THE FACTS

A partial decision of 1st April, 1966, has been published in Collection of Decisions, Volume 19, page 95.

Whereas the facts presented by the Applicant - excluding those which relate to the complaints already rejected by the Commission - may be summarised as follows:

The Applicant is an Austrian citizen, born in 1932 and at present detained in the Stein prison.

On 8th October, 1965, the Regional Court for Criminal Cases (Landesgericht für Strafsachen) in Vienna convicted the Applicant for theft and sentenced him to six years' severe imprisonment. The Court also ordered his subsequent internment in a labour institution (Arbeitshaus).

On 11th October, 1965, the Applicant first wrote to the Commission, complaining of his committal to a labour institution. The Commission's Secretary replied to this letter on 18th October, 1965.

The Applicant complains that the authorities controlling his correspondence forwarded to the press information about the contents of these two letters of 11th and 18th October, 1965 and that articles concerning this correspondence appeared in several Austrian newspapers which also published his name.

He states that he complained of this to the Minister of Justice and that his complaint was rejected on .. January, 1966.

He alleges a violation of Article 8, paragraph (2), of the Convention.

In support of his allegation, the Applicant has submitted a printed article which, according to his information, had appeared in the Austrian newspaper "Express" of 26th - 27th October, 1965. In this article, it is stated:

"There is no forced labour in a labour institution. This was established by the Commission of Human Rights in a letter to the Vienna prisoner X who, in respect of his committal to an Austrian labour institution, had invoked the provisions of the Convention on Human Rights according to which, in his opinion, forced labour is forbidden. In the information given to the prisoner, it is expressly stated that the labour institution only serves the purpose of reforming the prisoner. He should be brought back in this manner to a hard-working, regular life. Consequently, the labour institution is not covered by the provisions of the Convention which forbid forced labour."

The Applicant states that similar articles appeared in two other newspapers, "Wiener Kurier" and "Kronen Zeitung".

A further newspaper article is available to the Commission (received from the Information Service of the Council of Europe). In this article, which appeared in the "Arbeiter-Zeitung" on 14th October, 1965, it is indicated that X had alleged before the Commission of Human Rights that detention in a labour institution implied forced labour and was therefore illegal. Indications were given about the offenses of which X had been convicted and in regard to his complaint to the Commission the following information was added:

"I am not in possession of the necessary means to pay a lawyer ...", wrote X, in a manner calling for pity, in his latter of complaint to Strasbourg. Then he got upset at the thought of being punished, in case of refusal to work in the labour institution, with solitary confinement, sleeping hard, and deprival of privileges. Moreover, the

prisoner only receives 25 Groschen an hour for his work. "Even if I have had my shortcomings, I do wish to obtain my right", he concluded his letter.

It was asserted at the Regional Court of Vienna that this letter will be forwarded to the Commission of Human Rights although it contains defamatory and incorrect statements ..."

Proceedings before the Commission

Whereas the proceedings before the Commission may be summarised as follows:

By its partial decision of 1st April, 1966, the Commission declared certain parts of the Application inadmissible and decided to invite the Respondent Government, in accordance with Rule 45, paragraph 3 (b), of the Commission's Rules of Procedure, to submit its observations on the admissibility of the Applicant's complaint that the Austrian authorities had violated his right to respect for his correspondence within the meaning of Article 8 of the Convention.

The Government submitted its observations on 31st May, 1966, and the Applicant replied by letter of 8th June, 1966.

The Commission resumed its examination of the case on 14th, 15th and 19th July, 1966, and decided to ask the Government to submit further comments in regard to a number of specific points.

The Respondent Government submitted, on 27th September, 1966, the comments requested by the Commission, and the Applicant replied by letter of 9th October, 1966. The Applicant also made certain further submissions dated 14th November, 1966.

The Commission continued its examination of the Application on 14th December, 1966. On this occasion, the Commission considered it essential to obtain certain further documents regarding the case and instructed its Secretary to ask the Applicant to submit these documents or, if necessary, to obtain them from the Government.

The Applicant subsequently informed the Commission that he was unable to produce the documents concerned, but these were submitted on 1st March, 1967, by the Respondent Government.

Submissions of the Parties

Whereas the submissions of the Parties may be summarised as follows:

I. Exhaustion of domestic remedies

The Government submitted that the Application was inadmissible on the ground that the domestic remedies had not been exhausted within the meaning of Article 26 of the Convention. In the Government's opinion, there were two remedies which the Applicant ought to have exhausted, namely, (a) appeal to the Constitutional Court (Verfassungsgerichtshof) and (b) criminal charge (Strafanzeige).

