AS TO THE ADMISSIBILITY OF

Application No. 23231/94
by Adrianus Theodorus Maria MULDERS
against the Netherlands

The European Commission of Human Rights (Second Chamber) sitting in private on 6 April 1995, the following members being present:

Mr. H. DANELIUS, President
Mrs. G.H. THUNE
MM. G. JÖRUNDSSON
S. TRECHSEL
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY

Mr. K. ROGGE, Secretary to the Chamber

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

Having regard to the application introduced on 21 December 1993 by Adrianus Theodorus Maria MULDERS against the Netherlands and registered on 10 January 1994 under file No. 23231/94;

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

1. The particular circumstances of the case

The applicant is a Dutch national, born in 1946, and resides in Oss, the Netherlands. Before the Commission he is represented by Mr. C.J. van Bavel, a lawyer practising in Utrecht, the Netherlands.

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

In the beginning of 1989, a preliminary judicial investigation (gerechtelijk vooronderzoek) was opened by the investigating judge (rechter-commissaris) at the Regional Court (Arrondissementsrechtbank) of 's-Hertogenbosch, on suspicions that the applicant was a participant in an organisation whose aim was the commission of criminal offences. At that time, the applicant was a practising lawyer and interim manager of the P. Bank.

Apart from the applicant, there were other suspects, among whom Mr. K., Mr. G. and Mr. Van H.

On 10 March 1989, in the course of the preliminary judicial investigation, the investigating judge issued a warrant for the tapping of a number of telephone lines used by the applicant, including his office telephone.

Since the suspect whose telephone was going to be tapped was a practising lawyer, the investigating judge informed the Dean of the Bar Association (Deken van de Orde van Advocaten) in 's-Hertogenbosch. According to a letter from the Dean of 8 January 1991, which was addressed to the applicant's lawyer, an agreement had been reached between him, the investigating judge and the public prosecutor (officier van justitie) that only telephone conversations relating to the criminal investigation would be recorded in minutes, that the tapes of the recorded telephone conversations and copies of the minutes would be delivered to the Dean regularly, that the Dean could examine the minutes to verify that no conversations about other cases of the applicant were recorded and that he could make remarks about the minutes should this nevertheless be the case, and that the tapes would remain with the Dean until they could be destroyed.

On 4 December 1989, the applicant was arrested and detained on remand. He was released on 5 February 1991.

On 13 February 1990, the applicant was summoned to appear before the Regional Court of 's-Hertogenbosch on 12 March 1990. He was charged with the following offences: fraud, committed either alone or together with others; attempted fraud, committed either alone or together with others; directing the use of a forged document, either alone or together with others; and participation in an organisation whose aim was the commission of criminal offences.

On 12 March 1990, the Regional Court adjourned its examination of the case to 26 March 1990 because the applicant's lawyer did not have all the relevant documents at his disposal. The court rejected the applicant's request to be released from detention on remand.

On 26 March 1990, the Regional Court examined the case. It rejected the applicant's request to be released from detention on remand. On 9 April 1990, the Regional Court acquitted the applicant of one charge, convicted him of the remaining three, and sentenced him to 18 months' imprisonment, the time spent in detention on remand to be credited towards the sentence.

Both the applicant and the public prosecutor lodged an appeal with the Court of Appeal (Gerechtshof) of 's-Hertogenbosch against the judgment.

On 27 November 1990, the Court of Appeal sitting in chambers (raadkamer), composed of judges P., K. and V., rejected the applicant's request to be released from detention on remand. The court rejected the applicant's argument that he had to be released pursuant to Section 67a para. 3 of the Code of Criminal Procedure (Wetboek van Strafvordering) since there was a substantial possibility that the prison sentence that would ultimately be imposed by the court would be shorter than the time he had already spent in detention on remand. The Court of Appeal ruled that this situation had not arisen.

