



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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 52391/99  
by M. RAMSAHAI and Others  
against the Netherlands

The European Court of Human Rights (Third Section), sitting on  
3 March 2005 as a Chamber composed of

Mr B.M. ZUPANČIČ, *President*,  
Mr J. HEDIGAN,  
Mr L. CAFLISCH,  
Mrs M. TSATSA-NIKOLOVSKA,  
Mr V. ZAGREBELSKY,  
Mr DAVID THÓR BJÖRGVINSSON, *judges*,  
Mrs W. THOMASSEN, *ad hoc judge*,

and Mr M. VILLIGER, *Deputy Section Registrar*,

Having regard to the above application lodged on 8 September 1999,

Having regard to the decision to grant priority to the above application  
under Rule 41 of the Rules of Court,

Having regard to the observations submitted by the respondent  
Government, the observations in reply submitted by the applicants, and the  
further observations submitted by the Government and the applicants  
respectively,

Having deliberated, decides as follows:

## THE FACTS

The applicants are all Netherlands nationals resident in Amsterdam. They are represented before the Court by Mr G.P. Hamer, a lawyer practising in Amsterdam.

The respondent Government are represented by Mr R.A.A. Böcker and Ms J. Schukking of the Ministry for Foreign Affairs.

The first two applicants, Renee Ghasuta Ramsahai and Mildred Viola Ramsahai, are the grandfather and grandmother, respectively, of Moravia Siddharta Ghasuta Ramsahai, deceased (hereinafter Moravia Ramsahai). They were both born in 1938. They were the latter's guardians until he reached his majority at the age of eighteen. The third applicant, Ricky Moravia Ghasuta Ramsahai, born in 1960, is the father of the late Moravia Ramsahai.

Moravia Ramsahai was born on 6 December 1979. He died on 19 July 1998.

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

### **A. The circumstances surrounding Moravia Ramsahai's death**

In the evening of Sunday 19 July 1998, during the “Kwakoe” festival in the Bijlmermeer district of Amsterdam (a celebration by the Surinamese immigrant community of the abolition of slavery in Suriname 135 years earlier), Moravia Ramsahai forced the owner of a scooter at gunpoint to give up his vehicle. Having gained control of the scooter, he then made off with it.

The owner of the scooter notified a police officer who reported the robbery to the Flierbosdreef station of the Amsterdam police by radio. The duty police officer in turn alerted police patrolling in the area.

Some five minutes later, two uniformed police officers, Officers Brons and Bultstra, patrolling in a marked police car, saw a scooter driven by a person fitting the descriptions given them stopping near a high-rise building by the name of “Huigenbos”. They stopped the car and got out. Officer Bultstra ran towards the person whom they had seen riding the scooter, later identified as Moravia Ramsahai, and tried to arrest him.

It appears that Officer Bultstra saw Moravia Ramsahai draw a pistol from his trouser belt. Officer Bultstra then drew his service pistol and ordered Moravia Ramsahai to drop his weapon. This Moravia Ramsahai failed to do. Officer Brons, the driver of the patrol car, then approached. He also drew his service pistol. It appears that Moravia Ramsahai raised his pistol and pointed it at Officer Brons, who fired. Moravia Ramsahai was hit in the neck. At 10.03 p.m. Officer Brons radioed to the Flierbosdreef police station that he had shot someone and asked for an ambulance to be sent.

When the ambulance arrived on the scene, at approximately 10.15 p.m., the ambulance crew found Moravia Ramsahai already dead.

Upon his return to the Flierbosdreef police station, Officer Brons was seen by the commanding officer of the Amsterdam/Amstelland police force, Police Commissioner Van Riessen.

Local police secured technical evidence and took the names of a number of witnesses.

Later that night a special operations platoon (*Mobiele Eenheid*, “Mobile Unit”) of the Amsterdam/Amstelland police questioned all residents of the Huigenbos building found at home. No one could give any relevant information.

An autopsy was performed on Moravia Ramsahai's body on 20 July 1998, after which the body was released to his next of kin.

Also on 20 July 1998 the Amsterdam/Amstelland public information bureau published a press release in the following terms:

**“Police shoot down armed scooter thief**

Last night, at around 10 p.m., an eighteen-year-old youth who drew a firearm was shot down close by the Huigenbos building by a policeman. Shortly afterwards he died there of his wounds.

The victim had shortly before been present at the location of the Kwakoe festival. There he had gone up to a young man who was in possession of a brand new scooter. He had pushed a pistol into the young man's side and thereby forced him to hand over the scooter. He had also forced the owner to tell him how the alarm worked and had then made his escape.

The owner of the scooter reported the robbery to two police surveillance officers. They set off in pursuit of the thief and asked for assistance via the police radio room.

The thief managed to start the vehicle and make a rapid escape.

Shortly afterwards the suspected thief was noticed with the scooter on the Huntumdreef by the crew of a police car. The fellow (*knaap*) rode the scooter off the shoulder and crossed the lawn towards one of the entrances of the Huigenbos building. Having arrived there he rode the scooter into the hallway.

The passenger of the police car followed the suspect on foot and also ran towards the entrance. As he arrived there, the suspect came out again. The man drew a pistol. The policeman called out several times 'Drop the gun'. By this time the other policeman had also reached the entrance of the building. He saw that the suspect was starting to aim the firearm at his fellow officer (*het vuurwapen op zijn collega begon te richten*) and forestalled that danger with a shot from his service pistol. The suspect was hit and died shortly afterwards.

The suspect's pistol, which was loaded, has been seized. The State Criminal Investigation Department (*Rijksrecherche*) has begun an investigation into the shooting incident.”

Subsequently, as the applicants allege, Police Commissioner Van Riessen was quoted in the mass circulation daily newspaper *De Telegraaf* as having said that he would not co-operate with any further fact-finding body (“*Wat voor een onderzoekscommissie er daarnaast ook wordt ingesteld, ze komen er bij mij niet in*”).

Officers Brons and Bultstra were back on duty a few days after the shooting incident.

A criminal investigation was ordered, during which – as the applicants allege – Officers Brons and Bultstra were assisted by a single advocate retained by the police, Mr L.J.B.G. van Kleef. Ultimately the public prosecutor responsible, finding that Officer Brons had acted in legitimate self-defence, decided that no prosecution should be brought.

The applicants brought two sets of proceedings, one before the Court of Appeal (*gerechtshof*) of Amsterdam aimed at obtaining a court order overturning the public prosecutor's decision not to prosecute Officer Brons, the other before the Police Complaints Board (*Commissie voor Politieklachten*) to obtain redress for what they considered deficiencies in the way in which the Amsterdam/Amstelland police had acted in the wake of the death of Moravia Ramsahai. Neither set of proceedings produced the result which they sought.

## **B. The police investigation**

### *1. The questioning of the inhabitants of the Huigenbos building*

During the night of Sunday 19 July 1998, a platoon of police officers belonging to a mobile special operations unit and commanded by a police superintendent went door to door seeking statements from the inhabitants of each of the 135 apartments in the Huigenbos building.

According to the official report drawn up the following day by Detective Sergeant Wouter Barend Nicolaas Dolman of the Amsterdam/Amstelland police, three apartments had been uninhabited. The inhabitants of 75 apartments had been away. The inhabitants of 47 apartments had been at home, but had seen or heard nothing. The inhabitants of nine apartments had heard the shot fired. In one apartment a twelve-year-old girl was found, named Sangeeta Edwina Pamela Mungra, who stated that when she had got out of the lift on the ground floor, the door of the lift had struck a scooter lying on the floor. As she had got out of the lift she had heard a bang. She had seen two police officers and heard them say: “I have fired.” She had seen a male victim lying on the ground. She had panicked, fled into the lift and gone back home.

2. *Statements taken by various members of the Amsterdam/Amstelland police force*

a. **Statement by Vinod (or Vinodkumar) Hoeseni dated 19 July 1998**

Mr Hoeseni reported the theft of his scooter to the Amsterdam/Amstelland police on 19 July 1998 at approximately 11.15 p.m. His statement was taken by Senior Police Officer Benthem of the Amsterdam/Amstelland police force.

Mr Hoeseni had bought the scooter earlier that week. The night of 19 July 1998 he had ridden it to the Kwakoe festival where he had met his girlfriend. While he was with her, a youth unknown to him had come up to him and said: "Get off. Get off. I shoot you, I shoot you." ("*Deraf. Deraf. Ik schiet jou, ik schiet jou.*"). Mr Hoeseni had felt something being pushed against his right side. Looking down, he had recognised the object as a lady's pistol. He had been unwilling to give up the scooter but his girlfriend had advised him to lest he be shot. He had then let go of the scooter and run towards the first policeman he saw.

Mr Hoeseni had told the police officer that his scooter had been stolen at pistol-point and that they should run after it. He had given a description of the scooter and the thief. Mr Hoeseni and the two police officers had gone after the thief with the scooter, but he had ridden off.

He had heard, on the police officers' two-way radio, that the scooter had been found. Together with the police officers he had gone to a lawn where he had heard the scooter's alarm. He had seen his scooter surrounded by police and identified it as his.

He had not recognised the thief as anyone he knew.

b. **Anita Andjiedewie Bhondoe, questioned on 19 July 1998**

Ms Bhondoe was questioned by Detective Sergeant Wouter Barend Nicolaas Dolman of the Amsterdam/Amstelland police force on 19 July 1998 at 11.15 p.m.

Ms Bhondoe had gone with her brother to the Kwakoe festival, where she had met her boyfriend Vinob (or Vinod, or Vinodkumar). Vinob had just bought a new scooter. Ms Bhondoe's brother had gone to fetch something to drink for the three of them.

After about fifteen minutes she and Vinob had been approached by a youth whom she had noticed looking at her and the scooter. The youth had said to Vinob: "Get off, get off" (*Stap af, stap af*) and had pressed an object resembling a firearm against Vinob's belly. She had thought at first that this was a friend of Vinob's playing a prank, but had realised from Vinob's facial expression that this was not the case. She had prevailed on Vinob to get off the scooter when the youth had said: "Get off, get off, or I will shoot" (*Ga eraf, ga eraf, anders ga ik schieten*). Vinob had then run off to get help,

whilst the youth had bump-started the scooter and made off with it. Vinob had returned with two police officers and the three of them had run after the youth on the scooter. Ms Bhondoe had joined them for a bit but had been called back by her brother. Together they had run in the direction taken by the police officers. Arriving at the Huigenbos building, they had seen a large number of cars. Vinob had told them that the youth had been caught and that the police had shot him. After Vinob had spoken with the police, she and he had been taken to the police station to make a statement.

**c. Petrus van den Heuvel, questioned on 19 July 1998**

This witness was questioned by Police Sergeant Maria Cornelia de Bruijn of the Amsterdam/Amstelland Regional Police Force. He stated that he lived on the fifth floor of the Huigenbos building. Happening to look down from the walkway, he had seen a policeman run towards the doorway. He had seen a coloured man with a shaved head come out of the doorway. He had seen the policeman try to grab the coloured man by his arm. The coloured man had made a sideways movement with his arm, as if to say that he did not want to go along with the policeman, and the policeman had not been able to hold on to him. The coloured man had then drawn a pistol or a revolver, whether out of his pocket or out of his trouser band Mr van den Heuvel could not see. The weapon was a silver grey colour with a dark coloured grip. Mr van den Heuvel's instinctive reaction had been to dive for cover behind the balustrade of the walkway. As he glanced over briefly out of curiosity, it had appeared to him that the policeman had taken a few steps sideways. The coloured man had still had the weapon in his hand. He had not pointed it in any particular direction, but he had not dropped it either. All this happened very quickly, perhaps in less than half a minute. In the meanwhile a second policeman had come running. He had heard "Drop it" being shouted very loudly at least four times. The coloured man must have heard it, but ignored it.

Mr van den Heuvel did not remember the second policeman standing still after he had reached the scene of events. He had heard a bang and he had seen the coloured man collapse. The weapon had fallen to the ground a few metres away. The first policeman had walked up to the coloured man to inspect. The second policeman had spoken into some device or other, after which help had arrived. He had tried to call the police on his telephone, but had been told that help was on the way. He had stood and watched awhile longer, then gone down and given his name to the police as a witness.

**d. Police Officer Bas Dekker, questioned on 20 July 1998**

Officer Dekker was heard by Senior Police Officer Benthem of the detective section (*afdeling recherche*) of the Amsterdam/Amstelland police force and based at the Flierbosdreef police station.

At around 10.05 p.m. the night before, Officer Dekker had been patrolling the Kwakoe festival with Officer Boonstra. He had been addressed by a young man whom he did not know, who told him that he had been dragged off his scooter and that his scooter had been taken from him; this had happened less than a minute earlier. The young man had given him the insurance papers of the scooter and indicated the direction in which the thief and the scooter had gone.

Officers Dekker and Boonstra, together with the young man, had run in the direction indicated by the latter. While running Officer Dekker had radioed through the description of the scooter to other police officers. At this point he had not been aware that the thief had used a weapon; the owner of the scooter had not mentioned it. Officer Dekker had assumed that the thief had used physical force only, the owner of the scooter having stated that he had been dragged off his vehicle.

The thief had managed to start the scooter as they had caught sight of him. They had continued running but the scooter had been faster. Officer Dekker had radioed through his own description of the scooter and its rider, the possible directions in which they might have gone and its insurance plate number. They had continued running; upon reaching the pedestrian underpass Officer Dekker had heard, on his radio set, another policeman reporting a shooting incident and shortly after calling an ambulance. Officer Dekker estimated the lapse of time between his transmitting his description of the scooter and the report of the shooting at approximately one minute but he could not be sure.

As Officers Dekker and Boonstra stood wondering whether there was any connection between the shooting and the theft of the scooter, the owner of the scooter, who had apparently overheard the police radio, had told them that the thief had a small silver coloured pistol.

Officers Dekker and Boonstra and the owner of the scooter had made their way to the scene of the shooting in front of the Huigenbos building. They had seen a person lying supine on the ground, two uniformed police officers kneeling beside him. They had advanced and recognised the scooter. Officer Dekker had taken the particulars of the owner of the scooter and made arrangements for him and his companion to be taken to the police station so that they could make a statement.

**e. Police Officer Paulus Antonius Braam, questioned on 20 July 1998**

Police Officer Braam was questioned by Police Sergeant Theodorus Johannes Gerarda Limbeek of the Amsterdam/Amstelland police, detective support bureau of the Flierbosdreef police station. His work consisted of, among other things, following and dealing with two-way radio traffic.

On 19 July 1998 at 9.55 p.m. Officer Braam had been sitting at his plotting table when he had heard a report come in by two-way radio from a supervising police officer that he was following a youth who had just stolen

a scooter. A little later this officer had radioed in to say that the thief had managed to bump-start the scooter, and to give an indication of the direction in which he had gone. The officer had sounded unemotional, as if there were nothing the matter other than an “ordinary” robbery of a scooter.

The officer being on foot, he had requested the assistance of a motorised colleague. In so doing he had given a description of the scooter. Officer Braam had asked a colleague on a motorcycle to go in the direction indicated.

As the motorcycle policeman had been about to leave the courtyard of the police station, Officer Braam had heard Officer Bultstra from his marked police car report that he had seen the scooter with the thief go into the doorway of the third lift of the Huigenbos building and would go after them. Officer Bultstra too had sounded unemotional.

Perhaps four or five minutes later, perhaps less, Officer Braam had heard Officer Bultstra saying: “The suspect has been shot, I want an ambulance”. Again, Officer Bultstra had sounded calm and businesslike. At this, Officer Braam had summoned the appropriate services.

Officer Braam had not heard Officer Brons take part in the radio conversation. This reflected standard practice, namely that the driver of a police car – in this case Officer Brons – had his two-way radio set to the frequency of the central incident room, whereas the “passenger” – Officer Bultstra – had his radio set to the frequency used by the local team.

**f. Police Officer Renate Quirina van Daal, questioned on 20 July 1998**

Officer Van Daal was questioned by Senior Officer Petrus Wilhelmus Martinus Leerkes of the Amsterdam/Amstelland police force.

Officer Van Daal was a uniformed police officer on the basic police assistance staff. The previous night she had been seated at the plotting table from 8.15 p.m. until midnight. Until the shooting it had been a quiet night. She had sat there with Officer Braam and Police Superintendent Casper Sikking.

At around 10 p.m. she had heard, on the radio frequency used by the district police, that a police officer was chasing a scooter, and also which direction the scooter had taken. She did not remember the precise wording, nor any description given of the rider.

Shortly afterwards she had heard the voice of Officer Bultstra, reporting the sighting of the scooter. A second or two later Officer Bultstra had reported seeing the scooter in a doorway of the Huigenbos building.

Superintendent Sikking had called by radio: “All right boys, everyone go to Huigenbos.” (*Jongens met z'n allen naar Huigenbos*).

Very shortly afterwards Officer Bultstra had said: “I want an ambulance, I have fired” (*Ik heb geschoten*). Superintendent Sikking had asked him to repeat that. Officer Bultstra had repeated: “I have fired.” Hereupon most of



the police officers present had gone out and Officers Van Daal and Braam had contacted the appropriate emergency services.

Officer Van Daal had later heard Officer Brons say that the ambulance was needed urgently because the suspect was in a very bad way.

It was only later that Officer Van Daal had been informed by other police officers that it was in fact Officer Brons who had fired.

**g. Police Officer Bruin Jan van Dongen, questioned on 20 July 1998**

Police Officer Van Dongen was a police dog handler holding the rank of police sergeant whose duty station was the Flierbosdreef police station. He was questioned by Police Sergeant Lof of the Amsterdam/Amstelland police force.

Officer Van Dongen had been on duty the previous night, with his police dog.

