AS TO THE ADMISSIBILITY OF

Application No. 33127/96
by T.D.
against the Netherlands

The European Commission of Human Rights (Second Chamber) sitting in private on 14 January 1998, the following members being present:

MM J.-C. GEUS, President
M.A. NOWICKI
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
Mrs G.H. THUNE
MM I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN
E. BIELIUNAS
E.A. ALKEMA
A. ARABADJIEV
Ms M.-T. SCHOEPFER, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 10 September 1996 by T.D. against the Netherlands and registered on 24 September 1996 under file No. 33127/96;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Dutch national, born in 1946, and is currently serving a prison sentence in Maastricht. Before the Commission, he is represented by Ms I.N. Weski, a lawyer practising in Rotterdam.

a. Particular circumstances of the present case

On 14 February 1992, the applicant was arrested and detained on suspicion of having committed offences under the Opium Act (Opiumwet), i.e. production and trafficking of amphetamines ("XTC").

Following hearings held on 20 May, 10 August and on 3, 4, 5 and 6 November 1992, the Regional Court (Arrondissementsrechtbank) of Amsterdam, by judgment of 20 November 1992, convicted the applicant of participation in a criminal organisation and a number of offences under the Opium Act and sentenced him to ten years' imprisonment.

In the subsequent proceedings on appeal before the Court of Appeal (Gerechtshof) of Amsterdam, hearings were held on 13 May, 10 June, 6, 7 and 9 September, 24 November, 1, 8 and 10 December 1993, 1, 11 and 21 February 1994, 21 April and 25 and 27 May 1994. The witnesses heard before the Court of Appeal included the police officer and general Interregional Criminal Investigation Team (Interregionaal Recherche Team, hereinafter referred to as "IRT") leader Mr Van Baarle,

the PTT employees Mr J. and Mr S., the police officer Van den Berg, the chief public prosecutor of Amsterdam Mr Vrakkink, the chief commissioner of the Amsterdam police Mr Nordholt, the executive IRT team leader Mr Lith, and the public prosecutor at the Amsterdam Regional Court Mr Wortel. Although the proceedings remained formally separated, the hearings in the applicant's case were held simultaneously with the hearings in the cases of seven co-accused.

When on 1 February 1994 the Court of Appeal took evidence from the witness Wortel, one of the three public prosecutors involved in the investigation against the applicant, Mr Wortel confirmed that the criminal investigation against the applicant had started on the basis of information provided by the Criminal Intelligence Service (Criminele Inlichtingen Dienst, hereinafter referred to as "CID") and that thus use had been made of informers not being police officers. He refused, however, to answer the question put by the defence whether after the start of the criminal investigation against the applicant further use had been made of such informers. He further stated that he preferred not to answer questions giving an insight in crime detecting working methods.

The defence objected to the witness' refusal to answer this question. Having deliberated, the Court of Appeal accepted Mr Wortel's refusal, holding:

<Translation>

> "...the witness Wortel does not have to answer the precited questions, as <the court> does not see that answering these questions can add anything to any decision to be taken by the court in this case, to which moreover it considers:
> - as to the question whether after the start of the investigation use has been made of informers, not answering this question can be considered as justified from the point of view of protection of investigation interests as the methods used by the police in detecting punishable acts which have probably been committed do not have to be made public without due reasons."

By judgment of 9 June 1994, the Court of Appeal quashed the judgment of 20 November 1992, convicted the applicant of participation in a criminal organisation and various offences under the Opium Act and sentenced him to ten years' imprisonment with deduction of the time spent in pre-trial detention. It further ordered the confiscation of a large number of items and assets. It declared the request of the prosecution also to deprive the applicant of any unlawfully obtained proceeds inadmissible on formal grounds.

In the determination of its sentence, the Court of Appeal stated that the duration of the criminal proceedings against the applicant constituted a mitigating factor, although the extensive investigation before the Court of Appeal had mainly been caused by requests of the defence.

