COUNCIL OF EUROPE

EUROPEAN COMMISSION OF HUMAN RIGHTS

DECISION OF THE COMMISSION

AS TO THE ADMISSIBILITY

OF CERTAIN NEW ALLEGATIONS
MADE BY THE GOVERNMENTS OF DENMARK, NORWAY AND
SWEDEN IN THE PROCEEDINGS CONCERNING

1. Application No. 3321/67
   by the Government of Denmark
   against the Government of Greece

2. Application No. 3322/67
   by the Government of Norway
   against the Government of Greece

3. Application No. 3323/67
   by the Government of Sweden
   against the Government of Greece

4. Application No. 3344/67
   by the Government of the Netherlands
   against the Government of Greece

The European Commission of Human Rights sitting in private on 31st May, 1968 under the presidency of Mr. A. SUSTERHENN (Rules 3, 7, 8, 9 and 10 of the Rules of Procedure of the Commission) and the following members being present:

D 25.303
06.2/31
2nd Revision

MM. SØRENSEN
C. Th. EUSTATHIADES
F. ERMACORA
F. CASTBERG
G. SPERDUTI
J.E.S. FAWCETT
M. TRIANTAFYLLIDES
F. WELTER
T. BALTA
P.P. O'DONOGHUE
P.O. DE LAHAYE
T.B. LINDAL
E. BUSUTTIL

Mr. A.B. McNULTY, Secretary to the Commission, assisted by MM. K. ROGGE and C. KRUGER.

Having regard to:

- the application lodged on 20th September, 1967, by the Government of Denmark against the Government of Greece and registered on the same day under file No. 3321/67;

- the application lodged on 20th September, 1967, by the Government of Norway against the Government of Greece and registered on the same day under file No. 3322/67;

- the application lodged on 20th September, 1967, by the Government of Sweden against the Government of Greece and registered on the same day under file No. 3323/67;

- the application lodged on 27th September, 1967, by the Government of the Netherlands against the Government of Greece and registered on the same day under file No. 3344/67;

- the Commission's decision of 2nd October, 1967, that the above applications should be joined under Rule 39 of the Rules of Procedure;

- the Commission's decision of 24th January, 1968, by which these applications were declared admissible;

- the Order made by the Acting President on 25th January, 1968, fixing 26th March, 1968, as the time-limit for the submission by the applicant Governments of their memorial on the merits of the case;

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- chapters IV and V of the joint memorial filed on 25th March, 1968, by the Governments of Denmark, Norway and Sweden;

- the Commission's decision of 4th April, 1968:

  1. fixing 13th May, 1968, as the time-limit for the submission by the respondent Government of its written observations on the admissibility of the new allegations contained in chapters IV and V of the above joint memorial;

  2. inviting the respondent Government to state before 30th April, 1968, whether it wished to make oral submissions on this issue;

  3. ordering that, if the respondent Government requested such oral hearing, this hearing should open on 28th May and continue, if necessary, on 29th and 30th May, 1968;

- the respondent Government's request of 16th April, 1968, that the time-limit of 13th May for the submission of its written observations on admissibility should be extended and fixed to expire two months after receipt by the Government of a French translation of the joint memorial;

- the comments on the above request filed by the Governments of Denmark, Norway and Sweden on 22nd April, and by the Netherlands Government on 25th April, 1968;

- the respondent Government's declaration of 25th April, 1968, that it wished to make oral submissions on the admissibility of the new allegations;

- the Acting President's Order of 26th April, 1968:

  1. maintaining the time-limit of 13th May, 1968, for the submission of the respondent Government's written observations on admissibility;

  2. confirming the date of 28th May, 1968, as the opening of the oral hearing;

- the Acting President's letter of 29th April, 1968, to the Permanent Representative of Greece;

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- the letters of 29th April, 20th May and 27th May, 1968, from the Permanent Representative of Greece to the Secretary General of the Council of Europe;

- the respondent Government's request of 10th May, 1968, that the time-limit for its written observations should be extended and the oral hearing postponed;

- the Acting President's Order of 10th May, 1968:

  1. extending until 15th May, 1968, the time-limit for the respondent Government's written observations on admissibility;

  2. maintaining the date fixed for the opening of the oral hearing;

- the letter of 13th May, 1968, from the Netherlands Permanent Representative;

- the respondent Government's written observations of 15th May and its further observations of 27th May, 1968, on the admissibility of the new allegations;

- the oral submissions made by the parties at the hearing before the Commission on 28th, 29th and 31st May, 1968;

Having deliberated,

THE FACTS

A. As to the original applications

Whereas the facts concerning the original applications may be summarised as follows:

1. In their written applications of 20th September, 1967, which were further developed at the oral hearing on 23rd and 24th January, 1968,(1) the applicant Governments of Denmark, Norway and Sweden referred to the Royal Decree of 21st April, 1967(2) by which a state of siege had been declared in Greece and certain articles of the Greek Constitution(2) had been suspended. They quoted the letter of 3rd May, 1967(2) by

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(1) A fuller account of these submissions can be found in the Commission's decision of 24th January, 1968, published in: Collections of Decisions of the Commission, Vol. 25, pages 92-116.
(2) Reproduced in the Commission's above decision.

which the Permanent Representative of Greece, invoking Article 15 of the Convention, had informed the Secretary General of the Council of Europe of the measures taken,(3) and also relied upon other official and unofficial statements concerning the situation in Greece.

The above applicant Governments submitted that, by the legislative measures and administrative practices complained of, the respondent Government had violated Articles 5, 6, 8, 9, 10, 11, 13 and 14 of the Convention. They further considered that, with regard to its above derogation, the respondent Government had failed to show that the requirements of Article 15 had been satisfied. Finally, a reservation was made as to a subsequent extension of these allegations.

II. The submissions made by the applicant Government of the Netherlands, in its application of 27th September, 1967, and at the oral hearing, corresponded in substance to the above applications of the Governments of Denmark, Norway and Sweden.

III. In its observations of 16th December, 1967,(4) on the admissibility of the applications, the respondent Government first contested the competence of the Commission. It stated, in particular, that the present Greek Government was the product of a revolution and submitted that, consequently, the actions by which it maintained itself in power and which were also the original objects of the revolution, could not logically be subject to the control of the Commission. Reference was made in this connection to the Turkish revolution of 1960 and to the attitude adopted by the applicant Governments in the Turkish case in comparison with their attitude in the present case.