He had heard, by two-way radio, that a scooter had been stolen at the Kwakoe festival. The direction in which the thief had driven off was given. The description was of a coloured male, dressed in black, riding a red scooter. Officer Van Dongen had gone in the direction indicated.

Officer Van Dongen's car was passed by a marked police car containing two police officers, of whom he had recognised the driver, Officer Brons, but not the passenger. He had seen the car being parked and the passenger emerge.

Officer Van Dongen had also parked his car, intending to look for the thief if he could. He had been getting the police dog out when he had heard a pistol shot.

He had run with the dog in the direction from which the sound of the shot had come. Having reached the Huigenbos building, he had met Police Officer Brons coming towards him. He had seen Officer Bultstra kneeling near the head of a male who was lying flat on the ground.

He had asked Officer Brons what had happened. Officer Brons had replied that there had been shooting. Officer Van Dongen had asked who had fired. Officer Brons had replied that a pistol had been aimed at them and the police had fired.

Officer Brons had pointed out a silver coloured pistol lying on the ground close to the man. Officer Bultstra had been administering first aid. Officer Van Dongen had not been able to see any injury. He had had to keep his distance from the man because of the dog.

The man on the ground fitted the description given of the person who had stolen the scooter. There had been a red scooter in the doorway of the building and so Officer Van Dongen had understood that this was the person suspected of having committed the robbery.

Officer Van Dongen had heard Officer Brons notify the local health authority and the police superintendent on duty. Officer Van Dongen had guarded the area until the arrival of the criminal investigators (*recherche*)

and the forensic technical experts. He had stayed on the spot until they had finished and had returned to the police station at midnight.

**h. Police Officer Klaas Boonstra, questioned on 20 July 1998**

Police Officer Boonstra, a police officer serving a one-year apprenticeship and based at the Remmerdenplein police station, was questioned by Detective Sergeant (*brigadier-rechercheur*) Dolman of the Amsterdam/Amstelland police force.

Officer Boonstra had been assigned, together with Police Officer Bas Dekker, to patrol the Kwakoe festival, their task being to observe and to maintain a preventive presence. At a certain moment, a Hindustani<sup>1</sup> male had come up to them running and had motioned to them to follow him. Because the Hindustani had given the impression that something was the matter, they had followed him. While running he had told Officer Dekker what the matter was. Officer Boonstra had been following at a distance of about ten metres.

Officer Boonstra had heard on his two-way radio that a scooter had been stolen. It had not been immediately clear to him that the scooter belonged to the Hindustani.

At a certain moment they had seen the scooter thirty metres ahead of them, being ridden slowly. Officer Dekker had told Officer Boonstra that that was the scooter which had been stolen. The person riding the scooter had noticed the police officers but instead of stopping, had increased speed. Moving in the direction of the Huigenbos building, they had heard it said on two-way radio that there had been a shooting incident. They had not immediately linked the shooting to the stealing of the scooter. Still accompanied by the Hindustani, they had continued in the direction of the Huigenbos building, where they had noticed three or four police cars. The Hindustani had recognised his scooter.

**i. Najima Boujedaine, questioned on 21 July 1998**

Ms Boujedaine was questioned by Senior Police Officers Petrus Wilhelmus Marinus Leerkes and Anthonius Petrus Lof, both of the Amsterdam/Amstelland police force.

Ms Boujedaine worked as chief cashier at a Burger King restaurant located on the Leidseplein in Amsterdam. On 19 July 1998 she had been on the night shift, from 6.30 p.m. until 5 a.m. the following day.

She had noticed the presence of a particular youth from 6.30 p.m. onwards. She described him as being of Surinamese or Antillean descent, eighteen years old, bald-headed with two golden teeth, dressed in a black

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<sup>1</sup> Hindustani: a Surinamese (or a member of the Surinamese immigrant community in the Netherlands) who is descended from indentured labourers recruited from the Indian subcontinent in the nineteenth century.

tee-shirt and trousers and black shoes and wearing a golden chain around his neck. From 7.30 p.m. onwards she had noticed him distracting one of the cashiers, a young woman called Nancy.

Taken to task for failing to concentrate on her work, Nancy had explained to Ms Boujedaine that the youth was her boyfriend. The youth had reacted angrily, telling Ms Boujedaine to go easy on Nancy or else.

After having told Nancy, jokingly, that she might have to stay a little longer, Ms Boujedaine had seen the youth staring at her fixedly. This had frightened her, but she had not wished to show fear. Just before she had turned round to draw a soft drink she had seen his right hand move towards the band of his trousers.

Ms Boujedaine's sister Mimount (or Mimout), who also worked at that restaurant, had then said: "Najima, he was aiming a pistol at you!" Ms Boujedaine had turned round and had seen the youth stick something down the band of his trousers. Mimount had later described the pistol as a small silver-grey model known as a "ladykiller".

A Surinamese girl had then asked the youth a question in her own language and he had replied. She had then told Ms Boujedaine that she had asked the youth whether he was carrying a pistol, to which he had replied in the affirmative.

The youth had looked as though he might have been smoking cannabis, but Ms Boujedaine could not be sure of that.

He had continued to bother Nancy in her work. He had left several times and come back. At a certain moment he had returned on a brand new silver-grey scooter.

The youth had struck up a conversation with Ms Boujedaine in which he had indicated that he wanted to clear out the safe after closing time; he had wanted her to give him the codes of the safe. In the course of this conversation he had been eyeing the drawers of the cash registers.

Several times he had repeated that it was already 9 p.m. and Ms Boujedaine should close Nancy's cash register.

Ms Boujedaine had felt uncomfortable and frightened, particularly after the youth had signalled his intention to wring the manager's neck.

The youth had become angry again at 9 p.m., when Ms Boujedaine had terminated the conversation. Ms Boujedaine had then locked up Nancy's cash register and secured the tray. She had seen him and Nancy leave at around 9.30 p.m., on the scooter on which he had arrived earlier.

**j. Ronald de Getrouwe, questioned on 22 July 1998**

Mr de Getrouwe had come forward after hearing of the shooting incident at the Huigenbos building. He wished to report having been threatened. His statement was taken down by Police Sergeant Wouter Barend Nicolaas Dolman of the Amsterdam/Amstelland police force.

On Sunday, 19 July 1998 at 8.15 p.m. he had been on the Kwakoe festival ground with his wife and some friends. There had been a group of youths behind them, one of whom had been seated on a scooter or moped (*bromfiets*). Mr de Getrouwe described the vehicle as having a blue fairing. At a certain moment this youth had started the engine and repeatedly opened the throttle, releasing large quantities of exhaust gases. This had given rise to complaints from Mr de Getrouwe's group. Mr de Getrouwe himself had then gone up to the youth and asked him either to ride off or to turn off his engine, because he was poisoning everyone with his noxious fumes. The youth had turned off the engine and approached Mr de Getrouwe, saying: "You're smoking [a cigarette], you're going to die too." Mr de Getrouwe had thought that the youth wanted to discuss the matter like a reasonable person. Instead, the youth had taken a small metal-coloured pistol out of his right-hand trouser pocket and said: "Nobody's going to tell me what to do. I do as I please, we're all going to die anyway."

Mr de Getrouwe's wife, greatly upset by the sight of the pistol, had pulled Mr de Getrouwe away. The youth had got back onto the scooter.

None of the bystanders, who had been many, had offered any assistance. They had clearly been deterred by the sight of the pistol.

**k. Sanchaai Kumar Bhondoe, questioned on 22 July 1998**

Mr Bhondoe was questioned by Senior Police Officer Lof of the Amsterdam/Amstelland police force.

On Sunday 19 July 1998, between 8.30 p.m. and 10 p.m., he had been at the Kwakoe festival in the company of his sister and his friend Vinod. He had left them to fetch something to drink for the three of them. He had heard shouting, and he had seen Vinod run towards some police officers present. He had run after Vinod and asked him what the matter was. Vinod had answered that he would tell him later. He had found his sister in tears and asked her what had happened. She had told him how Vinod had been forced at gunpoint to hand over his scooter.

Mr Bhondoe's sister had taken fright and had fled to Utrecht. Friends of the thief were out looking for Vinod, who was planning to go into hiding.

**l. Najima Boujedaine, questioned on 23 July 1998**

Ms Boujedaine was questioned a second time, this time in her own home, by Senior Police Officers Petrus Wilhelmus Martinus Leerkes and Piet Wouda of the Amsterdam/Amstelland police.

She indicated that she was afraid of reprisals by the youth's family and asked the police officers to remove her statement from the file.

Ms Boujedaine's sister Mimout (or Mimount), who had witnessed the events in the Burger King restaurant on the Leidseplein, felt similarly. This had made the police officers decide not to question her.

### **C. The investigation by Detective Chief Superintendent Van Duijvenvoorde of the State Criminal Investigation Department**

Detective Chief Superintendent of the State Criminal Investigation Department (*hoofdinspecteur van politie-rijksrecherche*) Van Duijvenvoorde was put in charge of the investigation. He drew up a report of his actions and findings and took the statements summarised below.

Detective Chief Superintendent Van Duijvenvoorde's investigation report states that after 1.30 p.m. on 20 July 1998 the Amsterdam/Amstelland police force only carried out investigations at the request of the State Criminal Investigation Department “in the periphery of Moravia Ramsahai”.

#### *1. Statements taken by Detective Chief Superintendent Van Duijvenvoorde*

##### **a. Petrus van den Heuvel, questioned on 21 July 1998**

Supplementing his earlier statement, Mr van den Heuvel, now questioned by Detective Chief Superintendent Van Duijvenvoorde, described what he had seen from the fifth floor walkway of the high-rise building. He had seen a uniformed police officer running towards the doorway. He had seen a coloured male go to meet the policeman from the doorway. This man was walking very slowly, at a snail's pace. The police officer had wanted to grab hold of the man, by his left arm, as it appeared to Mr van den Heuvel. The coloured man made a gesture as if to repulse the police officer. He hit the police officer, knocking him off balance somewhat, which enabled the coloured man to pass. After he had passed the police officer, the coloured man had drawn a pistol or a revolver, a firearm at any rate, which he had held in his right hand. He had held his arm slanted downwards, thus pointing the pistol towards the ground, and had tried to continue on his way. Mr van den Heuvel had not seen the police officers draw their pistols. Feeling threatened by the pistol which the coloured man had drawn and not wishing to be hit by a stray bullet, he had dived for cover. He had therefore not witnessed the actual shooting, but he had heard shouts of “Drop it”, several times.

##### **b. Police Officer Brons, questioned on 22 July 1998**

Police Officer Brons, by then under investigation as a suspected perpetrator of a criminal act, was questioned by Detective Chief Superintendent of the State Criminal Investigation Department Van Duijvenvoorde in the afternoon of 22 July 1998.

Officer Brons had joined the Amsterdam municipality police (*gemeentepolitie*), as it existed at the time, in 1984. He had been promoted to operational police officer (*agent*) in 1985 and had been based at the

Flierbosdreef station from the beginning. He had been promoted to the rank of police sergeant on 1 February 1996. He was a traffic safety professional.

Officer Brons and Officer Bultstra had completed some assignments and were on their way back to the police station. They were in a marked police car, with Officer Brons driving. They had then received the radio call about the theft of the scooter. They had been told the make of the scooter and its colour and had been given a summary description of the thief and the direction in which he had fled. They had not been told that he was armed.

Driving in the direction given, Officers Brons and Bultstra had seen a scooter and a driver fitting the description given them turning into the doorway of a lift of the Huigenbos high-rise building. This had surprised them, because they would have expected him to try and evade arrest on noticing that he was being followed by a marked police car.

Officers Brons and Bultstra had agreed that Officer Bultstra would go after the thief while Officer Brons parked the car. Officer Bultstra had run towards the doorway holding a two-way radio. When Officer Bultstra was at a distance of between twenty and twenty-five metres from the doorway, the thief had emerged and run for a short distance. He had stopped and raised his hands when he had seen Officer Bultstra and shouted something unintelligible. Officer Bultstra had taken hold of the thief with both hands and had tried to turn him towards the building. The thief, however, had resisted. Officer Bultstra had shouted something to him which Officer Brons had been unable to understand. Officer Brons had understood that the thief would not come quietly and that Officer Bultstra needed help; he had therefore left the car and run towards them. He had reached a point about five or seven metres distant from the thief when the thief managed to tear himself loose and ended up at a distance of about three metres from Officer Bultstra. Suddenly Officer Brons had seen the thief holding a silver-coloured weapon which he had not seen him draw. It was a small pistol and it was pointed towards the ground. Officer Brons had not seen whether or not the pistol was cocked. It had seemed to him that Officer Bultstra had also seen the pistol, because Officer Bultstra had stepped backwards, drawing his service pistol and adopting a defensive posture. He had heard Officer Bultstra shouting "Drop that weapon. Don't be silly, man." (*"Laat vallen dat wapen. Doe nou normaal man."*) at least twice. The thief had not reacted by dropping his pistol, much to the surprise of Officer Brons seeing that Officer Bultstra had him covered. Given that the thief was armed and apparently had no intention of doing as he was told, Officer Brons had considered that Officer Bultstra was under threat. He had considered it highly possible that the thief would use his weapon against Officer Bultstra. He had been completely fixated on the thief. He had seen only the thief, holding a pistol with his finger on the trigger. At that point Officer Brons had not yet considered it necessary to draw his own service pistol because

the thief was covered by Officer Bultstra. His hand had been close to, but not on the holster.

Officer Brons had then seen the thief turn to the right, towards him, and turn the front of his body in his direction at a distance of five to seven metres. He had seen the thief raise his pistol and point it in his direction. Afraid that the thief would fire at him, Officer Brons had drawn his pistol from its holster with lightning speed (*bliksemsnel*) and had immediately fired one shot at the thief. He had had no time to aim at any particular part of the body. He remained convinced that if he had not fired first, the thief would have shot him.

Officer Brons had thought at the time that he had hit the thief high in the chest. Only later had he learned that he had hit the thief in the neck. The thief had remained on his feet for a short while longer; he had then tottered and collapsed, dropping the pistol. He had tried to stand up, milling his arms about. Officer Brons had pushed the thief's pistol away with his foot to prevent him from grabbing it.

Officer Bultstra had approached the man as he lay on the ground. Seeing that the thief was no longer a threat, he had put up his pistol.

Officer Brons had contacted the police station by two-way radio and had asked for the intervention of the local health authority (*Gemeentelijke Geneeskundige en Gezondheidsdienst*, "GG&GD"). Feeling that they were long in coming, he had again called the police station and asked them to hurry up.

Officer Bultstra had concerned himself with the victim. He, Officer Brons, had removed himself from the scene. He had seen a man trying to enter the doorway and had asked him not to do so because the area had to be fenced off for investigation.

Officers Brons and Bultstra had been taken back to the police station by a fellow officer. Officer Brons had handed in his pistol there. Officers Brons and Bultstra had received assistance and comfort from fellow officers and superiors and had been informed about the further procedure.

Officer Brons had only fired once. It had never been his intention to shoot to kill, but only to end the life-threatening situation. He felt that he had had no choice. He greatly regretted that the thief had died.

Officer Brons identified the thief's pistol on photographs.

#### **c. Officer Bultstra, questioned on 22 July 1998**

Officer René Bultstra had begun his police career in 1988 in the airport police. In 1992, after the duties of the airport police had been taken over by the Royal Military Constabulary, he had been transferred to what was then the Amsterdam municipal police force. He had been appointed as an operational police officer in 1994, after training. He had been promoted to senior police officer (*hoofdagente van politie*) in the Amsterdam/Amstelland police force on 1 June 1997.

He and Officer Brons had been on their way back to the Flierbosdreef police station after completing an assignment when they had received word by two-way radio that another policeman was pursuing on foot a thief who had just stolen a scooter. They had heard the description of the scooter and the thief, and the direction the thief had taken. It had not been mentioned that the thief was armed. They had then gone to intercept the thief.

Seeing a person and a vehicle matching the description given travelling towards a particular high-rise building, they had decided to park the car and arrest him. They had agreed that Officer Bultstra would leave the car immediately and pursue the man, after which Officer Brons would lock up the car and join Officer Bultstra.

Officer Bultstra had seen the man on the scooter ride into the doorway of the building. Having closed to a distance of twenty metres from the building, Officer Bultstra had seen the man come running out of the doorway. Seeing Officer Bultstra, the man had called: "So what's the matter then? What's the matter then?" (*"En wat nou? En wat nou?"*) His arms had been dangling along his body. He had raised them slightly when asking that question. Officer Bultstra and the man had approached each other. The man had glanced sideways to the right and left, apparently looking for a way to evade capture. His preference appeared to be for an underpass through the building, so Officer Bultstra had gone to head him off. His intention had been to grab the man and arrest him.

Officer Bultstra had grabbed the man by his left arm and pushed him bodily against the building. The man had made an aggressive impression on him because of his posture and his way of talking, and had appeared intent on resisting arrest. He had managed to tear himself loose and turn around. He had then taken two steps backwards, towards the doorway. His hands had been close to his body and his body had been poised forwards, and his posture had been threatening.

The man had then brought his right hand towards the left of his chest or his belly, as a person would who was about to draw a firearm from there. He had looked Officer Bultstra straight in the eye and said: "So what's the matter then?" (*"En wat nou?"*). Officer Bultstra had not seen him stick his hand inside his clothing. Seeing the gesture, Officer Bultstra had thought that the man was acting like someone who was about to draw a weapon. His common sense had told him to watch out. He had stepped backwards and placed his right hand on his service pistol, releasing the holster clip at the same time. He had not drawn his service pistol but had positioned himself so as to be able to do so immediately. Pointing to the man with his left hand, he had called out: "Show your hands. Don't be silly." (*"Laat je handen zien. Doe normaal."*). The man had then dropped his hand and resumed his earlier posture, his arms dangling along his body. He had said: "So what is it then? What is it then?" (*"En wat dan? En wat dan?"*) and had walked away from Officer Bultstra. His body had still been poised towards Officer



Bultstra and his eyes had still been directed towards him. Officer Bultstra had remained in the same position.