Insofar as the defence had argued that the prosecution should be declared inadmissible, the Court of Appeal held that the placement of a printer on a telephone line in order to obtain information as to which numbers were dialled, the time and duration of any connections established via that telephone line and, upon request, the transmission of this information, which did not concern the contents of any telephone conversations, to the public prosecutor was provided for by Article 125f of the Code of Criminal Procedure (Wetboek van Strafvordering, hereinafter referred to as "CCP"). The Court of Appeal accepted that requests by the prosecution to be provided with information obtained by the use of such printers constituted an interference with the personal sphere, but held that it could be regarded as foreseen in the law and necessary in a democratic society for the prevention of crime.

The Court of Appeal further held that in any event a judicial control over the activities of the prosecution should remain possible. It considered that, therefore, the position taken by the public prosecutor at the Regional Court, to the effect that the Note of 2 September 1991 of police officer Van den Berg, in which the latter requested the use of the powers under Article 125f CCP, and the prosecutor's decision of 4 September 1991 on this request, should not be included in the case-file, was incomprehensible and unlawful. The Court of Appeal noted, however, that at the order of the Regional Court these documents had been added to the applicant's case-file.

The Court of Appeal considered it established on the basis of the formal report (proces-verbaal) of police officer Van den Berg and his testimony before the Regional Court and the Court of Appeal, that the data obtained through the printers had been destroyed at the order of the public prosecutor. In view of judicial control that was required, the Court of Appeal considered the decision to destroy these data incomprehensible and unlawful.

It found that this destruction had infringed the rights of the defence, but that this infringement was of such a limited nature that it could not lead to the consequences suggested by the defence. It held on this point:
<Translation>

> "The court considers it to have been made plausible, in the absence of any elements for finding that the statements of <the police officer who wrote the formal reports> Van den Berg should be or could be put in doubt, that in the present investigation the printer has been attached exclusively on grounds of efficiency to only two telephone connections, only in order to verify whether in fact use was made of these telephone lines, that already shortly after the placement of these printers it has been decided to continue the investigation only in respect of one of those telephone lines by requesting the investigating judge to authorise the tapping of telephone conversations on this one line, and that the data from the printers do not in any event contain any information relevant for the investigation. In this connection the court further remarks that ... it has not been made plausible in any way that in this case telephone conversations have been tapped without the required authorisation from the investigating judge."

As to the alleged unlawful start of the investigation regarding the applicant, the Court of Appeal found it established, on the basis of evidence obtained in the proceedings at issue, that the IRT had been informed on 23 August 1991 by the CID that the applicant and one other identified person, Mr R.E., were involved in the production of and trafficking in XTC and/or amphetamines. According to the witness Lith, the executive IRT team leader, this information had come from a reliable source. Further information from other sources had subsequently been received. On 2 September 1991, police officer Van den Berg had requested the public prosecutor to connect a printer to the two telephone lines used by R.E. This request had been granted on the same day. As from 5 September 1991, observations had taken place and, on 10 September 1991, a request to commence a preliminary judicial investigation had been made which had been granted by the investigating judge the same day. In the course of this investigation telephone conversations had been tapped.

Insofar as the defence argued that the above course of action had not in fact taken place in that way, the Court of Appeal found that this argument was based on an incorrect reading of the investigating judge's formal report on the hearing of the witness Lith. As to the argument advanced by the defence that the start of the investigation had been unlawful in that the information received on 2 September 1991 had been insufficient to warrant placing a printer on two telephone lines, the Court of Appeal found that the public prosecutor had not

been wrong when deciding to authorise the placement of the printers. In this respect the Court had regard, on the one hand, to the nature and intrusive character of this method of investigation in connection with the information obtained which could justify the suspicion that serious offences were being or could be committed and, on the other hand, the requirements of proportionality and subsidiarity.

The Court further held that the rights of the defence did not include a right to obtain more information about the background of the initial CID information than the information which had been provided by the witness Lith. The Court considered that no facts or circumstances had been submitted by the defence which would justify a finding that the CID information had been obtained unlawfully. The defence had further not in any other way corroborated this contention.

