The European Commission of Human Rights sitting in private on 11 December 1986, the following members being present:

MM. C. A. NØRGAARD, President
G. SPERDUTI
F. ERMACORA
G. JÖRUNDSSON
B. KIERNAN
A. S. GÖZÜBÜYÜK
J. C. SOYER
H. G. SCHERMERS
H. DANELIUS
G. BATLINER
Mrs G. H. THUNE
Mr. F. MARTINEZ

Mr. J. RAYMOND, Deputy Secretary to the Commission

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

Having regard to the application introduced on 3 March 1985 by A.M.A. D. against the Netherlands and registered on 28 March 1985 under file No. 11477/85;

Having regard to the report provided for in Rule 40 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The facts of the case as they have been submitted by the applicant may be summarised as follows.

The applicant is a Dutch citizen born in 1935 and a teacher by profession. At present, he resides at The Hague.

In 1981, the applicant, who was then teaching at a municipal school at The Hague developed personal friendships with one of his former female pupils, then 16 years old, and still attending the applicant's school, and with the girl's mother. In the course of 1982 he apparently developed a closer relationship with the girl.

It appears that in May 1982 the girl came to stay for a few days with the applicant. Thereupon, the applicant was requested by the deputy director of his school to put an end to this situation and informed that the girl's mother had lodged a complaint with the Education Authorities (Onderwijsinspectie).

However, the mother subsequently denied having lodged such a complaint, but apparently the deputy director nevertheless asked the applicant to "limit his hospitality".

On 3 June 1982, the girl came to the applicant's house in an apparently upset state, after having been told by her mother and grandmother to choose between them and the applicant. The girl then stayed with the applicant.

On 5 June 1982, the applicant informed the police (kinderpolitie) that he was not hiding the girl, and on 10 June 1982 he informed the school authorities that he was ill.

It appears that the girl's mother had meanwhile contacted the police of her municipality, Rijswijk, on or about 4 June 1982 asking them to help her end the relationship between the applicant and her daughter and to conduct a criminal investigation of the case. For this purpose, she handed the private correspondence of her daughter and the applicant to the police. As no criminal charges could be brought against the applicant the police, with the permission of the mother, then put the correspondence at the disposal of the Education authorities on 10 June 1982, since they apparently considered that the problems of the mother could be solved if disciplinary measures would be taken against the applicant.

On 14 June 1982, the applicant was suspended by the school authorities because of his relationship with the girl, and on 25 June 1982 he was informed by the Mayor and Aldermen of The Hague of the intention to dismiss him, as it appeared from the documents made available by the Rijswijk police that the applicant had failed to respect his duties as a teacher.

The girl stopped attending the applicant's school on 15 June 1982 and was registered at another school as of 1 August 1982.

It also appears that since 1978 the applicant had introduced several appeals to the Mayor and Aldermen of The Hague against decisions by the school authorities not to give their approval to certain penalties ordered by the applicant. After a fourth appeal had been rejected, the applicant had ventilated his opinion on school punishment in a newspaper interview on 5 June 1982.

On 7 June 1982, the applicant's action had been censured during a meeting of his colleagues and he had been warned by the Mayor and Aldermen about his refusal to accept their views on school discipline.

The applicant introduced an appeal against his suspension with the Civil Servants Court (Ambtenarengerecht) at The Hague on 19 June 1982. He further initiated summary proceedings (kort geding) before the President of the Regional Court (Arrondissementsrechtbank) of The Hague, claiming that his correspondence be returned and not be used in the proceedings concerning his suspension. The applicant invoked Article 8 (Art. 8) of the Convention.

On 30 August 1982, the President decided that the applicant's request concerned a complaint about the act of an administrative organ, which fell within the exclusive competence of the Civil Servants Court. The applicant's request was therefore declared inadmissible.

On 6 September 1982, the Civil Servants Court rejected the applicant's appeal against his suspension. The Court considered, inter alia, that since the authorities had taken the applicant's correspondence into account in their decision they had correctly submitted these documents to the Court, as this could not be said to be contrary to the public interest.

By letter of 6 October 1982, the Mayor and Aldermen informed the applicant that he was dismissed as of 1 November 1982.

On 2 November 1982, the applicant appealed against his dismissal to the Civil Servants Court. The applicant claimed, inter alia, that the authorities had taken his, illegally obtained, correspondence into account when deciding on his dismissal.

On 6 July 1983, the Court declared the applicant's appeal well-founded and the dismissal null and void. According to the Court, the applicant could not be said to have failed to respect his duties as a teacher because of his relationship with a pupil.