On 30 November 1990, the Court of Appeal, composed of judges P., K. and V., commenced its examination of the merits of the case. Immediately after the commencement of the session, the applicant objected to the fact that the members of the court were the same members as on 27 November. Referring to the Hauschildt judgment (Eur. Court H.R., judgment of 24 May 1989, series A no. 154), he alleged that the impartiality of the court was in question. He argued that a tribunal that orders detention on remand must, pursuant to Section 67 para. 3 of the Code of Criminal Procedure, find it likely that the accused is guilty. He further argued that a tribunal that finds that the situation referred to in Section 67a para. 3 of the Code of Criminal Procedure does not arise, anticipates the sentence that will ultimately be imposed and must therefore have formed an opinion on the evidence and the suspect's guilt, and that this opinion cannot be based merely on a summary examination of the case-file. The applicant stated,

however, that he would not avail himself of the right to challenge the judges (wraking). The Court of Appeal rejected the objection, considering, inter alia:

<translation>
> "The argument that the court, in its decision of 27 November 1990, gave a decision on the sentence to be imposed...is incorrect.
> ....
> After all, the decision that in the present case the situation referred to in Section 67a para. 3 of the Code of Criminal Procedure does not arise, only means that in the present state of the proceedings it cannot reasonably be expected that the sentence will not be longer than the detention on remand. Such a decision does not express an opinion about the sentence that will ultimately be imposed in the case of a conviction, because that opinion can only be formed through the examination at the trial; in the phase of the pretrial investigation only a summary examination and assessment take place."

The applicant disputed in a general sense the correctness of the transcriptions and the selection of tapped telephone conversations in which he had participated. He further requested to be provided with copies of the case-files of all his co-suspects. The Court of Appeal rejected this request, considering:

<translation>
> "According to the law, [the] accused has a right to [be provided with] copies of documents in his own case, that is to say the case as it is submitted to the judge by the prosecution.
> The request to be provided with copies of all documents in [the] cases of all his co-suspects has no legal basis, if
>
> only because such a practice could lead to an inadmissible interference with the privacy of other suspects."

Also on 30 November 1990, the Court of Appeal examined police officer J., who had been involved in the drawing up of minutes of recorded telephone conversations. J. was examined at the request of the applicant.

On the same day, the Court of Appeal rejected the applicant's request to be released from detention on remand. The court adjourned its further examination of the case until 5 February 1991.

On 4 and 29 January 1991, the Court of Appeal sitting in chambers, both times composed of judges P., K. and V., rejected the applicant's request to be released from detention on remand.

On 5 February 1991, the Court of Appeal, composed of judges P., K. and V., examined at the applicant's request four witnesses, among whom the co-suspects K., G. and Van H.

Also on 5 February, the Court of Appeal ordered that the applicant be released from detention on remand. It adjourned its further examination of the case until 16 April 1991.

On 16 April 1991, the Court of Appeal, composed of judges P., K. and V., examined at the applicant's request four new witnesses (three police officers and Mr. H.), and three witnesses who had already been heard before (police officer J. and co-suspects G. and Van H.).

At the same hearing, the applicant again requested to be provided with copies of the case-files of all his co-suspects. He submitted that his co-suspects had no objections. The Court of Appeal rejected the

request, stating that the request had no legal basis and that the fact that the co-suspects consented did not justify a different conclusion.

The applicant further requested that he be given the opportunity to listen to all the tapes of the telephone conversations that had been tapped in his case, so that transcripts of exculpating conversations could be added to his case-file. The Court of Appeal rejected this request as well, considering, inter alia:

<translation>
"Section 125h paragraph 1 of the Code of Criminal Procedure states that the investigating judge must destroy minutes and tapes as soon as possible, if these are not relevant to the investigation. According to paragraph 2 of that Section, the same rule applies to information given by or to a person who could, on the basis of Section 218 of the Code of Criminal Procedure, be exempted from testifying. On the basis of paragraph 3 of the first-mentioned Section, the investigating judge adds the remaining relevant minutes and tapes to the case-file when the decision to close the preliminary judicial investigation becomes final. It is evident from this that the selection of relevant minutes and tapes is a discretionary task of the investigating judge. This leads to the conclusion that the accused only has the right to inspect or listen to, the minutes and the tapes that have been added to the case-file by the investigating judge. In the present case, [the] accused has not substantiated his objection that the last-mentioned minutes are not correct transcripts of the conversations recorded on tape; therefore [the] accused has no interest in listening to those tapes."