As to the allegation of the defence that the investigating judge had been misled in respect of the request for authorisation of the tapping of telephone conversations, the Court of Appeal considered that this was not supported by the facts. As to the allegation that telephone conversations had been tapped without authorisation of the investigating judge, the Court of Appeal concluded that this was also not supported by the facts. It considered that in relation to this allegation several witnesses had been heard before the Regional Court as well as before the Court of Appeal. Only one of these witnesses had given evidence - of a hearsay nature - that unauthorised tapping had occurred. However, this statement was not in the least supported by the other testimonies. On the basis of the evidence before it, the Court of Appeal further concluded, in particular as regards conversations tapped on telephone number 01807-5****, that it had not been made plausible that telephone conversations had been tapped without the required authorisation of the investigating judge, that the connection between that telephone number and a particular address would have been known to the IRT prior to 22 January 1992, or that this address had been identified unlawfully. It further rejected the defence's argument that the search carried out at this address had been unlawful.

The Court of Appeal further rejected a request by the defence, in which it relied on Article 6 of the Convention, to add to the case-file the unpublished part of the Report of the Wierenga Commission, which had carried out an investigation following the disbandment of the IRT. It held on this point that the necessity for granting this request had not appeared.

In this respect it stated, inter alia:

<Translation>

"Together with counsel the Court considers that the finding of the truth is the primary purpose in a trial concerning the determination of a criminal charge, and that this point of departure, which may be labelled inquisitorial, should be maintained. To this extent it can thus not be said that such proceedings are of an accusatory character. The Court agrees ... with counsel's opinion that only adversarial proceedings, in which the direct evidence rule, interpreted reasonably, is respected, enhance the chance of finding the truth.

Noting the above point of departure the Court does not subscribe to the opinion, as expressed by the procurator-general, that in cases where it is argued, for instance, that irregularities have occurred during the investigation, it is up to the defence to substantiate this claim.

Depending on the circumstances of the case it must be determined what may be asked from the defence in this respect. In any event, it is generally for the defence to submit facts and circumstances which in its opinion put the lawfulness of the investigation in doubt and it cannot confine itself merely to submitting that such

lawfulness should or may be in doubt. In addition, the purpose of the investigation at the trial is not, at least not in the first place, to fill in lacunae in respect of the possibilities to verify the course of events during the pre-trial investigation by hearing witnesses or adding further elements to the case-file. The general, and, in the eyes of the Court, realistic point of departure is that the case-file submitted to the judge contains sufficient elements on the basis of which it can be assessed whether the investigation has taken place in compliance with the relevant rules of law. The Court notes in this respect ... that it is the explicit task of the judge to form his own opinion as to the question whether the investigation has taken place in the said manner.

In certain circumstances it must be accepted that no more can be asked of the defence than that it give an indication in general terms of, in its opinion, possible shortcomings in the pre-trial investigation, and that it is for the prosecution or the investigating authorities to elaborate on those facts and circumstances which render a well-balanced judicial opinion possible. This may occur, for instance, where the use and permissibility of certain investigation methods are concerned - i.e. subjects which the procurator-general has classified as belonging to the "grey area". In this connection the Court considers in the first place that it is finally and exclusively for the judge to decide, with due regard to the law and thus the relevant statutory rules and case-law, whether or not applicable limits have been respected, and in the second place and connected to the foregoing, whether or not the prosecution and the investigating authorities were at liberty to withhold, by invoking the interests of the investigation, information from the judge which, given the task that he must carry out, should be known to him. As an aside the Court would note that it does not follow from the above that it is also required that facts which are irrelevant for the examination of the case concerned should be disclosed; moreover, in certain circumstances it should be possible, but for a judge to determine, that whilst sufficient information is being provided, the justified interests of investigation and prosecution are taken into account at the same time. In this respect the Court finally considers in the first place and on the one hand, ... that it is normal for a certain selection to take place when a case-file is being compiled and when, especially at first sight, some of the information contained therein may be deemed irrelevant, and that, therefore, the mere fact that at the trial additions and clarifications are found to be required cannot lead to the conclusion that irregularities have taken place; and in the second place and on the other hand, that the deliberate withholding of relevant information or the failure to provide such information when subsequently requested cannot remain without consequence for the assessment of the questions at issue in the trial.