The Mayor and Aldermen, thereupon, appealed against this decision to

the Central Appeals Board (Centrale Raad van Beroep). In her submissions to the Appeals Board, the applicant's representative stated, inter alia that it was very sad that the municipality had used the applicant's private correspondence to demonstrate that he had failed in his duties. In his oral submissions to the Appeals Board, the applicant himself referred to the social impropriety (maatschappelijke onbetamelijkheid) of the municipality's use of his correspondence in order to justify his dismissal.

On 25 October 1984, the Appeals Board quashed the decision of the Civil Servants Court and declared the applicant's initial appeal against his dismissal ill-founded. The Board, without making a finding on the use of the correspondence by the authorities, held that the applicant had in fact failed to respect his duties as a teacher.

Meanwhile, on 27 September 1982 the applicant and the girl had introduced a complaint with the National Ombudsman about the seizure of their correspondence by the Rijswijk police.

On 26 November 1984, the Ombudsman concluded that the police, by seizing the applicant's correspondence and putting it at the disposal of the Education authorities, had interfered with the rights of both the applicant and the girl under Article 8 (Art. 8) of the Convention in an unjustified way.

Thereupon, the applicant introduced a civil action for damages against the municipalities of The Hague and Rijswijk with the Regional Court of The Hague on 6 March 1985. It appears that these proceedings are still pending.

Finally, it appears that the applicant has been unemployed since his dismissal and that this has seriously affected his health and financial situation.

COMPLAINTS

The applicant complains that the municipality of The Hague obtained and used his correspondence in a way which violated his rights under Article 8 (Art. 8) of the Convention and which resulted in his dismissal. In addition, he complains that this provision was also violated because his private relationship with a pupil was taken as the ground for his dismissal. He claims that the interference with his right to respect for his private life and his correspondence could not be justified under the second paragraph of Article 8 (Art. 8) of the Convention.

The applicant further complains that he did not have a fair trial before the Central Appeals Board, inter alia since this court did not take the infringement of his rights under Article 8 (Art. 8) of the Convention into consideration, and based itself on facts which appeared from his correspondence. He invokes Article 6 (Art. 6) of the Convention in this respect.

THE LAW

1. The applicant has complained that he did not have a fair trial in the proceedings concerning his dismissal and he has invoked Article 6 (Art. 6) of the Convention which reads, inter alia:

"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...".

However, the Commission observes that no criminal proceedings were instituted against the applicant. Furthermore, the Commission finds that the dispute arising out of his dismissal does not involve civil rights and obligations within the meaning of Article 6, para. 1

(Art. 6-1) of the Convention as the decision taken has deprived him of the quality of public teacher, assigned to the institutions belonging to the State.

In this respect, the Commission holds the view that if, as in the present case, a State, in the exercise of the functions it assumes in the area of education, decides to regulate it as a public service, the persons selected to exercise such activity have no civil right to continue to occupy a post in this field.

It follows that the application, in this respect, is incompatible ratione materiae with the provisions of the Convention and must be rejected in accordance with Article 27 para. 2 (Art. 27-2) of the Convention (cf. Dec. No. 8686/79, 10.10.80, D.R. 21 p. 208 ff).

2. The applicant has further complained that he was dismissed because of a private relationship and that his correspondence was seized and used against him. He claims that this amounted to a violation of his rights under Article 8 (Art. 8) of the Convention, which reads, inter alia:

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

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

The Commission notes that the applicant's correspondence was handed over to the police by the girl's mother. Subsequently, the police put this correspondece at the disposal of the school authorities, who in turn submitted it as evidence to the courts deciding on the applicant's appeal against his dismissal.

With regard to the seizure and forwarding of the correspondence by the police, the Commission observes that civil proceedings for damages against the authorities responsible for the police action are still pending before the Dutch courts. In this respect, therefore, the applicant cannot be said to have exhausted the domestic remedies at his disposal, as required by Article 26 (Art. 26) of the Convention, and this part of the application must therefore be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

Insofar as the applicant's complaints under Article 8 (Art. 8) of the Convention concern the use of his private correspondence by the courts, the Commission notes that the proceedings at issue concerned the applicant's appeal against his dismissal.

The Commission finds that there was nothing under the Convention to prevent the domestic courts from using all evidence brought before them, including the applicant's private correspondence. In this respect, the Commission notes that it is an inherent feature of court proceedings in general that confidential documents may be examined. The courts thus cannot be said to have shown a lack of respect for any of the applicant's rights under Article 8 para. 1 (Art. 8-1) of the Convention.

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

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE

Deputy Secretary to the Commission	President of the Commission
(J. RAYMOND)	(C.A. NØRGAARD)