The respondent Government further pointed out that, both in the first Cyprus case and in the case of Lawless v. Ireland (Applications Nos. 176/56 and 332/57), the Commission, when applying Article 15 of the Convention, had recognised the right of the Governments concerned to enjoy a "margin of appreciation" in deciding whether or not a public emergency existed that did in fact threaten the life of the nation and what, if any, exceptional measures were required.

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(3) A further communication from the respondent Government of 19th September, 1967, is also reproduced in the Commission's above decision.

(4) For a fuller account of these submissions, see the Commission's above decision.

IV. By its decision of 24th January, 1968[5] the Commission declared the four applications admissible. At the same time, noting the reservation made by the applicant Governments, it reserved the right to decide on the admissibility of any subsequent extension of the original applications.

B. As to further declarations under Article 15

Whereas the following communications were brought to the attention of the Commission after its above decision of 24th January, 1968:

I. On 29th April, 1968, the Permanent Representative of Greece addressed the following letter[6] to the Secretary General of the Council of Europe:

"In accordance with Article 15 (3) of the European Convention on Human Rights, I have the honour to inform you of certain developments in Greece in regard to the measures taken with reference to Article 15 (1) of the Convention.

1. Security of tenure in the Civil Service

(a) Under Constitutional Acts Θ (in force from 22nd July, 1967, to 28th February, 1968) and I (in force from 31st August, 1967, to 28th February, 1968), security of tenure in the Civil Service was suspended so as to enable the public administration to be cleaned by the removal of communist officials who were engaged in political activities in their department and of other officials who, in one way or another, abused the powers vested in them by virtue of their office

(b) On the expiration of the period of validity set for these Constitutional Acts (28th February, 1968), security of tenure in the Civil Service was completely restored. Since that date, officials cannot be dismissed except in those special cases provided for in the Civil Service Regulations which have been in force for several years.

(c) It should, moreover, be noted that under Constitutional Act KA' all civil servants dismissed under the

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(5) Collection of Decisions of the Commission, Vol. 25, pages 92-116.

(6) Doc. D 24.217 of the Council of Europe. The original French text of this letter is reproduced at Appendix I to the present decision.

Constitutional Acts 'θ' and 'I' have the right to be informed of the reasons for their dismissal and to request that the relevant decision be reviewed. This new remedy was introduced with a view to eliminating all possibility of error or injustice.

2. Prisoners

(a) Since 21st April, 1967 (the date of the revolution), 6,848 communists have been deported. As a result of various acts of clemency, 4,411 persons have been released; the number of deported persons currently amounts to 2,437. Among those set at liberty, 608 are elderly and such people who were released without making the declaration whereby they undertook not to engage thereafter in subversive activities against law and order.

(b) The preventive measure of administrative detention (deportation) constitutes, in such cases, a duty of the state towards society and its citizens. For the deportees' refusal to undertake not to engage - after their release - in criminal activities against law and order, constitutes a real threat to the country, especially if account is taken of their past criminal record. (N.B: 697 of the 2,437 prisoners were sentenced before 21st April, 1967 - to death, life imprisonment or other heavy penalties - for committing murder, in some cases more than once, or for acts of espionage or sabotage.)

(c) It should be noted that the persons placed under surveillance or administrative detention were deported under legislation in force since 1929; their cases are examined by the special Judicial Commissions set up under Law 4299 of 1929, Legislative Decree 509 of 1947 and the Constitutional Order of 1946 providing for deportation.

3. Jurisdiction of the Extraordinary Military Tribunals

(a) Since November, 1967, all offences are tried, as in the past, by the ordinary civil courts, with the exception of political offences, which fall within the jurisdiction of the military tribunals.

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(b) Most of the persons sentenced by the military tribunals and subsequently imprisoned are already at liberty, persons convicted of political offences (conspiracy against the regime, etc.) having been amnestied on 23rd December, 1967.

(c) Since 21st April, 1967, the extraordinary military tribunals have not passed a single death sentence, notwithstanding the counter-revolution which broke out and was suppressed on 13th December, 1967.

4. The Press

(a) By the governmental decisions of 11th July, 1967, and 25th January, 1968, the press recovered all its fundamental freedoms. It can exercise its activities freely, subject only to such restrictions as are imposed by the criminal law which was already in force before the revolution.

(b) The only obligation still placed upon it is to respect the country's foreign policy and publish the government communiqués.

(c) Foreign newspapers circulate freely and in unlimited numbers throughout the country.

5. The Amnesty

(a) All political offences committed before 21st April, 1967 come under an amnesty, and there is no discrepancy between the decisions announced and the measures applied.

(b) Only persons who were not entitled to benefit by this measure have not been amnestied. These are persons under preventive administrative detention because of the danger which they represent to the country's law and order.

(c) It must be emphasised that these persons continue to refuse to sign a declaration undertaking not to indulge in criminal activities against law and order after their release.

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6. Abolition of censorship of correspondence

(a) Correspondence is not subjected to any censorship.

(b) Only prisoners' letters are censored, as is customary in all countries.

7. The Constitution

(a) On 15th March, 1968, the draft Constitution, drawn up by a Committee of twenty distinguished jurists under the chairmanship of the former President of the Council of State, Mr. Mitrelias, was submitted to the Greek people for free examination and criticism. The Government, holding that the people have a right and a duty to comment on and make suggestions for the structure and functioning of the state and the manner of protecting their rights, submitted the draft text to the general public for discussion with a view to the preparation of a final text which will be submitted to the sovereign people in a referendum on the first Sunday in September next.

(b) It should be noted that the necessity of revising the Constitution has in the past been stressed repeatedly by all the country's political leaders, including MM. C. Caramanlis, G. Papandreou, S. Stefanopoulos, S. Markezinis, S. Venizelos and E. Tsirimokos, as well as by former Ministers and Members of Parliament who are specialists in the subject, such as MM. M. Vamvetsos, Th. Tsatsos, M. Glezos and C. Mitsotakis.

Mr. C. Caramanlis had previously tabled a motion in the Chamber calling for revision of the Constitution and Mr. E. Tsirimokos has made a similar proposal in Parliament.

The Press, too, had insisted repeatedly on the necessity of revising the Constitution."