As regards the case at issue, the Court has, as a result of public information about the disbandment of the IRT, investigated in the course of various trials, by hearing a number of witnesses, the question whether there were reasons to doubt the lawfulness of the pre-trial investigation.

The Court has further taken note of the published Report of the above-mentioned Wierenga Commission and the various widely publicised articles and comments concerning the IRT. The Court considers that this information is in the public domain and of common knowledge.

The Court finds it established that no facts or circumstances have been made plausible which would justify the conclusion that the unpublished part of the Report of the Wierenga Commission

contains information concerning the investigation in the present case, and neither can this be assumed in any other way. This follows in the first place from the statements made by the witnesses at the trial. It also follows from the published part of the Report seen against the background of various press reports. The Court deduces from these elements that the pre-trial investigation or investigations by IRT teams under the direction of public prosecutors and police officers, in respect of which an inquiry has been held, did not concern the pre-trial investigation in the present case. This finding is also supported by the established fact that the charges in the present case concerned - production and export of - the substances MDA and/or MDMA (XTC), whereas it appears clearly from the said Report and publications that they are concerned with - import of - the substances hashish and/or cocaine. Moreover, as regards the specific points concerning the (un)lawfulness of the pre-trial investigation indicated by counsel in the present case, the Court has carried out a further investigation and according to its findings stated above has each time reached the conclusion in respect of those points that there was no unlawfulness or, insofar as there was a certain flaw, that this flaw could be considered as limited in character and not to have any connection with the use of unlawful methods of investigation.

Apart from the said points, counsel has not referred to other aspects, in any way specified, as regards the pre-trial investigation which would require the Court to carry out a further investigation.

Although the Court is aware that absolute certainty in this matter can never be obtained, and therefore also not in the present case, and although it finds that it should be considered unacceptable, in view of the consideration mentioned above that in a trial the finding of the truth is the primary aim, if information known to the prosecution and the police authorities is withheld from a judge, whereas the nature of this information is such that, if he would have been aware of it, the judge could or should reach a different finding, the Court finds on the basis of the above considerations that there is sufficient ground for its finding reached above that for a sound decision in this case it does not find it necessary to add the unpublished part of the Report of the Wierenga Commission [to the case-file]."

The Court of Appeal based the applicant's conviction on, inter alia, formal police reports on observations, statements made by various persons before the police, forensic evidence and the contents of forty-two telephone conversations tapped between 7 October 1991 and 6 February 1992 with authorisation by the investigating judge.

The applicant's appeal in cassation was rejected by the Supreme Court (Hoge Raad) on 12 March 1996. Insofar as the applicant's complaints could be examined in proceedings in cassation, which are limited to points of law, the Supreme Court accepted the findings of the Court of Appeal and found that the reasons stated by the Court of Appeal were sufficient.

Insofar as the applicant complained of the Court of Appeal's decision that the witness Wortel did not have to answer the question whether after the investigation regarding the applicant had started further use was made of informers as it had not appeared that a reply to this question could contribute anything to the decision to be taken by the Court of Appeal in the proceedings against the applicant, the Supreme Court stated:

<Translation>
"The reasons stated by the Court of Appeal as to why it availed itself of its powers under Article 288 CCP in conjunction with

Article 415 CCP, contain its finding that the general interest of an effective investigation and the importance of protecting informers against possible disclosure of their identity which in the present case is connected with that general interest outweigh the interest of the suspect in obtaining an answer to this question.

