THE FACTS

I. Whereas the elements common to the four applications, a appearing from the respective submission of both parties, and as are uncontested between them, may be summarised as follows:

The applicants are citizens of the United Kingdom and Colonies born in England who, at the ages of 15 and 16 joined, with the consent of their parents, the army or naval services for a period of nine years which, however, was to be calculated from the date on which they attained the age of 18 years. For various reasons the applicants have applied for discharge from the service but, in spite of repeated requests stating their particular reasons, discharge has been refused by the army or naval authorities including the Ministry of Defence.

In the United Kingdom, the armed forces now rely entirely on the recruitment of volunteers, and, at the time before the applicants entered the services, enlistment was governed by the Naval Enlistment Act, 1884, and the Army Act, 1955, which now have been replaced by the Armed Forces Act, 1966. Under the relevant legislation, those entering the services normally enlist for a term of 9 or 12 years; the term, however, only starts to run at the age of 18. Parental consent is, and was, required in law (for the navy initially only in practice) for boys up to the age of 17 1/2 years.
The possibilities of discharge are limited and desertion is a military offense. At the time when the applicants enlisted in the armed forces, a person who had enlisted in the army - but not in the navy - could claim his discharge as of right during the first three months of service. Since 1967, members of all the armed forces may claim such discharge during the first three months of service.

Save in these circumstances, a person who has enlisted in the armed forces has no right to obtain his discharge before the expiration of the term of years specified in the form signed by him. It is however, recognised that special personal reasons may call for the premature release of persons so enlisted.

There appear to exist the following ways of terminating active service:

(a) on compassionate grounds;
(b) the statutory right of purchasing discharge of £20 during the first three months of service;
(c) discharge by purchase under extremely restricted conditions such as the completion of a minimum period of productive service; the granting of such discharge depends on the discretion of the competent authorities;
(d) free discharge on redundancy;
(e) psychiatric or medical grounds;
(f) application to the Conscientious Objectors' Appellate Tribunal after a sentence of 90-days detention;
(g) transfer to the Reserves.

Certain amendments of the provisions relating to enlistment and discharge of minors have been recommended by the Committee on the Age of Majority in a report of July, 1967 (Cmnd 3342) and appear to be presently under consideration.

II. Whereas the individual facts of the four applications, as appearing from the submissions of both parties and as uncontested between them, may be summarised as follows:

1. Application No. 3435/67 (W.)

W., born on ..., 1949, joined the Royal Navy as a junior seaman on .. August, 1964. His commitment was for 9 years from the age of 18. As he joined at the age of 15, his total commitment was, in fact, for 12

years service. He applied for compassionate discharge on .. November, 1965, on the grounds that his father, his only parent, was in bad health and needed his assistance. He also applied for discharge by purchase but both requests were refused.

In 1967 he went home on a long weekend with the intention of deserting. The night on which he was supposed to return on board ship he tried to commit suicide by slashing his wrists with a razor blade. He was taken by the police to a hospital for treatment and subsequently transferred to a mental hospital. After spending a week in that hospital a medical escort came to fetch him and took him to a navy hospital where he was seen by a naval psychiatrist who, according to the applicant, treated him as a "silly little boy who would soon grow out of this passing phase in a child's life". After a few days he had to rejoin his ship. The doctor aboard has given him no treatment for his depression and the applicant's interview with him lasted no more than three minutes. However, a full examination of the applicant carried out in a naval hospital by a specialist in neuro-psychiatry disclosed no sign of mental illness.

On .. November, 1967, Lord A. raised his case in the House of Lords but apparently without success.

2. Application No. 3436/67 (X.)

Cliff Field, born on .... 1943, joined the Royal Navy at the age of 15. He is now 24 years old and has served 6 years of his engagement.

During his service his talent for boxing has come to light. He has been a heavyweight finalist for the national amateur boxing championship and has been told that, providing he can take up his career immediately, he would have a profitable future as a professional boxer.

He has made a number of applications for discharge and at one stage his younger brother offered to take his place in the navy if discharge could be granted. The offer was refused. An application for discharge in October, 1966 was unsuccessful in spite of representations made on his behalf by Mr. B., M.P., and a letter from the Ministry of Defence dated .. March, 1967 stated that, if he had applied for the next review in January, 1967, he would have been refused again. After a previous offence of being absent without leave, the applicant went absent again in December 1966 and was apprehended after one week. While he was being awarded punishment for this second offence, the applicant committed the further offenses of offering violence, attempting to strike a superior officer and violently resisting an escort. For these three offenses, he was sentenced to twelve months' detention. That sentence was approved by the Admiralty Board and the applicant did not exercise his right to petition for its review. After the applicant had served four months of that sentence, it was suspended and he was returned to duty.

The applicant again deserted in October 1967 and, on being apprehended, was tried summarily for desertion and was sentenced to 60 days' detention and dismissal from the Service. He then had to undergo the consecutive terms of 60 days and 236 days (the suspended portion of his previous sentence) detention at the Military Corrective Training Centre, Colchester. Provided that the applicant had earned full remission, he would have been due for release (and dismissal) on .. June, 1969.

His parents have been extremely upset by their son's difficulties and his father has received psychiatric treatment.

3. Application No. 3437/67 (Y.)

Y., born on ..., 1949, joined the Royal navy as a junior seaman on .. February, 1965, at the age of 15. according to a letter from his mother, he did so because there was some disagreement between him and

his father.

