Communication No. 903/2000, *Van Hulst v. The Netherlands*
(Views adopted on 1 November 2004, eighty-second session)*

Submitted by:	Antonius Cornelis Van Hulst (represented by counsel, Mr. Taru Spronken)
Alleged victim:	The author
State party:	The Netherlands
Date of communication:	8 April 1998 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 1 November 2004,

Having concluded its consideration of communication No. 903/1999, submitted to the Human Rights Committee on behalf of Antonius Cornelis Van Hulst under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The author of the communication is Antonius Cornelis Van Hulst, a Dutch citizen. He claims to be a victim of violations by the Netherlands[1] of articles 14 and 17 of the Covenant. He is represented by counsel.

1.2 A similar communication, based on the same facts, was submitted on 7 September 1998 by Mr. A.T.M.M., also claiming to be a victim of a violation by the Netherlands of article 17 of the Covenant. Mr. A.T.M.M. did not pursue his claim subsequently and, despite a reminder, did not inform the Committee whether he wished to maintain his communication.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Franco Depasquale, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

The facts as submitted by the author

2.1 During a preliminary inquiry against Mr. A.T.M.M., the author's lawyer, telephone conversations between A.T.M.M. and the author were intercepted and recorded. On the basis of the information obtained by this operation, a preliminary inquiry was opened against the author himself, and the interception of his own telephone line was authorized.

2.2 By judgement of 4 September 1990, the District Court of 's-Hertogenbosch convicted the author of participation in a criminal organization, persistent acquisition of property without intent to pay, fraud and attempted fraud, extortion, forgery and handling stolen goods, and sentenced him to six years' imprisonment.

2.3 During the criminal proceedings, counsel for the author contended that the public prosecutor's case should not be admitted, because the prosecution's case contained a number of reports on telephone calls between the author and his lawyer, A.T.M.M, which it was unlawful to receive in evidence. Counsel argued that, in accordance with article 125h,[2] paragraph 2, read in conjunction with section 218,[3] of the Code of Criminal Procedure, the evidence obtained unlawfully should have been discarded.

2.4 Although the District Court agreed with the author that the telephone calls between him and A.T.M.M., could not be used as evidence, insofar as the latter acted as the author's lawyer and not as a suspect, it rejected the author's challenge to the prosecution's case, noting that the prosecutor had not relied on the contested telephone conversations in establishing the author's guilt. While the Court ordered their removal from the evidence, it admitted and used as evidence other telephone conversations, which had been intercepted and recorded in the context of the preliminary inquiry against A.T.M.M., in accordance with section 125g[4] of the Code of Criminal Procedure, and which did not concern the lawyer-client relationship with the author.

2.5 On appeal, the author's defence counsel argued that not all records of the tapped telephone calls, which should have been destroyed pursuant to section 125h, paragraph 2, had in fact been destroyed. However, by judgement of 10 April 1992, the-Hertogenbosch Court of Appeal rejected this defence, stating that the author's request to examine whether the reports in question had been destroyed would be irrelevant, "as their absence from the case file would provide no certainty about [their destruction]." The Court convicted the author of persistent acquisition of property without intent to pay, forgery, and resort to physical threats, without making use of the telephone records, and sentenced him to five years' imprisonment.

2.6 Before the Supreme Court, the author's defence counsel stated that the Court of Appeal had not responded to his defence that the records of the telephone conversations with his lawyer had been illegally obtained without having subsequently been destroyed. The Supreme Court rejected this argument and, by decision of 30 November 1993, for different reasons, it partially quashed the judgement of the Court of Appeal on two counts, as well as the sentence, and referred the matter back to the Arnhem Court of Appeal.

2.7 On 24 March 1995, the Arnhem Court of Appeal acquitted the author on one count and sentenced him to three years' imprisonment on the other counts. In his cassation appeal against this judgement, the author contended that his defence relating to the tapped telephone calls had till not been responded to. On 16 April 1996, the Supreme Court dismissed the appeal, without reasons, referring to section 101a[5] of the Judiciary Act.

2.8 On 22 October 1996, the author applied to the European Commission of Human Rights, alleging, inter alia, a violation of article 6 of the European Convention. By decision of 8 December 1997,[6] the Commission declared the application inadmissible, on the ground that "an appeal tribunal does not violate article 6 of the Convention when, basing itself on a specific legal provision, it rejects an appeal as having no chances of success without giving further reasons for that decision." Regarding the author's other complaints, the Commission considered that they "[did] not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols."