This finding does not constitute an incorrect legal finding, in particular not as regards Article 288 CCP and Article 6 of the Convention. Furthermore, no additional reasons are required in order to comprehend this finding, in view of the fact that it does not appear that the defence has indicated that and why the answer to this question was relevant for any decision to be taken by the Court of Appeal."

b. Relevant domestic law

Article 125f CCP, insofar as relevant, provides as follows:

<Translation>
"In case of flagrante delicto or of a crime which allows for detention on remand, anyone working in a telephone agency shall provide the public prosecutor or, during a preliminary judicial investigation, the investigating judge at his demand with the required information concerning all communications effected through this agency where there is a suspicion that the suspect has participated in these communications."

Article 125g CCP reads as follows:

<Translation>
"During the preliminary judicial investigation the investigating judge may, if the investigation urgently so requires and if it concerns a crime which allows for detention on remand, authorise the investigating official to tap or record telephone conversations where there is a suspicion that the suspect has participated in them. A formal report of the tapping or recording shall be drawn up within forty-eight hours."

Article 125h CCP provides:

<Translation>
"1. The investigating judge shall have destroyed, in his own presence, formal reports and other items from which data can be derived which have been obtained as a result of the information, referred to in Article 125f, or by means of tapping or recording, within the meaning of the preceding Article (125g), and which are not relevant to the investigation. A formal report of the destruction shall immediately be drawn up.

2. The investigating judge shall likewise have destroyed immediately formal reports and other items referred to in the preceding paragraph, insofar as they concern statements made by or to a person who, on the basis of Article 218 (CCP), could refuse to testify if he would be asked as a witness about the contents of those statements.

3. The investigating judge shall include further formal reports and other items referred to in the first paragraph in the case-file at the latest when the decision to close the preliminary judicial investigation becomes irrevocable.

4. The public prosecutor shall have destroyed, in his own presence, formal reports and other items from which data can be derived which have been obtained as a result of the information referred to in Article 125f, if he has not demanded a preliminary judicial investigation within a month after obtaining that

information. He shall draw up a formal report of the destruction."

c. General background

On 26 January 1994, the Minister of Justice (Minister van Justitie) and the Minister of the Interior (Minister van Binnenlandse Zaken) informed the Lower House of Parliament (Tweede Kamer der Staten-Generaal) of the disbandment in December 1993 of the IRT Noord-Holland/Utrecht. The task of the IRT, which had been established in December 1988, was to combat serious organised crime through concerted activities of different regional police forces.

The methods of criminal investigation applied by the IRT gave rise to serious criticism, in particular in respect of certain practices where, for instance, considerable sums of money were paid to informers, where important narcotics transactions were allowed to proceed under IRT observation - which entailed these narcotics reaching the market -, and where use was made of infiltrators and so-called "peeping-Tom" operations ("inkijkoperaties"). The use of the so-called "Delta method" was one of the reasons which led to the disbandment of the IRT Noord-Holland/Utrecht.

This Delta method consisted of using informers, under the direction of the police and the prosecution department, who provided criminal organisations with facilities. These informers were used by the police in order to gather information as to the functioning of the criminal organisation. These informers, including persons working in the transport industry, had in one way or another contacts with members of criminal organisations. These informers would inform the police of the expected arrival of a container in which drugs were concealed. The police would make sure that this container would not be checked by the customs authorities and would ensure proper importation papers and clearance of the container. The police would proceed to check the contents and weigh the drugs found. These drugs would then be transported by the informer to the location indicated by the criminal organisation. Such drugs could then either be seized by the police or deliberately left unhindered in order to protect the informer or to allow an increase in the latter's prestige in the criminal organisation or the trust placed in him. In the latter case the drugs were enabled to reach the market. In some cases the police lost track of the drugs as not all deliveries could be placed under observation. The informers were paid for their activities by the criminal organisations and did not have to surrender this income to the police. The aim of the Delta method was to gain an insight into the distribution network and the persons in charge of a criminal organisation.