The man had again brought his right hand towards his body, the same place as before, and the man had taken hold of something. Officer Bultstra had not been able to see what it was. After the man had moved his hand away some distance from his body, Officer Bultstra had seen that he was holding a small silver-coloured pistol in his fist. The situation was now so threatening that Officer Bultstra had drawn his service pistol to protect himself. In view of the man's behaviour he was afraid that the man might fire. Officer Bultstra had taken hold of his service weapon in both hands and adopting a defensive position had aimed at the man's chest. He remembered shouting "Drop it" ("*Laat vallen*") several times. He might have shouted other things, but he did not remember having shouted anything other than "Don't be silly. Drop it." ("*Doe normaal. Laat vallen.*"). He had seen the man lower the hand holding the pistol along his body, so that the barrel was pointing towards the ground. The man had kept the front of his body turned towards Officer Bultstra, his legs slightly apart and his arms out – that is, not hanging limp – and he had kept turning his hands so that the pistol also kept changing direction. The barrel had however been kept aimed at the ground. Officer Bultstra described the man's posture as that of a cowboy who could start shooting at any moment. He had felt threatened to the point where he had decided to fire should the man point his pistol at him. He had been in fear of his life, convinced that the man would gun him down given the chance. As he remembered, this situation had lasted for about four seconds, during which time he had called out to the man twice to drop his pistol. This the man had not done. Things had happened very quickly; he estimated that the time from the moment he grabbed the man until the fatal shot had been no more than fifteen or twenty seconds.

Officer Bultstra had seen the man suddenly react to something. Still in his cowboy-like position the man had made a quarter turn to the left. Officer Bultstra could not remember how long this had taken but the time involved had been very short. The man had raised his right arm with the pistol somewhat, in a way in which he had not yet done so. This had caused Officer Bultstra to think: "Now I will shoot." Since the man was raising his hand and arm Officer Bultstra was convinced that he was about to fire; he had been building up tension in his right hand to pull the trigger of his service pistol when he had heard, on his right, a loud report that he had recognised as a pistol shot. He had immediately thought: "[Officer Brons] has got him." Officer Bultstra had felt so threatened that he would have fired if Officer Brons had not done so. He had noticed immediately that the man had been hit. He had moved his upper torso somewhat. His knees had then buckled and he had fallen to the ground. He had dropped his pistol in falling. He had tried, unsuccessfully, to get up. Officers Brons and Bultstra had approached the man from two sides, while still keeping him covered.

Having reached the man, Officer Bultstra had put up his service pistol and grabbed the man by his shoulder. He had wished to prevent the man from getting up and possibly picking up the pistol. He had been sitting next to the man. The man had been lying with his back against Officer Bultstra's knees. At that point Officer Bultstra had seen Officer Brons approaching from his right. He could not remember if Officer Brons still had his service pistol in his hand. Officer Brons had pushed the man's pistol away with his foot so that the man could not reach it.

Using his two-way radio, Officer Brons had reported to the police station to ask for urgent assistance by the local health authority. Officers Brons and Bultstra had left the scene of events as it was until other police officers arrived. Officer Bultstra had, however, loosened the man's clothing to see where he had been hit. He had been hit in the neck and his shirt had been saturated with blood. Officer Bultstra had tried to get him to give his name, but had received no answer. The man had gargled. He had been beyond reach. He had died quickly.

After the other police officers had arrived, Officers Brons and Bultstra had been taken back to the Flierbosdreef police station where they stayed for some time, estimated by Officer Bultstra as three hours. Officer Brons had been required to hand in his service weapon. They had had talks with a number of fellow police officers, including Police Commissioner (*commissaris van politie*) Van Riessen, the district head of police (*districtschef*) and the self-help-team (*zelfhulpteam*).

Officer Bultstra stated that the man himself had been in control of events (*zelf het scenario heeft bepaald*). He had had every opportunity not to draw his weapon, or to drop it after doing so. Officer Bultstra had shouted warnings to him repeatedly. He had not responded. Instead, he had stood in front of Officer Bultstra in a threatening posture with a pistol ready for immediate use. Officer Bultstra had had no other option but to draw his service weapon to protect himself. The situation had been so threatening that Officer Bultstra would have fired to put the man out of action, thus eliminating the danger to himself and possibly others. As it was, that had proved unnecessary because Officer Brons had fired first.

**d. Henna Emelita Rijssel, questioned on 24 July 1998**

Ms Rijssel was a social worker resident in Amsterdam.

On 19 July at around 10 p.m. she and her daughter, Syreeta Michelle Lieveld, returning from the festival, had been walking home. Passing through an underpass they had had to make way for a scooter driven by a person whom she described as a Negroid youth without a crash helmet. They had seen him pursue his way, and then turn towards one of the doorways of a high-rise building. They had noticed that he was driving unusually slowly but had paid no further attention. They had, however, noticed the youth come out of the doorway and that the scooter was inside.

Although some distance away, they had had a good view; it was not dark yet.

They had seen the youth come out of the doorway and they had seen a policeman run towards him. They had then noticed a police car which they had not seen or heard until then.

They had seen the youth come out of the doorway holding his right hand inside his jacket or shirt. The hand had been on his belly, just above his trouser band. They had decided to move closer because something was obviously happening.

Ms Rijssel had seen the youth walk towards the policeman. She had seen him raising his arms in a non-verbal “What do you want?” gesture. She had heard no words spoken. The policeman had grabbed hold of the youth's arm and turned it onto his back. She had had the impression that the youth was being arrested. She had seen the policeman trying to push the youth with his face towards the wall. This he did not manage to do; the youth had torn himself loose.

She had then seen the youth again putting his hand inside his shirt, in the same gesture which she had witnessed before. She had not seen him pull anything out; she had not at any time seen the youth draw a firearm.

The policeman had stayed where he was and had not got closer to the youth. The youth had stepped sideways. Mrs Rijssel had not seen the policeman draw his firearm.

Another policeman had come up running. He had stood still at a distance of about six metres. The youth had still had his hand inside his shirt near his trouser belt. She had then seen the second police officer draw his pistol and aim it at the youth. She had heard a shout of “Put it down” (*“Leg neer”*), once, which in her opinion had come from the police officer who was keeping the youth covered. This had happened after the policeman had drawn his pistol on the youth. Immediately after the shout of “Put it down” she had heard one shot fired. The youth had collapsed immediately.

Mrs Rijssel stated positively that she had not at any time seen the youth aim a pistol or anything similar at the policeman. She remembered the youth holding his hand inside his shirt, close to his trouser belt. She was sure of that, despite the speed with which events had unfolded.

Immediately after the shot had been fired she had run towards the place where the youth had collapsed. She had shouted to the policemen: “I saw what you did. That's a human being.” (*“Ik heb gezien wat jullie hebben gedaan. Het is een mensenkind.”*).

The policeman had felt the youth's pulse. The youth's arm had fallen limp.

More police officers had arrived, including one on a motorcycle who had asked her to make a statement. She had refused because she did not wish to make a statement that could be used against the youth and because her words could be misinterpreted. She had told two police officers, a man and

a woman, who were roping the area off that they did not need to rope off such a wide area. One of the police officers had accused her of trying to stir up trouble and had told her that she did not know what had caused the incident. She had replied that she was not aware of the cause of the incident, but did know what had happened, and had asked if the police were not supposed to fire a warning shot before firing at a person. She might well have said more than that in her emotional state.

On 20 July 1998 Mrs Rijssel had returned to the place where the youth had been shot to lay some flowers. She had met the youth's family there and spoken with them. They had told her that they had retained the lawyer Mr Hamer and she had given them her telephone number. She had later been contacted by Mr Hamer, who had asked her to make a statement to Chief Superintendent Van Duijvenvoorde.

**e. Syreeta Michelle Lieveld, questioned on 24 July 1998**

Ms Lieveld was a schoolgirl born in 1983 and the daughter of Mrs Rijssel. The pair of them had been walking home from the Kwakoe festival on the evening of 19 July 1998 at around 10 p.m. While walking through a pedestrian underpass they had been passed by a youth on a scooter. The youth had been dressed in black. He had not been entirely dark-coloured. He had worn his hair flat. He had not been wearing a crash helmet. Ms Lieveld could not describe the scooter.

The youth had run the scooter off the path and across the grass towards the Huigenbos building. Ms Lieveld had not seen him ride the scooter into the doorway.

Ms Lieveld's mother had then said: "Look, there's police." Ms Lieveld had seen a police officer standing in front of the building, close by the youth. She and her mother had then gone towards them. Ms Lieveld had seen the police officer trying to arrest the youth, grabbing hold of him and pushing his face against the wall. The youth, however, had torn himself loose. He had made a gesture with his arms as if to say: "What do you want with me?"

The youth had brought one of his hands, Ms Lieveld could not remember which, towards his trouser band. It had seemed as though he had a pistol there, but that had of course been a bluff.

A second police officer had come running. Ms Lieveld had heard shouts of "Drop it"; she remembered hearing it once. She had seen the two police officers with drawn service pistols. She had seen the first police officer, the one who had tried to arrest the youth, with his pistol drawn but she had not seen him point it at the youth. She had not seen the youth with a pistol or anything like that.

The other police officer had also had his service pistol in his hand. He had aimed at the youth. She thought that the shot had been fired immediately after the shout of "Drop it". After the shot the youth had turned

around some way and collapsed. She had seen him drop something; she thought it had been a mobile telephone. Later, having come closer to the scene of events, she had seen a mobile telephone lying near the youth; she assumed that the youth had dropped it.

Ms Lieveld could not give an estimate of how far it had been from where she stood to the place where the youth had collapsed, but it had been some distance. Things had happened very quickly, as in a flash.

The official record states that the witness made her statement in the presence of her mother in view of her emotional state.

**f. Merlijn van Rij, questioned on 24 July 1998**

Merlijn van Rij was a schoolboy born in 1982 and resident in the Huigenbos building.

On 19 July 1998 at around 10 p.m. he had been at home with his father, in the lounge of their first-floor apartment. It had been a warm night and the windows had been open.

At a certain moment he had heard "Stand still" shouted, once. A second or less after that, he had heard a bang from the direction of the doorway which had sounded like a pistol shot. In view of the shout of "Stand still", which was unlikely to have come from a criminal, he had concluded that the shot had been fired by police. He had wanted to go and watch, but his mother had not let him because she considered it in bad taste to take an interest in other people's misfortune. Later that night his father had gone to take the dog out; he had seen many police and someone lying underneath a sheet.

**g. Matthew Jiri Oostburg, questioned on 24 July 1998**

Matthew Jiri Oostburg was a schoolboy born in 1983.

On 19 July 1998 at around 10 p.m. he and his father had been walking from the location of the Kwakoe festival towards the Huigenbos building, where his father's girlfriend lived. They had noticed the presence of police on motorcycles, apparently looking for something or someone.

Just before entering a pedestrian underpass, they had heard a sound identified by Mr Oostburg's father as a pistol shot. It came from the direction of the Huigenbos building. They had seen police going towards the Huigenbos building but had been too far away to see what was happening.

On the way towards the building they had been stopped by police who were cordoning off the area.

Having entered the building through a different entrance, they had gone to the first floor and Mr Oostburg had looked down. He had seen a dark coloured youth with a bald head lying motionless in front of the entrance to the doorway. He had seen a small shiny pistol lying by the youth's feet. He had heard others say that they had initially thought that the youth had taken

out a mobile telephone and that the police had fired mistaking it for a pistol. But it had definitely been a pistol.

Mr Oostburg and others had assumed that the youth had drawn a pistol and aimed it at the police and that the police had fired for that reason.

He had later seen the emergency services arrive. It had been apparent that the youth was dead because they had covered him with a white sheet.

**h. Police Officer Klaas Boonstra, questioned on 27 July 1998**

Police Officer Boonstra, of the Amsterdam/Amstelland police force, was questioned by Chief Detective Superintendent Van Duijvenvoorde.

He stated that he and his colleague Police Officer Dekker had been ignorant of the fact that Moravia Ramsahai was armed. He and Officer Dekker had been approached by a coloured youth, who had asked them to follow him and run on. Since he and Officer Dekker had not immediately followed him at a run, the youth had turned round and gestured to them to follow him. This had led them to assume that there was something the matter and they had followed. It had been Officer Dekker, who had been closer to the youth than Officer Boonstra, who had spoken with him. It had also been Officer Dekker who had radioed through the insurance plate number and possibly the colour of the scooter as well as the police officers' precise location and the direction in which they were heading with the youth, but he did not recall Officer Dekker giving a description of the thief.

After they had lost sight of the scooter, they had heard it reported by radio that there had been a shooting incident at the Huigenbos building. Officers Boonstra and Dekker had gone there to see if they could be of assistance. Not realising that the person who had stolen the scooter was armed, they had not connected the shooting to the theft.

Only when they and the owner of the scooter had reached the scene of the shooting and the owner had recognised his vehicle did they ask him what precisely had happened. That had been when the owner of the scooter had told them that he had been forced at gunpoint to surrender control of the scooter. Officer Boonstra had told him that he ought to have mentioned that earlier (*"Dat had je wel eens eerder mogen zeggen."*)

Officer Dekker had told Officer Boonstra later that he too had been unaware that the thief had been carrying a firearm and had been just as indignant at not having been told. Both officers counted themselves lucky not to have been fired at during the pursuit.

**i. Vinodkumar Hoeseni, questioned on 31 July 1998**

Mr Hoeseni was questioned anew by Chief Superintendent Van Duijvenvoorde. He was asked to make a further statement as to when he had mentioned the firearm to Police Officer Dekker.

Mr Hoeseni stated that his scooter had been stolen from him at the Kwakoe festival site on 19 July 1998 between 9 and 10 p.m. A coloured youth had forced him to do so at gunpoint. He recognised the pistol on a photograph bearing the number 10 as the pistol with which he had been threatened. He had noticed that the pistol was cocked and ready to fire. This had frightened him into giving up the scooter.

Spotting two police officers, he had run up to them and asked them to follow him. They had not done so immediately, but only after he had waved at them a second time. While running he had told them about the theft of the scooter and given them the scooter's insurance documents and a description of the scooter and the thief.

Mr Hoeseni had told the police officers about the firearm at the same time when he had handed the insurance papers to them.

When he had heard, via the police officers' two-way radio, that there had been a shooting incident, he had immediately connected it with the robbery of his scooter. He had then told the police officers that the thief had had a small silver-coloured pistol.

**j. Wladimir Mohammed Abzell Ali Chitanie, questioned on 3 August 1998**

Mr Chitanie was a civil servant born in 1945.

On 19 July 1998 at around 10 p.m. he had been driving his car along the Huntumdreef. He had seen a marked police car following in his rear-view mirror. The police car had been brought to a sudden stop, at which moment a police officer had emerged and run in the direction of the doorway of the Huigenbos building. Thinking that something was happening, Mr Chitanie had decided to have a look for himself. He had parked his car, got out and walked towards the doorway towards which the policeman had headed. Street lights had been lit. It had been twilight. He estimated the distance from where he was to the doorway of the Huigenbos building to have been between 75 and 100 metres.

He had seen a youth aged about twenty, dressed in dark coloured clothing, emerge from the doorway. He had not seen any scooter in the doorway. There was a policeman standing opposite the youth, separated by a distance of about six metres. The police officer was pointing a pistol at the youth. The youth had been holding some dark coloured object, which Mr Chitanie had not been able to make out, in his right hand and was pointing it towards the police officer. The police officer had gestured to the youth with one hand, apparently ordering the youth to throw away whatever it was he had in his hand, while keeping the youth covered with his service pistol in his other hand. He had not heard anything shouted or said, the distance being too great. He had seen the youth throw away the unidentified object in his right hand.

While the first police officer was keeping the youth covered, Mr Chitanie had seen a second police officer come running towards his colleague with

the apparent intention of providing assistance. This second police officer had drawn his service pistol and had held it in two hands, levelled at the youth's head. He had heard a shot fired immediately. The shot had been fired after the youth had thrown the object away. Events had unfolded very quickly: the lapse of time between the youth throwing away the object and the firing of the shot had been a few fractions of a second. The youth had made some movements in the direction of the lamp post and had collapsed.

At that point panic had broken out. Police had arrived in cars and on motorcycles. After the shooting, more people had joined Mr Chitanie. The police had ordered them to leave; Mr Chitanie and the others had left. Mr Chitanie had asked a police officer why no ambulance was being ordered. The police officer had replied: "We will see about that later."

Having entered the Huigenbos building and looked down onto the scene of events from the second floor, Mr Chitanie had seen the victim covered with a white sheet. He had not seen a pistol lying next to the body. He had heard from bystanders that the youth had thrown away a mobile telephone, but he had not seen that.

It had taken Mr Chitanie six or seven minutes to reach the second floor of the building. He had seen numbered signs being set out and photographs being taken. It appeared that the bystanders had not been intended to see that, because police officers were holding a large sheet above the body and taking photographs underneath. Mr Chitanie thought that the youth might at that moment still have been alive, because he had heard a rattling sound, as if the youth's throat was full of blood.

Mr Chitanie estimated the time needed for the ambulance to arrive at thirty minutes or more. He had seen someone with medical equipment examine the victim, together with a person who appeared to be a public prosecutor.

In Mr Chitanie's opinion, any threat had disappeared after the youth had thrown away the object. He had not witnessed what had happened before.