(a) Appeal to the Constitutional Court

The Government submitted that the Applicant could have lodged a constitutional appeal in accordance with Article 144 of the Federal Constitutional Act (Bundes-Verfassungsgesetz). It was true that this provision only provided for appeals from formal decisions (Bescheide) of administrative authorities but, according to the consistent practice of the Constitutional Court, not only decisions but also factual official acts (faktische Amtshandlungen) could be challenged under Article 144 of the Federal Constitutional Act. According to the Government, the fact of communicating the contents of letters which had

become known to officials while performing their task of controlling the correspondence of prisoners could, in accordance with the consistent practice of the Constitutional Court, certainly be qualified as a factual official act.

The Government further pointed out that the Convention was an integral part of Austria's domestic legislation and had the status of a Federal constitutional act. The Constitutional Court, it was true, had decided that Articles 5, 6, 11 and 13 of the Convention were not self-executing. Such a decision of the Constitutional Court did not exist in regard to Article 8 of the Convention. The fact that the Constitutional Court had not yet had to deal with this provision of the Convention did not make any difference. Consequently, everybody could be expected to institute, in accordance with Article 144 of the Federal Constitutional Act, proceedings with the Constitutional Court for a violation of Article 8 of the Convention and such proceedings could not in advance be said to the hopeless. Consequently, before appealing to the Commission, the Applicant ought to have submitted his complaint to the Constitutional Court.

The Commission, on 19th July, 1966, decided to ask the Government for further information as to whether a constitutional appeal had been available to the Applicant in the circumstances of the present case. Information was requested on two specific points. First, the Commission had observed that, according to the Applicant, he did not know which public authority he should consider responsible for the alleged transmission of information to the press. The Commission therefore wished to be informed whether in these circumstances it would have been possible to lodge a constitutional appeal or whether there would have been an obstacle by reason of the fact that the Applicant could not bring proceedings against any particular authority. Secondly, the Commission pointed out that the Applicant's correspondence had apparently been censored by an official at the Regional Court for Criminal Cases. Consequently, the Commission wished to know whether the Applicant, if he considered that information had been given to the press by an official at this Court, could have raised this allegation before the Constitutional Court; or whether that Court would not have been competent to deal with the allegation on the ground that it concerned a court and not an administrative authority (see the wording of Article 144 of the Federal Constitutional Act: "appeals against decisions of the administrative authorities").

The Government, in its reply, pointed out that as a matter of principle, the legal questions raised by the Commission could only be finally answered by the Austrian courts themselves. The Government, however, referred to a decision (Slg. 3062) in which the Constitutional Court had pointed out that the administrative decision which an Applicant alleged to have violated one of his constitutional rights formed the subject of a complaint under Article 144 of the Federal Constitutional Act. In the same decision the Constitutional Court had added that it was immaterial if the complainant in his complaint named the wrong authority. In such a case the Constitutional Court could ex officio cite the authority which was in fact responsible for the decision forming the subject of the complaint.

In proceedings under Article 144 of the Federal Constitutional Act a factual official act was equivalent to a written administrative decision (see Decision Slg. 1542 of the Constitutional Court). The alleged transmission by a State official of the Applicant's correspondence with the Commission could be regarded as a factual official act within the meaning of the jurisprudence of the Constitutional Court. In this context mention could be made of Decision Slg. 2694, in which the Constitutional Court had ruled that the publication by a press release of a specific measure taken by an authority was a factual official act where the press release was not ordered by written administrative decision, and that a complaint under Article 144 of the Federal Constitutional Act could be lodged in such

a case.

Arguing from these decisions of the Constitutional Court, which were in complete accord with the wording of Article 144 of the Federal Constitutional Act, and of Article 82 of the Constitutional Court Act of 1953, where it was not stipulated that the authority should expressly be named, the Applicant could have resorted to the Constitutional Court on the ground of the alleged violation of Article 8 of the Convention. In his complaint to the Constitutional Court, the Applicant would have been obliged to name the official act which in his view violated one of his constitutional rights. But it would not have been absolutely necessary to name the State official or agency responsible for the act in question. It would only have been necessary - as, incidentally, in the present proceedings before the Commission - to prove that the act concerned was a specific official act. In compliance with its own Decision Slg. 3062, the Constitutional Court would ex officio have cited the authority responsible for this act.