The complaint

3.1 The author claims that the Supreme Court's dismissal, by mere reference to section 101a of the Judiciary Act, of his defence relating to the tapped telephone calls, as well as the admission as evidence and use of reports on tapped telephone calls between him and his lawyer, violated his rights under article 14 of the Covenant, and that the interference with his right to confidential communication with his lawyer was unlawful and arbitrary, in violation of article 17 of the Covenant.

3.2 The author submits that the courts' failure to give any reasons for dismissing his defence made his right to appeal his conviction meaningless. In particular, the Supreme Court's exercise of its discretion, based on section 101a of the Judiciary Act, to simply state that a petition may not lead to cassation of the original judgement or that it does not require that questions of law be answered in the interest of the uniformity or development of the law, deprived him of an opportunity to prepare his legal arguments for his complaint to the Committee or, for that matter, to the European Commission of Human Rights.

3.3 The author submits that article 121 of the Dutch Constitution requires that judgements state the reasons on which they are based; exceptions to this rule must be defined by law and must be restricted to an absolute minimum. Accordingly, section 101a, which was introduced in 1988 with a view to reducing the workload and strengthening the efficiency of the Supreme Court, cannot justify the denial of a defendant's right to know the reasons for dismissal of his appeal so as to adequately prepare his defence.

3.4 The author refers to the relevant jurisprudence[7] of the European Court of Human Rights, according to which national courts must indicate with sufficient clarity on what grounds they base their decisions, so as to enable the accused meaningfully to exercise his right to appeal. In view of the similarities between article 6 of the European Convention and article 14 of the Covenant, it is argued that the restrictive exceptions to this principle, which can be inferred from the European Court's jurisprudence, also apply to article 14 of the Covenant. Accordingly, no reasons need to be given by a court: (a) if a lower court has already rendered a reasoned judgement in the same matter; (b) if a judgement is not subject to appeal; (c) in relation to non-essential arguments; (d) in the context of a leave system; and (e) in relation to a decision on admissibility.

3.5 For the author, the above exceptions do not apply in his case because: (a) none of the courts seized with his case responded, in a substantive and comprehensive manner, to his challenge to the use of the tapped telephone calls in the criminal proceedings; (b) although the judgement of the Supreme Court of 16 April 1996 was not subject to further appeal at the national level, it should have been reasoned in order to allow the author to prepare a complaint to

the Committee and/or the European Commission of Human Rights; (c) his defence could not be dismissed as non-essential, since it related to violations of his rights to privacy and to a fair trial; and (d) the Supreme Court's discretion to dismiss a cassation appeal on the basis of section 101a of the Judiciary Act cannot be compared to a leave system, as the provision empowers the Court "to waive any provision of reasons altogether."

3.6 With regard to his claim under article 17, the author submits that, as a client of Mr. A.T.M.M., he should have been accorded judicial protection from the wire tapping and recording of his telephone conversations with his lawyer, since he could not know that the latter was a suspect in criminal investigations. The right to consult a lawyer of one's own choice is undermined if the protection of confidentiality depends on whether a lawyer is himself a criminal suspect or not.

3.7 The author submits that his right, under article 17, not to be subjected to arbitrary or unlawful interference with his privacy includes a right to confidential communication with his lawyer, which can only be restricted (a) in accordance with the law; (b) for a legitimate purpose; and (c) if the interference is proportionate to the aim pursued.

3.8 Although the author concedes that combating crime is a legitimate purpose, he challenges the Supreme Court's jurisprudence that section 125h, paragraph 2, of the Code of Criminal Procedure, while requiring the destruction of reports on tapped telephone calls involving a person entitled to decline to give evidence, does not preclude that cognizance may be taken of information which falls within the scope of section 218 of the Code of Criminal Procedure, as it is not clear in advance whether the conversation involves a person bound by law to observe confidentiality. Rather, section 125h, paragraph 2, should be read to forbid strictly the tapping of telephone connections of a lawyer/suspect, "as all confidential conversations must immediately be destroyed". Otherwise information could be gathered by means of interception and recording, which could normally not be obtained through the statements of witnesses or suspects. The author adds that the tapping of telephone calls between him and his lawyer was a disproportionate measure.