In late 1965 after 6 months in the service he started writing to his parents pleading with them to help him obtain a discharge. His parents, who had difficulty in persuading him to return after he had been home on leave, wrote to his Commanding Officer and, in reply, were told that he would not be released and that he must "make the best of things". They then contacted their Member of Parliament, Mr. C., and later the National Council for Civil Liberties. The applicant has applied for discharge two or three times and Mr. C. made representations on his behalf in June, 1966 and on subsequent occasions.
On July, 1966, the Ministry of Defence wrote to Mr. C. rejecting his representations and expressing the hope that Y. would settle down.

There were some ground for compassionate discharge which were not referred to in the applications to the Ministry of Defence. Mrs. Y. suffers from heart trouble, is subject to epileptic fits and attends a hospital regularly. His father was out of work for a long time after an accident. With regard to these facts the respondent Government has now stated that, if there is medical evidence that the illness and disability of the applicant's parents necessitates his discharge from the service for the purpose of assisting them and if such evidence is produced to the Ministry of Defence, the question of the applicant's discharge will be reviewed.

On .. January, 1967, the Ministry of Defence again wrote to Mr. C. saying that Y. had the makings of a reliable seaman and was happy in his work.

On .. February, Mr. C. pointed out to the Ministry of Defence that this was directly contrary to the boy's own view of his situation at that time. The Ministry replied on .. April:

"Since your last letter Y. has been interviewed again. It is true that he now wants to leave the Service. This change of heart appears to date from his parents' decision not to emigrate. He says that he was only happy in the Royal Navy when it replaced the security that his parents impeding departure had removed. There seems to be little doubt that the boy is confused and I am bound to say that he is not helped to stand on his own two feet by pressure from home ... I am afraid that there are still no reasons compelling enough to warrant Y's release under our present rules."

Y. persists in desiring to obtain his discharge from naval service, and contemplates taking the more drastic action of deserting if he cannot at least obtain an impartial hearing of his case for release. He is obliged to serve until April, 1976, and can only obtain his discharge earlier at the discretion of the British naval authorities.

4. Application No. 3438/67 (Z.)

Z., born on .. September, 1943, joined the army as a boy apprentice at the age of 16 1/2 years. He signed on for 9 years service to start from the age of 18, making his total commitment 10 1/2 years. He has now completed 7 1/2 years.

Early in 1967 when he was 23 years old he decided to try to purchase his discharge. He made preliminary enquiries in June and July 1967 - not, however, to the competent offices - and was told that he could make an application 6 years after his 18th birthday, i.e. .. September, 1967. The cost would be £200. He therefore applied for a civilian position with Hunting Aerial Surveys in connection with his trade training as a topographical surveyor and had hoped to start in October, 1967. To provide the money his father obtained a second mortgage on his house.

Mr. Z. formally applied to purchase his discharge on his 24th birthday

and was then informed that this could only be granted 6 years after he had completed his technical training, i.e. about December 1968 and at a cost of £150.

In March 1968, the applicant re-applied to transfer to the reserve by purchase to take up a vacancy at the National College for the training of Youth Leaders. The manning position in the trade, rank and age-of-service group in the service to which the applicant belongs being satisfactory, he has now been informed that he will be transferred to the reserve forthwith upon payment of £150.

COMPLAINTS

Whereas the applicants allege in their applications the following violations of the Convention:

(a) of their right under Article 4, paragraph (1) not to be held in servitude;

(b) of their right under Article 6, as regards the determination of the civil rights, to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, such violation arises from the fact that the national legislation provides for no machinery to deal with an application for discharge from army or naval service;

(c) of their right under Article 13 to an effective remedy before a national authority.

Whereas, in their submissions following the communication of the case to the respondent Government, the applicants have added a further complaint alleging violation of their right under Article 8 to respect for family life.

Whereas they claim discharge from army or naval service and therefore relief from oppressive compulsory service tantamount to the status of servitude and in the alternative, a fair and impartial hearing of the matters in issue by an independent tribunal and damages.

SUBMISSIONS OF THE PARTIES

Whereas on 6th April, 1968, the Commission decided to communicate the case to the respondent Government and to invite it to submit its observations on admissibility;

I. Whereas the respondent Government in its observations of 27th May, 1968, first explained the background and legislation as regards enlistment into the armed forces and in this context pointed out that the armed forces must recruit people at an early age since they are directly competing with industry in the recruitment sphere;

Whereas in this respect the respondent Government stated, in particular, the following in paragraph 6 of its observations:

"The authorities responsible for the administration of the armed forces (upon which the security of the State depends) must ensure the continuous and efficient manning of such forces if they are to meet their commitments. The authorities must, therefore, consider any application for discharge in the light of the requirements of the Service as well as in the light of the personal reasons put forward by the individual concerned. Where, however, an individual's family circumstances are such that his permanent presence with his family is essential to the solution of family problems, the authorities recognise those circumstances as being a reason for granting discharge which overrides manning requirements. Discharge may be granted on payment of a sum of money or, in cases where the discharge is granted from a requirement to pay, the individual is released free of charge."