On 24 May 1991, the Court of Appeal, composed of judges P., K., and V., resumed its examination of the case. In his final pleadings, the applicant argued that the Court of Appeal should declare its examination of the case null and void and should refer the case to another chamber of the court because the court in its present composition was not impartial in view of the fact that the members of the court had on several occasions rejected his requests to be released from detention on remand.

He further argued that the prosecution should be declared inadmissible, the tapping of his telephones being unlawful since it disregarded his professional obligation to secrecy and violated the interests of clients who had nothing to do with the criminal investigation against him.

The applicant complained once again of the rejection of his requests to be provided with copies of the case-files of his co-suspects or to be permitted to consult their case-files, and to listen to all the tapes of the tapped telephone conversations in which he had participated. He submitted that there had been no fair trial and that his defence was harmed. He further stated that the Dutch rules on telephone tapping are not in conformity with Article 8 of the Convention if neither the judge nor the defence can verify whether or not exculpating material is left out of consideration by the investigating judge or the police officers.

On 7 June 1991, the Court of Appeal quashed the Regional Court's judgment, acquitted the applicant of one charge, convicted him of the remaining three and sentenced him to two years' imprisonment, the time spent in detention on remand to be credited towards the sentence.

The Court of Appeal used in evidence statements made to the police by, inter alia, the applicant, his co-suspects K., G. and Van H., and by Mr. H., as well as statements made by the latter four before the Court of Appeal. The Court of Appeal further used in evidence a

number of documents, including minutes containing the transcripts of recorded telephone conversations between the applicant and co-suspect Van H., between the applicant and a notary, and between the applicant and Mr. H.

As regards its alleged partiality, the Court of Appeal stated, inter alia:

<translation>
"- that counsel had at his disposal...the legal remedy of challenging, but that at the hearing on 30 November 1990, when he raised this objection for the first time, he explicitly stated that he did not want to use this legal remedy;
- that the court, for that reason,...sees no grounds to refer the case to a different chamber;".

As regards the lawfulness of the tapping of the applicant's telephones, the Court of Appeal considered that the Code of Criminal Procedure permits the tapping of a telephone of a lawyer who himself is a suspect. It further considered:

<translation>
"- that...tapping [a telephone line of a person who enjoys the privilege of non-disclosure] can result in the recording of confidential conversations, but that this... does not have as a consequence that the telephone line of a person who enjoys the privilege of non-disclosure may never be tapped...;
- that it is true that the interest of society in giving everyone the opportunity to consult freely and without fear of disclosure a person who enjoys the privilege of non-disclosure -in the present case a lawyer- is an interest of great importance, but that this interest has to be balanced against the equally important interest of society in finding the truth about a person who enjoys the privilege of non-disclosure and who is a suspect;
- that in the opinion of the court the result of this balancing cannot be that the first-mentioned interest must be given absolute precedence;
- that the safeguard for those who wish to consult a person who enjoys the privilege of non-disclosure is the fact that the recorded conversations are initially only listened to in order to determine whether they are of a confidential character and that, when the confidential character has been established, the minutes and the tapes relating to those conversations are, pursuant to Section 125h paragraph 2 of the Code of Criminal Procedure, destroyed immediately by the investigating judge."

As to the last argument of the applicant, the Court of Appeal reiterated its decision that the law does not grant the accused the right to examine the case-files of his co-suspects or the right to listen to all tapes of recorded telephone conversations. It added:

<translation>
"- the Court is of the opinion that the principle of fair trial was guaranteed sufficiently because the accused had the opportunity to summon as witnesses the persons with whom he had had the recorded telephone conversations."

The applicant subsequently lodged an appeal in cassation with the Supreme Court (Hoge Raad). He reiterated the objections he had raised before the Court of Appeal.

On 16 February 1993, the Advocate General (Advocaat-Generaal) at the Supreme Court submitted his written conclusions, which were sent

to the applicant, who replied on 17 March 1993.