The State party's observations on admissibility and merits

4.1 In its observations dated 23 April 2003, the State party, while not contesting the admissibility of the communication, argues that neither the Supreme Court's reference to section 101a of the Judiciary Act, nor the admission as evidence of tapped telephone conversations between the author and Mr. A.T.M.M., violated the author's right to a fair trial under article 14, and that the interference with his privacy and correspondence was neither unlawful nor arbitrary.

4.2 While conceding that the right to a fair trial, in principle, requires tribunals to state the grounds for their judgements, the State party submits that the right to have a reasoned judicial decision is not absolute, but rather depends on the nature of the decision, the circumstances of each individual case and the stage of the proceedings. The European Court's jurisprudence[8] that appellate courts may, in principle, simply endorse the reasons stated in the lower court's decision must a fortiori also apply to the reasoning required from Supreme Courts, which, like Constitutional Courts, often dismiss appeals in a cursory manner.

4.3 Section 101a of the Judiciary Act was introduced as an efficiency measure, to ensure that the Supreme Court would be able to handle its growing workload. The provision was examined, and complaints against it declared manifestly ill-founded, by the European Court.[9] The mere existence of section 101a cannot therefore be said to violate article 14 of the Covenant.

4.4 The State party rejects the author's argument that the application of section 101a reduced his possibilities to defend himself before the Committee, arguing that the guarantees of article 14 of the Covenant only apply to appeals at the national level. Insofar as the author complains that his right to petition the Committee was curtailed by the fact that the Supreme Court confined itself to merely referring to section 101a, the State party submits that the decision of the Supreme Court in no way affected the detailed reasons given by the courts in earlier stages of the proceedings. The author's allegation that no judicial body ever responded substantively to his defence relating to the tapped telephone calls with his lawyer was unfounded. Moreover, the Supreme Court only made reference to section 101a of the Judiciary Act after it had partially quashed the judgement of the Court of Appeal of 10 April 1992, and referred the case back to the Arnhem Court of Appeal by judgement of 30 November 1993.

4.5 As to the admission as evidence of certain recorded telephone conversations between the author and Mr. A.T.M.M., the State party submits that it is generally for the national courts, and not for the Committee, to assess the evidence before them, unless there are clear indications of a violation of article 14. For the State party, the proceedings as a whole must be considered fair because: (a) the District Court only admitted recordings of conversations between the author and his lawyer, insofar as they related to the latter's involvement in the commission of a criminal offence, and made it clear that neither the public prosecutor nor the Court itself based their findings on protected lawyer-client conversations; (b) no transcripts of the recordings were made or introduced in the case file, the recordings merely having been mentioned at trial, in compliance with the European Court's judgement in *Kruslin v. France*,[10] where the Court stressed the need to communicate such recordings in their entirety for possible inspection by the judge and the defence; (c) the reliability of the evidence was never disputed by the author, who merely complained that the information should have been erased; and (d) because the case file indicates that the author's conviction was not based on tapped conversations in which Mr. A.T.M.M. acted as a lawyer rather than a suspect.

4.6 Regarding the author's claim under article 17, the State party concedes that telephone calls made from or to a law firm may be covered by the notions of "privacy" or "correspondence" and that the interception of the author's telephone calls constituted "interference" within the meaning of this provision. By reference to the Committee's general comment 16,[11] it denies that this interference was unlawful or arbitrary within the meaning of article 17, which only prohibits interference not envisaged by law ("unlawful"), and which itself must comply with the provisions, aims and objectives of the Covenant, or which is not reasonable in the in the particular circumstances ("arbitrary").

4.7 The State party argues that the applicable law at the time, i.e. sections 125 litera f to h of the Code of Criminal Procedure, did not forbid the tapping of telephone conversations with persons bound by law to secrecy. The legislator, when enacting these provisions in 1971, did not indicate that they should not apply to persons bound by law to secrecy, within the meaning of section 218 of the Code of Criminal Procedure. Moreover, the applicable law, which then included detailed Guidelines for the Examination of Telephone Conversations, was sufficiently

precise to authorize interference with the right to privacy, setting out procedural safeguards against abuse of power, such as the requirement of a judicial authorization of telephone taps and provision for the preparation and, in certain cases, destruction of official records on any interception.

