AS TO THE ADMISSIBILITY OF

Application No. 24967/94
by Frederik Jan IJSPEERD
against the Netherlands

The European Commission of Human Rights sitting in private on 20 February 1995, the following members being present:

MM. C. A. N0RGAARD, President
H. DANELIUS
C.L. ROZAKIS
S. TRECHSEL
A.S. GÖZÜBÜYUK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
Mrs. G.H. THUNE
Mr. F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
I. BÉKÉS
J. MUCHA
D. SVÁBY
E. KONSTANTINOV
G. RESS

Mr. H.C. KRÜGER, Secretary to the Commission

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

Having regard to the application introduced on 30 May 1994 by Frederik Jan IJSPEERD against the Netherlands and registered on 23 August 1994 under file No. 24967/94;

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

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Dutch national, born in 1971, and resides at Gouda, the Netherlands. He is a student.

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

Pursuant to the Study Finance Act (Wet op de Studiefinanciering) the applicant received a student pass for free public transport. It appears that the limited liability company responsible for the distribution and management of the student passes for free public transportation (the Openbaar Vervoer Studentenkaart B.V., hereinafter referred as "OVS"), which company has been created on the basis of an agreement between a number of public and private organs and organisations, in their mailings to students include advertising

brochures aimed at students.

In the spring of 1992 the applicant requested the OVS to refrain from sending him advertising brochures in the future. Despite his request, advertisement brochures continued to be included in the mail the OVS sent him.

The applicant started civil proceedings against the OVS before the District Court judge (kantonrechter) of Utrecht, arguing that the continued sending of advertising brochures by the OVS constituted a tortious act (onrechtmatige daad) and requested the judge to award him 2.450 Dutch guilders for non-pecuniary damages arising from this tortious act.

In the proceedings before the District Court judge, the OVS stated that it had never provided personal data to others for commercial purposes, but had always included advertisement brochures in its mail to students, as in this way the costs of the student passes for free public transportation and of the information on its use can be limited.

By judgment of 8 December 1993 the District Court judge found against the applicant, holding that the sending of advertisement brochures cannot be considered as a tortious act arising from a violation of Article 8 of the Convention, since this sending cannot be regarded as an interference with the applicant's right to respect for his private life. The District Court judge found that commercial utterances in sound, image and writing are normal in present day society and can easily be ignored.

In view of the limited amount in damages claimed by the applicant, no further appeal lies against this decision, whereas an appeal in cassation would only be possible when procedural errors had been committed, which did not appear to be the case.

COMPLAINT

The applicant complains that sending to him of unsolicited advertising brochures constitutes an unjust interference with his right to respect for his private life and home within the meaning of Article 8 para. 1 of the Convention.

THE LAW

The applicant complains that the sending to him of unsolicited advertising brochures violates his rights under Article 8 para. 1 (Art. 8-1) of the Convention.

Article 8 (Art. 8) of the Convention, insofar as relevant, reads:
"1. Everyone has the right to respect for his private (...) life [and] his home (...)."

The Commission notes that the applicant, despite his request to the OVS to refrain from sending him advertising material, continues to receive unsolicited advertising brochures enclosed in the mail he receives from the OVS, a private limited company responsible for the distribution and management of student passes for free public transport.

The Commission notes that the applicant has not been restricted in the exercise of his right to respect for his private life and home within the meaning of Article 8 para. 1 (Art. 8-1) of the Convention. Consequently, it cannot find that there has been an "interference" with the applicant's rights under Article 8 para. 1 (Art. 8-1) of the Convention.

The Commission has therefore examined the question whether the

facts of the case disclose a lack of respect on the part of the respondent Government on the basis of a positive obligation.

It recalls that the notion of "respect" enshrined in Article 8 (Art. 8) of the Convention is not clear-cut. This is the case especially where positive obligations implicit in that concept are concerned. In determining whether or not such an obligation exists, regard must be had to the fair balance that has to be struck between the general interest and the interests of the individual, as well as to the margin of appreciation afforded to the Contracting States (cf. No. 23634/94, Dec. 19.5.94, D.R. 77-A p. 133).

In the determination of the question whether or not there is a positive obligation under Article 8 (Art. 8) of the Convention for Contracting States to ensure that the wish of persons not to receive unsolicited advertisement brochures is respected, the Commission has had regard to the Convention organs' case-law stating that the freedom of expression within the meaning of Article 10 (Art. 10) of the Convention, which also applies to information of a commercial nature (cf. Eur. Court H.R., Casado Coca judgment of 24 February 1994, Series A no. 285-A, para. 35 with further references), holds a prominent place in a democratic society (cf. Eur. Court H.R., Oberschlick judgment of 23 May 1991, Series A no. 204, p. 25, para. 58).

The Commission subscribes to the District Court judge's finding that commercial utterances in sound, image and writing are normal in the present day society of the Contracting States and can easily be ignored.

Noting, on the one hand, the freedom of expression in respect of information of a commercial nature and the need felt to limit the costs of student facilities and, on the other hand, the fact that the commercial information at issue can easily be ignored, the Commission finds that the sending of unsolicited advertisement brochures does not, in the circumstances of the present case, amount to a lack of respect for the applicant's right to respect for his private life and home.

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

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)