On 31 January 1994, upon request of the Lower House, the Ministers of Justice and the Interior requested an extraordinary commission of inquiry (bijzondere onderzoekscommissie) under the presidency of H. Wierenga, a former Member of Parliament, to:

- conduct an independent inquiry into the creation, functioning and disbandment of the IRT;
- determine and assess the grounds on which the decision to disband had been based and the way in which this decision had been implemented; and
- formulate conclusions and recommendations.

The Report of the Wierenga Commission was presented to the Ministers of Justice and the Interior on 24 March 1994. In its public report, it concluded:

<Translation>
"As regards the working methods of the IRT, the Commission has determined that these have been applied in a well-considered and careful manner and not unlawfully. The Commission further finds that the application fell within the scope of the directives

determined within the framework of the Public Prosecutions Department. As to the application of the methods like the present one, both in general and in concrete cases, differences of opinion remain possible. The decision lies with the Public Prosecutions Department. The Minister of Justice must be able to carry the political responsibility for that decision. The Commission, however, is of the opinion that, noting the aim of the present inquiry, the application of the methods was sound."

The Report contained a number of classified annexes, consisting of a cover letter, parts of formal reports (processen-verbaal) of hearings of 27 persons and two formal reports on findings (processen-verbaal van bevindingen) of the hearings of a public prosecutor and a chief of police.

The Wierenga Commission recommended the Ministers not to publish these annexes in order to prevent damaging the interests of third persons. This recommendation was accepted by the Prime Minister, the Minister of Justice and the Minister of the Interior and they also undertook to keep certain statements secret where certain persons heard had been promised that their statements would remain classified. Only the Ministers concerned and the Parliamentary Standing Committee on Intelligence and Security Services (Vaste Commissie voor de inlichtingen- en veiligheidsdiensten uit de Tweede Kamer) were provided with this part of the Report of the Wierenga Commission.

The subsequent parliamentary debate on 7 April 1994 in the Lower House resulted in the opening of a parliamentary inquiry (parlementaire enquête) into the methods of criminal investigation used in the Netherlands. The appointed parliamentary commission of inquiry (parlementaire enquêtecommissie) was given the task to inquire into:

- the nature, seriousness and scope of the serious organised crime;
- the factual application, the lawfulness, the amount of consideration given to, and the effectiveness of the methods of criminal investigation; and
- the organisation, the functioning of and the supervision over the criminal investigation.

The parliamentary commission of inquiry presented its final report containing its findings and recommendations on 1 February 1996. In the opening remarks of this report, the President of the commission stated that in the report certain changes in the structure of the investigation authorities were recommended, as it had been found that the prosecution department did not always have sufficient authority over the police. In his words, the police should be made aware that in a democratic legal order it could not operate outside the authority and direction of the prosecution department and public administration, and that the gap, large at times, between distant persons in positions of authority and the day to day reality of crime fighting should be bridged.

COMPLAINTS

1. The applicant complains that the connection of printers to the telephone lines at issue is contrary to Article 8 of the Convention.

2. The applicant complains under Article 6 paras. 1 and 3 of the Convention that he did not receive a fair trial in that it was not possible for him to verify the print-outs as regards the telephone lines to which a printer had been connected.

3. The applicant further complains under Article 6 paras. 1 and 3 of the Convention that he was unable to investigate the origins of the information held by the police and to verify whether the investigation methods used by the police in gathering this information were in conformity with the requirements of Article 6 of the Convention. He

submits that it is within the realm and the duty of the prosecution to disclose fully all police proceedings leading to the origin of the charges against him.

4. The applicant also complains under Article 6 of the Convention of the rejection of his request to add to his case-file the contents of the unpublished part of the Report of the Wierenga Commission which could have shed light on the investigation conducted prior to the official judicial investigation.

5. The applicant finally complains under Article 6 paras. 1 and 3 of the Convention that the Court of Appeal allowed the witness Wortel not to answer questions put by the defence as to the possible use by the police of informers after the start of the criminal investigation against him.

THE LAW

1. The applicant complains that the connection of printers to the telephone lines at issue is contrary to Article 8 (Art. 8) of the Convention.