II. On 20th May, 1968, the Permanent Representative of Greece addressed the following letter(7) to the Secretary General of the Council of Europe:

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(7) Doc. D 24.804, Annex I, of the Council of Europe. The original French text of this letter is reproduced at Appendix II to the present decision.

"Further to the preceding letters which I sent to you in pursuance of the provisions of Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms, I have the honour to inform you that by a decision of the General Directorate of the Press to the Minister of the Presidency of the Council, censorship has been lifted completely, as from 11th May of this year, in respect of four newspapers (Eléftheros Kosmos, Vradyni, Imérisia, Naftemboriki) appearing in Athens and 150 magazines throughout the whole country.

These newspapers and publications are henceforth subject only the provisions of the Press Law in force before 21st April, 1967.

May I ask you to bring the contents of this letter to the knowledge of the President of the European Commission of Human Rights and to take all steps which it requires."

III. On 27th May, 1968, the Permanent Representative of Greece addressed the following letter(8) to the Secretary General of the Council of Europe:

"Further to the preceding letters which I sent to you in pursuance of the provisions of Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and more especially to my letter No. 871 dated 20th May, 1968, I have the honour to inform you that the Government of Greece, in compliance with its statements on this matter, has again further broadened the freedom of the Press by authorising the appearance of four Thessaloniki daily newspapers without their being subject to any censorship.

These latest decisions, which give proof of the wish of the Government of Greece to abolish progressively the exceptional measures which it was compelled to take on 21st April, 1967, to deal with the public emergency threatening the life of the nation, concern the papers "Ellinikos Vorras", "Drassis", "Espérini Ora" and "Néa Alithia".

These newspapers are henceforth subject only to the provisions of the Press Law in force before 21st April, 1967.

May I ask you to bring the contents of this letter to the knowledge of the President of the European Commission of Human Rights and to take all steps which it requires."

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(8) Doc. D 24.804, Annex II, of the Council of Europe. The original French text of this letter is reproduced at Appendix III to the present decision.

C. As to the new allegations

I. Submissions of the applicant Governments

Whereas the submissions, which the applicant Governments, in their written observations of 25th March and 13th May and at the hearing on 28th, 29th and 31st May, 1968, made on the admissibility of the new allegations, may be summarised as follows:

1. General

(a) Submissions of the Governments of Denmark, Norway and Sweden (hereinafter referred to as "the three applicant Governments")

Following the Commission's decision of 24th January, 1968, on the admissibility of their applications Nos. 3321/67, 3322/67, 3323/67, the applicant Governments of Denmark, Norway and Sweden, on 25th March, 1968, filed a joint memorial which, in chapters II and III, dealt with the merits of these applications. In chapters IV and V of the same memorial, these Governments extended their original allegations to Articles 3 and 7 of the Convention and Articles 1 and 3 of the Protocol. They observed that these provisions had not been invoked in their applications of 20th September, 1967, because, at that stage, they did not possess sufficient information. This was due to the failure of the respondent Government to fulfil its obligation under Article 15, paragraph (3), of the Convention, which required it to keep the Secretary General of the Council of Europe "fully informed of the measures which it has taken and the reasons therefor". In particular, the respondent Government had failed to indicate the articles of the Convention from which it had derogated.

(b) Submissions of the Netherlands Government

The applicant Government of the Netherlands, in its memorial of 25th March, 1968, dealt exclusively with the merits of its application No. 3344/67. Further, as stated in its letter of 13th May, 1968, and at the subsequent hearing before the Commission, this Government did not wish to express any view on the admissibility of the new allegations made by the Governments of Denmark, Norway and Sweden. This attitude, however, should not be held to be an argument against the admissibility of the above allegations.

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2. As to Article 3 of the Convention

(a) With regard to Article 3 of the Convention, the three applicant Governments submitted that, in a number of cases, political prisoners had been tortured or subjected to inhuman or degrading treatment by police officers acting under the authority of the respondent Government. In this respect they referred, in particular, to the following evidence:

- reports of Amnesty International of 27th January and 6th April, 1968;
- report by C. Thornberry of November, 1967 (abridged version in "The Guardian" of 24th November, 1967);
- article by G. Praxis in "New Statesman" of 24th November. 1967;
- article by E. Dreyer in "Ekstrabladet" of 22nd November, 1967;
- report in the London "Times" of 18th November, 1967;
- article in "L'Express" of 30th November, 1967;
- letter, allegedly from a prisoner, in "The Guardian" of 21st October, 1967;
- interview in "Arbetet" of 29th January, 1968, with A. Papandreou;
- interview on the Swedish television with a Greek woman (10th January, 1968);
- report (undated) and declaration of 3rd May, 1968, by K. Marotis;
- letter, allegedly from a doctor, in the London "Times" of 23rd April, 1968;
- statements by eight persons who had been detained on the Island of Leros, dated April, 1968;
- statutory declaration by K. Tsavalas of 25th April, 1968.

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(b) The three applicant Governments, quoting the Commission's above decision of 24th January, 1968, further submitted, with regard to Article 26 of the Convention, that the rule concerning the exhaustion of domestic remedies did not apply to their present allegation under Article 3 which, as in the case of their original applications, related to the administrative practices of the respondent Government. The evidence now available to them seemed to confirm that these practices permitted, or even systematically made use of, torture and inhuman or degrading treatment. In particular, it appeared that the security committees of Greek cities had been authorised to apply torture where deemed necessary.

Alternatively, the above applicant Governments dealt with the situation if the Commission should hold that the rule requiring the exhaustion of domestic remedies applied on the ground that the existence of an administrative practice had not been established; in that case, they submitted that any domestic remedies, which might be shown by the respondent Government to be available to political prisoners in Greece in cases of torture or ill-treatment, were in fact inadequate and ineffective. In particular, the constitutional and conventional guarantees of a fair and public trial had been suspended. Indeed, many individuals against whom political action had been taken by the respondent Government had under the present legislation no right of appeal to a court of law. This was shown by the following acts introduced after 21st April, 1967:

- Constitutional Act "E" of 9th June, 1967;
- Constitutional Act "G" of 11th July, 1967;
- Obligatory Law No. 165 of 16th October, 1967;
- Constitutional Act "D" of 23rd May, 1967;
- Constitutional Act "I" of 29th August, 1967;
- Constitutional Act "F" of 13th June, 1967.