Whereas the respondent Government further presented its "considerations of admissibility" the essential passages of which are as follows:

Article 4 (1)

"18. ... Paragraph (3) (b) of the article excludes from the ambit of the term 'forced or compulsory labour', as used in paragraph (2), 'any service of a military character'. This exclusion, it is submitted, demonstrates clearly that 'any service of a military character' is to be understood as being also excluded from the ambit of the words "slavery or servitude" in paragraph (1), because any argument to the contrary necessarily involves the anomalous conclusion that although no service of a military character can be, under the Convention, forced or compulsory labour, military service many amount to the more oppressive condition of slavery or servitude..."

"19. ... service in modern conditions in the armed forces of the Crown (or of any other democratic state, whether such service was entered into compulsorily or voluntarily) clearly cannot be regarded as constituting servitude within the meaning of paragraph (1) of that article. It is submitted that the term 'servitude', in this context, connotes a condition comparable to that of slavery, save that a person in a state of servitude may not be the actual property of his master. That is to say, it implies a deprivation of freedom and personal rights which quite patently does not exist in the case of persons serving in the armed forces of the Crown ..."

"20. ... The United Kingdom Government also submit that an essential feature of servitude is that it has been forced upon a person against his will, in circumstances where he has no genuine freedom of choice. In the United Kingdom, no one is required to enter upon military service and a person who does so chooses this course freely from among the various forms of employment available to him ..."

"21. In the submission of the United Kingdom Government the complaints of the applicants of the violation of their rights under Article 4 (1) are, for the reasons set out in paragraphs 18, 19 and 20 above, incompatible with the provisions of the Convention or, in the alternative, manifestly ill-founded and should be considered inadmissible under Article 27 (2) of the Convention.

22. Further, if the applicants' complaint is that the refusal of the United Kingdom authorities to discharge them from the armed forces is tantamount to an act of wrongful detention or confinement, whether for the purpose of exacting labour or for any other purpose, it is open to the applicants or any of them to apply to the High Court for a writ of habeas corpus. By that writ the High Court may command that the person detained be brought before the court so that the causes of his detention may be enquired into. If the detention is shown to be unlawful, the detained person's release will be ordered. None of the applicants has applied to the court for a writ of habeas corpus."

Article 5

"24. In the submission of the United Kingdom Government an application for discharge from the armed forces does not involve the determination of a civil right within the meaning of Article 6 of the Convention. It is submitted that, on the true construction of Article 6 (1) (in both the English and French texts), only something which is justiciable in the courts of the country concerned can properly be regarded as a civil right or obligation within the meaning of that Article ..."

"25. If Article 6 (1) is not interpreted in the way set out in paragraph 24 above, the word 'civil' in the phrase 'civil rights' would be unnecessary ..."

"27. In support of the above submissions the United Kingdom Government rely upon the decision of the Commission in Application No. 1329/62, Collection of Decisions, Vol. 9, p. 28, that 'Article 6 applies only to proceedings before courts of law' and that 'the right to have a purely administrative decision based upon proceedings comparable to those prescribed in Article 6 for proceedings in court is not as such included among the rights and freedoms guaranteed by the Convention.

28. It is the submission of the United Kingdom Government that the complaints of the applicants of the violation of their right under Article 6 are ... incompatible with the provisions of the Convention or, in the alternative, manifestly ill-founded and should be considered inadmissible under Article 27 (2) of the Convention".

"29. If ... the applicants intend to suggest that there is no 'machinery' in the armed forces of the United Kingdom for the making of complaints by persons serving therein with regard to such matters affecting their welfare as the treatment of applications by them for discharge, the United Kingdom Government state that any such person who wishes to complain about any such matter is required to do so to a superior officer; and, if the person so complaining is dissatisfied with the decision of such officer, he may request that the complaint be forwarded to the next superior authority. It is provided that all such requests shall be so forwarded. It is the duty of officers and authorities to investigate such complaints and take steps to redress any matter which requires to be redressed. None of the applicants has requested that his complaint regarding discharge from the armed forces be referred to the next higher authority."

Article 13

"31. The applicants complain of violations of their right under Article 13 to an effective remedy before a national authority. The United Kingdom Government submit that the applicants have not even prima facie established any violation of Article 4 or Article 6 nor of any right guaranteed by the Convention. The Commission has decided in numerous cases ... that Article 13 relates exclusively to a remedy in respect of a violation of one of the rights and freedoms set forth in the Convention, and that, until such a violation has been established, there is no basis for the application of Article 13. It is submitted that there is no basis for the application of Article 13 in these cases.

II. Whereas the applicants in their observations in reply submitted on 9th July, 1968, do not, in general, contest the respondent Government's explanations as to the background and the legislation on enlistment into the armed forces;

Whereas they refer in particular to the respondent Government's statement, in paragraph 6 of its observations, that in certain cases family problems are recognised by the authorities "as being a reason for granting discharge which overrides manning requirements"; whereas in reply the applicants make the following observations:

"This, it is submitted, is an express acknowledgement by the Government of the United Kingdom that military service (including recruitment) is subject to the guaranteed right of respect to family life. The applicants gratefully adopt what has been conceded by the Government of the United Kingdom, and hereby formally request that their respective applications be amended to include an additional claim that their rights under Article 8 (1) are being violated. Moreover, it is to be observed that in its concession (cited above) the Government of the United Kingdom acknowledges by implication that the recruitment of minors on long-term service contracts does not fall within the exceptions set out in Article 8 (2) ..."

