HRRS-Nummer: HRRS 2005 Nr. 631
Bearbeiter: Karsten Gaede
Zitiervorschlag: EGMR HRRS 2005 Nr. 631, Rn. X

EGMR Nr. 9940/04 - Zulässigkeitsentscheidung vom 5. April 2005 (Brinks v. Niederlande)

Recht auf Achtung des Privatlebens und Recht auf informationelle Selbstbestimmung (Datenschutz; Informationsanspruch über von Seiten des Staates gespeicherte personenbezogene Daten; Ausnahmen zum Schutz der nationalen Sicherheit: Einsatz von Geheimdiensten; *margin of appreciation*; prozeduraler Grundrechtsschutz: In-Camera-Verfahren; Verhältnismäßigkeit: dringendes gesellschaftliches Bedürfnis; *rule of law*: Rechtsstaatsprinzip; Gefahren geheimer Überwachung für die Demokratie).

Art. 8 EMRK; Art. 2 Abs. 1 GG; Art. 10 GG

Leitsätze des Bearbeiters

1. Art. 8 EMRK schützt vor der Speicherung personenbezogener Daten durch den Staat, vor ihrer Verwendung und vor der Verweigerung, die gespeicherten Daten gegenüber dem Betroffenen zu offenbaren.

2. Die Begründung von Einschränkungen gemäß Art. 8 II EMRK setzt voraus, dass der Eingriff durch ein dringendes gesellschaftliches Bedürfnis notwendig gemacht wird und dass er zu diesem in einem proportionalen Verhältnis steht. Obgleich den nationalen Institutionen ein Beurteilungsspielraum bei der Einschätzung des dringenden gesellschaftlichen Bedürfnisses zukommt, müssen adäquate und wirksame Garantien gegen einen Missbrauch vorliegen, da ein zur Bewahrung der nationalen Sicherheit bestimmtes System geheimer Überwachung die Gefahr begründet, dass die Demokratie im Rahmen ihrer Verteidigung unterminiert oder gar zerstört werden könnte.

3. Sollen geheime Überwachungen mit Art. 8 EMRK vereinbar sein, müssen hinsichtlich der Kontrolle der relevanten Geheimdienstaktivitäten gesetzlich bestimmte Schutzinstrumente vorgesehen sein. Die Kontrollmechanismen müssen so weit die möglich den Werten der Demokratie verpflichtet sein und dabei insbesondere der *rule of law* (Rechtsstaatsprinzip) genügen. Die *rule of law* erfordert u.a., dass Eingriffe der Exekutive in Rechte des Einzelnen einer effektiven Kontrolle unterstehen, die normalerweise - jedenfalls letztinstanzlich - durch die Justiz erfolgen muss, da eine richterliche Kontrolle die besten Garantien für Unabhängigkeit, Unparteilichkeit und ein angemessenes Verfahren bietet.

THE FACTS

The applicant, Mr Jan Herman Brinks, is a Netherlands national who was born in 1957 and lives in Groningen. 1

A. The circumstances of the case 2

The facts of the case, as submitted by the applicant, may be summarised as follows. 3

Between 1987 and 1990 the applicant lived in the German Democratic Republic ("DDR"), where he did academic research for a dissertation. During his stay in the DDR, he also worked as a free-lance journalist for Netherlands daily and weekly papers. Like most aliens from capitalist countries living in the DDR, the applicant was kept under surveillance by the DDR intelligence authorities. 4

After his return to the Netherlands in 1990, the applicant suspected that he had attracted the attention of the then Netherlands National Security Service (*Binnenlandse Veiligheidsdienst*; "BVD") in that he had the feeling that his telephone conversations were being intercepted. After having obtained a *magna cum laude* doctorate degree in 1991, the applicant was unable to find suitable employment in the Netherlands. 5

According to the applicant, this was linked to the often critical positions he had adopted in his academic and journalistic work which allegedly had considerably irritated colleague historians and politicians in the Netherlands. He submitted 6

that Netherlands academics had repeatedly insinuated that he was a "fellow traveller" of communism. The applicant suspected that his publications and stays in the DDR and the mistrust displayed by his peers had a negative influence on his career prospects in the Netherlands. He therefore decided to move abroad, and he worked as a researcher and journalist in successively Germany, the United States of America and the United Kingdom. The applicant returned to the Netherlands in 1998.