The above applicant Governments also stated that political prisoners and their relatives were subject to constant pressure, that lawyers were afraid to assume the defence of such prisoners in criminal or civil cases and that complaints concerning torture remained unanswered. In this respect, reference was made to the evidence already submitted and to the following documents:

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- report of the International Commission of Jurists of 17th November, 1967 (abridged version in the London "Times" of 18th November, 1967);

- article in "Eleftheros Kosmos" of 21st November, 1967;

- statement by A. Papandreou of 3rd May, 1968.

3. As to Article 7 of the Convention

The three applicant Governments submitted that the Constitutional Act "G" of 11th July, 1967, violated Article 7 of the Convention. Article 1 of the Act stated as follows (9):

"1. Greek citizens residing abroad, temporarily or permanently, or having more than one citizenship, who act or have acted unpatriotically or who perform acts incompatible with the Greek citizenship, or contrary to the interests of Greece, or for selfish reasons, according to articles 1 and 2 of the Obligatory Law 509/1947, as this has been modified through article 2, paragraph 1, of Decree MH/1947, for dissolved Parties or Organisations, or such in the process of being dissolved, can be deprived of their Greek citizenship by decision of the Minister of the Interior, against which it is not allowed to appeal or to request annulment.

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(9) English translation submitted by the three applicant Governments. The French translation submitted by the respondent Government reads as follows:

"1. Sujets ou ressortissants hellènes, demeurant provisoirement ou de permanence à l'étranger ou ayant plus d'une nationalité, agissant ou ayant agi contre les intérêts nationaux en commettant des actes incompatibles avec la qualité d'Hellène, ou contraires aux intérêts de la Grèce, ou pour servir des buts de Partis ou d'Organisations dissous ou qui seront dissous conformément aux articles 1 et 2 de la loi obligatoire 509/1947 ..., peuvent être déclarés déchus de la nationalité hellénique par décision du Ministère de l'Intérieur, contre laquelle aucun recours ni enquête pour annulation ne sont permis.

2. (Definition of "unpatriotic activity")

3. The violators of the above paragraph 1 are punished to a prison penalty of at least three months and to a fine of at least drs. 20,000.

In case the act was committed abroad by fellow countrymen, the persecution takes place ex officio, independently of the conditions of Article 6 of the Penal Code.

Modification or suspension of the penalty is not allowed, and the appeal has no suspending force."

In the opinion of the three applicant Governments, the words "have acted" in paragraph 1 gave retroactive effect to the penal provision in paragraph 3. This violated Article 7 of the Convention according to which no one should be held guilty of any criminal offence an account of any act that did not constitute a criminal offence at the time when it was committed.

4. As to Article 1 of the First Protocol

The three applicant Governments submitted that the above Constitutional Act "G" also violated Article 1 of the First Protocol to the Convention. In this respect they referred to Article 2 of the Act which stated as follows (10):

"1. It is possible to order the confiscation of the whole or of a part of the immovable and movable property of any person who loses the Greek citizenship in accordance with article 1.

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(9) (continued from p. 14)

2. .....

3. Les contrevenants au paragraphe 1 ci-dessus sont punis par la peine d'emprisonnement de trois mois au moins et par une peine pécuniaire de 20.000 drachmes au moins.

Si l'acte a été commis à l'étranger par des Hellènes, les poursuites se font ex officio, indépendamment des dispositions de l'article 6 du Code pénal.

Commutation ou sursis de la peine n'est pas permis et l'exercice d'appel n'a pas d'effets suspensifs."

(10) English translation submitted by the three applicant Governments. The French translation submitted by the respondent Government reads as follows:

"1. La confiscation du tout ou partie de la propriété mobilière ou immobilière des personnes déchues de la nationalité hellénique peut être prononcée suivant les prescriptions de l'article 1.

2. As property which can be confiscated, is considered also the property in the name of the husband or the wife of those who are declared having lost the Greek citizenship.

In this case the confiscation cannot exceed 1/3 of the whole immovable property.

3. Transmission of elements of property, belonging to persons according to paragraphs 1 and 2, made up to two months before the issue of the decision according to next article about confiscation is null and void.

4. The confiscation according to the previous article is imposed by decision of the Court of the first instance at the place of the last residence or stay of the person who will be deprived of his Greek citizenship, after proposal of the Minister of the Interior, to be transmitted to the Court through the competent Public Prosecutor.

5. No legal action is allowed against the decision of the Court of the first instance.

6. Upon issuance of the decision according to the above paragraph, the property to be confiscated is transferred to the full possession of the Greek State, and the relative decision shall be communicated by the Ministry of Finance to the competent Director of Taxation.

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(10) (continued from p. 15)

2. Est considérée comme propriété susceptible d'être confisquée celle qui se trouve au nom de l'époux ou de l'épouse des personnes déchues de la nationalité hellénique. Dans ce cas, la confiscation ne peut pas s'étendre sur plus que le tiers de la propriété immobilière seulement.

3. Transmission de propriété appartenant aux personnes mentionnées aux paragraphes 1 et 2, de la présente loi, faite deux mois avant la publication de la confiscation est nulle et non existante (ne produit aucun effet).

4. La confiscation prévue par l'article précédent est prononcée par le Tribunal de première instance du dernier domicile ou de la dernière demeure de la personne déchue de la nationalité hellénique, jugeant sur requête du Ministre de l'Intérieur transmise au Tribunal par la Procureur compétent.

5. Aucun moyen de droit n'est permis contre la sentence du Tribunal de première instance.

6. Aussitôt la publication de la décision du Tribunal prononcée suivant le paragraphe qui précède, la propriété confisquée est dévolue en plein droit de propriété à l'Etat hellénique et la décision y relative est communiquée par le Ministère des Finances au Percepteur des Contributions compétent."

The three applicant Governments considered that the above provisions for confiscation of property did not fulfil the condition of "public interest" laid down in the first paragraphs of Article 1 of the First Protocol and, further, that they could not be regarded as a law which was "necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties" within the meaning of the second paragraph of this Article.