Whereas the applicants then present their considerations of

admissibility the essential parts of which read as follows:

Article 4 (1)

"9. The Government of the United Kingdom contends that the exclusion in Article 4 (3) (b) of military service from the meaning of 'forced or compulsory labour' must also operate to exclude military service from the prohibition against slavery or servitude. It is submitted that this is not the natural construction of the article. The drafters of this article clearly intended that there should be an absolute prohibition against servitude or slavery, but only a qualified prohibition against forced or compulsory labour. The exclusion of 'service of military character' from Article 4 (2) bites conceptually on 'forced or compulsory labour' as being concerned with objective fact; whereas 'servitude or slavery' is dealing with status. Thus age and sex would be irrelevant to the question of whether the individual was being made to undergo forced labour, but would be directly relevant to the question whether they were slaves. Again, slavery might not in any way involve forced labour but merely involve a state of ownership. It is submitted that it is wrong to conclude that slavery or servitude constitute a 'more oppressive condition' than forced or compulsory labour. Slavery or servitude is a condition different conceptually from forced labour, and may or may not be more oppressive. Some forms of slavery are much less physically, if not psychologically oppressive than forced or compulsory labour. There is, it is submitted, nothing anomalous about the conclusion that no military service under the Convention can be forced or compulsory labour but might amount to slavery or servitude.

10. It is accepted, as stated in paragraph 19 of the observations of the Government of the United Kingdom, that the prohibitions in Article 4 (1) imply a deprivation of freedom and personal rights. While it is conceded that for all those over the age of 21 (or, at very least, over the age of 18 which is the lowest age of majority in modern civilised countries) who serve in the armed forces of the Crown there is no substantial impairment of rights, the same cannot be said, it is submitted, for infants who lose the very vital protection of the English law.

11. The United Kingdom Government submit in paragraph 20 that the involuntariness of service is an essential feature of servitude or slavery. It is submitted that once again this is to confuse status and contract ... The fact that each of the four applicants exercised a freedom of choice to undergo military service is neutral in determining whether that exercise of choice involved the creation of a legal status. Whether that status was imposed or created by the applicants and the Crown does not alter the fact that the status objectively exists. If the Convention had sought to exclude armed servicemen from the prohibition of slavery or servitude it would have declared that 'for the purpose of this article the term 'slavery or servitude' shall not include membership of any armed force'.

12. In the submission of the applicants there is, for the reasons set out in paragraphs 9, 10 and 11, a violation of their rights under Article 4 (1). The United Kingdom Government has contended that these applications should be considered incompatible with the provisions of the Convention solely on the ground that Article 4, (3) (b) qualified the absolute prohibition contained in Article 4 (1). For the reasons expressed herein the applicants submit that there is an incorrect construction of the relevant provisions of Article 4. The United Kingdom Government has pointed to no other provisions of the Convention with which these applications should be considered incompatible. It is submitted that these applications are moreover not manifestly ill-founded within Article 27 (2).

13. The applicants admit as alleged in paragraph 22 of the observations of the United Kingdom that none of them has applied to the English

courts for a writ of habeas corpus. Although the United Kingdom Government does not specifically request that the Commission should exercise its powers under Article 27 (3) the applicants treat this submission of the United Kingdom Government as an argument for concluding that the applicants have not exhausted all domestic remedies.

"16. It is submitted that in any event the writ of habeas corpus ad subjiciendum is available to an applicant only if the confinement is such as to put the military authorities in such control over the applicants as to constitute them custodians of their bodies for the purpose of habeas corpus. In Ex parte Mwenya (1959) 3 W.L.R. 767, 772, Lord Evershed, M.R. was doubtful if habeas corpus lay in the case where the applicant was merely restricted from moving out of an area of 1500 miles, in which area there were no limitations on his movements.

17. No English judge could conceivably make an order that would have the effect of overriding the statutory powers of the military authorities and the Crown to keep the applicants under military service for the full period of their engagement ..."

Article 8 (1)

"19. The principle of respect for family life under Article 8 (1) includes the right of any member of the nuclear family - that is, husband, wife and dependent or minor children - to the consortium of every other member. A prime element in that consortium is the right of each member to reside in the family's chosen place of residence. The Commission has already recognised that the unity of the family is a factor to be considered under Article 8. The desirability of maintaining that unity is recognised by English law, and indeed the United Kingdom Government specifically recognises it in the context of the recruitment of young servicemen; see paragraph 6 of the observations of United Kingdom Government."

"20. A state which ratifies the Convention agrees to restrict its powers to legislate in such a way as not to infringe the right of its citizens conferred by the Convention. To provide for the recruitment and long-term service of minors (even with the express consent of the minors and their parents or guardians) is to interfere with the right of respect for family life. That right under Article 8 (1) may be waived with the consent of those vested with such right but only as long as the consent is not withdrawn. Any waiver of a right under the Convention is ambulatory, in the sense that no citizen can prospectively contract out of rights and obligations imposed under the Convention."

"21. The applicants were entitled at any time up to their majority or at least until the age of 21 to claim their discharge from the service as having the right to live with other members of their family. This right subsists today in Application No. 3437/67 (Y.) and Application No. 3435/67 (W.). In the case of Application No. 3436/67 (X.) and Application 3438/67 (Z.) the right to respect for family life was infringed until the age of 21 and such infringement was only abated at the age of majority."

"22. By its observations in paragraph 6 the United Kingdom Government by implication has conceded that these applications could not come within the exceptions set out in Article 8 (2)."

