevolg van bodemdaling en aardschokken', *NJB* 2002, p.560 ff. Compare also my treatise *Verbintenissenrecht, Volume 2*, 5th ed., Kluwer, Deventer, p.895 ff., and several articles in *TMA* (Tijdschrift voor Milieu Aansprakelijkheid en Schadevergoedingsrecht / Environmental Damage and Liability Law Review), in 2002.

soil water management, especially in a country like The Netherlands, namely account for a range of difficulties that arise in practice, which will be reflected in the legal issues that come in its wake.[6]

Meanwhile, the legislative process illustrated to what extent the government was prepared to lean over backwards to serve the interests of the mining industry, at the cost of private parties confronted with soil subsidence damages, as caused by the mining operations. The compensation fund for mining damage claims, originally drafted, was thereupon struck out at the request of the mining industry, in the second Draft of the Bill. In the first Draft, the limitation period was fixed at 20 years, which howver is not in conformance with the 30 year period for environmental liability in the Civil Code, which also is the common rule in other jurisdictions. In a later stage of the legislation, it was changed into 30 years, at the request of Parliament.

It is no secret that the Ministry involved, presumably acting solely in the public interest, is also a stake-holder in the mining industry. Its annual revenues from mining concessions over the last years in average are an amount of 4 billion Euro. Rising oil prizes, used as a norm for mineral gas prizes, do not make the business less profitable, lately. Soil subsidence may have tremendous consequences for private parties, house owners, small farmers, businesses, which in practice encounter great difficulty in receiving compensation for damage to their property from mining concession holders. Over the last years, the courts at several occasions had to intervene, and gave support to civilian claims in compensation for soil subsidence damage, or measures meant to curb those risks.

The potential danger to the environment at large, in an area close to one of Europe's foremost Habitat grounds (the *Wadden Sea*), is a subject in itself, and cannot be treated in this paper.[7]

3. Comparison of the new Dutch Mining Law with the mining law of other jurisdictions

3.1 Introduction

As indicated, the Dutch legislator has not produced a state of the art piece of legislation with the 2002 Mining Law. In Parliament, the Minister of Economic Affairs referred to the 1982 Act of Germany as the most recent legislation on mining law, completely unaware of more recent legislation in France and the U.K., of the 1990's. French and German mining law, furthermore, was misinterpreted, neglecting concepts as the reversal of the burden of proof and state liability, the role of the 'subsidence adviser' in the U.K., et cetera. Publications on those subjects from the present author, including books and studies commissioned by Provinces and NGO's,

[6] For a positive view on the new Mining Law, however, see: M.M. Roggenkamp and Ch.P. Verwer, 'De aansprakelijkheid voor schade veroorzaakt door bodembeweging. De rol van de Mijnbouwwetgeving en de Technische Commissie Bodembeweging', *Energierecht* 2004-6, p.213. The authors, highly involved in the mining industry, the latter is secretary to the newly formed Technical Committee Soil activity, remarkably suggest that I had lost the battle to have *fault liability* accepted in the new law. This is only 180 degrees off course. On the basis, of course of *strict liability*, in my 2002 article I advocated reversal of the burden of proof, and state liability, on which topics I also advised the Labour fraction in Parliament.

[7] Jan Veltman, of the 'Wadden Vereniging', was quite critical in his assessment of the new Mining Law in this respect, compare *Milieu en recht*, 1999, p.184.

deliberately were neglected or mis-quoted, in parliamentary documents and debates.[8] Apparently, there was much at stake, in legislative circles, and surrounding lobbying clubs.

In the following, to compensate for the lack of information used by the legislator, an overview is given of mining law in other jurisdictions, including neighbouring countries of The Netherlands. Thus, it will be paramount what inspiration was missed when drafting the new Dutch Mining Law.