4.8 The State party argues that the interference with the author's right to privacy pursued a legitimate purpose (combating crime) and was proportionate, as the District Court ensured that the tapped conversations, in which Mr. A.T.M.M. acted as the author's lawyer, rather than a suspect of criminal offences, were not taken into account in the criminal proceedings against the author. As for the conversations which were intercepted because A.T.M.M. was a suspect, thus not involving professional communication between a lawyer and his client, the State party argues that it is unreasonable to expect total impunity for the author and A.T.M.M. on the mere basis that the latter is also a lawyer.

4.9 Lastly, the State party argues that the detriments caused to the author by the fact that the conversation with A.T.M.M. was tapped are primarily a matter between private parties, as the author could have initiated civil proceedings against A.T.M.M., who could further be held responsible by means of disciplinary proceedings.

Author's comments

5.1 In his comments, dated 15 July 2003, on the State party's observations, the author reiterates his claims and expands on his argumentation relating to the alleged breach of article 17. He submits that the practical consequence of the Dutch courts' decisions is that, whenever a lawyer is suspected of a criminal offence and his telephone line is tapped for that reason, his clients can no longer claim the confidentiality of lawyer-client relationship or the guarantee of immediate destruction of the records of such telephone taps.

5.2 The author contends that the State party failed to differentiate between counsel-client conversations and suspect-suspect conversations, when it tapped the calls he made to A.T.M.M., which concerned a completely different matter than the one in which his lawyer was considered a suspect, thus putting the police onto the track of a possible new criminal offence, or when it subsequently tapped his own telephone connection, thereby putting the police on yet another track relating to an offence that again differed from the one for which the telephone was tapped, and of which his lawyer was then also suspected. The core of his complaint is the fact that the suspicion against him was raised as a result of intercepting confidential telephone contacts, the records of which should have been destroyed immediately, rather than including them in the court file as evidence against him.

5.3 The author concludes that the authorities' freedom to initiate investigations, on the basis of confidential information obtained through telephone interception, into any possible criminal offence that may have been committed by the client of a lawyer, whose telephone is tapped because he is the suspect of a criminal offence, constitutes a disproportionate interference with article 17 of the Covenant, which cannot be justified by the aim pursued. Any other interpretation would make the right to confidential telephone communication with one's lawyer illusory.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, in accordance with article 5, paragraph 2 (a) and (b), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement and that the author has exhausted domestic remedies.

6.3 Insofar as the author alleges that the mere reference to section 101a of the Judiciary Act, in the Supreme Court's decision of 16 April 1996, deprived him of an opportunity adequately to elaborate the arguments in support of the present communication, the Committee observes that the guarantees of article 14, paragraphs 3 (b) and 5, which apply to domestic criminal proceedings, do not extend to the examination of individual complaints before international instances of investigation or settlement. This part of the communication is therefore inadmissible under article 3 of the Optional Protocol.

6.4 With regard to the author's claim that his right under article 14, paragraph 5, to have his conviction and sentence reviewed by a higher tribunal was violated, because the judgements other than that of 16 April 1996 by the Supreme Court did not give sufficient reasons for the courts' dismissal of his defence challenging the lawfulness of the evidence obtained, the Committee recalls that, where domestic law provides for several instances of appeal, a convicted person must have effective access to all of them. To ensure the effective use of this right, the convicted person is entitled to have access to duly reasoned, written judgements in the trial court and at least in the court of first appeal.

6.5 The Committee notes that the judgements of the 's-Hertogenbosch District and Appeal Courts, as well as the judgement of the Supreme Court dated 30 November 1993 and the judgement of the Arnhem Court of Appeal, do give reasons for the dismissal of the author's defence. It recalls that it is generally for the national tribunals, and not for the Committee, to evaluate the facts and evidence in a particular case, unless it can be ascertained that the proceedings before these tribunals were clearly arbitrary or amounted to a denial of justice. The Committee considers that the author has not substantiated, for purposes of admissibility, that the reasons given by the Dutch courts for rejecting his challenge to the admissibility of the prosecution's case were arbitrary or amounted to a denial of justice. It must therefore follow that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.6 Concerning the claim that the admission as evidence of certain tapped telephone conversations between the author and A.T.M.M., and their use during the criminal proceedings in general, violated his right to a fair trial, the Committee does not consider that the District Court's differentiation between records of tapped telephone calls that could be used as evidence, as they related to conversations which were intercepted in the context of the preliminary inquiry against A.T.M.M., and records of conversations, in which A.T.M.M. acted as the author's lawyer, that could not be used as evidence and should be removed from the file and destroyed,