The Government further submitted that a complaint to the Constitutional Court within the framework of proceedings under Article 144 of the Federal Constitutional Act was not a priori excluded by the fact that it was an official of the Regional Court who was alleged to have violated Article 8 of the Convention. From the competence of the Constitutional Court under Article 144 of the Federal Constitutional Act acts of "jurisdiction" were excepted. But courts were active not only in the field of jurisdiction but also in the field of administration ("judicial administration" as provided by Article 87 of the Federal Constitutional Act). To this extent the acts of a court did come under constitutional jurisdiction and were subject to the proceedings provided by Article 144 of the Federal Constitutional Act (see for example Decision Slg. 3701 of the Constitutional Court).

The Applicant first maintained that under Austrian law he must, if an appeal of his was dismissed, be informed orally or in writing to which authority he could apply for the further protection of his rights. This had not been done in the present case and he had therefore not been aware of the possibility of appealing to the Constitutional Court. Subsequently, he also contested that an appeal to the Constitutional Court had been available and referred to a letter which he had received from the President of the Constitutional Court. In this letter, dated .. October, 1966, the President had stated as follows:

"Under Article 144 of the Federal Constitutional Act, the Constitutional Court may decide on appeals against decisions (Bescheide) of the administrative authorities. Since your letter does not refer to any such decision, it cannot be treated as an appeal within the meaning of Article 144 of the Federal Constitutional Act."

The Commission found it necessary also to have the text of the letter which the Applicant had sent to the Constitutional Court and to which the President of the Court had replied as indicated above. The letter is dated .. October, 1966, and concerned complaints regarding the Applicant's internment in a labour institution and the lawfulness of labour institutions in general. In respect of the publication of the Applicant's correspondence in the press, the letter contains the following statement by the Applicant:

"I do not wish to deal, in this connection, with the publication of my letters in the press, since the High Commission has already been dealing with this question since 18th February, 1966, under file No. 2742/66, according to Articles 6 and 8."

(b) Criminal charge

The Respondent Government also submitted that there was a further remedy which the Applicant should have exhausted. The act of which he complained was punishable according to Article 102, paragraph (c), of

the Austrian Penal Code which subjects to punishment "whoever in a dangerous manner divulges an official secret entrusted to him; whoever destroys a document (Urkunde) entrusted to him in his official function or, contrary to his duty, discloses it to somebody". Consequently, the Applicant would have had the possibility to lodge a criminal charge (Strafanzeige) and, if necessary, to bring a "subsidiary charge" (Subsidiarantrag) according to Article 48 of the Code of Criminal Procedure (Strafprozessordnung). However, by not using these remedies he had failed to comply with Article 26 of the Convention.

The Commission, on 19th July, 1966, decided to ask the Government for further information as to whether the alleged act constituted a criminal offence under Austrian law since otherwise the remedies concerned would not be applicable. First, the Commission wished to be informed of the exact provision of Article 102, paragraph (c), of the Penal Code which was considered by the Government to cover the circumstances of the present case and, in particular, as to whether the letters concerned were to be considered as "documents" (Urkunden) within the meaning of Article 102, paragraph (c). Secondly, the Commission drew the Government's attention to Article 1 of the 1870 Act for the Protection of the Secrecy of Letters and Documents (Gesetz zum Schutze des Brief- und Schriftengeheimnisses) which gives protection against "unlawful opening or suppression" of letters and documents. The Commission asked the Government to indicate whether it considered this provision to be applicable to the present case.

The Government, in its reply, emphasised that the authoritative interpretation of the provisions concerned was a matter for the Austrian courts.
It pointed out, however, that Article 101 of the Penal Code gave a general description of the crime of abuse of official powers and then indicated who was to be regarded as an official in this context; the following Article 102 added some "particular cases" of abuse of official powers. The provisions of Articles 101 and 102 of the Penal Code in its present version were the following:

"Article 101: Any official of the State or a municipality who in his official position in whatever manner it may be abuses the powers entrusted him with intent to cause detriment to somebody, whether it be the State, a municipality or some other person, shall be guilty of a felony; regardless whether he be induced by self-interest or any other passion or intention.

Whoever by force of a direct or indirect public appointment is engaged to transact government business, regardless whether or not he has taken an oath of office, shall be regarded as an official.

Article 102: Under such circumstances this felony is in particular committed by:

(a) a judge, public prosecutor or other government official, and generally any official on active duty, who refrains from fulfilling his official duties;

(b) any official, including notaries public, drawing up or executing legal instruments, who in an official matter testifies to untrue facts;

(c) whoever in a dangerous manner divulges an official secret entrusted to him; whoever destroys a document entrusted to him in his official function or, contrary to his duty, discloses it to somebody;

(d) a lawyer or other sworn attorney who, to the detriment of his party, assists the opponent in the drawing up of legal papers or in some other manner advises or aids him.