5. As to Article 3 of the First Protocol

The three applicant Governments stated that, following the change of Government in Greece on 21st April, 1967, political leaders had been arrested, political parties prohibited and political organisations dissolved. Parliamentary elections scheduled for May, 1967, had been cancelled and political activities as a whole prohibited. At present there existed no elected legislative body in Greece and the people could not, through ordinary free elections, express their opinion in the choice of the legislature as provided for by Article 3 of the First Protocol. The above applicant Governments observed that the respondent Government had not indicated when such elections would take place and they considered that this Government had violated its obligation under Article 3 to hold such elections.

II. Submissions of the respondent Government

Whereas the submissions, which the respondent Government, in its written observations of 15th and 27th May, 1968, and at the subsequent hearing before the Commission, made on the admissibility of the above new allegations, may be summarised as follows:

1. General

The respondent Government considered that the new allegations were as a whole inadmissible on the following grounds:

(a) that they constituted an abuse of the procedure provided for by the Convention in that they pursued political ends;

(b) that the issues at present pending before the Commission were at the same time discussed in public by the Consultative Assembly of the Council of Europe and that this prevented the Commission from considering the case in the proper atmosphere;

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(c) that the new allegations should have been submitted as new applications;

(d) that, under Article 24 of the Convention, these new applications should have been addressed to the Secretary General of the Council of Europe and not to the Commission's Secretary; and

(e) that, in accordance with Article 15, the respondent Government had validly derogated from certain of its obligations under the Convention.

2. As to Article 3 of the Convention

(a) The respondent Government submitted that the allegations under Article 3 of the Convention were inadmissible because no prima facie proof of these allegations had been established. The accuracy of the evidence offered by the three applicant Governments was contested and counter-evidence was submitted to show that the said Governments' allegations of torture and inhuman or degrading treatment were manifestly ill-founded. In this connection, reference was made to:

- declarations of the Greek Minister for Public Order of 10th June, 1967, 21st December, 1967; 12th, 20th and 25th April, 1968;

- reports of the International Committee of the Red Cross of 3rd July, 15th July, 16th July, 18th July, 21st July, 30th July, 3rd August, 16th October, 17th October, 18th October, 19th October, 20th October, 21st October, 24th October, 25th October, and 26th October, 1967; 29th January, 30th January, 2nd February, 3rd February, 9th February, 10th February, 20th February, 21st February, 10th March, 12th March, 13th March and 15th March; undated reports on visits of 27th and 28th July, 1967, general report of May, 1967;

- declarations made by British Members of Parliament at two press conferences in April, 1968;

- statement by F. Noel-Baker in the House of Commons on 11th April, 1968;

- report of the Consultative Assembly of the Council of Europe, of 22nd January, 1968;

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- proceedings of the 24th session of the United Nations Commission on Human Rights (February/March, 1968);

- declaration of the Attorney General of Athens of 24th May, 1968.

(b) The respondent Government further submitted that the above complaint under Article 3 should be rejected on the ground of non-exhaustion of domestic remedies within the meaning of Articles 26 and 27, paragraph (3), of the Convention. In this respect it was stated:

(aa) that no "administrative practice" of torture or inhuman or degrading treatment of prisoners existed in Greece; and

(bb) that effective remedies, which were available under Greek law in cases of alleged torture or ill-treatment, had not been exhausted.

As to (aa), the respondent Government pointed out that, in its previous decisions, the Commission had used the term "administrative practices" in connection with the term "legislative measures". In the opinion of the Government, an "administrative practice" was neither legally nor logically conceivable save in the framework of specific legislation or custom. It could not exist outside this framework. A fortiori an "administrative practice" was not conceivable as contravening a clear and precise legislation. As, under Greek law, torture was expressly prohibited, it was not possible to speak of an "administrative practice" of torture in Greece. In these circumstances the rule concerning the exhaustion of domestic remedies must be applied.

As to (bb), the respondent Government stated that, under Greek law, the following remedies were available to persons claiming to be the victims of torture or inhuman treatment:

- Article 18 of the Constitution prohibited torture or inhuman treatment;

- criminal charges could be brought against perpetrators of torture under Articles 151, 239, 308-311, 314, and compensation could be claimed under Articles 63-68 and 82-84 of the Criminal Code;

- civil actions could be instituted:

  (1) against perpetrators of torture under Articles 914 and 932 of the Civil Code, and

  (2) against the State under Articles 104 and 105 of the Introductory Act to the Civil Code;

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- disciplinary complaints could be lodged against the officers concerned:

  (1) under Article 221 of Legislative Act No. 3365 concerning the County Police (Gendarmerie), or

  (2) under Article 99 of the Ordinance of 1957/58 concerning the City Police;

- administrative complaints could be brought:

  (1) under Article 21 of the Prison Code,

  (2) under Rule 25 of the Rules for Detention Camps,

  (3) under Article 4 of Obligatory Law No. 125/1967, and

  (4) by way of a plea of nullity to the Supreme Administrative Court.

The respondent Government submitted, in reply to the allegations of the three applicant Governments, that the above remedies did in fact provide effective and adequate redress for any victim of torture or ill-treatment. It stated that the Courts were functioning normally in Greece and that any administrative complaints were properly considered and decided upon by the higher authorities concerned. Reference was made to schedules setting out the disciplinary proceedings instituted against police officers in 1965-68.

In reply to a question by the Commission regarding a press report in the "Figaro" of 31st May, 1968 (11), the representative of the respondent Government confirmed that the judges' tenure of office, which was guaranteed by the Constitution, had, in May 1968, been suspended for a period of three days. He explained that this measure, which would not be repeated, had been taken in order to remove from their offices a limited number of judges who, before 21st April, 1967, had committed acts which were considered incompatible with the exercise of judicial functions.

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(11) Reproduced at Appendix IV to the present decision.

3. As to Article 7 of the Convention

The respondent Government contested the three applicant Governments' allegations that Article 1 of Constitutional Act "G" had retroactively created a new criminal offence. It stated that in effect the penal provision in paragraph 3 of Article 1 applied only to persons who "act", and not to those who "have acted", unpatriotically. Moreover, any retroactive effect of paragraph 3 was excluded by Article 7 of the Greek Constitution which was still in force. Also those acts which were punishable under Constitutional Act "G" constituted, even before the entry into force of that Act, criminal offences punishable by a heavier penalty than that provided for in Constitutional Act "G". In this respect, reference was made to Articles 1 and 2 of Obligatory Law No. 509/1947 and to Article 4 of Ordinance No. 4234/1962. It was also stated that Article 1, paragraph 3, of Constitutional Act "G" had not so far been applied.

