AS TO THE ADMISSIBILITY OF

Application No. 25512/94
by Albert Antoon PETERS
against the Netherlands

The European Commission of Human Rights (Second Chamber) sitting in private on 17 January 1996, the following members being present:

Mr. H. DANELIUS, President
Mrs. G.H. THUNE
MM. G. JÖRUNDSSON
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN

Ms. M.-T. SCHOEPFER, Secretary to the Chamber

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

Having regard to the application introduced on 12 September 1994 by Albert Antoon PETERS against the Netherlands and registered on 2 November 1994 under file No. 25512/94;

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 citizen, born in 1942 and at present serving a prison sentence. Before the Commission he is represented by Mrs. T. Spronken, a lawyer practising in Maastricht.

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

A. The particular circumstances of the case

In the course of a preliminary judicial investigation into a criminal organisation involved in the production of and trade in amphetamines, the investigating judge (rechter-commissaris) on 29 October 1990 authorised the tapping of the applicant's telephone for a period of four weeks. This authorisation was prolonged a number of times until 18 October 1991 when the applicant was arrested.

During the period when the applicant's telephone was tapped it happened that as a result of the fact that the receiver had not been properly put back on the telephone and the line had thus remained open, background conversations which took place in the room where the telephone was situated were recorded. Data gathered from these conversations were used by the police in the investigation. Their transcripts were subsequently used in evidence in the criminal proceedings against the applicant.

On 28 January, 25 February and 6 March 1992 hearings took place before the Regional Court (Arrondissementsrechtbank) of Maastricht. The applicant was convicted on 20 March 1992 of having participated in a criminal organisation and of drug offences and he was sentenced to six years' imprisonment.

In its judgment the Regional Court did not accept the applicant's claim that the Dutch practice of telephone tapping contravened the Convention. It held furthermore that there was no rule of law prohibiting the use in evidence of transcripts of background conversations recorded while the receiver had not been placed on the telephone.

The applicant filed an appeal against the judgment of the Regional Court with the Maastricht Court of Appeal (Gerechtshof). He submitted that the background conversations could not have been recorded as a result of the fact that the telephone receiver had not been properly put back. According to the applicant use had been made of sophisticated microphones placed in his house. He argued that the transcripts of these background conversations ought not to be used in evidence since the way in which they had been obtained did not comply with Article 8 of the Convention.

During the hearings on appeal, which took place on 2 December 1992, 18 January and 1 and 10 March 1993, witnesses were heard in order to establish whether microphones might have been placed in the applicant's house and whether it was technically possible to record background conversations taking place in the room where the telephone was situated while the receiver was not placed on the telephone.

The Court of Appeal quashed the decision of the Regional Court on 24 March 1993 on the basis of a different evaluation of the evidence. The applicant was convicted of having participated in a criminal organisation and of drug offences and was sentenced to five years and six months' imprisonment.

The Court of Appeal found that the extensive investigation conducted at the hearings had not disclosed that the recording of the background conversations had in any way been intentionally brought about by the investigating authorities. If in the process of authorised telephone tapping background conversations were recorded, it could, therefore, not be said that this was the result of an interference by the investigating authorities. The Court further held that the evidence which had thus, as a coincidence, come to light could not be considered as having been obtained illegally. It finally considered that there were no principles or rules which prohibited the use of evidence thus obtained.

The applicant filed an appeal in cassation with the Supreme Court (Hoge Raad). Following a hearing on 14 December 1993, the Supreme Court rejected the appeal in cassation on 15 March 1994.

B. Relevant domestic law

Sections 125 f-h of the Dutch Code of Criminal Procedure (Wetboek van Strafvordering) permit the interception of telephone conversations in which a suspect is likely to participate, provided that the offences of which he is suspected are of a certain gravity and the investigation urgently requires interception. The Guidelines on the Interception of Telephone Conversations (Richtlijnen Onderzoek van Telefoongesprekken), which have been published, limit the duration of interception. A written transcript must be made of all intercepted calls.

COMPLAINT

The applicant complains under Article 8 of the Convention that

the use in evidence against him of transcripts of background conversations violated his right to respect for his private life. In this respect he furthermore submits that the interference was not in accordance with the law since the relevant Dutch legal provisions only allow for the interception of telephone conversations.

THE LAW

The applicant complains that the use in evidence of transcripts of background conversations violated his right to respect for his private life.

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

> "1. Everyone has the right to respect for his private ... life, ... and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society 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 in the first place 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., Kruslin and Huvig judgments of 24 April 1990, Series A no. 176-A and B, p. 20, para. 26, and p. 52, para. 25; and No. 10862/84, Dec. 6.3.86, D.R. 46 p. 123).

The Commission therefore finds that the tapping of the applicant's telephone constituted an interference by a public authority with his right to respect for his private life and correspondence.

As regards the question whether this interference was justified under Article 8 para. 2 (Art. 8-2) of the Convention, the Commission recalls that it has previously examined the Dutch rules on telephone tapping as contained in, inter alia, Sections 125 f-h of the Dutch Code of Criminal Procedure. It has found that these rules 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; No. 20555/92, Dec. 6.4.94; No. 22788/93, Dec. 6.4.94, all unpublished; and No. 21207/93, Dec. 30.11.94, D.R. 79 p. 31).

The Commission finds no reason to take a different view in the present case with regard to the recording of the telephone conversations during the period when the applicant's telephone was being tapped.

The Commission notes, however, that apart from conversations on the telephone, other conversations were also recorded which had taken place in the room where the telephone was situated at a time when the receiver had not been properly put back. The information thus gathered was used in the investigation in which the applicant was a suspect and the transcripts of these conversations were used in evidence against the applicant in the ensuing criminal proceedings.

In this respect the Commission further notes that in the domestic proceedings the Court of Appeal concluded that after an extensive investigation it had not appeared that the recording of the background conversations had intentionally been brought about by the public authorities. There is no indication that this finding of the Court of Appeal was in any way unfair or arbitrary on the basis of the evidence

that was adduced before the court. Consequently, the Commission accepts that the background conversations were unintentionally recorded as a result of the fact that the receiver had not been properly put back on the telephone and without any deliberate action on the part of a public authority.

The question which remains to be answered is whether Article 8 (Art. 8) of the Convention precludes the use in evidence of the transcripts of these background conversations.

The Commission considers that Article 8 (Art. 8) does not require that there should be a specific provision in domestic law which authorises the use in evidence of documents, objects or information which have been found by chance and which happen to constitute evidence in a criminal case. Moreover, the domestic courts in the present case did not find any illegality under Dutch law.

Consequently, the Commission finds that, insofar as the use made of the background conversations can be considered an interference with the applicant's right to respect for his private life, this interference was "in accordance with the law" and can furthermore be considered necessary for the prevention of disorder or crime.

It follows that this complaint 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, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber — President of the Second Chamber

(M.-T. SCHOEPFER) — (H. DANELIUS)