Furthermore, any official who in the exercise of his official duties or services trespasses on the privacy of a person's home or on a

person's freedom by illegally restricting his personal freedom or depriving him thereof shall also be guilty of the felony of abuse of official powers."

The Government further stated that Article 1 of the Act of 6th April, 1870, RGBl. No. 42. for the Protection of the Secrecy of Letters and Documents read as follows:

"The wilful violation of the secrecy of letters of other sealed papers by unlawful opening or suppression of them shall be punished as a misdemeanour, unless a severer provision of general criminal law is applicable to such a violation. When committed by an official or public servant or some other person entrusted with public business in the exercise of his duties or services, such a misdemeanour shall be punishable by a term of imprisonment not exceeding six months and, in other cases, by a fine not exceeding 25,000 Schillings or a term of imprisonment not exceeding three months.

In the latter case a criminal prosecution shall not be instituted unless this is requested by the person whose right has been violated."

Under Article 102, paragraph (c), of the Penal Code the felony of abuse of official powers was committed by:

1. an official who in a dangerous manner divulges an official secret entrusted to him;
2. an official who destroys a document entrusted to him in his official function;
3. an official who, contrary to his duty, discloses to some other person a document entrusted to him in his official function.

It was, according to the Government, the first and the third offence which must be discussed in the present connection.

Matters entrusted to an official in his official function were all matters of which he was informed only because of his official position, i.e. any information he obtained in the performance of his official duties (Supreme Court Decisions of 3rd January, 1936, SSt XVI/1, and of 20th April, 1956, SSt XXVII/20; cf. Rittler, Lehrbuch des österreichischen Strafrechts, 1962, Volume II, page 407). An official secret was any fact of which an official only learned in the performance of his official duties and whose secrecy was necessary in the interest of an authority or of the parties involved (Article 20 of the Federal Constitutional Act; Article 23 of the Civil Service Regulations of 25th January, 1914, RGBl. No. 15; Article 58 of the Judiciary Act, BGBl. No. 305/1961; Article 5 of the Contract Officers Act, BGBl. No. 86/1948). An official secret was not necessarily a State secret. It might just as well relate to private affairs. Facts which had been discussed in public proceedings lost their secret character (Rittler, Volume II, page 408). "In a dangerous manner" as used in this passage of the Act meant that an official secret had been disclosed in circumstances in which a damage or loss might be caused to somebody (Supreme Court Decisions of 3rd January, 1936, SSt XVI/1, of 12th December, 1952, SSt XXIII/101 and of 20th April, 1956, XXVII/20). The intention to violate the State's right to secrecy did not suffice to make the betrayal of a secret a punishable act; rather, the intent of the offender must also have been influenced by the possibility of causing some other loss or damage in addition (Supreme Court Decision of 6th March, 1950, Evidenzblatt No. 285/1950). The intention to violate the right to privacy of correspondence was not sufficient in this context; rather, the intent must have been to cause some concrete damage or loss, though this need not be of a material nature.

Divulging an official secret meant disclosing it (Supreme Court Decision of 3rd January, 1936, SSt XVI/1). A document was any statement which was embodied in a readable form, provided that it constituted evidence (Rittler, Volume II, page 438 et seq.). The protection of

Article 102, paragraph (c), of the Penal Code was extended to public and private documents. It could be assumed that the application dated 11th October, 1965, and the reply of the Secretary to the Commission dated 18th October, 1965, were documents within the meaning of this legal provision. A document was entrusted to an official if he received it through official channels (Supreme Court Decision of 28th October, 1948, Evidenzblatt No. 232/1949). "Disclose" meant any act by which a third party was given access to the document, regardless whether that party only inspected it or was allowed to copy it or make use of it in some other manner (Supreme Court Decision of 16th May, 1898, KH 2212).

According to Article 1 of the Act for the Protection of the Secrecy of Letters and Documents, one of the cases in which an infraction of this Act was committed was, in the Government's opinion, the case of an official who wilfully violated the privacy of sealed letters (or papers) by unlawfully opening or suppressing them. The applicability of this penal provision depended on the condition that the unlawful opening or suppression was not subject to a severer provision of general criminal law (Supreme Court Decision of 29th January, 1934, SSt XIV/7; Rittler, Volume II, page 89 et seq. and page 409). The criminal offence defined in Article 1 of the Act for the Protection of the Secrecy of Letters and Documents was perpetrated by the mere opening of the sealed letter (or paper), i.e. by tearing or cutting it open or by using chemical methods, etc., or by its suppression. It was not required that a third party by acquainting himself with the contents of the letter (or paper) trespassed on the privacy existing between the writer of the letter (or paper) and the addressee (Supreme Court Decision of 24th October, 1949, Evidenzblatt No. 107/1950; Rittler, loc. cit.). It was only after the sealed letter or paper had unlawfully been opened that making accessible its contents to a third party became an offence punishable under Article 1 of the Act.