4. As to Article 1 of the First Protocol

The respondent Government maintained that the confiscation provided for in Article 2 of Constitutional Act "G" was justified as a penal or security measure both under Article 1 of the Protocol and, in the emergency situation prevailing in Greece, also under Article 15 of the Convention. It was further stated that, so far, this provision had not been applied.

5. As to Article 3 of the First Protocol

The respondent Government referred to Articles 53 and 57 of the draft Constitution which provided for parliamentary elections. It stated that the draft Constitution would be submitted to a plebiscite in September, 1968, and that elections would be held after its entry into force. It was true that the last parliamentary elections in Greece had taken place in February, 1964, and that Article 3 of the First Protocol provided for such elections to be held "at reasonable intervals". However, in other democratic States, Parliament was elected for five years which, consequently, must be considered a "reasonable" period between two elections. In any case, the respondent Government's position was justified under Article 15 of the Convention.

6. As to the evolution of the general situation of human rights in Greece

The respondent Government emphasised that those human rights and fundamental freedoms, whose application had been suspended in Greece after 21st April, 1967, were gradually being restored as was shown by the recent communications addressed by the Permanent Representative of Greece to the Secretary General of the Council of Europe (12). In this connection, it also stated that the freedoms of assembly and association had been partially restored.

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(12) Reproduced under B above.

THE LAW

As to the general objections raised

Whereas the respondent Government submits that, on various grounds, the new allegations are as a whole inadmissible;

Whereas, in the first place, the Government maintains that the allegations constitute an abuse of the procedure provided for by the Convention in that they are clearly directed towards political ends; whereas, in this respect, it should be recalled that the procedural provisions of the Convention are based on the concept of a collective guarantee by the High Contracting Parties of the rights and freedoms set forth in Section I; whereas further as stated by the Commission in its decision on the admissibility of application No. 788/60 (Austria v. Italy, Yearbook of the European Convention on Human Rights, Vol. 4, pages 116, 140), a Contracting Party, when bringing an alleged breach of the Convention before the Commission under Article 24, is not to be regarded as exercising a right of action for the purpose of enforcing its own rights, but rather as raising an alleged violation of the public order of Europe; whereas it is true that the decision of a Contracting Party to proceed under Article 24 may involve considerations of Government policy; whereas, nevertheless, it remains the object of such proceedings to ensure the observance of the legal engagements undertaken by the Parties in the Convention;

whereas the Commission has also had regard to the provisions of the Convention concerning petitions lodged by individuals under Article 25; whereas, in this respect, Article 27, paragraph (2), requires the Commission to declare inadmissible any application by an individual which it considers an abuse of the right of petition; whereas, however, the provisions of Article 27, paragraph (2), deal only with petitions submitted under Article 25 and not with applications made by Governments and are therefore inapplicable to the present case; whereas in this respect the Commission refers to its decision of 24th January, 1968, on the admissibility of the original applications, in which it also quoted its decision in the first Cyprus case;

whereas, however, the respondent Government, by inviting the Commission to reject the present allegations as abusive, appears to invoke a general principle according to which the right to bring proceedings before an international instance must not be abused; whereas, assuming that such a general principle exists and is applicable to the institution of proceedings within the framework of the Convention, the Commission finds that the alleged political element of the new allegations, even if established, is not such as to render them "abusive" in the general sense of the word; whereas, therefore, they cannot be rejected on this ground;

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Whereas the respondent Government further submits that the new allegations are inadmissible because the issues before the Commission are at the same time under discussion in the Consultative Assembly of the Council of Europe and that this prevents the Commission from considering the case in the proper atmosphere; whereas, in this respect, the Commission has already stated in its decision of 24th January, 1968, on the admissibility of the original applications that, in the exercise of its functions under Article 19 of the Convention, it "is limited to a consideration of the substance of the case-file before it and thus acts in complete independence as regards any outside body";

Whereas the respondent Government submits that the new allegations are also inadmissible as regards the form of their presentation; whereas, in this Government's view, they should have been filed as new applications and addressed to the Secretary General of the Council of Europe, in accordance with Article 24 of the Convention;

whereas the Commission has considered the question whether the above allegations should be treated as an extension of the original applications or whether they should form the subject of new applications; whereas, in this respect, it has had regard to its decision of 24th January, 1968, in which it stated:

"Whereas the Commission has noted the declaration by the applicant Governments reserving their right to extend their original allegations should new information so require; and whereas it reserves itself the right to decide on the admissibility of any subsequent extension of the original applications;"

whereas the above reservation of the Commission expressly related to "any" subsequent extension of the original applications; whereas, consequently, the Commission, in its consideration of the procedure to be adopted in regard to their new allegations, is not in any way bound by the terms of the three applicant Governments' above reservation;

whereas, in general, the Commission holds that new allegations may be introduced in proceedings concerning an application declared admissible where these allegations concern, or are closely related to, issues of law or of fact already

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raised in the original application and, further, where this extension of the original application does not prejudice the respondent party in the effective exercise of its defence; whereas the Commission has in similar circumstances allowed the introduction of a new complaint in the case of Wemhoff v. Federal Republic of Germany (Application No. 2122/64, Yearbook Vol. 7, pages 288-298); whereas, finally, a new allegation will be subject to the normal rules governing admissibility;

whereas, with regard to the new complaints introduced by the three applicant Governments, the Commission finds that they concern, or are closely related to, issues already raised in the original applications in that, although also making specific allegations, they refer to the general situation of human rights and fundamental freedoms in Greece after 21st April, 1967; whereas, further, in considering the admissibility of these new allegations, the Commission has fixed a separate series of time-limits for the submission of both written and oral observations of the parties; whereas, therefore, the present extension of the original applications does not prejudice the respondent Government in the effective exercise of its defence;

whereas, in conclusion, the Commission finds that the above new allegations have properly been introduced as an extension of the original applications of the three applicant Governments;

whereas, consequently, it is not necessary to decide in what form these allegations should have been brought if they were to be regarded as constituting new applications, in particular whether, as submitted by the respondent Government, they should have been addressed to the Secretary General of the Council of Europe and not to the Commission's Secretary; whereas, in any event, the Commission observes that, in pursuance of Article 37 of the Convention, its Secretariat is provided by the Secretary General of the Council of Europe; and whereas it follows from Rules 11 and 12 of the Commission's Rules of Procedure as applied in its established practice that its Secretary, having been appointed by the Secretary General, is "the channel for all communications concerning the Commission"; whereas it is clear, therefore, that the new allegations, even if constituting new applications, were properly addressed to the Commission's Secretary;