Article 6

"23. The United Kingdom Government, in paragraph 24 of its observations, submits that an application for discharge from the armed forces of the Crown does not involve the determination of a civil right within the meaning of Article 6 of the Convention. The submission proceeds upon the assumption that only something which is justifiable

in the courts of the respondent Government can properly be regarded as a civil right. The applicants submit that the short, an conclusive answer to the submission is to be found in the decision of the Commission as to the admissibility of Application No. 2991/66. In that case the Commission held that 'the determination of a right to respect for family life under Article 8 may well be considered as the determination of a civil right within the meaning of Article 6'. It is to be observed that in that case, which concerned the refusal by UK immigration authorities to allow a minor child to enter the United Kingdom to take up residence with his father, there was no remedy available to the applicant in the English courts.

24. It is submitted that the determination of a right not to be held in slavery or servitude under Article 4 may well also be considered as the determination of a civil right within the meaning of Article 6. It is therefore further submitted that if the Commission holds (as the applicants ask it to) that their respective complaints under Articles 4 and 8 cannot be declared manifestly ill-founded, accordingly the applicants' submission that a civil right existed under Article 6 (1) in respect of determination under Articles 4 and 8 can also not be declared manifestly ill-founded.

25. It is to be observed that the submissions made in paragraphs 23 to 27 of the observations of the United Kingdom Government are substantially in the form submitted to the Commission in Applications 2991/66 and 2992/66. For their part the applicants adopt the submissions made on behalf of the applicants in Applications 2991/66 and 2992/66.

26. The applicants, in answer to the matters set out in paragraph 29 of the observations of the United Kingdom Government submit that the reference to the absence of any machinery to deal with an application for discharge from army or naval service was a submission that there had been no compliance with the requirements of Article 6 (1) to provide an independent and impartial tribunal and also a fair and public hearing.

Article 13

27. The applicants submit that the United Kingdom Government is in breach of Article 13 because it has failed to provide any remedy or effective remedy before a national authority for violations of the prohibition against slavery or servitude and of family rights under Article 8 by the relevant military authorities."

THE LAW

Whereas the Commission has noted that the respondent Government, in its observations on admissibility, has referred to the possibility for the applicants to apply either to the High Court for an order of habeas corpus or to the higher military authorities for discharge from the service;

Whereas it is not clear whether the respondent Government, by referring to the possibility to apply for an order of habeas corpus, wishes to raise a formal objection of non-exhaustion of domestic remedies under Article 26 (Art. 26) of the Convention; whereas, in any event, the Commission has examined ex officio the question whether in the circumstances of the present case an application for an order of habeas corpus would have constituted an effective remedy within the meaning of Article 26 (Art. 26);

Whereas the Commission has noted the applicants' submissions that an order of habeas corpus can only be obtained in cases of close confinement and that it could not be granted in respect of any restriction of freedom based on statutory power; whereas, on the basis of the information at present available, the Commission finds that both

these elements appear to exclude in the applicants' situation any chance of success of an application for an order for habeas corpus;

Whereas the respondent Government has also referred to the possibility of having a complaint forwarded to the superior officers and authorities of the armed forces, whereas it is again not clear whether the respondent Government thereby formally submits that the applicants have failed to exhaust an effective remedy available to them; whereas the Commission has nevertheless also examined ex officio this question in the light of Article 26 (Art. 26);

Whereas, it is first observed that all four applicants repeatedly applied to their military superiors for discharge and that, after this was refused, three of the cases (W., X., Y.) were taken up either in the House of Lords or by a Member of Parliament and, in fact, the Defence Secretary appears to have been aware of all four cases and to have examined them; whereas in these circumstances it cannot be said that the applicants failed to take any action which might have led to their discharge;

Whereas the Commission further considers that mere internal representations to higher authorities within the military hierarchy cannot be considered as an effective remedy within the meaning of Article 26 (Art. 26);

Whereas this provision, although not necessarily presupposing a judicial review, nevertheless refers only to a reconsideration by some outside organ which is not part of the decision-making authority itself;

Whereas, for these reasons, the Commission finds that the applications are not to be rejected on the ground of non-exhaustion of domestic remedies under Articles 26 and 27, paragraph (3) (Art. 26, 27-3), of the Convention;

Whereas the Commission has consequently examined the substance of the applicants' complaints; whereas, in doing so, the Commission finds it first necessary to examine the application ex officio in the light of Article 4, paragraphs (2) and (3) (b) (Art. 4-2, 4-3-b) of the Convention which state as follows:

"(2) No one shall be required to perform forced or compulsory labour.
(3) For the purpose of this article the term 'forced or compulsory labour' shall not include:
(a) ...
(b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;"

Whereas the Commission has first considered ex officio the question whether, in view of the exception clause contained in Article 4, paragraph (3) (b) (Art. 4-3-b), military service is completely outside the scope of Article 4, paragraph (2) (Art. 4-2), with the consequence that any complaint made as to such service must in the light of this provision be rejected as being incompatible with the provisions of the Convention ratione materiae;

Whereas it is true that Article 4, paragraph (3) (Art. 4-3), is so worded that any military service or substitute service by conscientious objectors is not to be included in the term "forced or compulsory labour";