On 29 June 1993, the Supreme Court rejected the applicant's appeal in cassation. As regards the alleged partiality of the Court of Appeal, it considered, inter alia:

<translation>
> "When evaluating a plea on the absence of judicial impartiality within the meaning of Article 6 para. 1 of the Convention, it should be of primary importance that a judge...must be presumed to be impartial, unless exceptional circumstances arise that provide clear indications that a judge is prejudiced against the suspect, [or] at least that the suspect's fear on that subject is objectively justified.
> The mere fact that a tribunal that deals with the suspect's case on appeal has repeatedly rejected requests to lift or suspend the detention on remand, does not mean that the case is not dealt with by an impartial tribunal within the meaning of Article 6 para. 1 of the Convention. Exceptional circumstances, that in the present case should have led to a different opinion, have not been established, nor have they become apparent from the case-file. The fact that this tribunal, in rejecting [the requests to lift or suspend the detention on remand], considered that the situation referred to in Section 67a para. 3 of the Code of Criminal Procedure did not arise, cannot be regarded as such a fact."

As regards the tapping of the applicant's telephone lines, the Supreme Court considered that the tapping of a telephone line of a person who enjoys the privilege of non-disclosure is not unlawful and that the legislation on telephone tapping does not lead to the conclusion that a lawyer's telephone can only be tapped in very exceptional circumstances.

As regards the fairness of the trial, the Supreme Court stated, inter alia:

<translation>
> "The right to inspect or to receive copies of documents belonging to cases against co-suspects cannot be derived from Article 6 of the Convention.
> ....
> A reasonable interpretation, in the light of the right to a fair trial laid down in Article 6 para. 1 and the beginning of para. 3 and sub-para b of that paragraph of the Convention, entails that in Section 125h, paragraph 1, of the Code of Criminal Procedure, the words 'as soon as possible' have to be read in such a manner - unless Section 125h, paragraph 2 is applicable - that the destruction of minutes and items within the meaning of that provision will not be carried out until after the defence has had sufficient opportunity to request that, in the interest of the defence, one or more of those be added to the case-file, and a decision has been given on that request. A right to listen to tapes which have not been added to the case-file, cannot, however, be derived from the aforementioned Convention provisions."

2. Relevant domestic law and practice

Pursuant to Section 67 para. 3 of the Code of Criminal Procedure, detention on remand (voorlopige hechtenis) can only be ordered when there are serious indications ("ernstige bezwaren") against the suspect, meaning that it is likely that he has committed the offence he is accused of.

Pursuant to Section 67a para. 3 of the Code of Criminal Procedure, (the prolongation of) detention on remand will not be ordered when there is a substantial possibility ("wanneer ernstig rekening moet worden gehouden met de mogelijkheid dat") that the suspect will not be sentenced to an unconditional prison sentence or when there is a substantial possibility that the prison sentence to be imposed will be shorter than the time spent in detention on remand.

Sections 125g and 125h paras. 1 - 3 of the Code of Criminal Procedure read as follows:

<translation>

125g "During the preliminary judicial investigation the investigating judge may, if the investigation urgently so requires and concerns an offence which allows for detention on remand, authorise the investigating official to tap or record telephone conversations where there is a suspicion that the suspect participates in them. Minutes of the tapping or recording shall be drawn up within forty-eight hours."

125h.1 "The investigating judge shall have destroyed, as soon as possible, in his presence, any minutes and other items from which information can be derived that has been obtained...by tapping or recording..., and which are not relevant to the investigation. Minutes of the destruction shall be drawn up immediately."

125h.2 "The investigating judge shall likewise have immediately destroyed any minutes and other items referred to in the preceding paragraph, insofar as they concern statements made by or to a person who, on the basis of Section 218 [of the Code of Criminal Procedure] could be exempted from testifying if he were questioned as a witness about the contents of those statements."

125h.3 "The investigating judge shall add the remaining minutes and other items referred to in the first paragraph to the case-file, at the latest, when the decision to close the preliminary judicial investigation becomes final."