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Whereas the respondent Government also submits that the new allegations are as a whole inadmissible on the ground that, in accordance with Article 15, this Government has validly derogated from certain of its obligations under the Convention; whereas, in this respect, the Commission has already stated in its decision of 24th January, 1968, that it is bound to reserve for an examination of the merits of the case the question whether the measures of the respondent Government, which form the subject of the present applications, were or are justified under Article 15;

As to Article 3 of the Convention

Whereas the respondent Government, without specifically invoking Article 27, paragraph (2), submits that the three applicant Governments' allegations under Article 3 of the Convention are inadmissible because no prima facie proof has been established; whereas, in this respect, the Commission first recalls that, in its decision of 24th January, 1968, it has already stated that an allegation under Article 24 cannot be rejected in accordance with Article 27, paragraph (2), of the Convention as being manifestly ill-founded and that the question whether such an allegation is well-founded or not is solely a question relating to the merits of the case; whereas the Commission next observes that, when considering the admissibility of allegations under Article 3 of the Convention in the second Cyprus case, it stated that it could not "ascertain whether the applicant Contracting Party establishes 'prima facie proof' of its allegations since inquiry into such matters relates to the merits of the case and cannot therefore be undertaken at the present stage of the proceedings" (Application No. 299/57, Yearbook Vol. 2, pages 186, 190); whereas it follows that the three applicant Governments' allegations under Article 3 of the Convention cannot be rejected on the ground that they are manifestly ill-founded within the meaning of Article 27, paragraph (2), or otherwise on the ground that no prima facie proof has been established;

whereas the respondent Government further submits that the allegations under Article 3 should be rejected in accordance with Articles 26 and 27, paragraph (3), of the Convention on the ground of non-exhaustion of domestic remedies; whereas the three applicant Governments submit, in the first place, that their allegations of torture and ill-treatment relate to an "administrative practice" of the respondent Government and that consequently, in accordance with the Commission's decision of 24th January, 1968, on the admissibility of the original applications, the rule requiring the exhaustion of domestic remedies does not apply; whereas the respondent Government contests the

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allegations of the three applicant Governments; whereas, in particular, it is submitted that an essential element of an "administrative practice" is that the practice concerned should be based on specific legislation, executive authority express or implied, or finally on established custom; whereas in Greece no such ground exists on which existence of the alleged administrative practice can be based; whereas the respondent Government submits that torture and ill-treatment are, indeed, prohibited by laws the enforcement of which is furthermore strictly supervised by competent administrative and independent judicial authorities; whereas therefore the alleged torture and ill-treatment cannot be held to constitute an "administrative practice" as alleged by the three applicant Governments;

whereas the Commission, when admitting the original applications in the present case and at the same time referring to its decision in the first Cyprus case, has held that the rule requiring the exhaustion of domestic remedies does not apply where an application raises, as a general issue, the compatibility with the Convention of "legislative measures and administrative practices"; whereas, with regard to the three applicant Governments' allegations under Article 3 of the Convention, the Commission has considered what should, in this context, be understood by the term "administrative practice"; whereas it finds that, assuming that an "administrative practice" may exist in the absence of, or contrary to, specific legislation, the above Governments have not, at the present stage of the proceedings, offered substantial evidence to show that such a practice exists in Greece as regards torture or inhuman or degrading treatment within the meaning of Article 3 of the Convention; whereas, therefore, the application to the present allegations of the rule requiring the exhaustion of domestic remedies laid down in Article 26 cannot be excluded on the above ground;

whereas, under Article 26, the Commission may deal with a case only after all domestic remedies have been exhausted, according to the generally recognised rules of international law; whereas this means in principle that remedies which are shown to exist within the legal system of the responsible State must be used and exhausted in the normal way before the Commission is seized of a case; whereas, on the other hand, remedies which do not offer a possibility of redressing

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the alleged damage cannot be regarded as effective or sufficient and need not, therefore, be exhausted; whereas, in this respect, the Commission refers to its decision on the admissibility of Application No. 712/60 (Retimag v. Federal Republic of Germany, Yearbook Vol. 4, pages 384, 400);

whereas the respondent Government submits that, under Greek Law, a number of effective remedies are available in criminal, civil, disciplinary and administrative proceedings to persons claiming to be the victims of torture or ill-treatment and that, in fact, disciplinary proceedings have on various grounds been instituted against police officers; whereas the three applicant Governments argue that any remedies which might be shown to be available are in fact inadequate and ineffective on the ground that the constitutional guarantees of a fair trial have been suspended and particularly, having regard to the situation of political prisoners in Greece.

whereas the Commission has first taken note of the existence of the various legal provisions indicated by the respondent Government giving remedies in the case of alleged torture or ill-treatment; whereas it has then considered the question whether, in view of the alleged situation of the persons described by the three applicant Governments as political prisoners and, further, of the measures taken by the respondent Government with regard to the status and functioning of courts of law, such remedies may be considered to be effective in connection with the present allegations under Article 3 of the Convention;

whereas, in this respect, it is not disputed between the parties that a great number of prisoners are at present detained in Greece under administrative orders; and whereas it follows from Article 3 of Obligatory Law No. 165 that, as regards the lawfulness of their detention, these persons are not entitled to appeal to a court of law;

whereas, furthermore, concerning the situation of courts of law in Greece, the Commission has noted that, by Royal Decree No. 280 of 21st April, 1967, a number of constitutional guarantees relating to the institution and functioning of the ordinary courts and to the procedural rights of individuals have been suspended for an indefinite period of time (see the Commission's decision of 24th January, 1968, on the admissibility of the present applications);