On 11 January 2000, the applicant requested the Minister of the Interior and Kingdom Relations (*Minister van Binnenlandse Zaken en Koninkrijkrelaties*; "the Minister"), to inform him what data were contained in the file possibly held on him by the BVD. 7

In his decision of 31 October 2000, with further additions in a subsequent decision of 13 February 2001, the Minister stated - referring to Article 10 § 1 (b) of the Publicity of Public Administration Act (*Wet Openbaarheid van Bestuur*; "WOB") and the relevant case-law under this provision by the Administrative Jurisdiction Division (*Afdeling Bestuursrechtspraak*) of the Council of State (*Raad van State*), and Article 14 of the Intelligence and Security Services Act (*Wet op de Inlichtingen- en Veiligheidsdiensten*) - that no information would be provided on whether or not the BVD held current information about the applicant, since that could give an insight into BVD sources, working methods and current level of knowledge. The Minister had, therefore, considered the applicant's request as a request for access to outdated information possibly held on him by the BVD. Apart from outdated material from a "foreign sister organisation", no outdated information about the applicant had been found. After the "foreign sister organisation" had granted permission for disclosure, the applicant was granted access to the outdated information to the extent that the contents thereof would not lead to disclosure of BVD sources or working methods, or of personal data of third persons. 8

The outdated information disclosed to the applicant consisted of (parts of) six documents, including (parts of) two letters in German concerning the applicant and a copy of a letter the applicant had written on 7 September 1977 to the Public Prosecutor's Office at the (West) Berlin Regional Court. In this letter, the applicant criticised in virulent terms recent searches carried out by the German investigation authorities of the homes of persons referred to by the applicant as "'enemies of the Constitution' and other 'enemies'" (*"Verfassungsfeinden" und sonstigen "Feinden"*)[1]. The applicant ended this letter with the phrase "Death to the 'German rule-of-law State'" (*Tot an den "Deutschen Rechtsstaat"*). 9

Dissatisfied with the limited information disclosed, the applicant filed an objection (*bezwaar*), which was rejected by the Minister on 17 August 2001. The applicant filed an appeal against the decision of 17 August 2001 with the Groningen Regional Court (*arrondissementsrechtbank*), arguing *inter alia* that, as the BVD information about him had apparently been gathered in an investigation that had been conducted in the late seventies in a "Cold War" context, this information could no longer be considered "current" but should instead be classified as "outdated". 10

The applicant's appeal was, apart from one point, rejected by the Groningen Regional Court in its judgment of 17 January 2003. With the applicant's permission, as required by Article 8:29 § 5 of the General Administrative Law Act (*Algemene Wet Bestuursrecht*; "AWB"), the Regional Court had been given access to undisclosed BVD information, without that information being disclosed to the applicant. The Regional Court held that one particular document that had not been disclosed - it being unclear whether or not it did in fact concern the applicant whilst it did have a link with the applicant - should not have been withheld from the applicant under Article 16 § 1 of the 1987 Act as it was not established that this document concerned personal data of a third person. As, in respect of this document, the Minister's decision was not adequately reasoned, the Regional Court quashed the Minister's decision. It did, however, add that - apart from this one element - it found no reason to find the Minister's decision incorrect. 11

On 27 February 2003, the applicant filed an appeal with the Administrative Jurisdiction Division of the Council of State. 12

In the meantime, on 5 March 2003, the Minister had taken a new decision in which the applicant was granted access to the one document referred to in the Regional Court's ruling of 17 January 2003 and confirming the remainder of his initial decision. The applicant filed an appeal against the new decision of 5 March 2003. 13

On 14 January 2004, the Administrative Jurisdiction Division - which, with the applicant's permission, had also been given access to undisclosed BVD information without that information being disclosed to the applicant - rejected the applicant's appeal against the Regional Court's judgment of 17 January 2003, upheld this judgment and rejected the applicant's appeal against the Minister's decision of 5 March 2003. This decision, in so far as relevant, reads as follows: 14

"2.2. Under Article 3 § 1 of the WOB, anyone can address a request to a public body ... for information set out in documents about a public administrative matter. Pursuant to [Article 3 § 3 of the WOB] a request for information will be granted, with respect for the provisions of Articles 10 and 11 [of the WOB]. Pursuant to Article 10 § 1 (b) of the WOB, 15

no information will be provided in so far as this could harm the security of the State.