Mr Chitanie appended a sketch plan to his statement.

#### **k. Police Officer Brons, questioned on 3 August 1998**

Detective Chief Superintendent Van Duijvenvoorde confronted Officer Brons with the statement by the witness Chitanie to the effect that Moravia Ramsahai had thrown something away before the fatal shot fell. Officer Brons denied this. In view of the threat posed by the thief, Officer Brons had been much fixated on the thief's hands. Until the thief drew the pistol, he had had nothing in them.

#### **l. Police Officer Dekker, questioned on 3 August 1998**

Detective Chief Superintendent Van Duijvenvoorde asked Police Officer Dekker for further information as to when he had become aware that the theft of the scooter had taken place with a firearm.



Mr Hoeseni had told him that he had been pulled off the scooter but had not mentioned the fact that a firearm had been used. Both he and Officer Boonstra had therefore assumed that only physical force had been used.

Mr Hoeseni had given Officer Dekker the scooter's insurance papers immediately and of his own motion and had at the same time given a description of the thief. Officers Dekker and Boonstra, joined by Mr Hoeseni, had run after the thief. However, they had lost him. Officer Dekkers had then passed on the thief's presumed direction of flight and the insurance registration number via his two-way radio.

At no time while they were running had he heard Mr Hoeseni say that the thief was armed. He had noticed, however, that Mr Hoeseni was frightened and spoke in a soft tone of voice. It was therefore quite possible that Mr Hoeseni had mentioned the fact but that he had not heard it while they were running.

Only after the report of the shooting had come through had Officer Dekker heard Mr Hoeseni say: "He had a small silver-coloured pistol." They had then gone towards the Huigenbos building. Officer Dekker had asked Mr Hoeseni: "Why did you not tell us that before?" but Mr Hoeseni had not given a clear reply. He had appeared very upset.

Afterwards Officers Dekker and Boonstra had reflected on their luck at not having been shot as well. Had Officer Dekker been told at an earlier stage that the thief had used a pistol to steal the scooter, he would have passed that information on immediately and before all else. In addition, he and Officer Boonstra would not have run after the thief: their supervisory duties at the festival had required them to be unarmed themselves.

**m. Police Officer Bultstra, questioned on 4 August 1998**

Detective Chief Superintendent Van Duijvenvoorde confronted Officer Bultstra with the statement by the witness Chitanie.

Officer Bultstra considered it unlikely that Mr Chitanie could have parked his car and walked back to the place from which he claimed to have witnessed the events in such a short time. Officer Bultstra himself had needed up to ten seconds to run the fifty metres from where the police car had been parked to Moravia Ramsahai and Officer Brons.

It appeared that Mr Chitanie had missed the struggle with Moravia Ramsahai; he had not mentioned it in his statement. That would be consistent with the distance between where Mr Chitanie had parked his car and the scene of events.

It was incorrect that Officer Brons had held his service weapon in one hand. It took two hands to hold it in the defensive position. Officer Brons had made gestures, but that had happened before Moravia Ramsahai drew his pistol.

Moravia Ramsahai had had nothing in his hands until the moment he had drawn his pistol. He had, however, not pointed it at Officer Bultstra; he had

pointed it at the ground. He had held it in his hand continuously. He had definitely not thrown anything away or dropped anything. He had only let go of the pistol once Officer Brons had shot him, but even then only as he collapsed.

Officer Bultstra had held his two-way radio set in his left hand as he had left the police car. He had kept hold of it until he dropped it. He did not remember when that had been, but it must have been no later than when he drew his service pistol because in the defensive position he had needed both his hands to hold it. He could not remember either whether he had already dropped the radio at the time of the struggle. He had, however, later seen it lying on the ground, level with Moravia Ramsahai's chest and about sixty centimetres away from him. He had left it there.

The ambulance had been called for immediately, not once but twice. Officer Bultstra had not seen it arrive. By that time he and Officer Brons were being taken to the police station, having spent five to seven minutes at the scene of the events.

Officer Bultstra had heard Moravia Ramsahai's death rattle. That had stopped already before he and Officer Brons had left. It had appeared to Officer Bultstra that Moravia Ramsahai's lungs were filling with blood, but Officer Bultstra could do nothing to stop that.

The official record of this interrogation states that Officer Bultstra consented to being questioned without his counsel present.

**n. Petrus van den Heuvel, questioned on 4 August 1998**

Detective Chief Superintendent Van Duijvenvoorde decided to question this witness a second time in the light of the statement of Mr Chitanie.

He reiterated that he had been fixated on the coloured man with the firearm. He had clearly seen the coloured man hold a firearm in his right hand, which he had pointed downwards. The coloured man's other hand had been empty.

Mr van den Heuvel had not witnessed the actual shooting, having taken cover behind the balustrade. He had looked to see what had happened right after the shot had been fired. This had been only fractions of a second later. He had not seen the coloured man's pistol fall to the ground. When Mr van den Heuvel had looked, the pistol had been lying on the ground, next to the coloured man, as shown on photograph no. 5 (see below for a description of the photographs). The pistol shown on photograph no. 10 was very similar to that which Mr van den Heuvel had seen in the hand of the coloured man.

For the remainder, Mr van den Heuvel confirmed his earlier statement.

**o. Police Officer Bruin Jan van Dongen, questioned on 4 August 1998**

Officer Van Dongen held the rank of senior police officer.

Officer Van Dongen had been driving a police car with a police dog along the Huntumdreef. Officer Van Dongen had heard that a scooter had

been stolen at the Kwakoe festival ground and had heard the description given of the scooter and the thief. He was looking for the thief. There was no information that the robbery had taken place at gunpoint.

Officer Van Dongen had been passed by another police car. He had recognised the driver as Officer Brons. He had seen the police car pull up and the passenger emerge.

He had parked his car and got out. In so doing he had seen Officer Brons get out of his car. Going round the back of the car to get out the police dog, Officer Van Dongen had heard a pistol shot from the direction of the Huigenbos building. The dog had reacted furiously to the sound. It had been necessary to be particularly careful with the dog, because in its excitement the dog might have attacked people.

He had met Officer Brons and had asked him what had happened. Officer Brons had replied that a pistol had been aimed at the police and a shot had been fired by the police, but had not named the officer who had fired the shot.

Officer Van Dongen had walked up to the victim lying on the ground, keeping at a distance of two metres because of the unpredictable reaction of the dog. The victim had been motionless, except for opening and closing his mouth a few times. He had heard no death rattle.

As Officer Van Dongen had arrived on the scene, there had been only the two police officers and the victim. He had not seen anyone else close by. The dog would have reacted if there had been anyone.

Officer Van Dongen appended a sketch to his statement.

**p. Lambertina Helena Hup, questioned on 5 August 1998**

Ms Hup was questioned by Detective Chief Superintendent Van Duijvenvoorde. She had been the driver of the ambulance which had been sent out to collect Moravia Ramsahai after he had been shot.

At 10.02 p.m. the ambulance crew had received the instruction to drive to the Huigenbos building because someone had been shot. The ambulance had left at 10.04 p.m., showing its blue flashlight and sounding its siren. There had been some traffic but Ms Hup had not been particularly bothered by it. The ambulance had arrived on the scene at 10.14 p.m. – well within the time allowed, which was fifteen minutes.

Ms Hup and the other member of the ambulance crew, Mr van Andel, had taken out the stretcher, which was given to police officers. Ms Hup and Mr van Andel had then taken their equipment and had run towards the victim. She described the victim as a Negroid youth. There had been a small silver-coloured pistol lying next to him, which she and Mr van Andel had had to avoid touching while doing their work.

Ms Hup had not heard the victim rattle or make any other sound. She had assisted Mr van Andel as he gave first aid. They had connected the victim to the heart monitor. Mr van Andel had checked eye pupil reflexes by shining

a light into each eye but had got no reaction and had noted the absence of a pulse and breathing. From the information thus obtained Mr van Andel had concluded that the victim had died on the spot.

Ms Hup and Mr van Andel had seen the wound where the bullet had entered, which was in the neck on the right. They had not seen the exit wound.

Ms Hup and Mr van Andel had then covered the body with a white sheet. They had then spent some time talking with police officers. They had not removed the body, which had been picked up later by a special vehicle.

**q. Leendert van Andel, questioned on 5 August 1998**

Mr van Andel, a paramedic, had been the other member of the crew of the ambulance driven by Ms Hup.

At around 10.02 p.m. they had received the instruction to go to the Huigenbos building where someone had been shot. They had been given a route to take. They had left at 10.04. It had been an A-1 transport, meaning urgency and the use of optical and acoustic signals. The blue flashlight and the siren had been switched on continuously. They had arrived at the scene at 10.14.

Ms Hup and he had run quickly towards the victim. Police officers had carried the stretcher, he and Ms Hup the other equipment.

Mr van Andel described the victim as a Surinamese youth, about twenty years old. A police officer had told him that the youth had been shot. He had seen the entry wound in the neck but no exit wound. There had been a small pistol lying close by the victim. Mr van Andel had not noticed a two-way radio lying on the ground.

The victim had given no signs of life. There had not been any rattle. Mr van Andel had checked his vital functions, and had noted the absence of any heart function (checked with a heart monitor) or pupil reaction. This, combined with the gunshot wound, had led Mr van Andel to conclude that the youth was dead. After conferring briefly with one of the police officers present and telling him that there was nothing more to be done, he and Ms Hup had covered the body with a sheet.

Mr van Andel and Ms Hup had then returned to the ambulance and had reported themselves ready for further duty at 10.35 p.m. The body had been removed later. This would have been done by the local health authority using a vehicle that looks similar to an ambulance, but it might have taken some time.

**r. John Pel, questioned on 7 August 1998**

Mr Pel was a police technical investigator (*technisch rechercheur*). He had been on call on the evening of 19 July 1998. He had been instructed to go to the Huigenbos building where there had been a shooting incident. He had arrived after the ambulance had left.

On arrival at the scene, he had seen a white sheet covering the victim and a pistol lying on the ground.

Mr Pel and a colleague, Mr Popping, had identified pieces of evidence and marked them with numbered markers before photographing them. He had also examined the body of the victim and in particular his hands for traces of gunshot residue (*schotrestbemonstering*). This had required that the sheet with which it was covered be lifted.

Mr Pel had heard no death rattle.

**s. Hèlen Milian Jalink, questioned on 11 August 1998**

Ms Jalink was a maternal great-aunt of Moravia Ramsahai.

She had been informed on Monday 20 July 1998 by an aunt of Moravia Ramsahai's that he had stolen a scooter and had been shot dead for that reason by the police. That evening, between 6 and 7 p.m., she and other relatives of the deceased had held a prayer meeting at the place where it had happened.

During this prayer meeting, two persons were presented to her who had allegedly witnessed the events. They had told her that, when driving by in a car, they had seen a parked police car with the doors open, one policeman standing near the Huigenbos building and another policeman running in the same direction. They had seen a youth, who had apparently come out of the doorway, walking with his hands raised. She had not been told how high he had raised his arms, but they had told her that he had raised them. They had not told her of any struggle between the youth and the police officer. They had not told her that the first police officer had kept the youth covered with his service pistol. The second police officer, the one who had come running, had shot the youth down. They had not seen the youth with any firearm; they had been definite about that. They had seen the youth being hit and collapsing. They had seen him covered with a sheet.

Some persons present had mentioned a mobile telephone which the police had said was a pistol.

The two persons who had said that they had witnessed the shooting had been evasive when asked whether they were prepared to make statements to the police. They had been more willing to talk to a lawyer. An appointment had been made for this purpose with Mr Hamer, the applicants' representative in the proceedings now pending before the Court, but they had failed to turn up. Ms Jalink had been told that they had gone to Germany.

These two individuals were Gypsies who spoke limited Dutch and English. Mrs Jalink had no idea why they were so reluctant to co-operate fully.

**t. Wladimir Mohammed Abzell Ali Chitanie, questioned on 17 August 1998**

Chief Detective Superintendent Van Duijvenvoorde questioned Mr Chitanie a second time.

Mr Chitanie repeated that he had not witnessed any struggle between the victim and the first police officer.

Asked whether he had seen a policeman with a dog, he answered that he had not paid attention to anything other than what was happening where the victim lay. He had, however, seen police officers with dogs; he did not remember how many. There had also been civilians with dogs. No police officer with a dog had passed close by him as he was standing still witnessing events from a distance.

Mr Chitanie remembered a police officer telling him that “they” – meaning the police – would decide when the ambulance would come; that although the victim could no longer talk, “they” could; and that there were more wounded, who had fled.

Mr Chitanie had seen Gypsies and had been told that they had seen everything. However, they would not co-operate because they were members of a criminal organisation.

*2. Other information contained in Detective Chief Superintendent Van Duijvenvoorde's report*

At the start of his investigations Detective Chief Superintendent Van Duijvenvoorde asked the technical experts about the distance between Officer Brons and Moravia Ramsahai at the moment of firing. He was told that this had been several metres. On 24 July 1998, he spoke to the pathologist who had carried out the autopsy (see below), Dr C.J.J. Hens, who told him that the shot had definitely not been fired in contact with Moravia Ramsahai's body.

On 29 July 1998 Detective Superintendent Van Duijvenvoorde telephoned the Royal Netherlands Meteorological Institute inquiring after the weather conditions on the evening of 19 July. He was given the following information:

Warm day and evening; somewhat overcast

9.45 p.m. Sundown

10 p.m. Twilight

10.30 p.m. Dark

On 30 July 1998 Detective Chief Superintendent Van Duijvenvoorde questioned the twelve-year-old Sangeeta Edwina Pamela Mungra. She confirmed what she had stated to members of the mobile special operations unit on the night of 19 July. She added that she had only looked outside after having heard the bang. Moravia Ramsahai had already been lying on the ground. She had not seen the police officers properly. She had gone back up, glanced down from the seventh floor and gone inside.

Detective Chief Superintendent Van Duijvenvoorde had returned to the scene of the incident with Mesdames Rijssel and Lieveld and with Mr Chitanie and his wife after taking their respective statements. They had shown him where they had been standing and Detective Chief Superintendent Van Duijvenvoorde had paced the distance to the lamp-post where Moravia Ramsahai had lain. This had been about 57 metres in the case of Mesdames Rijssel and Lieveld and about 58 metres in the case of Mr and Mrs Chitanie.

Detective Chief Superintendent Van Duijvenvoorde had also gone back with Officer Bultstra, who had shown him where he thought Officer Brons had parked the car. This was about 48 metres away from the lamp-post. He had asked Officer Bultstra to run that distance and timed him with a stopwatch. It had taken him 9.40 seconds. Detective Chief Superintendent Van Duijvenvoorde noted in his report that the distance from where the car was parked had actually been measured on the night of the shooting, and found to be 56 metres.

On 4 August 1998 Mr Hamer had telephoned Detective Chief Superintendent Van Duijvenvoorde telling him that Moravia Ramsahai had at some time in the recent past been in trouble involving himself and a police officer, possibly a fight. Detective Chief Superintendent Van Duijvenvoorde had investigated this the following day. It turned out that several police reports existed naming Moravia Ramsahai, but that these had not involved either Officer Brons or Officer Bultstra in any capacity.

On 7 August 1998 Detective Chief Superintendent Van Duijvenvoorde interviewed the applicants. They told him that they were not aware that Moravia Ramsahai had had a pistol and could not imagine this to be the case. Moravia Ramsahai had, however, had a mobile telephone, which was nowhere to be found. The third applicant also told Detective Chief Superintendent Van Duijvenvoorde that he had heard of two Gypsies who had witnessed the shooting, but who were unwilling to provide information because they were illegally resident in the Netherlands.

The Gypsies had already been mentioned to Detective Chief Superintendent Van Duijvenvoorde by Mr Hamer. Detective Chief Superintendent Van Duijvenvoorde had discussed them with Public Prosecutor De Vries, who had decided that they should be questioned on the premises of the State Criminal Investigation Department in the presence of the lawyer acting for Officers Brons and Bultstra, Mr van Kleef, and that their true identity should appear in an official document. On 10 August Mr Hamer had informed Detective Chief Superintendent Van Duijvenvoorde that the two Gypsies could not be found.

## **D. Documentary evidence**

### *1. Seizure of Officer Brons's service pistol*

Officer Brons handed his service weapon and ammunition to Superintendent Jacobus Wilhelm Rijkenberg of the Amsterdam/Amstelland police force on 19 July 1998 at 11.15 p.m.

The weapon was a Walther P5 automatic pistol loaded with seven rounds, one chambered and six in the magazine. Officer Brons also handed in a reload magazine containing eight more rounds.

The ammunition was standard police issue (i.e. 9x19 mm parabellum Action 3, see below).

The weapon and ammunition were placed at the disposal of the police commissioner and kept at the police station pending a decision by the public prosecutor.

The owner of the pistol and ammunition was stated to be the Amsterdam/Amstelland Regional Police Force.

### *2. Description of Moravia Ramsahai's pistol*

An official record dated 23 July 1998 and drawn up by Senior Police Officer André Stolte of the Amsterdam/Amstelland police force, central investigation department, investigation information bureau, describes the weapon that was seized.

It was a Beretta 950 B, 6.35 mm (.25") calibre, semi-automatic pistol, loaded with five live rounds – one chambered, four in the magazine – bearing fully jacketed bullets.

### *3. Ambulance journey form*

A form – unsigned, but which gives personal identification numbers of the crew members Hup and Van Andel – states that the ambulance went to the Huigenbos building on an urgent call to pick up an unnamed male but had returned empty. The call had been received at 10.02 p.m., the ambulance had left at 10.04 p.m. It had reached the patient at 10.14 p.m. The ambulance had been ready for other calls at 10.35 p.m., and had returned to base at 10.50 p.m.