Section 218 of the Code of Criminal Procedure states that witnesses who have a professional obligation to secrecy have the privilege of non-disclosure and are exempted from testifying on matters that are confided to them in their professional capacity. Practising lawyers fall within the ambit of this provision.

Pursuant to Section 516 of the Code of Criminal Procedure, an accused can challenge a judge.

COMPLAINTS

1. The applicant complains under Article 6 para. 1 of the Convention that the Court of Appeal was not impartial, since the same three judges who decided on his requests to be released from detention on remand also decided on the merits of his case. He argues, citing Sections 67 para. 3 and 67a para. 3 of the Code of Criminal Procedure, that the Court of Appeal anticipated its determination of his guilt and the sentence it would ultimately impose.

2. The applicant complains under Article 6 of the Convention that the equality of arms between the prosecution and the defence was violated by the rejection of his requests to be provided with copies of the case-files of all his co-suspects or to be permitted to examine those case-files, and his requests for permission to listen to all the tapes of recorded telephone conversations in which he had participated.

He argues that the Court of Appeal, by considering that the prosecuting authorities shall decide which documents are to be included in the case-file, disregarded the principle of equality of arms.

3. He complains under Article 8 of the Convention that the Dutch legislation on telephone tapping does not meet the requirements of that provision because it does not afford adequate safeguards against abuse and leaves too many issues open for judicial discretion. Furthermore, referring to the Niemietz case (Eur. Court H.R., judgment of 16 December 1992, Series A no. 251-B), the applicant complains under Article 8 of the Convention that the tapping of his telephones was a disproportionate interference with his professional obligation to secrecy. He submits that all his telephone conversations, including those with clients who had nothing to do with the criminal investigation, were overheard and that the interests of his clients, who thought they could communicate confidentially with their lawyer, were harmed.

THE LAW

1. The applicant makes two complaints under Article 6 (Art. 6) of the Convention, which, insofar as relevant, reads as follows:

> "1. In the determination...of any criminal charge against him, everyone is entitled to a fair...hearing...by an...impartial tribunal....
> ....
> 3. Everyone charged with a criminal offence has the following minimum rights:
> ....
> b. to have adequate time and facilities for the preparation of his defence;
> ...."

a) The applicant's first complaint under Article 6 (Art. 6) is that, in the determination of the criminal charges against him, he did not receive a hearing by an impartial tribunal.

Under Article 26 (Art. 26) of the Convention, the Commission may only deal with this matter after all domestic remedies have been exhausted. The Commission recalls the applicant's statement before the Court of Appeal that he would not avail himself of the right to challenge the judges concerned. At the same time, however, he put before the Court of Appeal the arguments he now submits to the Commission as regards the alleged partiality of these judges. These arguments were considered and rejected by the Court of Appeal and, subsequently, by the Supreme Court. In these circumstances the Commission cannot find that the applicant's complaint of partiality of the Court of Appeal is inadmissible under Article 27 para. 3 (Art. 27-3) of the Convention for non-exhaustion of domestic remedies.

As regards the substance of this complaint, the Commission recalls that the existence of impartiality for the purposes of Article 6 para. 1 (Art. 6-1) of the Convention must be determined according to a subjective test, that is on the basis of the personal conviction of a particular judge in a given case, and also according to an objective test, that is ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect (Eur. Court H.R., Hauschildt case, judgment of 24 May 1989, Series A no. 154, p. 21 para. 46; Eur. Court H.R., Padovani case, judgment of 26 February 1993, Series A no. 257-B, p. 20 para. 25).

The Commission notes that the applicant has not questioned the personal impartiality of the members of the Court of Appeal.

As to the objective test, it must be determined whether, quite

apart from the judge's conduct, there are ascertainable facts which may raise doubts as to his impartiality. In this respect even appearances may be of importance. What is at stake is the confidence which the courts in a democratic society must inspire in the public and above all, as far as criminal proceedings are concerned, in the accused. It follows that, in deciding whether in a given case there is a legitimate reason to fear that a particular judge lacks impartiality, the standpoint of the accused is important but not decisive. What is decisive is whether this fear can be regarded as objectively justified (Padovani judgment, loc. cit., p. 20 para. 27).