was arbitrary. Although the author contends that the Dutch authorities did not differentiate between counsel-client and suspect-suspect conversations, since his calls to Mr. A.T.M.M. concerned different matters than the one in which his lawyer was a suspect, he has not substantiated this claim. This part of the communication is also inadmissible under article 2 of the Optional Protocol.

6.7 The Committee considers that the author has substantiated, for purposes of admissibility, that the interception of telephone conversations between him and his lawyer, as well as the State party's failure to destroy the recordings of certain tapped calls, may raise issues under article 17 of the Covenant. It therefore concludes that the communication is admissible insofar as it raises issues under article 17.

Consideration of the merits

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

7.2 The issue before the Committee is whether the interception and recording of the author's telephone calls with Mr. A.T.M.M. constituted an unlawful or arbitrary interference with his privacy, in violation of article 17 of the Covenant.

7.3 The Committee recalls that, in order to be permissible under article 17, any interference with the right to privacy must cumulatively meet several conditions set out in paragraph 1, i.e. it must be provided for by law, be in accordance with the provisions, aims and objectives of the Covenant and be reasonable in the particular circumstances of the case.[12]

7.4 The Committee notes that section 125g of the Dutch Code of Criminal Procedure authorizes the investigating judge to order, during the preliminary judicial investigation, the interception or recording of data traffic, in which the suspect is believed to be taking part, provided that this is strictly required in the interests of the investigation and relates to an offence for which pretrial detention may be imposed. The author has not contested that the competent authorities acted in accordance with the requirements of this provision. The Committee is therefore satisfied that the interference with his telephonic conversations with Mr. A.T.M.M. was lawful within the meaning of article 17, paragraph 1, of the Covenant.

7.5 One other question which arises is whether the State party was required by section 125h, paragraph 2, read in conjunction with section 218 of the Code of Criminal Procedure, to discard and destroy any information obtained as a result of the interception and recording of the author's conversations with Mr. A.T.M.M., insofar as the latter acted as his lawyer and as such was subject to professional secrecy. The Committee notes, in this regard, that the author challenges the Supreme Court's jurisprudence that cognizance may be taken of tapped telephonic conversations involving a person entitled to decline evidence, even though section 125h, paragraph 2, provides that the reports on such conversations must be destroyed. The Committee considers that an interference is not "unlawful", within the meaning of article 17, paragraph 1, if it complies with the relevant domestic law, as interpreted by the national courts.

7.6 Finally, the Committee must consider whether the interference with the author's telephonic conversations with Mr. A.T.M.M. was arbitrary or reasonable in the circumstances of the case. The Committee recalls its jurisprudence that the requirement of reasonableness implies that any interference with privacy must be proportionate to the end sought, and must be necessary in the circumstances of any given case.[13] The Committee has noted the author's argument that clients can no longer rely on the confidentiality of communication with their lawyer, if there is a risk that the content of such communication may be intercepted and used against them, depending on whether or not their lawyer is suspected of having committed a criminal offence, and irrespective of whether this is known to the client. While acknowledging the importance of protecting the confidentiality of communication, in particular that relating to communication between lawyer and client, the Committee must also weigh the need for States parties to take effective measures for the prevention and investigation of criminal offences.

7.7 The Committee recalls that the relevant legislation authorizing interference with one's communications must specify in detail the precise circumstances in which such interference may be permitted and that the decision to allow such interference can only be taken by the authority designated by law, on a case-by-case basis.[14] It notes that the procedural and substantive requirements for the interception of telephone calls are clearly defined in section 125g of the Dutch Code of Criminal Procedure and in the Guidelines for the Examination of Telephone Conversations of 2 July 1984. Both require interceptions to be based on a written authorization by the investigating judge.