Article 8 (Art. 8) of the Convention, insofar as relevant, reads:

"1. Everyone has the right to respect for his private ... life ... and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the prevention of ... crime..."

The Commission recalls that communication by telephone falls within the concepts of "private life" and "correspondence" within the meaning of Article 8 para. 1 (Art. 8-1) of the Convention (cf. Eur Court HR, Kruslin and Huvig v. France judgments of 24 April 1990, Series A no. 176-A and 176-B, p. 20, para. 26 and p. 52, para. 25 respectively; and Halford v. United Kingdom judgment of 25 June 1997, Reports 1997-III, no. 39, para. 44). The surveillance by criminal investigation authorities of communications by telephone, either by tapping and recording telephone conversations or by registering other data in this area by the use of surveillance devices, does therefore constitute an interference by a public authority with the exercise of a right guaranteed under Article 8 para. 1 (Art. 8-1) of the Convention.

The question therefore arises whether this interference was justified under Article 8 para. 2 (Art. 8-2) of the Convention.

As to the question whether the placement of the printer on the telephone lines at issue was "in accordance with the law", the Commission has previously examined the Dutch rules on secret surveillance of communications by telephone as contained in, inter alia, Articles 125f-h of the Netherlands Code of Criminal Procedure and found that these rules are sufficiently precise to be considered as "law" within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention (cf. No. 21207/93, Dec. 30.11.94, D.R. 79, p. 31).

The Commission notes that, in the present case, the domestic courts found that the use of the printers was in conformity with Article 125f of the Code of Criminal Procedure. The Commission finds no reason to take a different view.

The Commission further considers that, in the present case, the use of printers in the course of a preliminary investigation into suspected large scale narcotics offences can reasonably be considered as being necessary in a democratic society for the prevention of crime

within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention.

It follows that this complaint must be rejected for being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant complains under Article 6 paras. 1 and 3 (Art. 6-1, 6-3) of the Convention that he did not receive a fair trial in that it was not possible for him to verify the print-outs of the telephones lines to which a printer had been connected, in that he could not verify the origins of the information held by the police which had led to the investigation against him and whether this information had been obtained by lawful means, in that the Court of Appeal rejected his request to add the unpublished part of the Wierenga report to his case-file and in that the Court of Appeal allowed the witness Wortel not to answer a specific question, i.e. whether after the start of the criminal investigation against the applicant further use had been made of police informers.

Article 6 (Art. 6) of the Convention, insofar as relevant, reads:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair .. hearing ... by a ... tribunal established by law. ...

2. ...

3. Everyone charged with a criminal offence has the following minimum rights:
...
b. to have adequate time and facilities for the preparation of his defence;
...
d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
..."

The Commission recalls that the guarantees of paragraph 3 of Article 6 (Art. 6) of the Convention are specific aspects of the general right to a fair trial contained in Article 6 para. 1 (Art. 6-1) of the Convention (cf. No. 25062/94, Dec. 18.10.95, D.R. 83, p. 77). The Commission will therefore examine this part of the application under Article 6 paras. 1 and 3 (Art. 6-1+6-3) taken together.

The Commission further recalls that questions concerning the admissibility of evidence is primarily a matter for regulation by national law and as a general rule it is for the national courts to assess the evidence before them. The task of the Convention organs under the Convention is not to give a ruling as to whether evidence was properly admitted, but rather to ascertain whether the proceedings as a whole, including the way evidence was taken, were fair (cf. Eur. Court, Doorson v. the Netherlands judgment of 26 March 1996, Reports 1996-II, no. 6, p. 470, para. 67).

The Convention does not preclude reliance, at the investigation stage, on sources such as anonymous informants. The subsequent use of information provided by such sources by a trial court to found a conviction may, however, raise issues under the Convention (cf. Eur. Court HR, Windisch v. Austria judgment of 27 September 1990, Series A no. 186, p. 11, para. 30).