In the Hauschildt case the European Court expressed the view that the mere fact that a judge has also made pre-trial decisions in a case, including those concerning detention on remand, cannot be held, in itself, as justifying fears concerning his impartiality, but that special circumstances may, in a given case, be such as to warrant a different conclusion (Hauschildt judgment, loc. cit., p. 22 paras. 50-52).

In the present case the Court of Appeal, when it had to decide on the applicant's detention on remand, did not have to answer the same questions as those which were decisive for its final judgment. The issue the Court of Appeal was faced with when deciding on the applicant's detention on remand, i.e. a summary examination and assessment of the charges against him, was not the same as the issue it had to settle when deciding whether the evidence placed before it was sufficient to find the applicant guilty of the offences he was charged with and to convict him of these offences (cf. No. 13157/87, Dec. 27.5.91, D.R. 70 p. 167).

Moreover, the Court of Appeal's finding that the situation referred to in Section 67a para. 3 of the Code of Criminal Procedure had not arisen, does not imply that the court was no longer impartial. It is true that Section 67a para. 3 required the Court of Appeal to anticipate the sentence that might ultimately be imposed, but the opinion that the situation referred to in Section 67a para. 3 was not at hand could be reached after a summary examination and a provisional assessment of the case.

Consequently, in the circumstances of the present case, the Commission finds no elements that warrant misgivings about the impartiality of the Court of Appeal.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

b) The applicant's second complaint under Article 6 (Art. 6) of the Convention is that the equality of arms between the prosecution and the defence was violated by the rejection of his requests to be provided with copies of the case-files of all his co-suspects or to be permitted to examine those case-files, and his requests for permission to listen to all the tapes of recorded telephone conversations in which he had participated. He argues that the Court of Appeal, by holding that it is the prosecuting authorities who decide which documents are to be included in the case-file, disregarded the principle of equality of arms.

The Commission will examine this complaint under paras. 1 and 3 (b) of Article 6 (Art. 6-1+6-3-b) of the Convention taken together.

The Commission finds that the mere fact that it is the prosecutor who composes the case-file of an accused does not lead to the conclusion that the equality of arms between the prosecution and the defence is disregarded. Moreover, the selection of the tapped telephone conversations was in the present case entrusted to the investigating judge - whose function it is to gather not only inculpating evidence

but also exculpating evidence (cf. Baegen v. the Netherlands, Comm. Rep. of 20.10.94; and Doorson v. the Netherlands, Comm. Rep. of 11.10.94) - and not to the prosecution.

The case-files of the co-suspects and the tapes and the recorded telephone conversations that were not selected by the investigating judge, were not a part of the applicant's case-file that was subsequently submitted by the prosecution to the trial judge.

The documents submitted by the applicant disclose no appearance of a violation of the principle of equality of arms. It has not been alleged that the prosecution has used material which the applicant was unaware of, nor that the applicant's conviction was based on evidence that he could not challenge. It has furthermore not been argued that during the proceedings the domestic courts placed the prosecution in a more advantageous position than the applicant.

The Commission finds no indication that the applicant's trial was otherwise unfair. Considering the proceedings as a whole, it notes that the applicant was provided with ample opportunity to present his case and to challenge the evidence against him. At his request nine witnesses were heard by the Court of Appeal, including his co-suspects K., G. and Van H. Two of the witnesses who were heard at the applicant's request were persons with whom he had had telephone conversations that were included in his case-file (Mr. H. and co-suspect Van H.). The Commission also observes that the applicant's requests to be given the opportunity to listen to all the tapes of recorded telephone conversations in which he had participated and to be provided with copies of the case-files of all his co-suspects had not been shown to be based on any necessity to safeguard the applicant's defence.

The Commission therefore finds no indication of a violation of Article 6 (Art. 6) of the Convention.