3.2 French mining law

As was mentioned before, for ages in French law there was strict liability under the Napoleontic Mining Law of 1810. In recent years, there was legislative activity in this field, which has led to the Mining Law 1994 (*Code minier*). Not surprisingly, the new law also contains strict liability. Of particular interest here is however Article 75-1 which holds 'une présomption de responsabilité', combined with 'une présomption de causalité'[9]. As it was phrased by a couple of French authors:

> '.. the courts had ascertained and applied for more than 150 years the principle whereby the operator of a mining title is deemed to be liable for damages incurred by his activities unless he proves that these damages were incurred by an extraneous cause (*cause étrangère*). This principle is now codified in the Mining Code'.[10]

The article referred to, is the following:

> Article 75- 1 Code Minier 1994:
>
> L'exploitant ou le titulaire d'un permis exclusif de recherche est responsable des dommages causés par son activité. Il peut toutefois s'exonérer de sa responsabilité en apportant la preuve d'une cause étrangère.

In 1999 the following addition was made by Parliament, at its initiative, disregarding strong opposition from the government:

> Article 75- 1 French Code Minier (Law of 30 March 1999):
>
> L'explorateur ou l'exploitant, ou à défaut le titulaire du titre minier, est responsable des dommages causés par son activité. Il peut toutefois s'exonérer de sa responsabilité en apportant la preuve d'une cause étrangère.

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[8] See my 2002 *NJB* article, at pp. 561; 568. Elf Petroland and NAM had a report made by two law professors from Leiden University, and presented to the Ministry. The authors (Hartlief and Snijders) , however, refrained from going into modern mining law, as discussed in my reports and publications of 1998 and 1999. Previously, a comparable action was taken by these companies with the help of a part-time University of Delft professor, on technical matters of soil subsidence.

[9] See Ch. Huglo, *Le régime juridique de la remise en état dans le domaine des mines: des progrès sont-ils possibles?*, *Annales des mines*, 1998, p.77.

[10] S.A. Brabant and B. Montembault-Héveline, 'Reform of French Mineral Law', *Journal of Energy & Natural Resource Law*, 1997, p. 255 ff.; in the notes reference is made to the classic book of J. Personnaz, *Droit des mines*, 1958, nr 296 ff., and to Article 75-1 Code minier 1994. For French case law, see also: R. Delcourt, *Les indemnités dues par la mine à la surface en droit comparé*, PhD thesis Paris, 1945, p.187 ff.

> Cette responsabilité n'est pas limitée au périmètre du titre minier ni à la durée de validité du titre.
> En cas de disparition ou de défaillance du responsable, l'Etat est garant de la réparation des dommages mentionnés au premier alinéa ; il est subrogé dans les droits de la victime à l'encontre du responsable.

Thus, in the last paragraph we find *state liability* in case of bankruptcy of the mine operator, which actually was already accepted in the 1994 Act (Article 29 III).

The new law is consistent with the old mining law, as is illustrated in a decision of the Cour de Cassation of 1990 on multiple causation caused by mining activities.[11] Compare also the famous doctrine of 'fait des choses' of Article 1384 CC, in general holding the owner of movables and immovable (like mines) liable for damage caused by the things or property. The following quote from a book of Starck, and others, is exemplary:

> 'En d'autres termes, il existe une véritable présomption de causalité en faveur de la victime qui n'a, une fois encore, d'autre preuve à apporter que celle d'un contact avec la chose; les juges du fond, dans leur grande majorité, adoptent cette solution en déclarant *expressis verbis* que la chose en mouvement est présumée être la cause du dommage' (p.432). 'Cette présomption de rôle actif a été justement étendue aux choses inanimées, même immobiles, « porteuses d'un dynamisme propre susceptibles de se manifester dangereusement » … parce que la chose est intrinsèquement dangereuse, on conclut à son fonction causale. *Res ipsa loquitur*' (at p.433, see: Goedmakers, o.c, p.164).

The French legislator did not explicitly use terms as 'reversal of the burden of proof' or 'presumption of causation' in the Mining Law. However, it is generally accepted that such is accepted under the concept of 'responsabilité objective', as contained in Article 75-1 Code minier. In this respect, compare also Ph. Yolka en B. Wertenschlag.[12]

It is observed, however, that the mining industry, and its legal advisers, have put great effort in alleging that the reversal of the burden of proof in unknown in French mining law, easily convincing the Ministry in that respect. Remarkably, the above literature, illustrative of French legal doctrine, was not taken into consideration, let alone, refuted.