The type of incident was listed as not falling into any standard category. It was recorded that the patient, stated to have been a pedestrian, was dead when the ambulance arrived. The patient was subjected to physical examination, including verification of the pulse, breathing, lungs, pupil reaction and the heart, with appropriate equipment.

Damage was noted to the neck.

It is stated that the patient was “shot during pursuit” and died on the spot.



#### *4. Sketch map by Detective Superintendent Van Duijvenvoorde*

A large-scale sketch map of the area in front of the Huigenbos building gave the locations of the body of Moravia Ramsahai, Police Officers Brons and Bultstra, the lamppost which illuminated the scene and the position, in vertical projection, of the witness Van den Heuvel who had been on the fifth floor, with the measurements rounded to multiples of 10 cm.

The accompanying official report states that Officers Brons and Bultstra themselves marked the places where they thought they had been when the fatal shot was fired.

#### *5. Overview map prepared by technical investigators*

A smaller-scale map covering a larger area gives the positions of Moravia Ramsahai, Officers Brons and Bultstra and their cars, Officer Van Dongen, the unknown Gypsies, the ambulance, and the witnesses Van den Heuvel, Rijssel, Lieveveld, Oostburg and Chitanie.

#### *6. Report of use of force*

This report was drawn up by Senior Police Officer Petrus Wilhelmus Martinus Leerkes of the Amsterdam/Amstelland police force, together with Police Sergeant Brons, on 24 August 1998.

It is stated that Sergeant Brons, who is forty years old, has served on the police force for fourteen years. The use of force that is the subject of the report is stated to have taken place on 19 July 1998 at five past ten in the evening, Sergeant Brons being then on duty, on the public highway – namely, at the Huigenbos building in Amsterdam, on the lawn, by the third lift. Relevant parts of the report are the following (the original numbering has been kept):

“9. Type of unit during incident: Basic police work, viz. uniformed service. ...

13. Action under direction by superior officer: Action did not take place under the direction of a superior officer.

14. Direction by reporting officer: The reporting officer did not direct the action at that location.

15. Number of police officers present: 2.

16. Number of police officers who used their firearms: 2.

17. Dress in which action took place: Uniform.

18. Type of use of force: Firearm. ...

24. Type of use of firearm: Self-defence.

19. Purpose of use of force: Pre-emption of violence (*afwenden van geweld*) against the police officer(s) concerned (self-defence).

20. Aim achieved: Yes. ...

25. Date of last test using live ammunition (*'toets' beurt scherp*): Monday 10 July 1998.

26. Date of last 'Fire Arms Training System' [i.e. simulator] test (*'toets' beurt FATS*): Monday 20 April 1998.

27. Date of last theoretical instruction (day programme): Wednesday, 27 August 1997.

28. Service firearm used: Walther P5.

29. Ammunition used: Action 3.

30. Permission of competent authority for the special use of force (*inzet bijzondere geweldsmiddelen*): None.

31. Warning(s) preceding the use of force: None.

32. Number of warning shots: None.

33. Number of shots fired: 1.

34. Number of accidental shots: None.

35. Aiming point(s) of firearm use: Person, once.

36. The object aimed at was: In motion.

37. Specific aiming point(s) of firearm use: Body, general.

38. Distance from target (in metres): 5 – 7 metres.

39. Position during firearm use: Standing.

40. Supported grip during firing: Yes.

41. Hit by police firing: Yes.

42. Part of body hit: Torso/neck. ...

44. Posture of object(s) or person(s): In motion.

45. Consequences of police use of force for suspect(s): Death. ...

56. Nature of injury/injuries of suspect: Entrance and exit wound.

46. Consequences of police use of force for police officer(s): None.

- 47. Consequences of police use of force for third party/parties: None.
- 48. Identity of suspect(s) known to police officer beforehand: No.
- 49. Threat and/or violence by suspect shortly before or at the time of police use of force, directed against: Police officer himself and fellow officer.
- 50. Type of threat or violence by suspect(s): Firearm.
- 51. Protective equipment used: None. ...
- 53. Consequence of use of force by suspect(s) to [other] suspect(s): None.
- 54. Consequence of use of force by suspect(s) to third party/parties: None. ...
- 58. Light available at the place of the incident: Twilight (owing to time of day or weather conditions).
- 59. Circumstances: Among buildings.
- 60. Free field of fire: Yes.
- 61. Other persons at the place of the incident: Fellow police officer."

### 7. *Coroner's report*

The Amsterdam coroner (*lijkschouwer*), H. van Venrooij, a physician, viewed the body of Moravia Ramsahai five minutes after midnight, before it was removed from the scene of the incident. His report is recorded in a pre-printed form addressed to the public prosecutor.

He had not given Moravia Ramsahai any medical advice or treatment in the preceding two years. Having examined the body himself, he stated that he was not convinced that death had resulted from natural causes.

The following is added in handwriting:

"Fatality resulting from shooting on the ground in front of the 'Huigenbos' building, level with lift 3.

Examination on 20-7-1998, 00.05 hours, at the place of the crime (sic).

Gunshot wound on the right side of the neck.

Further examination has been dispensed with in view of the judicial autopsy which is due to take place.

Provisional conclusion: died as a result of a shot from a firearm with injury to vital neck organs/structures.

Amsterdam 20-7-1998

(signed) H. van Venrooij, physician"

8. *Official report of seizure of the body dated 20 July 1998*

Senior Police Detective (*hoofdagent-rechercheur*) Jacob Cornelis Peter Schultz, a police officer serving at the Flierbosdreef police station, officially seized the body where it lay at 10.02 p.m. and provisionally identified it as Moravia Ramsahai's from identity documents found in his clothing.

The body was removed at 0.45 a.m. on 20 July and taken to the morgue of the hospital of the Free University of Amsterdam under Senior Police Detective Schultz's personal supervision.

9. *Forensic examination of the scene of the shooting dated 22 July 1998*

A report drawn up by Technical Detectives (*technisch rechercheurs*), John Pel and Jan Popping describes the action taken following the incident to secure information and evidence at the scene of the shooting.

The detectives had been informed that a uniformed colleague had tried to arrest someone and had fired his service weapon, which had resulted in the death of Moravia Ramsahai.

The report describes the location of the body. Next to it they had found a Beretta 950 B pistol, calibre 6.35 mm, with the hammer cocked. They had also found a spent cartridge.

They had found the scooter in the doorway.

Next to the doorway there was a staircase, closed from the outside by tall windows. In one of these windows they had found a bullet hole. Under the bullet hole they had found a bullet lying on the floor. No ricochet marks had been found in the stairway. This had made it impossible to determine the bullet's precise trajectory.

Outside the doorway they had found a yellow ear plug, which they assumed had come out of the barrel of the service pistol used by their uniformed colleague when he fired.

They had secured the Beretta pistol, the yellow ear plug, the bullet, the spent cartridge and a white disposable lighter found underneath the body of the victim, and had taken swabs from the victim's hands to be checked for traces of gunshot residue.

On 21 July 1998 they had received Officer Brons's Walther P5 service pistol and two magazines, the first holding seven rounds, the second holding eight.

The bullet, the spent cartridge and Officer Brons's service pistol were handed over to staff of the Forensic Laboratory (*gerechtelijk laboratorium*) in Rijswijk. The Beretta pistol, the yellow ear plug, the disposable lighter and the sample taken from Moravia Ramsahai's hands were handed to staff based at the Flierbosdreef police station.

Twenty-nine photographs were appended to this record, photocopies of which – in black and white – are contained in the Court's file.

The first eight photographs show an overview of what is described in the report as the scene of the crime (*plaats delict*). It is apparent that they were taken at night: they are dark and lampposts and other electric lights are lit. An area in front of a large building is shown to have been fenced off with bicoloured tape. On photographs numbers 5 through 8, a white or light-coloured object is visible which could be a body covered by a white sheet. A pistol or pistol-shaped object is visible on photograph number 5, lying next to the white or light-coloured object. Photograph number 8 shows small signs bearing numbers.

Photographs numbers 9 and 10 show an automatic pistol lying on the ground. It is discernible on photograph number 10 that the pistol is made out of shiny metal and bears the brand name “Beretta”. The hammer is in the cocked position.

Photograph number 11 shows another overview, taken from approximately the same vantage point as photograph number 5. Numbered signs have been placed next to particular objects, including the pistol – numbered 1 – and the white or light-coloured object, which is numbered 2. The sign bearing the numeral 3 is visible in the background, in front of the building and close to it.

Photograph number 12 shows a small object lying on the ground, stated in the report to be the yellow ear-plug. A number sign 3 is set next to it.

Photograph number 13 shows tall windows, through which a stairway is visible. The sign bearing the numeral 3 is in front of it. Next to the stairway is a doorway, where an object which could be a scooter is shown lying on the ground, next to a sign bearing the numeral 6.

Photograph number 14 shows a hole in a pane of glass stated in the report to be the bullet hole found in the window of the stairway. The hole is indicated with an arrow and marked with the numeral 4.

Photograph number 15 shows what is stated in the report to be the inside of the windows closing off the stairway. The hole in the pane of glass, marked with the numeral 4, is visible. On the floor below the same window and close to it lies a small object, marked with a sign bearing the numeral 5, lies a small object.

Photograph number 16 shows a small object, stated in the report to be the bullet and marked with a sign bearing the numeral 5, lying on the floor at the bottom of a window.

Photograph number 17 shows what is stated to be the doorway where the scooter was found. It shows the doors of a lift which a sign identifies as “Lift 3”. On the lower portion of the photograph an object is visible which is difficult to make out on the photocopies contained in the Court's file, but which could be a scooter.

Photographs numbers 18 through 22 show parts of a scooter which appears to be lying on its side.

Photograph number 23 shows another overview of the scene outside, on which an object covered in what appears to be a sheet is visible, as well as what appears to be the front of a ground floor office, an area in the background which is brightly lit and which may be identified as the entrances to the staircase and the hallway, and a sign bearing the numeral 7. The sign bearing the numeral 7 is some distance removed from the object covered in what appears to be a sheet. The number 7 is stated in the report to indicate the spent cartridge.

Photograph number 24 shows another overview, including the sign bearing the numeral 7.

Photograph number 25 shows an overview on which the object covered in what appears to be a sheet and the sign bearing the numeral 7, are visible.

Photographs numbers 26 and 27 show the body of a male lying on the ground. The body is clothed in dark colours. The shirt is undone and the torso is visible. The body is shown lying on its left side, the left arm outstretched. The hair has been cropped very close to the head or shaved off.

Photograph 28 shows the torso, head and neck of a male body. The head is turned so that the right side of the neck is visible, showing a wound which could have been caused by the entry of a bullet fired from a firearm.

Photograph 29 shows the head of the body of a coloured male lying supine on the ground. The face is visible. The hair has been cropped very close to the skin or shaved off.

#### *10. Official report of identification of the body dated 20 July 1998*

This report, by Senior Police Detective Schultz, states that on 20 July 1998 at 2.15 p.m. the body was shown to Mrs Ruth Helen Versteeg-Tewari, Moravia Ramsahai's mother, and Mr Carlitto Marciano Farook Alihusain, his cousin. They both recognised the body and identified it as Moravia Ramsahai's.

#### *11. Official record of findings and autopsy dated 20 July 1998*

This report was drawn up by Police Superintendent Jelle Sijbolt Attema and Senior Police Officer Abraham Maria Hout, serving with the central detective service (*Dienst Centrale Recherche*) of the Amsterdam/Amstelland police force, and temporarily assigned to the Tactical Office (*Bureau Taktiek*), Serious Crimes Product Division (*Produktgebied Ernstige Delicten*).

The report states that a public prosecutor to the Amsterdam Regional Court (*arrondissementsrechtbank*), Ms S.N. de Vries, had ordered a judicial autopsy on the body of Moravia Ramsahai. The body was accordingly removed from the morgue at the Amsterdam Free University Hospital and

transferred to the Forensic laboratory in Rijswijk. The autopsy was carried out by the pathologist Dr C.J.J. Hens.

Clothing and jewellery removed from the body are described in the report. It is mentioned that an additional 6.35 mm cartridge was found in the shirt pocket. Separate reports of seizure were drawn up in respect of these objects.

The pathologist's provisional conclusions, in handwriting, are appended to the report. These are:

“A. 1. There was a presumed gunshot entry wound in the neck, on the right. Course of bullet runs towards the rear, the centre and somewhat downwards to presumed exit wound in the back on the right.

B. 1. Laceration of the brachiocephalic (innominate) artery and vein at the back.

2. Extensive bleeding in soft parts of the neck.

3. In the right chest cavity 1,300 cc of blood, internal organs and mucous membranes exsanguine.

C. No pathological organic abnormalities.

D. Further examination:

alcohol, exploratory toxicological examination and further pathological-anatomical examination.

Provisional conclusion: A gunshot wound penetrating the body front to back (*doorschotverwonding*).

Cause of death: extensive damage to tissue, massive internal bleeding.”

## 12. The autopsy report

On 20 July 1998 a full autopsy was carried out on Moravia Ramsahai's body at the Laboratory for Judicial Pathology (*Laboratorium voor Gerechtelijke Pathologie*) in Rijswijk, near The Hague, by the physician and pathologist Dr C.J.J. Hens.

The summary and conclusions of this report were as follows (the numbers between brackets refer to paragraphs of the report):

### “a. Summary

The autopsy showed that:

A. There was a probable gunshot entry wound in the right side of the neck (6A). The course of the bullet runs backwards, towards the middle and somewhat downwards to a probable exit wound in the right of the back (6B).

B1. Laceration of the brachiocephalic (innominate) artery and vein on the right (29, 30)

2. There was extensive bleeding in the soft parts of the neck (13).

3. There were perforations of the upper lobe of the right lung (17).

4. In the right chest cavity [there were] 1,300 cubic centimetres of blood, there were internal organs and membranes drained of blood (11, 20, 26, 13).

C. There were no pathological organic abnormalities relevant to the death.

D. Toxicological examination showed the alcohol content of the blood to be 0.85 permille and that of the urine to be 1.51 permille according to report number 98.07.21.022.

Further toxicological examination into other foreign substances will be the object of a separate report of the Judicial Laboratory.

As was stated by the recording police officer (*verbalisant*), M.S.G. Ramsahai died shortly after receiving a gunshot wound.

It follows from the findings under A. that M.S.G. Ramsahai was hit by one bullet in the neck area. The injuries as a result of the gunshot wound, described under B1 through B3, led to his death through organ and tissue damage and massive internal bleeding (in light of the findings under B4).

#### **b. Conclusion**

In the case of Moravia, Siddharta, Ghasuta Ramsahai, age 19 years, injuries resulting from a single gunshot wound were established by which *inter alia* major blood vessels and the right lung were perforated. These injuries led to his death.”

The report, dated 31 August 1998, further states that a blood sample, some fluid from the vitreous humour of the eyes, a piece of skin from the entry wound and some hair samples will be kept for six months, after which they will normally be destroyed unless orders to the contrary are received.

#### *13. Report of the seizure of a video tape on 20 July 1998*

This report by Detective Sergeant W.B.N. Dolman relates the seizure of a video tape recorded by closed-circuit television in the Burger King restaurant aforementioned on 19 July 1998. It is stated that the tape shows Moravia Ramsahai for a considerable length of time and that a copy has been made.

#### *14. Decision of Public Prosecutor De Vries dated 22 July 1998*

Having taken note of the report of Coroner Van Venrooij, Public Prosecutor De Vries gave permission for the body of Moravia Ramsahai to be disposed of by burial or cremation.



*15. Official record, 4 August 1998*

Police Superintendent Ronald Groenewegen of the Amsterdam/Amstelland police drew up a record describing the events which he himself had witnessed.

On the evening of 19 July 1998 Superintendent Groenewegen had been out in uniform, in charge of the police detachment monitoring the Kwakoe festival. At 09.55 p.m. he had heard on his two-way radio that two supervising officers were pursuing a thief who had stolen a scooter. From other messages he concluded that other officers had also set off in pursuit, including Officers Brons and Bultstra in a police car. At around 10 p.m. Superintendent Groenewegen had heard that Officers Brons and Bultstra were pursuing the thief in the direction of the Huigenbos building. Shortly afterwards, he had heard that there had been shooting and that an ambulance was needed.

Superintendent Groenewegen had immediately made his way to the Huigenbos building.

Upon arrival, he had seen a man lying on the ground, wounded in the neck. He had seen a silver-coloured pistol lying on the ground, about one metre away from the man's feet. He had also spotted a police two-way radio lying on the ground, about one metre away from the body at hip level.

The ambulance had arrived at approximately 10.20 p.m. and its crew had emerged with a stretcher.

Shortly afterwards, someone had thrust a two-way radio set into Superintendent Groenewegen's hands, telling him that it was Officer Bultstra's. Superintendent Groenewegen had understood that this had been the set which he had seen lying on the ground.

*16. Report of toxicological examination dated 23 December 1998*

This report was drawn up by Dr. K.J. Lusthof, pharmacist and toxicologist, to whom parts of Moravia Ramsahai's body had been entrusted for the purpose of establishing whether they contained any alcohol, narcotic or stimulant substances or prescription drugs.

The presence of alcohol was investigated by two analysts working independently and following a prescribed method. It was found that the blood sample provided contained 0.85 milligrams of alcohol per litre, the urine contained 1.51 milligrams per litre, the vitreous humour of the left eye contained 1.53 milligrams per litre and that of the right eye contained 1.55 milligrams per litre.

The presence of amphetamines in the urine sample was initially suspected but could not be confirmed by subsequent testing.