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

2. The applicant makes two complaints under Article 8 (Art. 8) of the Convention. He argues that the Dutch legislation on telephone tapping does not meet the requirements of that provision because it does not afford adequate safeguards against abuse and leaves too many issues open for judicial discretion, and he complains that the tapping of his telephones was a disproportionate interference with his professional obligation to secrecy.

Article 8 (Art. 8) of the Convention reads as follows:

> "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 recalls that telephone communications are covered by the notion of "private life" and "correspondence" within the meaning of Article 8 para. 1 (Art. 8-1) of the Convention (cf. Eur. Court H.R., Huvig judgment of 24 April 1990, Series A no. 176-B, p. 52 para. 25; and No. 10862/84, Dec. 6.3.86, D.R. 46 pp. 136-137).

The Commission therefore finds that the tapping of the

applicant's telephones constituted an interference by a public authority with his right to respect for his private life and correspondence.

The question which remains to be answered is whether the interference was justified under Article 8 para. 2 (Art. 8-2) of the Convention.

The Commission must first examine whether the tapping of the applicant's telephones was "in accordance with the law" within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention.

The Commission recalls in this respect that, where the Convention refers to domestic law, it is primarily the task of the national authorities to apply and interpret domestic law, and that the Convention organs have a limited jurisdiction in controlling the manner in which this is done (cf. No. 10689/83, Dec. 14.5.84, D.R. 37 p. 225). However, the phrase "in accordance with the law" does not merely refer back to domestic law, but also relates to the quality of law, requiring it to be compatible with the rule of law (cf. Eur. Court H.R., Olsson judgment of 24 March 1988, Series A no,. 130, p. 30 para. 61).

The Commission has previously examined the Dutch regulations on telephone tapping as contained in, inter alia, Sections 125 f-h of the Dutch Code of Criminal Procedure, and has found that these regulations are sufficiently precise to be considered as "law" within the meaning of Article 8 para. 2 (Art. 8-2) (No. 18395/91, Dec. 7.12.92, unpublished; No. 20555/92, Dec. 6.4.94, unpublished; No. 22788/93, Dec. 6.4.94, unpublished; No. 21207/94, Dec. 30.11.94, D.R. 79-A). The Commission finds no reason to take a different view in the present case.

The Commission observes that under Dutch law persons enjoying the privilege of non-disclosure are not exempt from telephone tapping when they themselves are suspected of having committed criminal offences and that, in the present case, the national courts ruled that the tapping of the applicant's telephones was lawful.

The Commission cannot find this ruling unreasonable or arbitrary and finds no indication of non-observance of the relevant provisions of the Dutch Code of Criminal Procedure. Consequently, the Commission considers that the interference at issue was "in accordance with the law" within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention.

The Commission finds that the interference pursued an aim that was legitimate under Article 8 para. 2 (Art. 8-2) of the Convention, namely the prevention of crime.

As to the question whether the interference was "necessary in a democratic society", the applicant submits that the tapping of his telephones constituted a disproportionate interference with his right to professional secrecy and violated the rights of his clients who had nothing to do with the investigation against him.

The Commission observes that the present case differs from the Niemietz case to which the applicant has referred (Eur. Court H.R., judgment of 16 December 1992, Series A no. 251-B) in that the applicant in the present case was himself suspected of criminal offences.

The Commission further observes that the tapping of the applicant's telephones was accompanied by procedural safeguards, namely Section 125h para. 2 of the Code of Criminal Procedure, and the involvement of the Dean of the Bar Association (cf. Niemietz judgment, loc. cit., pp. 36-37 para. 37), in order to protect the interests of clients of the applicant who had nothing to do with the criminal investigation against him.

The Commission finds that the interference with the applicant's private life and correspondence, having regard also to his right to professional secrecy and the rights of his clients, was not disproportionate to the legitimate aim, namely the prevention of crime.

The interference can thus reasonably be regarded as having been necessary in a democratic society.

It follows that the interference with the applicant's private life and correspondence was justified under Article 8 para. 2 (Art. 8-2) of the Convention.

This part of the application is, therefore, also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber — President of the Second Chamber

(K. ROGGE) — (H. DANELIUS)