2.3. In the [impugned] decision, the Minister informed the appellant that, after a thorough archive investigation, some outdated information had been found which was disclosed - in a paraphrased form - to the applicant, and that for the remainder no outdated information on him had been found. To the extent that the appellant's request concerned current information, the Minister gave a reasoned explanation for not disclosing information that could give an insight into the current level of BVD knowledge, leaving open whether or not current information about the appellant was being held. 16

2.4. The Regional Court has concluded that, ...[apart from one document]..., it saw no reason for finding incorrect the decision [of 17 March 2001]. 17

2.5. The appellant disagrees with this conclusion of the Regional Court. According to the appellant, the BVD holds much more outdated information about him than it pretends. In this connection the appellant refers to the remark in the letter of 17 March 1978 - one of the classified documents disclosed to the appellant - that an investigation of the applicant was still running. As the Minister has qualified the letter of 17 March 1978 as "outdated", the investigation mentioned in it should also be regarded as outdated, so that the documents relating to the investigation should be disclosed to the appellant. The appellant fails to see why [access to] this information, which has been gathered in the context of the Cold War, should be refused on the ground of the fact that this could give an insight on current sources and working methods of the BVD. The appellant cannot follow the Regional Court's considerations on this point. 18

2.6. This argument fails. After having followed the procedure set out in Article 8:29 of the AWB, the Administrative Jurisdiction Division is, like the Regional Court, of the opinion that, apart from the [one document] disclosed to the appellant in the meantime, there is no reason for holding that the [impugned] decision is incorrect. It has not appeared that outdated information concerning an investigation of the appellant has remained undisclosed. The question whether the BVD, at present the General Intelligence and Security Service [*Algemene Inlichtingen- en Veiligheidsdienst*] (hereinafter: AIVD), holds information on the appellant which in view of the tasks performed by the service remains of a current nature, does not have to be answered. In this connection, the Regional Court has correctly referred to the constant case-law of the Administrative Jurisdiction Division, as appearing from *inter alia* the rulings of 14 December 1998 concerning no. H01.97.1354, ([Netherlands Administrative Law Reports (*Administratiefrechtelijke Beslissingen*)] AB 1999, 93) and 1 July 1999 concerning no. H01.98.1287, [Administrative Case-law Reports (*Jurisprudentie Bestuursrecht*)] JB 1999/198), in which it has been held that the Minister may refrain from disclosing information that can give an insight into the current level of knowledge held by the BVD, at present AIVD, since disclosure of such information could harm the functioning of the service and thus the security of the State. 19

2.7. It follows from the above that the appeal is unfounded. The impugned decision must be upheld. The appeal directed against the decision of 5 March 2003 is equally unfounded." 20

No further appeal lay against this ruling. 21

B. Relevant domestic law and practice 22

Until 1987, the Netherlands intelligence and security services were governed by the Royal Decree of 5 August 1972 regulating the duties, organisation, working methods and cooperation of the intelligence and security services (*Koninklijk Besluit van 5 augustus 1972, Stb. 437, houdende regeling van de taak, de organisatie, de werkwijze en de samenwerking van de inlichtingen- en veiligheidsdiensten*). 23

In its Report under former[2] Article 31 of the Convention of 3 December 1991, in the case of R.V. and Others v. the Netherlands (nos. 14084/88, 14085/88, 14086/88, 14087/88, 14088/88, 14109/88, 14173/88, 14195/88, 14196/88 and 14197/88), the European Commission of Human Rights found that the provisions of the Royal Decree of 5 August 1972 were incompatible with the requirements of Article 8 of the Convention, in that these legal rules lacked precision and adequate safeguards. 24

In the meantime, the Royal Decree of 5 August 1972 had been replaced by the 1987 Intelligence and Security Services Act (*Wet op de inlichtingen- en veiligheidsdiensten*; "the 1987 Act"), which entered into force on 1 February 1988. It provided for two branches of intelligence and security services, namely the National Security Service (BVD) and the Military Intelligence Service (*Militaire Inlichtingendienst*; "MID"). 25