Whereas, however, the form of drafting applied in Article 4 (Art. 4) is taken over from Convention No. 29 of the International Labour Office, concerning Forced or Compulsory Labour, 1930 and it would moreover be in conformity with the forms of drafting adopted in other articles of the Convention on Human Rights, such as paragraphs (2) of

articles 8, 9, 10 and 11 (Art. 8-2, 9-2, 10-2, 11-2), to consider Article 4, paragraph (3) (Art. 4-3), as constituting provisions permitting limitations of, or exceptions to, the general freedom from forced or compulsory labour set forth in paragraph (2) (Art. 4-2) of that article;

Whereas, considering the provisions from this point of view, the Commission finds that it is competent to examine and pronounce upon questions involving the interpretation and application of the exception clauses contained in paragraph (3) (Art. 4-3); whereas in this respect the Commission refers to its findings in the decision on the admissibility of Application No. 1468/62, Iversen against Norway (Yearbook vol. VI, page 278 [324]) and in the Report concerning the Grandrath case, Application No. 2299/64, (page 34 of the Report) confirmed by Resolution (67) DH 1 of the Committee of Ministers of 29th June, 1967;

Whereas consequently the Commission finds that a complaint raising an issue of "forced or compulsory labour" under paragraph (2) of Article 4 (Art. 4-2), even if relating to one of the situations regulated in paragraph (3) of that article (Art. 4-3), is not to be considered as being incompatible with the provisions of the Convention within the meaning of Article 27, paragraph (2) (Art. 27-2);

Whereas, indeed, the Commission finds it necessary in the present case to examine and pronounce upon the question whether the exception clause of Article 4, paragraph (3) (b) (Art. 4-3-b), also covers military service into which a person has entered as a volunteer; whereas in this respect the Commission has had regard to the history of this provision;

Whereas Article 4 (Art. 4) of the European Convention was drafted on the basis of the earlier projects of Article 8 of the United Nations Covenant on Civil and Political Rights which in turn was partly based on the 1930 ILO Convention; whereas Article 2, paragraph (2) (a) (Art. 2-2-a), of that Convention reads as follows:

"... for the purposes of this Convention, the term 'forced or compulsory labour' shall not include:
(a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character."

Whereas, however, all drafts of the United Nations and of the Council of Europe from the very beginning replaced the term "any work or service exacted in virtue of compulsory military service laws" used in the ILO Convention by the term "any service of a military character"; Whereas no reasons for this change are to be found in the preparatory work;

Whereas, however, it is safe to assume that in omitting the word "compulsory" it was intended to cover also the obligation to continue a service entered into on a voluntary basis;

Whereas consequently the Commission finds that the service entered into by the applicants is subject to the limiting provision under Article 4, paragraph (3) (Art. 4-3), and therefore any complaint that such service constitutes "forced or compulsory labour" must be rejected as being manifestly ill-founded in view of the express provision of Article 4, paragraph (2) (b) (Art. 4-2-b) of the Convention;

Whereas the applicants submit, however, that the service to which they are presently bound without any possibility of discharge violates Article 4, paragraph (1) (Art. 4-1), of the Convention which reads as follows:

"(1) No one shall be held in slavery or servitude."

Whereas, while not alleging that their service amounts to "slavery"

they do submit that it constitutes a form of "servitude" within the meaning of the Convention;

Whereas the Government of the United Kingdom contends that the exclusion in Article 4, paragraph (3) (b) (Art. 4-3-b), of military service from the meaning of "forced or compulsory labour" must also operate to exclude military service from the prohibition against slavery or servitude;

Whereas the applicants, on the other hand, submit that the drafters of this article clearly intended that there should be an absolute prohibition against servitude and slavery, but only a qualified prohibition against forced or compulsory labour; whereas they further submit that the exclusion of "service of military character" from Article 4, paragraph (2) (Art. 4-2), bites conceptually on "forced or compulsory labour";

Whereas the Commission is of the opinion that "servitude" and "forced or compulsory labour" are distinguished in Article 4 (Art. 4) and, although they must in fact often overlap, they cannot be treated as equivalent, and that the clause excluding military service expressly from the scope of the term "forced or compulsory labour" does not forcibly exclude such service in all circumstances from an examination in the light of the prohibition directed against "slavery or servitude";

Whereas indeed there are historical examples of uncontestable slavery or servitude being used for purposes of military service;
Whereas the employment for such service of a person subjected to a state of slavery or servitude would not detract from this status if otherwise established; whereas thus it proves necessary to examine the general situation of the particular group of persons employed in military service in order to determine whether an allegation that they are kept in "slavery or servitude" is well founded or not; whereas consequently the Commission finds that the allegation to this effect made by the applicants in the present cases cannot be rejected as being incompatible with the provisions of the Convention within the meaning of Article 27, paragraph (2) (Art. 27-2);

Whereas the Commission has therefore proceeded to an examination of the general situation of those who, like the applicants, have entered as minors into the armed forces of the United Kingdom; whereas it is clear, and in fact admitted by the applicants, that generally the duty of a soldier who enlists after having attained the age of majority, to observe the terms of his engagement and the ensuing restriction of his freedom and personal rights does not amount to an impairment of rights which could come under the terms of "slavery or servitude"; whereas furthermore the applicants themselves mention that both the age of majority and the minimum age for the recruitment of volunteers into the armed forces widely vary in different countries; whereas it is true that such recruitment under the age of 18 appears to be exceptional;

Whereas, however, the Commission finds that the young age at which the applicants entered into the services cannot in itself attribute the character "servitude" to the normal condition of a soldier; whereas the applicants refer to the particular protection of minors provided for in all legal systems in regard to their own possibly unconsidered engagements;