Other substances found in the urine sample were nicotine, cotinine (a breakdown product of nicotine) and psilocine (an alkaloid compound found in certain hallucinogenic toadstools – genus *Psilocybe* – known colloquially

as “magic mushrooms”). The concentration of psilocine in the blood was too low to be determined.

#### *17. Other police records*

The file contains an official record of the seizure of a tape-recording made of police two-way radio conversations on the night of 19 July 1998 and a transcript.

Other official records drawn up by police officers describe personal effects found on Moravia Ramsahai's body – clothing, jewellery, the contents of his pockets – and their return to his next-of-kin, the return to Vinodkumar Hoeseni of the scooter taken from him by Moravia Ramsahai, and the opening of a temporary document register for the case.

The file also contains a printout giving the results of the firearms training undergone by Officer Brons in the year before 19 July 1998. It shows that during this period Officer Brons had fired 390 practice rounds, scoring an average of 88.80% hits, and had undergone refresher training on 10 July 1998.

### **E. Proceedings brought by the applicants**

#### *1. Preliminary developments*

On 22 July 1998 Mr Hamer wrote to Chief Superintendent Van Duijvenvoorde on behalf of the third applicant, Moravia Ramsahai's father, and the Ramsahai family. He informed Chief Superintendent Van Duijvenvoorde that the third applicant intended to appear as an injured party (*beledigde partij*) in any prosecution that might be brought against the person responsible for shooting Moravia dead and asked for information on the case, including copies of all documents contained in the case file.

On 28 July 1998 Mr Hamer wrote in comparable terms to the public prosecutor in charge of the investigation, Ms S.M. de Vries.

On 13 August 1998 the public prosecutor replied that she had not yet received the case file. However, attempts were being made to find witnesses put forward by Mr Hamer's clients.

On 9 September 1998 Mr Hamer wrote to the public prosecutor again asking for a copy of the case file. He expressed the wish that the decision whether or not to prosecute the police officer responsible for the shooting should not be taken before the Ramsahai family had had a chance to study the file and add their comments (*becommentariëren*). He also asked the public prosecutor to ensure that the public prosecution service made no public statement to the effect that the police officer had acted in self-defence. The following day, apparently in response to a letter received from

the public prosecutor, Mr Hamer repeated this request in more forceful terms.

On 11 September the public prosecutor wrote to the parents of Moravia Ramsahai. In addition to expressing the public prosecutor's condolences, this letter contains the following passage:

“Having studied the documents of the investigation I have decided not to prosecute the police officer who fired at your son. In my considered opinion (*naar mijn oordeel*) there existed, for the police officer in question and his fellow officer, such a threatening situation at the moment of the shooting that the shooting was justified.

I will, if you wish, explain the reason for my decision in person.”

The same day the public prosecution department put out a press release which read as follows:

**“Shooting incident Amsterdam South-East**

On 19 July 1998 a shooting incident took place in Amsterdam South-East in which an eighteen-year-old youth was shot dead by a police officer after having stolen a scooter. The State Investigation Department has investigated the circumstances of this shooting incident.

The public prosecutor has decided not to initiate a prosecution against the police officer. It has emerged from the investigation that the situation was a life-threatening one and that the police officer acted to put an end to a situation that was threatening his life and that of his fellow officer. The victim drew a loaded pistol first and, despite having been called upon to drop it, he failed to do so and aimed it at one of the police officers. The police officer is therefore entitled to claim self-defence.

The investigation has further shown that the police acted appropriately (*adequaat*) immediately after the shooting. The alleged delay in the arrival of the ambulance, the [alleged] dropping of an object by the suspect and the reporting, or failure to report, by the person reporting the theft of the scooter that the suspect was in possession of a firearm, has also been investigated. It has turned out that the statements of [members of] the public who appeared on the scene in large numbers (*het toestromende publiek*) were incomplete and incorrect on these points.”

On 14 September 1998 Mr Hamer wrote to the public prosecutor complaining that he had not yet received a copy of the case file.

On 8 October 1998 Mr Hamer wrote to the public prosecutor asking about any criminal investigations which there might have been concerning Moravia Ramsahai, and asking for copies of documents from the relevant case files from which it might appear whether or not Moravia Ramsahai had ever come across Officers Brons and Bultstra.

On 16 October 1998 Mr Hamer wrote to the public prosecutor asking, among other things, for the drawing which he assumed the pathologist had made of the injuries visible on the body, and for an official determination of the bullet's trajectory to be made if this had not already been done.

On 9 November 1998 Mr Hamer wrote to the public prosecutor reminding her of an offer she had made to grant the third applicant an

interview in which she would explain in person her decision not to prosecute Senior Police Officer Brons. Mr Hamer indicated that the third applicant wished to take the public prosecutor up on that offer and asked her to allow the press and the television media to attend.

The public prosecutor replied on 12 November 1998, stating that she was still prepared to meet Mr Hamer's clients, but not in the presence of the press.

On 18 December 1998 the public prosecutor wrote to Mr Hamer again. In response to his requests made in his earlier letters, she referred him to the case file. Additional information, such as the precise trajectory of the bullet, did not exist and was unobtainable for technical reasons.

## *2. The complaint to the Amsterdam Court of Appeal*

On 23 September 1998, having learned that the public prosecutor did not intend to prosecute, Mr Hamer wrote to the public prosecutor announcing the intention of the third applicant to seek a court order for the prosecution of Senior Police Officer Brons.

On 2 October 1998 the three applicants applied for such an order to the Amsterdam Court of Appeal by means of a protest against the failure to prosecute (Article 12 of the Code of Criminal Procedure – *Wetboek van Strafvordering*). The application was signed by Mr Hamer as the applicants' representative and by each of the applicants individually. They stated that the information available did not admit of the conclusion that the shooting of Moravia Ramsahai by Senior Police Officer Brons was sufficiently justified. They also pointed out that certain key parts of the investigation after the shooting had been carried out by the Amsterdam/Amstelland police force – that is, Senior Police Officer Brons's direct colleagues – and argued on that ground that the investigation had not been “effective” and “independent”. Further complaints addressed the failure to question Officers Brons and Bultstra until several days after the event, the failure to question all the police officers who had arrived at the scene after the shooting about what had been said by Officers Brons and Bultstra, the failure to determine the precise trajectory of the bullet (which the applicants submitted would have been possible), the failure to secure gunshot residue samples from the hands of Officers Brons and Bultstra, and other alleged lacunae in the investigation. Reference was also made to the statement of Police Commissioner Van Riessen as reported in the newspaper *De Telegraaf*, to the effect that he would not allow an independent inquiry, and to the fact that the Chief Public Prosecutor (*hoofdofficier van justitie*) of Amsterdam retained overall responsibility for the investigation and the prosecution, if any.

On 8 January 1999 the Acting Prosecutor General (*plaatsvervangend procureur-generaal*) of the Amsterdam Court of Appeal submitted an opinion in response to the applicants' complaint about the failure to

prosecute Senior Police Officer Brons. He considered it sufficiently clear from the evidence available that Officer Brons had acted in self-defence and was not convinced that Public Prosecutor De Vries, who had decided not to prosecute, was in any way biased. Although perhaps some might have preferred the non-prosecution decision to have been taken by an official body further removed from the Amsterdam police, that was not a wish which needed to be taken into account by the courts. It followed that the applicants' complaint of 2 October 1998 was unfounded.

On 23 February 1999, Mr Hamer, having been informed of the date on which a hearing would be held to consider the applicants' said complaint, wrote to the Court of Appeal asking for the hearing to be public.

On the same day Mr Hamer wrote to the Acting Prosecutor General to the Court of Appeal, complaining about the failure of the registry of that court to provide him with copies of the complete case file and asking for this failure to be redressed. He made a similar request to the President of the Court of Appeal.

The registrar of the Court of Appeal replied on 24 February 1999, pointing out that the question to be decided was whether to hold a hearing; in such circumstances it was appropriate for participants in the hearing to be allowed to view the file but, for reasons of caution, copies were refused. By a separate letter of the same date, the registrar informed Mr Hamer that the hearing would not be public, but that Mr Hamer could raise the issue at the hearing if desired.

The Acting Prosecutor General replied on 25 February 1999, stating that he was not an appellate body competent to review decisions of the registrar of the Court of Appeal to withhold documents. In any event, Mr Hamer had been able to see all available documents.

The applicants' complaint under Article 12 of the Code of Civil Procedure was heard *in camera* by a judge delegate (*raadsheer-commissaris*) on 1 March 1999. Mr Hamer made extensive oral submissions on the applicants' behalf.

On 19 March 1999, with the consent of the Advocate General in charge of the case, Mr Hamer wrote to the judge presiding the chamber of the Court of Appeal which was to hear the applicants' complaint against the failure to prosecute, pointing to an alleged inconsistency between the statements of Officers Brons and Bultstra and the statements of other police officers as reported in the press release, which in his submission would justify a further criminal investigation.

On 26 April 1999 the Court of Appeal dismissed the applicants' complaint against the public prosecutor's decision not to prosecute. In its reasoning it endorsed the decision of the delegated judge not to hold a public hearing. In the light of the legal provisions applicable, it would go beyond the powers of the judiciary to develop the law if a hearing, the purpose of which was to decide whether a particular person should be put

on public trial, were itself held in public. Moreover, that would defeat the purpose of the applicable legal provisions.

As to the merits of the case, the Court of Appeal was satisfied that Officer Brons had acted to avert a threat of harm by a deadly weapon and had acted in legitimate self-defence. It based this finding on the statements of Officers Brons and Bultstra and Mr van den Heuvel. It added that if there had been more time, it might have been possible to avoid inflicting a lethal wound; however, an immediate reaction had been required in the circumstances, as had subsequently been borne out by the fact that Moravia Ramsahai's pistol had had a round chambered and its hammer cocked in the firing position. This conclusion was reinforced by the available information that earlier that day he had stolen a vehicle at gunpoint and used the pistol in a threatening way on at least one more occasion, as well as by the retrospective finding of traces of alcohol and the active ingredient of hallucinogenic toadstools in Moravia Ramsahai's body. The other witness statements available were either plainly incorrect (as in the case of Mr Chitanie and Ms Rijssel) or irrelevant, or else did not materially affect the above findings.

Although the Court of Appeal agreed with the applicants that a reconstruction would have been desirable, it found nothing to suggest that the evidence available had not been investigated conscientiously and thoroughly. Nor could the fact, as alleged by the applicants, that they or their counsel had been denied access to certain documents lead to any different conclusion.

### *3. The complaint to the Police Complaints Board*

On 6 October 1998, in parallel with the proceedings before the Court of Appeal, Mr Hamer lodged a complaint with the Police Complaints Board on behalf of the first applicant to the effect that the press release put out by the Amsterdam/Amstelland police was incorrect and therefore improper vis-à-vis the first applicant.

By a separate letter of the same date and on behalf of the same applicant, Mr Hamer complained that Police Commissioner Van Riessen had had a conversation with Senior Police Officer Brons of which he had not kept any official record, but that he had failed to arrest Officer Brons or have him questioned and he had failed to order Officers Brons and Bultstra not to speak with each other until they had both been questioned. A further complaint raised in this letter concerned Police Commissioner Van Riessen's apparent refusal to agree to an independent inquiry, as reported in the newspaper *De Telegraaf*.

On 23 December 1998 the regional commanding officer of the Amsterdam/Amstelland police force submitted a written response to the first applicant's complaints to the Police Complaints Board. It was stated that Police Commissioner Van Riessen had come to the Flierbosdreef police

station after being informed of the events complained of, in order to provide moral support. He had not been in charge, or even involved, in the investigation so that his presence did not need to be recorded. Police Commissioner Van Riessen was not opposed to an independent inquiry, as reported in the newspaper, but did not see the point in view of the inquiry being carried out by the State Criminal Investigation Department. As to the press release, it was not clear why the first applicant found it objectionable.

On 10 February 1999 Mr Hamer transmitted to the Police Complaints Board a rebuttal to the regional commanding officer's letter of 23 December 1998, pointing to what in his view were inconsistencies. In particular, the statement of fact in the press release that the police officer who had shot Moravia Ramsahai had done so in defence of his fellow police officer was contradicted by the information available.

On 8 March 1999 the regional commanding officer of the Amsterdam/Amstelland police force transmitted a counter-rebuttal to the Police Complaints Board. It was stated that Police Commissioner Van Riessen had spoken to Officer Brons following the shooting not in order to establish the facts, but to offer Officer Brons emotional support after a profoundly distressing experience. There had been no need to make an official record of this conversation. The decision whether or not to make such records was, and remained, in the hands of the State Criminal Investigation Department. It was noteworthy in this connection that the investigating officer had not seen the need to seek more information about the conversation in question. The police had offered its full co-operation in the investigation, and an additional independent investigation was unnecessary. An explanation was given for the suggestion in the press release that Officer Brons had fired to protect Officer Bultstra. The discrepancy noted, however, was not fundamental and therefore did not justify an official retraction.

On 7 July 1999 the Police Complaints Board transmitted its advisory opinion to the Acting Burgomaster (*loco-burgemeester*) of Amsterdam. It took the view that the statements made by Police Commissioner Van Riessen in the media had been undiplomatic, likely to create misunderstanding and be hurtful towards the first applicant and, to that extent, the first applicant's complaints were well-founded; they were ill-founded for the remainder.

By letter of 2 September 1999 the Acting Burgomaster informed the first applicant that he had decided to adopt as his the opinion given by the Police Complaints Board.

#### *4. The complaint to the National Ombudsman*

The applicants state that a further complaint was submitted to the National Ombudsman (*Nationale Ombudsman*), but have provided no further information in this respect.

## **F. Relevant domestic law**

### *1. Criminal law and procedure*

#### **a. The Criminal Code**

The provisions of the Criminal Code (*Wetboek van Strafrecht*) potentially relevant to the case provide as follows:

##### **Article 40**

“He who commits an act to which he is compelled by circumstances beyond his control shall not be punishable.”

##### **Article 41**

“1. He who commits an act made necessary by having to defend his own or someone else's physical integrity (*lijf*), sexual integrity (*eerbaarheid*) or property against immediate unlawful assault shall not be punishable.

2. A transgression of the limits of necessary defence shall not be punishable if it has been caused immediately by a strong emotion occasioned by the assault.”

##### **Article 42**

“He who commits an act prescribed by law shall not be punishable.”

##### **Article 287**

“He who deliberately deprives another of his life shall be guilty of manslaughter and shall be punished by a term of imprisonment of no more than fifteen years or a fifth-category fine.”

##### **Article 289**

“He who deliberately and with malice aforethought (*met voorbedachten rade*) deprives another of his life shall be guilty of murder and shall be punished by imprisonment for life or for a term not exceeding twenty years or a fifth-category fine.”

#### **b. The Code of Criminal Procedure**

At the time of the events complained of, relevant provisions of the Code of Criminal Procedure provided as follows:



**Article 12**

“1. If a punishable act is not prosecuted, or if the prosecution is not pursued to a conclusion, then a person with a direct interest (*rechtstreeks belanghebbende*) may lodge a written complaint with the Court of Appeal within whose area of jurisdiction the decision not to prosecute or not to pursue the prosecution to a conclusion has been taken.

2. The expression 'person with a direct interest' shall include a legal person (*rechtspersoon*) which, in pursuance of its aims and as apparent from its actual activities, serves an interest that is directly affected by the decision not to prosecute or not to pursue the prosecution.”

**Article 12d**

“1. The Court of Appeal shall not decide without first having heard the complainant, or at least after having properly summoned the complainant ...”

**Article 12e**

“1. The Court of Appeal may summon the person whose prosecution is being sought in order to afford him the opportunity to remark on the request made in the statement of complaint and the grounds on which it is based. Such summons shall either be accompanied by a copy of the statement of complaint or contain an indication of the fact to which the complaint relates.

2. No order of the kind referred to in Article 12k shall be given unless and until the person whose prosecution is being sought has been heard by the Court of Appeal, or has at least been properly summoned.”

**Article 12f**

“1. The complainant and the person whose prosecution is being sought may be assisted *in camera*. They may be represented by an advocate ...

2. The president of the Court of Appeal shall ... allow the complainant and the person whose prosecution is being sought, as well as their advocates or authorised representatives (*gemachtigden*), to inspect the documents relative to the case if a request to that effect is made. Inspection shall take place in the way determined by the president. The president may, of his own motion or at the request of the Prosecutor-general, except particular documents from inspection in the interests of the protection of privacy, the investigation or prosecution of criminal acts or on important general interest grounds.”

**Article 12g**

“The person whose prosecution is being sought shall not be obliged to answer questions put to him *in camera*. He shall be so informed before he is questioned. The fact of his being so informed shall be mentioned in the official record.”

**Article 12h**

“The hearing of the complainant and of the person whose prosecution is being sought may also be delegated to one of the judges of the Court of Appeal.”

**Article 12i**

“1. If the complaint is within the Court of Appeal's jurisdiction, the complainant can be received (*de klager ontvankelijk is*), and if the Court of Appeal finds that a prosecution ought to have been brought or pursued to a conclusion, the Court of Appeal shall order the prosecution to be brought or pursued in respect of the fact to which the complaint relates.

2. The Court of Appeal may also refuse to give such an order for reasons derived from the general interest.

3. The order may also include the direction (*last*) that the public prosecutor shall make the request referred to in Article 181 or Article 237 § 3 [i.e. a request to the investigating judge (*rechter-commissaris*) to initiate or continue a preliminary judicial investigation (*gerechtelijk vooronderzoek*), respectively] or that the person whose prosecution is being sought shall be summoned for trial. The first-mentioned order may also be given by the Court of Appeal if the public prosecutor has already had the person whose prosecution is being sought officially notified of the decision of closure of a preliminary judicial investigation or if the time-limit prescribed in Article 237 § 3 has already passed.