Under Article 8 § 2 (a) of the 1987 Act, the BVD was entrusted *inter alia* with the task of collecting information about organisations or persons who, by the aims they pursue or their activities, give rise to serious suspicions that they 26

constitute a danger for the continued existence of the democratic legal order, or for the security or for other weighty interests of the State. It was further charged with carrying out security screenings of public officials (Article 8 § 2 (b) of the 1987 Act) and furthering measures aimed at securing information the secrecy of which was required in the interest of the State or information of those parts of the public service and industry which, according the responsible Minister, was of vital importance for maintaining life in society (Article 8 § 2 (c) of the 1987 Act).

Article 14 of the 1987 Act provided: 27

"The coordinator and the heads of the [intelligence or security] services are to ensure: 28

a. the secrecy of information eligible for qualification as classified and of the sources of that information. 29

b. the safety of persons with whose cooperation that information is being gathered." 30

Article 16 of the 1987 Act read in its relevant part: 31

"1. Personal data will only be gathered, recorded and provided to third parties by a [intelligence or security] service in so far as this is strictly necessary for carrying out its task as defined in this Act. 32

2. ... 33

3. Our Minister concerned shall, in agreement with Our Minister of Justice, determine rules concerning the management of the collections of personal data that are being held by the [security] service concerned. 34

4. The rules referred to in the previous paragraph shall at least contain regulations concerning: 35

a. the purposes of the collections; 36

b. the secrecy of the data recorded therein; 37

c. the control of the correctness of those data; 38

d. the delays during which data may be kept in storage; 39

e. the remaining grounds for removal of data from the collections; 40

f. the destruction of removed data. 41

5. ..." 42

The Minister of the Interior, in agreement with the Minister of Justice, issued the BVD Privacy Regulation (*Privacyregeling BVD*) which contained further rules within the meaning of Article 16 of the 1987 Act. This Regulation entered into force on 5 July 1988. According to Article 10 § 1 of the Privacy Regulation, a person about whom data have been recorded did not have a right of access to his personal data and also had no right to learn whether or not personal data had in fact been recorded. 43

In two rulings given on 16 June 1994 (one of which was published; see AB 1995, 238), the Administrative Jurisdiction Division found that the provisions of the 1987 Act fell short of the requirements under Articles 8 and 13 of the Convention. It found that the provisions of the 1987 Act did not comply with the requirement of foreseeability under the Convention as regards the categories of persons about whom information could be collected, the circumstances in which information could be collected and the means that could be used for obtaining information. It further considered that a person who had been refused access to information should be given reasons for this refusal instead of a general statement referring to national security. It also found that the two existing control mechanisms could not be regarded as effective in that the National Ombudsman was not competent to give any binding decisions and the Standing Committee on Intelligence and Security Services of the Lower House (*Vaste Kamercommissie voor de inlichtingen - en veiligheidsdiensten uit de Tweede Kamer*) did not have a statutory basis. 44

Consequently, the Minister of the Interior could no longer determine requests for access to information under the BVD Privacy Regulation, but had to apply the criteria of the Publicity of Public Administration Act (WOB) in determining such 45

requests, implying that each request for access to information should be examined on an individual basis and that reasons should be given in case of a refusal.

Article 3 §§ 1 and 3 of the WOB reads: 46

"1. Anyone can submit a request for information laid down in documents about a public administration matter to a public administration body or to an institution, service or company working under the responsibility of a public administration body. 47

3. A request for information shall be granted with respect for the provisions of Articles 10 and 11 [of the WOB]." 48

Article 7 of the WOB provides: 49

"1. The public administration body provides the information in respect of the documents that contain the requested information by 50

a. providing a copy thereof or by providing the literal contents thereof in another form, 51

b. allowing access to the contents, 52

c. providing an excerpt or a summary of the contents, or 53

d. providing information therefrom. 54

2. In the choice between the various forms of information, referred to in the first paragraph, the public administration body will take into account the petitioner's preference and the interest of a smooth progress of its activities." 55

Article 10 § 1 (b) of the WOB states: 56

"No information will be made available under this Act in so far as this: ... 57

b. might harm the security of the State;" 58

Proceedings under the WOB are governed by the provisions of the General Administrative Law Act (AWB). Article 8:29 of the AWB provides: 59