3.3 A comparison with German and Austrian mining law

In the 1982 German Mining Law, the *Bundesberggesetz*, a continuation of strict liability is found, as was the case under the old Prussian law of the previous century. Furthermore, there is a presumption of damage and causation contained in Article 120, the so-called *Bergschadensvermutung*:

> §120 Bundesberggesetz 1982, Germany

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[11] Civ. 3e, 7 nov. 1990, *LEXIS* 1715. See, extensively: A.J. Goedmakers, *De aansprakelijkheid van de mijnexploitant voor door mijnbouw toegebrachte schade aan de oppervlakte. De Nederlandse ontwerp-Mijnbouwwet vergeleken met het Franse mijnrecht, TMA* 1999, p.159.

[12] *C.J.E.G.* 2000, p.5; *Semaine Juridique* 2000, p.1515, respectively. See also: A. Seban, *Bull. de Droit de l'Environnement Industriel* 2000, p.12, on Conseil d'Etat 19 May 2000, *Soc. Des mine de Sacilor Lormines*, on Article 79 Code minier, in regard to abandoned mines. The operator has to 'respecter les contraintes et obligations afférentes à (..) la sécurité et la salubrité publiques (…) à la solidité des édifices publics ou privés'.

Bergschadensvermutung

(1) Entsteht im Einwirkungsbereich der untertägigen Aufsuchung oder Gewinnung eines Bergbaubetriebes durch Senkungen, Pressungen oder Zerrungen der Oberfläche oder durch Erdrisse ein Schaden, der seiner Art nach ein Bergschaden sein kann, so wird vermutet, daß der Schaden durch diesen Bergbaubetrieb verursacht worden ist. Dies gilt nicht, wenn feststeht, daß

1. der Schaden durch einen offensichtlichen Baumangel oder eine baurechtswidrige Nutzung verursacht sein kann oder
2. die Senkungen, Pressungen, Zerrungen oder Erdrisse

a) durch natürlich bedingte geologische oder hydrologische Gegebenheiten oder Veränderungen des Baugrundes oder

b) von einem Dritten verursacht sein können, der, ohne Bodenschätze untertägig aufzusuchen oder zu gewinnen, im Einwirkungsbereich des Bergbaubetriebes auf die Oberfläche eingewirkt hat.

(2) Wer sich wegen eines Schadens an einer baulichen Anlage auf eine Bergschadensvermutung beruft, hat dem Ersatzpflichtigen auf Verlangen Einsicht in die Baugenehmigung und die dazugehörigen Unterlagen für diese bauliche Anlage sowie bei Anlagen, für die wiederkehrende Prüfungen vorgeschrieben sind, auch Einsicht in die Prüfunterlagen zu gewähren oder zu ermöglichen.

The legislation also has made use of the concept of *Einwirkungsbereich*, the area of influence by mining activities, which is established under the *EinwirlungsBergverordnung* Decree. In brief, the system is, that when damage is found within such area, where a subsidence of 10 cm and more is occurring, there is a presumption of causation, to the detriment of the mine operator of the area.

It is noted that the above article of the German Mining Law is only applicable to coal mining; since no decree on gas mining was issued, as practically non-existent in Germany, contrary to the adjacent Netherlands.

Austrian mining law in Article 160, *Mineralrohstoffgesetz* 1999, also has accepted strict liability and the presumption of causal connection, comparable to general civil liability for dangerous acts or things under the Civil Code. Furthermore, there is joint and several liability for mine operators that are active simultaneously in the same area where damage occurred, under Article 162.[13]

3.4 Comparison with U.K. mining law

In the U.K., the Coal Mining Subsidence Act of 1991 and Coal Authority Act of 1994 are the central pieces of legislation. Here we find a reversal of burden of proof in regard to subsidence damage in Article 40 (2) Coal mining Subsidence Act, *loud and clear*:

Coal Mining Subsidence Act 1991

Art. 40 (2) Where in any proceedings under this Act the question arises whether any damage to property is subsidence damage, and it is shown that the nature of the damage and the circumstances are such as to indicate that the damage may be

[13] See for a more extensive discussion of German and Austrian law, my *NJB* article of 2002, at p.566 ff.