4. In all other cases the Court of Appeal shall ... dismiss the complaint.”

**Article 12j**

“The judges of the Court of Appeal who have considered the complaint shall preferably not take part in the trial.”

**2. Authority over the police**

The Police Act 1993 (*Politiewet*), in relevant part, provides as follows:

**Section 12**

“1. If the police act in a municipality to maintain public order and to carry out their task of assisting the public (*hulpverleningstaak*), they shall be under the authority of the burgomaster.

2. The burgomaster is empowered to give the police officers involved directions in carrying out the tasks referred to in the first paragraph.”

### Section 13

“1. If the police act to maintain the legal order through criminal law, or to carry out tasks in support of the administration of justice, they shall be under the authority of the public prosecutor.

2. The public prosecutor is empowered to give the police officers involved directions in carrying out the tasks referred to in the first paragraph.”

### 3. Rules governing the use of force by the police

#### a. The Police Act 1993

Section 8 § 1 of the Police Act 1993 provides as follows:

“A police officer appointed to carry out the tasks of the police force shall be authorised to use violence in the lawful exercise of his duties when the aim thereby intended to be served, taking into account also the dangers involved in the use of violence, so justifies and that aim cannot be otherwise served. The use of violence shall be preceded, if possible, by a warning.”

#### b. The Standing Orders 1994

At the relevant time, the Standing Orders for the Police, the Royal Military Constabulary and officers invested with special investigative powers (*Ambst instructie voor de politie, de Koninklijke Marechaussee en de buitengewone opsporingsambtenaar*) provided, in relevant part:

### Section 7

“1. Use of a firearm, other than a firearm suitable for automatic fire or long-range precision fire, is permitted only:

a. to arrest a person who poses a firearms hazard (*vuurwapengevaarlijk persoon*);

b. to arrest a person who is trying to evade, or has evaded, arrest or being brought before the competent legal authority (*die zich aan zijn aanhouding of voorgeleiding tracht te onttrekken of heeft onttrokken*) and who is suspected or has been convicted of a serious indictable offence (*ernstig misdrijf*) which must in addition be considered a serious disruption of the legal order.

...

3. In the cases referred to in the first paragraph under a and b, the firearm shall not be used if the identity of the person to be arrested is known and it may reasonably be assumed that delaying the arrest will not jeopardise the legal order in a way that may be considered unacceptable. ...”

## Section 12

“1. Immediately before he fires a firearm, other than a firearm suitable for automatic fire or long-range precision fire, the officer shall give warning, in a loud voice or in another way that cannot be misunderstood, that fire will be opened if the order is not followed without delay. This warning, which may if necessary be replaced by a warning shot, shall be omitted only if the circumstances do not admit of it.

2. A warning shot shall be fired in such a way as to avoid, as far as possible, endangering persons or property.”

### c. The Police Armaments Rules 1994

In relevant part, the Police Armaments Rules 1994 (*Bewapeningsregeling Politie*) provide as follows:

#### Section 1

“In these rules, the expression ...

'pistol' [shall mean] the semi-automatic pistol, brand name Walther, type P5, calibre 9x19 millimetres; ...”

#### Section 2

“The armament of a police officer and of a special police officer, as referred to in section 43 of the Police Act shall, while they are in duty, consists of:

a. a short truncheon of a brand and type approved by the Ministers [sc. the Minister of Internal Affairs (*Minister van Binnenlandse Zaken*) and the Minister of Justice (*Minister van Justitie*)];

b. pepper spray;

c. the pistol.”

#### Section 14

“The pistol ... shall be loaded with cartridge ammunition, brand name Dynamit Nobel A.G., type Action, model 3, calibre 9x19 millimetres.”

#### Section 16

“The regional police force manager (*korpsbeheerder*) shall ensure that a police officer ... has a weapon at his disposal only if he meets requirements of competence in their use set by the Ministers.”

#### 4. Rules governing the State Criminal Investigation Department

##### a. The Police Act 1993

Article 43 of the Police Act provides as follows:

“1. For tasks determined by the Minister of Justice, after consultation with the Minister of Internal Affairs, the Prosecutor General shall have special duty police officers (*bijzondere ambtenaren van politie*) ... at his disposal.

2. The Minister of Justice shall be charged with the management of the police officers referred to in the first paragraph. These police officers shall ... be appointed, promoted, suspended and dismissed by the Minister of Justice.”

##### b. Rules governing the organisation of the service departments of the Public Prosecution Service

According to section 1 of the Rules governing the organisation of the service departments of the Public Prosecution Service (*Organisatieregeling dienstonderdelen OM*), the State Criminal Investigation Department is a nationwide service placed directly under the primary collective responsibility of the Prosecutors General to the Courts of Appeal. Its day-to-day affairs are managed by a Director who reports to the Prosecutors General (section 3).

##### c. Circular on the Tasks and Deployment Criteria of the State Criminal Investigation Department

At the relevant time, a circular issued on 10 July 1997 by the Ministers of Justice and Internal Affairs entitled the Circular on the Tasks and Deployment Criteria of the State Criminal Investigation Department (*Circulaire Taken en inzetcriteria Rijksrecherche*, Official Gazette – *Staatscourant* – 1997, no. 135), provided that Department's terms of reference.

The State Criminal Investigation Department *per se* had, and has, no basis in statute or delegated legislation. Its members did: they were special duty police officers as referred to in section 43 § 1 of the Police Act (paragraph 2 of the circular).

Specific tasks for which this department was intended included, *inter alia*, investigating deaths in police custody and investigating the use of firearms by police officers (paragraph 3.1.4). In particular, all cases involving the use by a police officer of a firearm, leading to death or injury, should be investigated by this department (paragraph 4.2.1).

An application for an investigation by the Department was made by the Chief Public Prosecutor to the head of the local unit of the department. If the Chief Public Prosecutor was met with a refusal, he could apply to the mandated Prosecutor General for a decision (paragraph 6.1).

After the Chief Public Prosecutor had obtained the agreement of the head of the unit, or of the mandated Prosecutor General as the case might be, the investigation became the Chief Public Prosecutor's responsibility. So did any resulting prosecution. The mandated Prosecutor General might, in special cases, indicate that he wished to be involved in any follow-up decisions to be taken by the Chief Public Prosecutor. The Prosecutors General might also take a collective decision to assume direct responsibility for the follow-up decisions themselves. In addition, the mandated Prosecutor General received periodic reports on the actions of the Chief Public Prosecutor in relation to the State Criminal Investigation Department's investigations for *ex post facto* scrutiny by the Prosecutors General collectively. Every police officer whose actions were investigated by the State Criminal Investigation Department was to be informed of the outcome of the investigations afterwards (paragraph 7).

### 5. *Police complaints procedure*

#### a. **The Police Act 1993**

According to section 61 of the Police Act, the burgomasters of the municipalities located within each police jurisdiction (*regio*) shall provide for a complaints procedure involving a committee of independent members who shall advise the regional police force manager – i.e. the burgomaster of one of the said municipalities, appointed according to a list appended to the Police Act (section 23) – in dealing with complaints.

#### b. **The Amsterdam/Amstelland Police Complaints Rules**

In relevant part, the Amsterdam/Amstelland Police Complaints Rules (*Regeling met betrekking tot de behandeling, het onderzoek en de afdoening van klachten over het optreden van ambtenaren van het politiekorps Amsterdam/Amstelland*) provide as follows:

#### **Rule 3: Aims**

“The complaints procedure is intended to improve, where possible, the relationship between citizens and the police.”

#### **Rule 4: Basic features of the complaints procedure**

“1. The complaints procedure is in two parts:

- a. informal mediation by a complaint mediator within the local team or the police station to which the complaint relates;
- b. formal consideration by the regional police force manager following investigation by the Board and the Board's advisory opinion.

2. Formal consideration shall take place if:
  - a. the complainant expressly so desires;
  - b. the complainant requests it after mediation;
  - c. it is clear that a mediation attempt will not lead, or has not led, to adequate treatment of the complaint;
  - d. the Board is of the opinion that formal consideration is desirable because of the special nature of the complaint.”

**Rule 5: Complaints procedure when an indictable offence (*misdriff*) is suspected**

1. If there is a suspicion that the complaint may relate to an indictable offence committed by a police officer, it shall be transferred to the Chief Public Prosecutor.
2. The complaints procedure according to these Rules shall be resumed if the Chief public Prosecutor indicates that that is preferable.
3. If the Chief Public Prosecutor takes responsibility for dealing with the complaint, the complainant shall be so informed. In so far as the complaint relates at the same time to behaviour that does not raise any suspicions of an indictable offence, the Chief Public Prosecutor shall also include such behaviour in his investigation and express an opinion about it. The Board shall receive a copy of the Chief Public Prosecutor's decision on the complaint.
4. If the Chief Public Prosecutor makes a criminal investigation based on the complaint, statements made during the complaints procedure shall be disregarded unless the police officer concerned by the complaint has agreed otherwise.”

**Rule 6: The Police Complaints Board**

- “1. There shall be an independent Police Complaints Board. It shall consist, preferably, of six members including the Chairman.
2. The members and the Chairman shall be nominated by the Board appointed by the regional police force manager, after consultation of the burgomasters of the municipalities located within the police jurisdiction. The Secretary of the Board shall be appointed by the regional police force manager.
3. The Board's task shall be to give an opinion as to whether the actions (*optreen*) of the police officer concerned by the complaint were proper (*behoorlijk*). In addition, it shall uphold the quality and the uniformity of the complaints procedure within the police jurisdiction. It shall advise the burgomasters and the regional police force manager in dealing with a complaint and shall, if it sees fit, make recommendations for the improvement of the organisation and its internal procedure.
4. The Board may further determine its internal working procedure in Rules.”

### **Rule 8: Information**

“1. The complainant and the police officer concerned by the complaint shall receive, as soon as possible after the complaint is introduced, information about the procedure. This shall include a statement that they may be assisted by an advocate or other trusted assistant (*vertrouwenspersoon*). They shall also be informed of the progress of the proceedings.

2. The Chief Public Prosecutor shall be informed of the introduction and treatment of written complaints.”

### **Rule 13: Suspension of the complaint proceedings**

The complaint proceedings shall be suspended if a criminal complaint has been made in relation to the action complained of, or if a complaint has been made to the Chief Public Prosecutor, or if proceedings are pending before a judicial authority, as long as no final decision has been made on that complaint or in those proceedings as the case may be. The same shall apply if the complainant makes use of the right to complain under Article 12 of the Code of Criminal Procedure.”

### **Rule 14: Inadmissibility**

Insofar as the authorities mentioned in section 13 of these Rules, the National Ombudsman or the regional police force manager have already stated their findings (*uitspraak*) about an action, or if the complaint concerns a decision against which an objection or an appeal is possible or has been possible for the complainant, the [complaint] shall be inadmissible.”

### **Rule 21: Position of the Board**

“The Board shall be authorised to give directions relating to mediation if there is occasion to do so.”

### **Rule 32: Formal consideration**

“1. Formal consideration of the complaint shall take place by the regional police force manager after the Board has given its advisory opinion.

2. If no mediation attempt is made, the complaint mediator, now acting as rapporteur, shall investigate the complaint. He shall report his findings. ...”

### **Rule 35: Advisory opinion**

“1. The Board shall report its findings to the burgomaster and advise on how to deal with the complaint.

2. The Board's advisory opinion can contain the following findings:

a. the Board has not been able to establish that the action complained of actually took place;



b. the Board is of the opinion that the action complained was [or was not] proper in whole or in part, as the case may be.

3. The Board may, if the complaint so requires, express its views (*zienswijze*) about any measures to be taken. ...”

### **Rule 37: Decision**

“1. The burgomaster or the regional police force manager shall send his decision on the complaint to the complainant. The Board's advisory opinion shall be appended. The decision shall mention that the complainant may submit his complaint to the National Ombudsman if he does not agree with the decision.

2. If the decision of the regional police force manager differs from the Board's advisory opinion, this shall be mentioned in the reasoning of the decision, together with the grounds for the difference.”

### *6. The Civil Code*

In relevant part, the Civil Code (*Burgerlijk Wetboek*) provides as follows:

#### **Article 6:106**

“1. The injured party (*benadeelde*) is entitled to compensation, to be determined *ex aequo et bono*, for non-pecuniary damage:

- a. if the person liable intended to cause such damage;
- b. if the injured party has suffered physical injury, damage to his honour or reputation, or other harm to his person (*op andere wijze in zijn persoon is aangetast*);
- c. if the damage consists of harm to the memory of a deceased person and has been caused to the deceased's spouse (who was not separated from the deceased by a judicial decision), registered partner or a first or second-degree blood relation of the deceased, provided that the harm has been caused in a way that would have given the deceased, were he still alive, an entitlement to compensation for harm to his honour or reputation.

2. The right to compensation referred to in the previous paragraph shall not pass to another person or be subject to attachment, unless it has been established by agreement or has been claimed in court. For it to pass under a universal title, it shall be sufficient that the person entitled has informed the other party that he claims such compensation.”

#### **Article 6:108**

“1. If someone dies as a result of an occurrence for which another is liable towards him, that other shall be obliged to make good the damage caused by loss of subsistence:

a. to the deceased's spouse who is not judicially separated from the deceased, [the deceased's] registered partner and [the deceased's] underage children, up to a sum equal to no less than the subsistence to which they are entitled under the law;

b. to other relations by blood or marriage of the deceased, provided that the deceased provided their subsistence in whole or in part already at the time of death or was obliged so to do pursuant to a judicial decision;

c. to those who lived together with the deceased in a family unit (*in gezinsverband*) already before the occurrence on which the liability is based and whose subsistence he [i.e. the deceased] provided in whole or in major part, to the extent that it may be assumed that such would have continued to be the case had the death not occurred, and they cannot reasonably provide sufficiently for themselves;

d. to the person who lived with the deceased in a family unit and to whose subsistence the deceased contributed to by doing their joint housekeeping, to the extent that [that person] suffers damage as a result of the need to make alternative housekeeping arrangements as a result of the death.

2. Furthermore, the person liable shall be obliged to refund the costs of the funeral to the person who has borne these costs, to the extent that these are consistent with the deceased's condition in life (*omstandigheden*).

3. He who is sued for damages pursuant to the preceding paragraphs shall be entitled to the same defences as would have been available to him vis-à-vis the deceased.”

#### Article 6:162

“1. He who commits against another person a tort (*onrechtmatige daad*) which is imputable to him shall be obliged to make good the damage suffered by that other person.

2. Shall be deemed to be a tort the violation of a right, an act or omission violating a statutory duty or a rule of unwritten law pertaining to proper social conduct, except where there is a ground of justification.

3. A tort may be imputed to its author if it is due to his fault or to a cause for which he is answerable according to law or common opinion.”

### G. The Walther P5 pistol and Action 3 ammunition

The Walther P5 is a double-action semiautomatic pistol. It has a number of safety features, including an internal firing pin retaining mechanism which prevents the firing pin from striking the primer of the cartridge unless the trigger is pressed all the way through. This enables the weapon to be carried safely with a round chambered and ready for immediate use, while preventing its being fired accidentally.

In the version issued to the Netherlands police, the Walther P5 fires a 9x19 mm (also known as 9 mm parabellum or 9 mm Luger) cartridge. The ammunition issued as standard, “Action 3” manufactured in Germany by Dynamit Nobel AG, has a bullet which is designed specifically for police work. This bullet, a non-deforming hollow one made out of a brass alloy, sheds much of its kinetic energy when it hits a solid object (a human body for example), which in riots or hostage-taking situations may prevent it from wounding someone other than the intended target unintentionally while at the same time causing the least possible damage to body tissue.

## COMPLAINTS

1. The applicants raised a number of complaints under Article 2 of the Convention.

Firstly, they submitted that the death of Moravia Ramsahai had not been absolutely necessary for any of the purposes set out in the second paragraph of that Article.

Secondly, they complained that the investigation after Moravia Ramsahai's death had been deficient. More specifically, they complained that:

- (a) the investigation could not be considered “independent”, since essential parts of it had been carried out by the Amsterdam/Amstelland police force, the same force to which Officers Brons and Bultstra belonged;
- (b) after the first door-to-door search for witnesses in the Huigenbos building itself, no further effort had been made to find civilian witnesses, and in fact some had even been turned away;
- (c) Officers Brons and Bultstra had not been questioned until several days after the fatal shooting, during which time they had had the opportunity to discuss the incident with others and with each other;
- (d) several technical investigations which one would normally expect in a case such as the present had not been carried out: thus, no attempt had been made to establish the precise trajectory of the bullet (which the applicants submitted would have been possible); no gunshot residue samples had been taken from the hands of Officers Brons and Bultstra; no report of any examination of Officer Brons's service weapon and ammunition and of the spent cartridge was contained in the investigation file; and there had been no reconstruction of the incident;
- (e) Police Commissioner Van Riessen's refusal to co-operate with any further investigation was evidence of subjective partiality;
- (f) the State Criminal Investigation Department could not be considered independent and impartial, since at the time it reported to the local Chief

Public Prosecutor (*hoofdofficer van justitie*), who was also responsible for the local public prosecution service and the local police;

- (g) Officers Brons and Bultstra had been provided with a single advocate, which was contrary to normal practice in the Netherlands;
- (h) the decision not to prosecute Officer Brons had been taken by an Amsterdam public prosecutor who was specifically responsible for the police work done at Flierbosdreef police station and dependent on the officers based there for assistance and information;

2. The applicants complained under both Article 2 and Article 6 of the Convention that the investigation had not been independent and effective. They raised the following complaints about the procedure followed by the Court of Appeal:

- (a) the hearing had not been public, nor had the decision been pronounced in public;
- (b) certain documents had been denied them, including an official report by the public prosecutor, which however had been before the Prosecutor General to the Court of Appeal and the Court of Appeal itself;
- (c) requests for Officers Brons and Bultstra to be questioned in public, for access to Officer Brons's service record (including any complaints against him), and for a reconstruction of the incident involving Officers Brons and Bultstra had not been entertained;
- (d) the Court of Appeal had undertaken no independent investigation of its own, but had relied on information provided by the Amsterdam/Amstelland police and the State Criminal Investigation Department;
- (e) the hearing had been held before a single judge, whereas the decision had apparently been given by three;
- (f) as far as could be established, no official record had been kept of the Court of Appeal's hearing, which was contrary to the law.