Whereas in this respect the Commission has noted that parental consent is required in the United Kingdom at least for boys entering the armed forces under the age of 17 1/2 years and that in the present cases such consent was in fact given; whereas the protection of minors in other fields of law consists exactly in the requirement of parental consent and also in the existence of the principle that an engagement entered into by the minor will be void without such consent but valid and binding in if the consent has been duly given; whereas thus the

provisions of the United Kingdom concerning the recruitment of boys under 17 1/2 years take into account the special situation of a minor;

Whereas consequently the terms of service if amounting to a state of servitude for adult servicemen, can neither have that character for boys who enter the services with their parents' consent;

Whereas consequently an examination of the cases as they have been submitted does not disclose any appearance of a violation of the right set forth in Article 4, paragraph (1) (Art. 4-1), of the Convention;

Whereas it follows that under this aspect the applications are manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention;

Whereas the applicants in their observations of 9th July, 1958, also invoke Article 8 (Art. 8) of the Convention and allege violations of their right to respect for their family life insofar as they are still minors (Y. and W.) and insofar as concerns the period of service which the other two applicants (X. and Z.) had to perform before the age of 21; whereas the applicants submit that they are or were "entitled up to their majority or at least until the age of 21 to claim their discharge from the service as having the right in live with other members of their family"; whereas they refer to this respect to a remark in the respondent Government's observations of 27th May, 1968, to the effect that "an individual's family circumstances" may in certain cases be recognised as "being a reason for granting discharge which overrides manning requirements"; whereas the applicants consider that, in the absence of any observations by the respondent Government referring to paragraph (2) of Article 8 (Art. 8-2), the Government had conceded that the applications should not come within the exceptions set out therein;

Whereas the Commission is of the opinion that the term "respect for family life" cannot reasonably be given such a wide interpretation as to allow an individual - even a minor - to free him from the obligations under a long-term service engagement freely entered into but involving a separation from his family except for periods of leave;

Whereas such is indeed the normal condition of anyone in the armed forces and even in many civilian occupations; whereas it is true that in the present cases this separation from the family is, or was, taking place at a time when the applicants are, or were, still minors;

Whereas the refusal of discharge from a service involving separation of a minor from his family to which both the minor and his parents had consented for a certain period of time, cannot be said in the Commission's opinion to involve an issue of the right to respect for family life;

Whereas consequently an examination of the case as it has been submitted, does not disclose any appearance of a violation of the right set forth in Article 8 (Art. 8) of the Convention; whereas it follows that this part of the applications is also manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention;

Whereas the applicants also allege a violation of their right under Article 6 (Art. 6), to have their civil rights determined in a fair and public hearing by an independent and impartial tribunal established by law and whereas they complain that the national legislation does not provide for such a tribunal to deal with an application for discharge from army or naval service;

Whereas the respondent Government contests that the request for discharge involves a "civil right or obligation" and submit that "only something which is justiciable in the courts of the country concerned

can properly be regarded as a civil right or obligation within the meaning of that article", and that otherwise the word "civil" would be unnecessary;

Whereas the respondent Government also refers to the Commission's Decision in Application No. 1329/62, (Collection of Decisions, Vol. 9, p. 28), where the Commission expressed the view that "Article 6 (Art. 6) applies only to proceedings before courts of law" and that "the right to have a purely administrative decision based upon proceedings comparable to those prescribed in Article 6 (Art. 6) for proceedings in court is not as such included in the right and freedoms guaranteed by the Convention";

Whereas with regard to these submissions of the respondent Government the Commission recalls that it has held in constant jurisprudence that the term "civil rights and obligations" cannot be construed as a mere reference to the domestic law of the High Contracting Party concerned but, on the contrary, must be interpreted independently (see Decision on the admissibility of Applications No.s 1931/63, Yearbook vol. VII, p. 222, and 2145/64, Collection of Decisions, Vol. 18, p. 17); whereas the Commission also maintained this view recently before the European Court of Human Rights, "Neumeister" case, judgment of 27th June, 1968, page 28); whereas the Commission has further emphasised in several decisions that the question whether a right or an obligation is of a civil nature does not depend on the particular procedure prescribed by domestic law for its determination but solely on an analysis of the claim itself (Applications Nos. 808/60, Yearbook V, p. 122, and 2145/64, Collection of Decisions, p. 16);

Whereas consequently the "non-justiciable" character in English law of a claim to be discharged from service in the armed forces cannot be considered as excluding such claim from the applicability of the requirements established in Article 6, paragraph (1) (Art. 6-1), for the "determination of civil rights and obligations"; whereas, on the contrary, the Commission finds it necessary to examine whether, according to the Commission's interpretation of this autonomous concept, Article 6 (Art. 6), may be applicable to a serviceman's application for discharge from military service before the end of the term for which he has enlisted;

Whereas the respondent Government particularly emphasised the importance of the word "civil" mentioned in Article 6, paragraph (1) (Art. 6-1) and submits that this term must be interpreted in a way restricting the scope of those rights to which this provision should apply;

Whereas the applicants in reply to this argument refer to the case of Alam (Khan) and Singh against the United Kingdom (Applications Nos. 2991/66 and 2992/66) and to the submissions made on behalf of the applicants in those cases (see the summary, Collection of Decisions, Vol. 24, p. 126); whereas it was there argued that the term "civil" should be widely interpreted and that its function within Article 6 (Art. 6) was to distinguish such matters from criminal charges";