> subsidence damage, the onus shall be on the Corporation to show that the damage is not subsidence damage.

Under Article 1 of the Act, 'subsidence damage' is defined as damage to property, land or buildings, caused by 'withdrawal of support from land in connection with lawful coal-mining operations'. 'Corporation' stands here for the British Coal Corporation, which under Article 2 has the task 'to take in respect of subsidence damage to any property remedial action', which may consist of restoration, compensation of costs of repair or loss of value of the damaged property. Under the Coal Industry Act 1994, the British Coal Corporation became the Coal Authority, in charge of issuance of licenses and 'the need to secure the safety of members of the public', including supervision of the mining industry, the handling of claims, which has to be supported by adequate finances of license holders (Article 1). Members of the Coal Authority are appointed by the Secretary of State; it is an independent body, not part of the Crown. It is an interesting structure, in which competing interests are separated, an idea which deserves following in countries as The Netherlands.

The liability of concession holders is similar to the German approach, albeit in a more flexible setting. In Article 37 we have the concept of 'area of responsibility': all soil damage occurring in this area is attributed to the license holder in place, and makes it liable. That area in question is where mining activities are carried out, but also 'such other areas appearing to the Authority to be capable of being affected by those operations as may be described in the license'.

The Articles 42 ff. are dedicated to soil subsidence damage; the 1991 Act is applicable here, under which the license holder in whose 'area of responsibility' the damage was caused is held liable, and: 'in any other case, the Authority' (Article 43, section 2). In case the damage occurred only partly in that area, the license holder will be jointly and severally liable with the license holder of the adjoining area. If the latter is non-existent, the Authority will step in, and carry liability (Article 44, section 1). Thus, the Authority has a vicarious liability for soil subsidence damage, if no redress on a license holder is possible, or only partly.

Under Article 46 the Secretary of State may appoint an independent person as 'subsidence adviser', giving support to persons filing claims, advising persons held liable for damage and reporting on the handling of soil damage claims. Finally, Articles 53 ff., indicate the respect for 'the natural beauty of any area', and contain for license holders the obligation to disclose information, inter alia 'about any subsidence or subsidence damage or about claims made under the 1991 Act' (Article 57).

In disputes, the Lands Tribunal has competency to hear cases. However, dispute resolution by arbitration is encouraged: see the Householders' Arbitration Scheme, and General Arbitration Scheme, respectively (the latter directed at: property owners, farmers, commercial organisations). The Chartered Institute of Arbitrators, in London, is involved here, and has dealt with a large number of disputes in the previous years. Several chambers of arbitrators have decided dozens of cases annually, in the peak years, awarding substantial compensations to private parties with damaged property.

4 Conclusions

For the above reasons, it is fair to come to the conclusion that the Dutch Mining Law of 2002 is not a specimen of successful legislation, an expression of modern draftmanship, which one would have expected of the legislator in this field, where so much is at stake, not just for the mining industry, but citizens as well.

Our *tour d'horizon*, covering the mining law a number of jurisdictions, may have illustrated that presently, the liability of mine operators is better regulated outside of The Netherlands.

The practice under the new Dutch Mining Law is too brief to have an evaluation of its functioning.[14] Hopefully, the law of neighbouring countries may inspire all institutions and persons involved (including courts addressed), and above all the mining industry itself, to find solutions for soil subsidence damage whereby the reasonable interests of private parties are taken into account. The example of mining law in the U.K., France and Germany, and the position taken by the industry there, are too convincing to be ignored any longer.

[14] In the article of Roggenkamp and Verwer, referred to before, one finds an assessment of the first 5 years of functioning of the Technical Committee under the 2002 Law (it started before its enactment), at p.221 ff. See also the 2004 Annual Report of the Committee. Of the 8-odd civilian subsidence cases dealt with, in 4 cases the Committee rejected the mine operator's negative position, finding for claimants. Also 9 cases of damage caused by a 2003 earthquake were treated.