3. Finally, the deficiencies alleged above were, in the applicants' submission, also constitutive of a violation of Article 13 of the Convention.

## THE LAW

The applicants allege violations of Articles 2, 6 and 13 of the Convention, which provide as follows:

### Article 2

“1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of an indictable offence for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

### Article 6

“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. ...”

### Article 13

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

The Government dispute the admissibility of the application.

## A. Whether domestic remedies have been exhausted

### *1. Arguments before the Court*

The Government submit that, insofar as it is alleged that the State of the Netherlands is responsible for Moravia Ramsahai's death, domestic remedies have not been exhausted. In their submission, the applicants ought, before lodging an application with the Court, to have instituted civil proceedings against the State.

An action in tort would have afforded the applicants a chance to obtain a judgment establishing liability in civil law for the death of Moravia Ramsahai, whatever the sum which they might have been awarded in damages. Moreover, civil proceedings of this nature would not have been prejudged by the complaint which they had lodged with the Court of Appeal under Article 12 of the Code of Criminal Procedure. In support of this argument they submit a decision given by the Regional Court of The Hague on 20 December 2001 (no. 01.481), in which that court ordered a hearing of

witnesses as a measure preliminary to an action in tort intended to be brought in a case likewise concerning the fatal use by a police officer of his service weapon. They further argue that a successful criminal prosecution is not a prerequisite for a successful action in tort.

The Government refer to a judgment delivered by the President of the Regional Court of The Hague on 23 September 1994 (Case no. 94/934). In that judgment the President of the Regional Court, in summary proceedings, awarded a sum of 75,000 Netherlands guilders (NLG), in advance of a final damage settlement, to a Romanian national who had suffered brain damage as a result of treatment undergone at the hands of the authorities when they attempted to deport him from the Netherlands.

The Government argue that the present case is distinguishable from that of *Köksal v. the Netherlands* (dec.), no. 31725/96. In that case the same argument was made but was rejected by the Court on the ground that the applicants had been entitled merely to await the outcome of a criminal prosecution against the person responsible for the violation alleged. In the present case, in contrast, no prosecution was ever brought.

The applicants state that, as a matter of domestic law, the present case is different from that cited by the Government in that the said Romanian national survived; Moravia Ramsahai died. That being so, the only damages that could be claimed was compensation for the subsistence which his surviving dependents would have enjoyed had he lived – Moravia Ramsahai left no dependents – and the cost of the funeral, which came to approximately one thousand euros; this follows from Article 6:108 of the Civil Code (see above). It is not possible to claim compensation for non-pecuniary damage suffered by Moravia Ramsahai's next-of-kin.

In addition, a civil action is not a remedy capable of ensuring “the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility” (*Finucane v. the United Kingdom*, no. 29178/95, § 67, ECHR 2003-VIII), the less so since the costs and the risk of an unfavourable outcome would have to be borne by the applicants themselves.

The applicants are not in any event interested in obtaining financial compensation for the loss of Moravia Ramsahai. Rather, they wish his death to be properly investigated, with their involvement and with the opportunity to seek information on their own account. As long as such a possibility does not exist, the respondent Party has not acquitted itself of the procedural requirements imposed by Article 2.

A preliminary hearing of witnesses, as suggested by the Government, does not necessarily satisfy these requirements. The applicants draw the Court's attention to the fact that, in the case referred to by the Government, the number of witnesses was limited by the Regional Court in the interest of procedural economy. Moreover, the position taken by the respondent in

those proceedings, namely that a preliminary hearing of witnesses should be refused, is inconsistent with the position taken by the Government in the proceedings now pending before the Court.

The decision of the Court of Appeal not to order the prosecution of Officer Brons effectively determined the criminal charge against him, in the sense that it was held that Officer Brons had no case to answer. That being so the applicants take the view that there is a parallel to be drawn between the present case and *Köksal*; the Government's argument based on the availability of remedies in civil law can therefore be dismissed on the same grounds.

## 2. *The Court's assessment*

In its above-mentioned *Köksal* decision, the Court restated the applicable principles in the following terms (case-law references omitted):

“The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal system, thus dispensing States from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal systems. In order to comply with the rule, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (...).

Furthermore, the Court emphasises that the application of the exhaustion of domestic remedies rule must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting Parties have agreed to set up. Accordingly, it has recognised that Article 35 must be applied with some degree of flexibility and without excessive formalism. It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. This means in particular that the Court must take realistic account, not only of the existence of formal remedies in the legal system of the Contracting Party concerned, but also of the general context in which they operate, as well as the personal circumstances of the applicant. It must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him to exhaust domestic remedies (...).

In the same decision the Court recognised that in certain circumstances a criminal complaint might be considered to constitute an adequate and sufficient remedy within the meaning of Article 35 § 1 of the Convention in cases concerning alleged violations of Article 2 committed by police officers. It further reiterated that it was in the first place for the applicant to select which legal remedy to pursue. Where there was a choice of remedies available to the applicant to obtain redress for an alleged violation of the Convention, Article 35 must be applied in a manner corresponding to the reality of the applicant's situation in order to guarantee him effective protection of his rights and freedoms set forth in the Convention.

The same considerations apply in the present case. The procedures actually chosen by the applicants – namely, a complaint to the Amsterdam Court of Appeal about the failure to bring a prosecution and a complaint to the Police Complaints Board – were appropriate to their grievances as subsequently presented to the Court.

The Government's objection that the applicants failed to exhaust the available domestic remedies accordingly fails.

## **B. Whether the application is manifestly ill-founded**

### *1. Arguments before the Court*

#### **a. Article 2 of the Convention**

The Government rely on the findings of the Amsterdam Court of Appeal. That court found that Moravia Ramsahai had threatened Officer Brons with a lethal weapon – a cocked pistol with a round chambered – and had thus himself created the situation in which the use of force, even lethal force if need be, became no less than an absolute necessity. It also considered that the investigation made following Moravia Ramsahai's death had been conscientious and thorough. The local police had immediately secured all evidence on site and collected all necessary information. This had involved, for example, a door-to-door search of 138 apartments for witnesses. The public prosecutor had been informed the same night and responsibility for investigating the case had been transferred to the State Criminal Investigation Department as soon as possible.

Quoting a decision of the Amsterdam Court of Appeal given in proceedings under Article 12 of the Code of Criminal Procedure in a different case (decision of 23 June 2004, no. R04/001/12Sv), the Government argue that the investigation by the State Criminal Investigation Department was sufficiently independent, that Department, unlike the local police, being answerable directly to the highest authorities of the Public Prosecution Service rather than the regional police commander. As the Court of Appeal also stated in that case, the public prosecutor could be considered sufficiently independent and qualified to decide, on the basis of the results of the criminal investigation, whether or not to prosecute; the same applied in the present case, the public prosecutor's position in relation to the Amsterdam/Amstelland police force notwithstanding. Moreover, Public Prosecutor De Vries and Officer Brons had never met.

The State Criminal Investigation Department admittedly made use of investigation reports prepared by the local police force to which Officer Brons himself belonged. However, the State Criminal Investigation



Department itself undertook extensive additional investigations, and clearly did not see any need to question the work of the local police.

The applicants were sufficiently involved in the procedure: firstly, through having been granted an interview with the public prosecutor responsible for the case; secondly, through having made their views known in the complaint proceedings brought under Article 12 of the Code of Criminal Procedure; and thirdly, through their additional complaint to the Police Complaints Board.

It is true that complaint proceedings under Article 12 of the Code of Criminal Procedure are not public. The Government explain that this is to protect individuals whom the prosecuting authorities may not intend to prosecute – and who very possibly do not deserve to be prosecuted – from the *strepitus fori*, the clamour of the courtroom, to which any complainant might otherwise subject them on a whim. If the prosecution of Officer Brons had been ordered, the proceedings and the case file would, of course, have been public.

It is also true that there was neither a reconstruction of events nor a ballistic investigation, but none had been needed. It was established that the bullet which killed Moravia Ramsahai had been fired from Officer Brons's service pistol, and Officer Brons never denied firing the fatal shot. The absence of a reconstruction of events and of a ballistic investigation did not prevent the Court of Appeal from finding that Officer Brons had fired in self-defence.

There was admittedly a delay of two days after the incident before Officers Brons and Bultstra were questioned. This reflected a decision to question them only once technical evidence and the first reports of witnesses had been secured. If necessary, they could then have been confronted with these, the more effectively to question them. In any case, there was no reason to consider Officers Brons and Bultstra likely to evade questioning or flee.

The applicants take the view that the shooting of Moravia Ramsahai did not result from the use of force which was “no more than absolutely necessary” to effect a “lawful arrest”. The Court of Appeal, in its decision of 26 April 1999, did not express itself in such terms. Moreover, referring to section 7 of the Standing Orders 1994 (which they quote in a version postdating the events complained of), they express the opinion that the theft of a scooter, whether at gunpoint or not, was hardly a crime that constituted a major infringement of physical integrity or privacy or a threat to society as a whole; nor, *a fortiori*, could such a threat be construed on the basis of a suspicion of this nature involving a youth fitting the description given to Officers Brons and Bultstra.

The applicants argue in the alternative that, even if it has to be assumed that the violence inflicted on Moravia Ramsahai was intended to effect his “lawful arrest”, Officers Brons and Bultstra acted without proper planning.

They neglected to ask for relevant information, further instructions or reinforcements, all of which might have minimised to the greatest extent possible any risk to life.

Moreover, in the applicants' submission a violation of the procedural requirements of Article 2 is constituted by the Court of Appeal's failure to consider statements made by persons other than Officers Brons and Bultstra and Mr van den Heuvel. Mr van den Heuvel had not even seen the actual shooting. Other witnesses, in particular Mesdames Lieveld and Rijssel and Messrs Chitanie and Van Rij, had not been heard, and their statements had been ignored, in spite of the applicants' requests that the Court of Appeal hear them.

The applicants take issue with the Government's statement that the Court of Appeal found the investigation to have been "conscientious and thorough". In their submission, the Court of Appeal merely found that the evidence available had been examined in a conscientious and thorough manner; it had never expressed any views on the investigative acts that had never taken place, including testing for gunshot residue on the police officers' hands, and presumably elsewhere, and a reconstruction of events and of the trajectory of the bullet. Also missing were the drawings or photographs made at the autopsy, showing the entry and exit wounds made by the bullet.

The applicants also point to the fact that a major part of the investigation, including some investigative measures which could not readily be repeated afterwards, was undertaken by police officers belonging not only to the same police force as Officers Brons and Bultstra – the Amsterdam/Amstelland force – but even to the same police station, Flierbosdreef in Amsterdam, and therefore clearly belonging to the same chain of command. This, in their submission, is all the more poignant in view of the fact that officers appearing at the scene turned away important witnesses, Mesdames Rijssel and Lieveld, and perhaps others too whose names were not recorded. It was left to the applicants and their counsel to find them again afterwards. The insufficiency of the investigation in its early stages is also reflected by the cantankerous attitude of Police Commissioner Van Riessen of the Amsterdam/Amstelland police force, as shown by his statement, quoted above, published in the newspaper *De Telegraaf*.

As regards the State Criminal Investigation Department, the applicants accept that it is under the authority of the highest prosecuting authorities. However, the State Criminal Investigation Department's investigation did not take place under the responsibility of a prosecuting authority unrelated to the Amsterdam/Amstelland police force. It took place under the responsibility of Public Prosecutor De Vries, whose position in relation to the Amsterdam/Amstelland police force could hardly be seen as independent. In this connection, the applicants point to the decision of the

Amsterdam Court of Appeal of 23 June 2004, no. R04/001/12Sv, which was submitted by the Government. In that decision, in fact, the Court of Appeal found that a public prosecutor was not sufficiently independent and, precisely for that reason, the case was referred to an investigating judge for further investigative measures.

The applicants are unable to confirm that Public Prosecutor De Vries and Officer Brons never met, given the absence of any information to that effect emanating from Public Prosecutor De Vries herself or other corroboration.

It is true that the State Criminal Investigation Department questioned Officers Brons and Bultstra. However, this was done long after the shooting, and after Officers Brons and Bultstra had had the opportunity to discuss the case with others – including Police Commissioner Van Riessen. In addition, Officers Brons and Bultstra were allowed to resume their duties while the investigation was still pending and while important information was still being committed to paper by officers of the Flierbosdreef police station.

As long as the investigation was pending, the applicants were denied all involvement and access to the case file, despite requests made on their behalf by their counsel. This situation continued until after the public prosecutor had decided that a prosecution should not be brought. Moreover, it was only after the public prosecutor had notified the applicants of this decision that she agreed to see the applicants.

The proceedings before the Court of Appeal did not involve the applicants sufficiently for their interests to be safeguarded. Reasonable requests, including a request for copies of certain documents from the case file and for certain investigative measures, were refused.

Nor, in the applicants' submission, is it at all clear why these proceedings could not have been public. The decision of the Regional Court ordering a hearing of witnesses as a preliminary to a civil suit, submitted by the Government themselves, show that it is possible even in civil proceedings to maintain the anonymity of the police officer concerned: in the said civil proceedings the police officer did not appear and was referred to, not by name, but by a code number.

The complaints procedure before the Police Complaints Board is, the applicants submit, irrelevant to the complaint now before the Court: the purpose of that procedure is merely to verify the propriety of police actions, any complaint involving a suspicion of an indictable offence having to be turned over to the Chief Public Prosecutor. In addition, proceedings under the Code of Criminal Procedure cause such complaint proceedings to be suspended *ipso facto* and, even if the Police Complaints Board eventually expresses an opinion, it is not binding on the burgomaster.

**b. Article 6 of the Convention**

The Government state that Article 6 does not guarantee a right to initiate a criminal prosecution against another person. It follows that the applicants' complaints under Article 6 of the Convention about alleged failings in the proceedings which they brought under Article 12 of the Code on Criminal Procedure, seeking a court order for the prosecution of Officer Brons, are manifestly ill-founded.

Assuming Article 6 to be applicable notwithstanding their arguments to the contrary, the Government take the view that it was not violated. The public are excluded from complaint proceedings under Article 12 of the Code of Criminal Procedure in order to protect the person whose prosecution is being sought. After all, that person is not, strictly speaking, a suspect, and will not be unless his prosecution is ordered; he is therefore entitled to protection from the public eye. For the same reason, copies of the documents pertaining to the case are denied third parties; they have to be content with the possibility of inspecting the file.

The applicants respond that they do not claim the right to initiate a prosecution *per se*, but adequate protection of the right to life. In their opinion, if not the right to life, then at least the right to physical integrity is a "civil right" within the meaning of Article 6. Such a right is at stake no less in the present case than in *M.C. v. Bulgaria* (no. 39272/98), in which the Court recognised rape to be an interference with the right to respect for "private life" (as guaranteed by Article 8 of the Convention), entailing an obligation on the State to ensure appropriate protection.

They further argue that the proceedings brought under Article 12 of the Code on Criminal Procedure should be seen as a continuation of the criminal prosecution of Officer Brons. Although that prosecution was pursued to a conclusion, the Article 12 proceedings followed on from precisely the same criminal charge.

They also suggest that if a court order for a prosecution had been given and the case against Officer Brons had gone to court, they would have been in a position, as injured parties, to claim reimbursement of the cost of Moravia Ramsahai's funeral.

The applicants maintain the position that Article 6 has been violated. They posit that the importance of the publicity of proceedings in a case involving a death at the hands of the police outweighs any interest the police officer concerned may have in keeping the proceedings private. From this it follows that the failure to allow the applicants a copy of the case file, purportedly to pre-empt such publicity, also falls foul of the standards laid down by Article 6. Finally, as is undisputed, the decision was not given in public.

**c. Article 13 of the Convention**

The Government reiterate in this connection that the applicants had the opportunity to bring civil proceedings in tort and that they also had available a remedy, in the form of complaint proceedings, under Article 12 of the Code of Criminal Procedure before the Court of Appeal. They state, referring to *Lorsé and Others v. the Netherlands* (no. 52750/99, 4 February 2003, § 96), that the fact that they made use of the latter remedy but were unsuccessful makes no difference in the assessment of its effectiveness *per se*.

As regards the effectiveness of a civil action in a case such as the present, the applicants refer to their arguments as outlined above.

For the remainder, the applicants restate their arguments as set out in the context of Article 2 of the Convention, referring in addition to the Court's case law (judgments in the cases of *Finucane*, cited above; *Anguelova v. Bulgaria*, no. 38361/97, ECHR 2002-IV; *Salman v. Turkey* [GC], no. 21986/93, ECHR 2000-VII; *Nachova and Others v. Bulgaria*, nos. 43577/98 and 43579/98, ECHR 2004-...; and *İpek v. Turkey*, no. 25760/94, ECHR 2004-...).

*2. The Court's assessment*

The Court considers, in the light of the parties' submissions, that the complaints raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court by a majority

*Declares* the application admissible, without prejudging the merits of the case.

Mark VILLIGER  
Deputy Registrar

Boštjan M. ZUPANČIČ  
President