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whereas it is true that, as stated by the respondent Government, some of the human rights and fundamental freedoms, the application of which had been suspended in Greece after 21st April, 1967, have since been partially restored; whereas, in this connection, the Commission has duly noted that the extraordinary powers which had been conferred upon court martials have recently been reduced and that, correspondingly, the jurisdiction of the ordinary courts has been partially restored in criminal cases;

whereas, however, it is next to be examined whether the conditions are such as to allow Greek courts to render justice independently; whereas, in this regard, the Commission has noted that the judges' tenure of office, which was guaranteed by the Constitution, has recently been suspended for a period of three days by the Council of Ministers; whereas, during this period, the President of the Supreme Court and twenty-nine other judicial officers were removed from office; whereas the Commission finds that this measure cannot but seriously affect the independent status of the judiciary; and whereas such status appears to be essential for a proper determination of complaints relating to alleged violations by organs of Government of Article 3 of the Convention;

whereas, further, it is true that some of the remedies indicated by the respondent Government concern steps, not before courts of law, but before various administrative authorities; whereas, however, the Commission finds, particularly in view of the interference with the independence of the judiciary, that such administrative authorities, being under the control of the Government, can, even less than judges, be in a position to deal properly in the present circumstances with complaints of torture and ill-treatment of prisoners;

whereas, in conclusion, the Commission does not find, that, in the particular situation at present prevailing in Greece, the remedies indicated by the respondent Government can be considered as effective and sufficient; whereas therefore the present allegations under Article 3 cannot be rejected for non-exhaustion of domestic remedies in accordance with Articles 26 and 27, paragraph (3), of the Convention;

whereas, finally, as regards the six months rule laid down in Article 26, the Commission has noted that some of the three applicant Governments' allegations under Article 3 of the Convention appear to concern facts which, in whole or in part, arose more than six months before 25th March, 1968, the date on which the joint memorial containing these allegations was filed with the Commission; whereas, however, the term "final decision" in Article 26 refers exclusively to the final decision given in the course of the normal exhaustion of domestic remedies and the six months period is

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operative only in this context, as stated by the Commission in its decision on the admissibility of application No. 214/56 (De Becker v. Belgium, Yearbook Vol. 2, pages 214, 242); and whereas, in respect of the three applicant Governments' allegations under Article 3 of the Convention, the Commission, as mentioned above, has not found that the various means of redress indicated by the respondent Government can be considered to be effective and thereby to constitute remedies within the meaning of Article 26 of the Convention; whereas it follows that the term "final decision" has no relevance in regard to these allegations which, even to the extent that they concern facts occurring more than six months before 25th March, 1968, cannot be rejected for non-observance of the six months rule in accordance with Articles 26 and 27, para. (3) of the Convention;

As to Article 7 of the Convention and Article 1 of the First Protocol

Whereas the three applicant Governments submit that Article 1, paragraph 3 , and Article 2 of Constitutional Act "G" of 11th July, 1967, violate Article 7 of the Convention and, respectively, Article 1 of the First Protocol to the Convention; whereas the respondent Government submits, first, that the provisions complained of have not so far been applied and secondly that, in any event, they are compatible with the above Articles of the Convention and the Protocol;

whereas with regard to the first submission of the respondent Government, it is to be observed that, under Article 24 of the Convention, any High Contracting Party may refer to the Commission "any alleged breach of the provisions of the Convention by another High Contracting Party" ("tout manquement aux dispositions de la présente Convention qu'elle croira pouvoir être imputé à une autre Partie Contractante"); whereas it is true that, under Article 25, only such individuals may seize the Commission as claim to be "victims" of a violation of the Convention; whereas, however, the condition of a "victim" is not mentioned in Article 24; whereas, consequently, a High Contracting Party, when alleging a violation of the Convention under Article 24, is not obliged to show the existence of a victim of such violation either as a particular incident or, for example, as forming part of an administrative practice; whereas, therefore, it is not necessary for the three applicant Governments to establish, at the present stage of admissibility, that the provisions of Constitutional Act "G", which form the subject of their above allegations, have in fact been applied;

whereas the second submission of the respondent Government relates to the question whether the allegations under Article 7 of the Convention and Article 1 of the Protocol are well-founded or not; whereas this question concerns the merits of the case; whereas, therefore, it cannot be considered by the Commission at the stage of admissibility;

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whereas the Commission has also had regard ex officio to the possible effect of the provisions of Article 26 of the Convention on the present allegations; whereas, first, the rule requiring the exhaustion of domestic remedies does not apply to the present allegations, the object of which is to determine the compatibility with the Convention and the Protocol of legislative measures of the respondent Government; whereas, in this respect, reference is made to the Commission's decision of 24th January, 1968, on the admissibility of the original applications in which it also quoted its decision in the first Cyprus case;

whereas, secondly, as regards the six months rule laid down in Article 26 of the Convention, the Commission has noted that Constitutional Act "G" was promulgated on 14th July, 1967, that is more than six months before 25th March, 1968, the date on which the joint memorial containing the present allegations was filed with the Commission; whereas, however, as the rule concerning the exhaustion of domestic remedies does not apply, the term "final decision" in Article 26 can itself have no application in connection with the present legislative measures; whereas, further, the provisions of Constitutional Act "G" gave rise to a permanent state of affairs which is still continuing and the question of the six months rule could only arise after this state of affairs has ceased to exist (see Application No. 214/56, loc. cit. page 244); whereas it follows that the three applicant Governments' allegations concerning Constitutional Act "G" cannot be rejected under Articles 26 and 27, paragraph (3), of the Convention as having been lodged out of time;

As to Article 3 of the First Protocol

Whereas the three applicant Governments submit that the respondent Government has failed to comply with its obligation to hold free elections in accordance with Article 3 of the First Protocol to the Convention; whereas the respondent Government submits that such elections will take place after the entry into force of the new Constitution; and whereas it considers that the fact that no parliamentary elections have been held in Greece since February, 1964, does not constitute a violation of Article 3 of the Protocol; whereas these submissions again relate to the merits of the case; whereas, therefore, they cannot be considered by the Commission at the stage of admissibility;

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whereas, further, the object of the present allegation is to determine the compatibility with Article 3 of the Protocol of legislative measures and administrative practices in Greece; whereas it follows that, for the reasons stated above, the provisions of Articles 26 and 27, paragraph (3), of the Convention do not apply;

Whereas no other ground has been found for declaring the new allegations inadmissible;

Now therefore, the Commission, without prejudice to the merits,

declares admissible the new allegations of the applicant Governments of Denmark, Norway and Sweden of 25th March, 1968

Secretary to the Commission — Acting President of the Commission

(A.B. McNULTY) — (A. SUSTERHENN)