"1. Parties who are obliged to submit information or documents may, when there are weighty reasons for so doing, refuse to provide information or submit documents, or inform the court that only the court may take notice of the information or documents. 60

2. Weighty reasons are in any event not present for a public administration body in so far as the obligation exists, pursuant to the Publicity of Public Administration Act, to grant a request for information contained in documents. 61

3. The court shall decide whether the refusal or limitation in taking notice referred to in the first paragraph is justified. 62

4. In case the court has decided that the refusal is justified, the obligation becomes void. 63

5. In case the court has decided that the limitation in taking notice is justified, it can only with permission of the other party give a ruling on the basis of *inter alia* the information or documents concerned. In case permission [by the other party] is withheld, the case will be referred to another bench." 64

Given the rulings given on 16 June 1994 by the Administrative Jurisdiction Division, the Netherlands Government decided to revise fully the statutory rules governing the Netherlands intelligence and security services. This resulted in the enactment of the Intelligence and Security Services Act 2002 which entered into force on 29 May 2002, replacing the 1987 Act. The 2002 Act provides for two intelligence and security agencies, namely the General Intelligence and Security Service (*Algemene Inlichtingen- en Veiligheidsdienst*; "AIVD") and the Military Intelligence and Security Service (*Militaire Inlichtingen- en Veiligheidsdienst*; "MIVD"). The AIVD tasks are set out in Article 6 § 2, and the MIVD tasks in Article 7 § 2 of the 2002 Act. This Act further contains detailed provisions on the categories of persons about whom information can be collected, the circumstances in which information can be collected, the means that can be used for 65

obtaining information, and the manner of recording of information.

The 2002 Act further provides for an independent Supervisory Board (*Commissie van Toezicht*), entrusted with the task of supervision of the lawfulness of the activities of the intelligence and security agencies. Pursuant to Article 73 of the 2002 Act, the Ministers concerned, the Heads of the agencies, the official entrusted with the task of coordinating the AIVD/MIVD policies and activities, and all other officials involved in activities under the 2002 Act are obliged to provide the Supervisory Board with all information and cooperation which this Board finds necessary for the exercise of its task. The 2002 Act also provides for the possibility for individuals to request access to information held on them, or their deceased spouse, partner, child or parent. Article 57 of the 2002 Act stipulates that the Regional Court of The Hague is competent to hear appeals against decisions refusing access to such information. 66

COMPLAINTS

The applicant complained of a violation of his right to privacy as guaranteed by Article 8 of the Convention in that, despite changed circumstances in that the Cold War had ended, he was only granted limited access to information held on him by the BVD that had been gathered at least since 1977. 67

The applicant further complained under Article 10 of the Convention that his freedom of expression had been and still was being seriously curtailed in that, in all probability, owing to the activities of the BVD he could not find employment in the Netherlands despite his holding a *magna cum laude* doctorate degree. 68

THE LAW

1. The applicant complained under Article 8 of the Convention that he was only granted limited access to information gathered on him and held by the BVD. 69

In so far as relevant, Article 8 reads as follows: 70

"1. Everyone has the right to respect for his private ... life 71

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 ... ." 72

The Court reiterates that the storing by a public authority of information relating to a person's private life, the use of it and the refusal to disclose that information to the person concerned amount to an interference with the right to respect for private life secured in Article 8 § 1 of the Convention (see *Rotaru v. Romania* [GC], no. 28341/95, § 46, ECHR 2000-V). 73

As it is clear in the present case that the BVD held information about the applicant and that he was only granted limited access to that information, there was an interference with the applicant's right to respect for his private life as guaranteed by Article 8 § 1. Such interference will be in violation of Article 8, unless it is justified under its second paragraph in that it was "in accordance with the law", pursued an aim or aims that are legitimate under Article 8 § 2 and was "necessary in a democratic society" in order to achieve that aim. 74

The Court notes that the decision to limit the applicant's access to the information held on him by the BVD to outdated information not containing personal data of a third person and not being of such a nature that it could give an insight into BVD sources, working methods and current level of knowledge, for the reason that disclosure of such information could harm the functioning of the BVD and thus the security of the State, was based on Article 10 § 1 (b) of the WOB in conjunction with Article 14 and 16 § 1 of the 1987 Act and the case-law of the Administrative Jurisdiction Division under Article 10 § 1 (b) of the WOB. 75