Whereas the Commission, without entering into the general problems of an interpretation of the concept of "civil rights and obligations", finds that the subject at issue in the present cases does not fall within the scope of that concept; whereas in this respect the Commission has had regard both to the preparatory work and to its own previous jurisprudence;

Whereas the wording of Article 6, paragraph (1) (Art. 6-1), of the Convention is taken over from the early drafts for Article 14, paragraph (1), of the United Nations Covenant on Civil and Political Rights;

Whereas the word "civil" was not contained in the first drafts but

inserted subsequently in the drafting process and whereas the considerations leading to this amendment are to be found in the discussions of the United Nations Commission for Human Rights (see the summary given by J. Velu, le problème de l'application aux juridictions administratives des règles de la Convention Européenne des Droits de l'Homme relatives à la publicité des audiences et des jugements, in Revue de Droit International et de Droit Comparé, Brussels, 1961, pp. 130 et seq.); whereas it is true that in these discussions different views were expressed as to the meaning and purpose of this amendment; whereas it appears, however, that the delegates, whether favouring or opposing the amendment, agreed generally that a right to determination by a court of a question concerning military service and taxes would be excluded from the field of application of the provision; whereas in this respect particular reference is made to the declarations by the Delegates of the United States, France and Egypt (see United Nations Doc. E/CN 4 SR 107, pages 3, 6 and 8);

Whereas the drafters of the European Convention on Human Rights, when adopting a text partly based on the work of the United Nations, without reconsidering the concept of "civil rights and obligations" expressly referred to the results achieved in the drafting process in the United Nations framework (see Velu loc. cit. p. 159 et seq.);

Whereas consequently the intentions and views then expressed must also be assumed to be those of the High Contracting Parties to the European Convention on Human Rights and must be taken into account when interpreting and applying Article 6, paragraph (1) (Art. 6-1), of this Convention;

Whereas in the light of the meaning thus to be given to this provision and determination of any questions related to military service cannot be reasonably considered as falling within its scope;

Whereas furthermore the same conclusion also follows from the principle already established in the Commission's jurisprudence that disputes between civil servants and the State do not involve the "determination of civil rights or obligations"; whereas in this respect the Commission refers to its decisions on the admissibility of Applications Nos.423/58 (Collection of Decisions, Vol. 1) and 734/60 (Collection of Decisions, Vol. 6, p. 32); whereas the status of an enlisted serviceman is in this regard similar to that of a civil servant; whereas therefore the Commission finds that the applicants' claim to be discharged from the armed forces before the end of their term cannot be considered as a "civil right" within the meaning of Article 6, paragraph 1 (Art. 6-1);

Whereas it is true that the applicants refer more particularly to their rights to respect for family life under Article 8 (Art. 8) and to freedom from servitude under Article 4, paragraph (1) (Art. 4-1), of the Convention;

Whereas they claim that these are civil rights to be determined under Article 6, paragraph (1) (Art. 6-1), by an independent and impartial tribunal;

Whereas, however, the Commission has already found that the right to respect for family life cannot reasonably be given such a wide interpretation as to allow the applicants to free themselves from the obligations under their service engagements; whereas consequently the determination of their requests for discharge from service did not in fact involve any issue of the right to respect for family life which might be qualified as a "civil right" within the meaning of Article 6, paragraph (1) (Art. 6-1);

Whereas the applicants similarly invoke as a "civil right" their right under Article 4, paragraph (1) (Art. 4-1), of the Convention not to be subjected to servitude; whereas even assuming that this right is to be considered as a "civil right" within the meaning of Article 6,

paragraph (1) (Art. 6-1), such right was not in fact in issue in the present cases since the Commission has already found that the applicants' condition cannot be said to amount to a state of "servitude";

Whereas it follows that also under the aspects of the Articles 8 and 4, paragraph (1) (Art. 8, 4-1), no "civil rights" of the applicants were involved;

Whereas consequently an examination of the case as it has been submitted including an examination made ex officio, does not disclose any appearance of a violation of the right set forth in Article 6, paragraph (1) (Art. 6-1);

Whereas it follows that this part of the applications is also manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2) of the Convention;

Whereas finally the applicants complain that the United Kingdom Government was responsible for a breach of Article 13 (Art. 13) of the Convention in that it failed to provide any effective remedy before a national authority for the alleged breaches of the rights to freedom from servitude under Article 4, paragraph (1) (Art. 4-1), and respect for family life under Article 8 (Art. 8) of the Convention; whereas, however, Article 13 (Art. 13) relates exclusively to a remedy in respect of a violation of one of the rights and freedoms set forth in the other provisions of the Convention (see the Commission's decisions on the admissibility of Applications Nos. 472/59, Yearbook, Vol. III, p. 212, 655/59, Yearbook, Vol. III, p. 286 and 3325/67, Collection of Decisions, Vol. 25, p. 124); whereas the applicants not having established even the appearance of a violation of one of the other rights invoked by them, there is in the present cases no basis for the application of Article 13 (Art. 13) of the Convention;

Whereas it follows that this part of the applications is incompatible with the provisions of the Convention within the meaning of Article 27, paragraph 2 (Art. 27-2), of the Convention (see also the decision on the admissibility of Application No. 2992/66, Collection of Decisions, Vol. 24, p. 131);

Now therefore the Commission declares these applications INADMISSIBLE