7.8 The Committee considers that the interception and recording of the author's telephone calls with A.T.M.M. did not disproportionately affect his right to communicate with his lawyer in conditions ensuring full respect for the confidentiality of the communications between them, as the District Court distinguished between tapped conversations in which A.T.M.M. participated as the author's lawyer, and ordering their removal from the evidence, and other conversations, which were admitted as evidence because they were intercepted in the context of the preliminary inquiry against A.T.M.M. Although the author contested that the State party accurately made this distinction, he has failed to substantiate this challenge.

7.9 Insofar as the author claims that the reports of the tapped conversations between him and his lawyer should have been destroyed immediately, the Committee notes the State party's uncontested argument that the records of the tapped conversations were kept intact in their entirety, separately from the case file, for possible inspection by the defence. As the right to privacy implies that every individual should have the right to request rectification or elimination of incorrect personal data in files controlled by public authorities,[15] the Committee considers that the separate storage of the recordings of the author's tapped conversations with Mr. A.T.M.M. cannot be regarded as unreasonable for purposes of article 17 of the Covenant.

7.10 In the light of the foregoing, the Committee concludes that the interference with the author's privacy in regard to his telephone conversations with A.T.M.M. was proportionate and necessary to achieve the legitimate purpose of combating crime, and therefore reasonable in the particular circumstances of the case, and that there was accordingly no violation of article 17 of the Covenant.

7.11 The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it do not disclose any violation of article 17 of the Covenant.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Note

[1] The Covenant and the Optional Protocol to the Covenant both entered into force for the State party on 11 March 1979.

[2] Section 125h of the Code of Criminal Procedure reads, in pertinent parts: "(1) The investigating judge shall, as soon as possible, order the destruction in his presence of any official reports or other objects from which information may be obtained that has been acquired as a result of the provision of information referred to in section 125f, or of the interception or recording of data traffic referred to in section 125g, and which is of no relevance to the investigation. An official report shall immediately be drawn up on the said destruction. (2) The investigating judge shall, in the same way, order the destruction without delay of any official reports or other objects, as referred to in paragraph 1, if they relate to statements made by or to a person who would be able to decline to give evidence, pursuant to section 218, if he were asked as a witness to disclose the content of the statements. (3) […] (4) […]" (Translation provided by the State party.)

[3] Section 218 of the Code of Criminal Procedure reads: "Those who are bound to secrecy by virtue of their position, profession or office may decline to give evidence or to answer certain questions, but only in so far as the information concerned was imparted to them in that capacity." (Translation provided by the State party.)

[4] Section 125g of the Code of Criminal Procedure reads: "During the preliminary judicial investigation, the investigating judge is empowered to order an investigating officer to intercept or record data traffic not intended for the public, which is carried via the telecommunications infrastructure, and in which he believes that the suspect is taking part, provided this is urgently necessary in the interests of the investigation and concerns an offence for which pretrial detention may be imposed. An official report of such interception or recording shall be drawn up within forty-eight hours." (Translation provided by the State party.)

[5] Section 101a (old; currently section 81) of the Judiciary Act reads: "If the Supreme Court considers that a petition may not lead to cassation of the original judgement or that it does not require that questions of law be answered in the interests of the uniformity or development of the law, it may confine itself to stating this opinion in that part of the judgement containing the grounds on which it is based." (Translation provided by the State party.)

[6] European Commission of Human Rights, decision as to the admissibility of application No. 36442/97 by A.H. against the Netherlands, 8 December 1997.

[7] European Court of Human Rights, *Hadjianastassiou v. Greece,* judgement of 16 December 1992, Series A, No. 252.

[8] European Court of Human Rights, *Garcia Ruiz v. Spain*, application No. 30544/96, judgement of 21 January 1999, at para. 26.

[9] The State party refers to the European Court's decisions in *Polman v. The Netherlands*, application No. 48334/99, decision on admissibility of 9 July 2002 and *Mink Kok v. The Netherlands*, application No. 43149/98, decision on admissibility of 4 July 2000.

[10] Judgement of 24 April 1990, Series A-176-A, at para. 35.

[11] General comment 16 [32], at paras. 3-4.

[12] General comment 16 [32], at paras. 3-4.

[13] See communication No. 488/1992, *Toonen v. Australia*, at para. 8.3.

[14] General comment 16 [32], at para. 8.

[15] Ibid., at para. 10.