The applicant has not asserted that the impugned decision was not "in accordance with the law" or that it lacked the legitimate aim of protection of national security, and the Court has found no reason for holding that the decision at issue, based on Article 10 § 1 (b) of the WOB, fell short of these two conditions. 76

As regards the remaining question whether the limitation of the applicant's access to information held on him by the BVD was "necessary in a democratic society", the Court reiterates that the notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued, and that - although the national authorities enjoy a certain margin of appreciation in assessing the pressing 77

social need in a particular case - there should exist adequate and effective guarantees against abuse, since a system of secret surveillance designed to protect national security entails the risk of undermining or even destroying democracy on the ground of defending it (see *Leander v. Sweden*, judgment of 26 March 1987, Series A no. 116, p. 25, §§ 58-60).

78 In order for systems of secret surveillance to be compatible with Article 8 of the Convention, they must contain safeguards established by law which apply to the supervision of the relevant services' activities. Supervision procedures must follow the values of a democratic society as faithfully as possible, in particular the rule of law, which is expressly referred to in the Preamble to the Convention. The rule of law implies, *inter alia*, that interference by the executive authorities with an individual's rights should be subject to effective supervision, which should normally be carried out by the judiciary, at least in the last resort, since judicial control affords the best guarantees of independence, impartiality and a proper procedure (see *Rotaru*, cited above, § 59).

79 The Court notes that, in the present case, the information withheld from the applicant by the Minister on the basis of Article 10 § 1 (b) of the WOB was made available - with the applicant's permission - to the Groningen Regional Court as well as to the Administrative Jurisdiction Division without that information being passed on to the applicant, in order to allow these tribunals to assess whether or not any information had been unjustly withheld by the Minister under Article 10 § 1 (b) of the WOB.

80 In its judgment of 17 January 2003, the Regional Court concluded that, apart from one document which was subsequently disclosed to the applicant, the Minister had taken a correct decision, and this judgment was upheld by the Administrative Jurisdiction Division on 14 January 2004.

81 The Court considers that the supervision carried out by the Regional Court and the Administrative Jurisdiction Division constitutes an effective judicial control, which meets the requirements of Article 8 § 2 of the Convention. Further having regard to the margin of appreciation enjoyed by it, the Court accepts that the Netherlands State was entitled to consider that in the present case the interests of national security in withholding from the applicant information that might give an insight into the Netherlands intelligence and security agency's sources, working methods and current level of knowledge prevailed over the individual interests of the applicant in being granted full access to any undisclosed information possibly held on him by this agency.

82 Consequently, the Court concludes that the decision to limit the applicant's access to the information held on him by the BVD to outdated information not containing any personal data of third persons and not being of such a nature that it could give an insight into BVD sources, working methods and current level of knowledge cannot be said to have been disproportionate to the legitimate aim pursued and was, therefore, "necessary in a democratic society" within the meaning of Article 8 § 2 of the Convention.

83 It follows that the facts of the present case do not disclose an appearance of a violation of Article 8 of the Convention, and that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

84 2. As regards the applicant's complaint under Article 10 of the Convention which guarantees the right to freedom of expression, the Court is of the opinion, even assuming that in this respect the applicant has exhausted domestic remedies as required by Article 35 § 1 of the Convention and to the extent that this complaint has been substantiated, that there is no indication in the case-file that the applicant's rights under this provision have not been respected.

85 It follows that this complaint must also rejected as being manifestly illfounded, pursuant to Article 35 §§ 3 and 4 of the Convention.

86 For these reasons, the Court unanimously

87 *Declares* the application inadmissible.

[1] On 5 September 1977, the German industrialist Mr H-M. Schleyer was kidnapped by the socalled Red Army Faction (also referred to as the Baader-Meinhof Gang); a notorious extreme left-wing terrorist group whose members had been involved previously in the murder of public figures, the explosion of buildings and bank robberies for idealistic motives. The kidnapping of Mr Schleyer triggered extensive investigations in leftwing circles, including house searches.

[2] The term "former" refers to the text of the Convention before the entry into force on 1 November 1998 of Protocol No. 11 to the Convention.