As to the origins of the information which led to the police investigation against the applicant, the Court of Appeal found that it had not been made plausible that this information had been unlawfully obtained and that, given the nature of this information, the public

prosecutor had not been wrong in ordering the connection of printers to the two telephone lines at issue.

Noting that the applicant's conviction was not based on any initial information communicated to the police prior to the start of the police investigation against the applicant, but on other evidence obtained in the course of the police and judicial investigation and that the evidence thus obtained was subsequently examined in the course of adversarial proceedings before the trial courts, whereas in these proceedings the trial court did in fact examine the question whether unlawful investigation methods had been used in obtaining this initial information, the Commission cannot find that, in this respect, the proceedings against the applicant fell short of the requirements of Article 6 (Art. 6) of the Convention.

Insofar as the applicant complains that he was unable to verify the data collected by the printers connected at the order of the public prosecutor, the Commission notes that the Court of Appeal held that these data only disclosed whether or not use had been made of the telephone lines at issue and had not served any other purpose useful for the investigation, although it acknowledged that the decision of the public prosecutor to destroy these data had been unlawful and had infringed the rights of the defence to a limited extent.

Noting the limited scope of the information which can be obtained through the use of such printers and considering that the applicant's conviction was not at all based on the data obtained by the use of the printers at issue, but rather, inter alia, on the contents of tapped telephone conversations whereas these conversations and the other evidence were subsequently examined in the course of adversarial proceedings before the trial courts, the Commission does not find that the fact that the applicant could not verify the data obtained by the printers deprived him of a fair trial within the meaning of Article 6 (Art. 6) of the Convention.

As regards the applicant's complaint that the Court of Appeal rejected his request to add the unpublished part of the Wierenga Report to his case-file, the Commission notes that the Court of Appeal found no indication that the unpublished part of this Report contained information as regards the investigation conducted by the police in the applicant's case. This factual finding cannot be reviewed by the Commission under the terms of Article 19 (Art. 19) of the Convention.

Noting that the Wierenga Report concerned an official inquiry into the creation, functioning and disbandment of the IRT in general and further noting that, in the adversarial proceedings in the present case, the Court of Appeal did examine the lawfulness of the methods by which evidence against the applicant had been obtained and the evidence itself, the Commission cannot find that the refusal of the Court of Appeal to add the unpublished part of the Wierenga Report to the applicant's case-file deprived him of a fair hearing within the meaning of Article 6 (Art. 6) of the Convention.

The applicant finally complains under Article 6 (Art. 6) of the Convention that the Court of Appeal allowed the witness Wortel not to answer the question put by the defence whether or not further use of informers had been made following the opening of the criminal investigation against the applicant.

On this point, the Commission recalls that, as a general rule, it is for the national courts to assess the evidence before them as well as the relevance of the evidence which the defence seeks to adduce. More specifically, Article 6 para. 3(d) (Art. 6-3-d) of the Convention leaves it to them, again as a general rule, to assess whether it is appropriate to call witnesses. It does not require the attendance and examination of every witness on the accused's behalf (cf. Eur. Court HR, Vidal v. Belgium judgment of 22 April 1992, Series

A no. 235-B, p. 32, para. 33).

The Commission further recalls that it follows from the national courts' margin of appreciation in assessing the relevance of the evidence which the defence seeks to adduce that they also have a margin of appreciation in controlling the accused's questioning of such witnesses as are called (cf. No. 30059/96, Dec. 26.2.97, unpublished).

The Commission finds no indication in the case-file that the evidence before the Court of Appeal included any information obtained by the investigation authorities from informers after the start of the criminal investigation against the applicant. Consequently, the Court of Appeal did not have to address any questions related to such informers in the applicant's case.

In these circumstances, the Commission cannot find that the decision of the Court of Appeal allowing Mr Wortel not to answer the question at issue was unreasonable or arbitrary or otherwise contrary to the applicant's defence rights under Article 6 paras. 1 and 3 (Art. 6-1, 6-3) of the Convention.

It follows that this part of the application must also be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

J.-C. GEUS
President
of the Second Chamber