In summary the Government submitted that Article 102, paragraph (c), of the Penal Code could be cited if an official given all the other prerequisites, had betrayed a secret with intent to cause the party concerned a concrete damage or loss, beyond the State's right to secrecy and the right to privacy of correspondence.

Article 1 of the Act for the Protection of the Secrecy of Letters and Documents could be applicable if an official other than a judge (i.e. a prison officer, or an official in the "Einlaufstelle", "Vollzugsabteilung" or "Geschäftsstelle" departments of the Vienna Regional Court) had unlawfully opened the letters concerned at a time when they were sealed. Since there were no facts which might give rise to such a suspicion no reference had so far been made to this provision.

The Applicant pointed out, in particular, that the Public Prosecutor had the duty to institute criminal proceedings ex officio irrespective of whether the victim of the offence submitted a complaint to him. In the present case, the Applicant had complained to the authorities, even to the Ministry of Justice which was the supervising authority in respect of the Public Prosecutor, and it would therefore have been the task of the Public Prosecutor to institute proceedings ex officio, on the basis of these complaints. Consequently, the Applicant did not consider that his failure to lodge a criminal charge could be held to constitute a failure to satisfy the requirements of Article 26 of the Convention.

II. The question as to whether the Application is manifestly ill-founded

The Respondent Government informed the Commission that extensive enquiries had been made by the Austrian authorities but that it had not been possible to clarify how the newspapers had obtained information about the correspondence concerned. In any case, there was no reason to assume that any official had forwarded information to the press.

On the basis of the enquiries made, the Government submitted that on 11th October, 1965, S, a court guard, had taken over from the Applicant a letter in a closed envelope which was addressed to the Commission. Mr. S had passed that letter, whose contents were unknown to him, on to the incoming-mail-bureau of the Regional Court for Criminal Cases of Vienna, which had submitted it to Dr. F, the competent judge.

The latter had stated that the Application addressed by the prisoner to the Commission as well as the Commission's reply to the Applicant had been submitted to him for censoring. He had not informed any third person, in particular any press reporter, of that letter. However, the Applicant, in a great number of letters to third persons, had notified the contents of his petitions to the Commission as well as the contents of the latter's replies. This had been admitted by the Applicant, who had been heard on this matter on .. May, 1966; but he had held that this could not have resulted in the contents of his respective letter to the Commission having been published in part literally in newspapers already two days after dispatch of the letter. For, he said, he had neither literally repeated in his letters to third persons the contents of his Application nor had he written to any person whom he could assume to be connected with the press.

The court officers and guards who, within their sphere of duty, had had to do with the Applicant's correspondence had stated concordantly that they had not known the contents of these letters and that for this reason they could not have furnished any information to daily papers.

In an application, dated .. December, 1965, the Applicant had complained to the Federal Ministry of Justice that his correspondence with the Commission had been published in daily papers.

Dr. F had pointed out in his observations to that application on .. December, 1965, that the Applicant himself had declared in the court room at the end of the final hearing that he intended to lodge an application with the Commission for being sent to a labour institution and he had written this in nearly all of his letters.

By its decree of .. January, 1966, the Federal Ministry of Justice had informed the Applicant that it had not found any reason for issuing an order in its capacity of supervising authority.

The Commission, on 19th July, 1966, decided to ask the Government for further information on certain points. First, the Government was asked to comment on the following passage in the article in the Arbeiter-Zeitung: "It was asserted at the Regional Court of Vienna that this letter will be forwarded to the Commission of Human Rights although it contains defamatory and incorrect statements". Secondly, the Government was asked to indicate whether the Applicant had himself had the possibility of communicating with the press during the relevant time and, in this connection, to submit information from the prison records as regards any letters sent by him and any visits received by him in the periods of 11th-14th October and 18th-26th October, 1965.

The Government replied that investigations had shown that the author of the article in the Arbeiter-Zeitung refused to disclose his source of information, invoking the journalists' code of ethics. He had stated, however, that the only purpose of the passage in question had been to inform the readers that applications of prisoners to the Commission are passed on in all circumstances, even if they contains insults and false allegations. This had not been based on any piece of information which had led to the writing of the article in question but was a widely known fact.

The Government further stated that Dr. F, when heard again on .. August, 1966, had referred to his previous statements. He had then declared that, as far as he remembered, it was not after the sentence

had been read and the Applicant had asked to be given time to consider an appeal that the Applicant in conversation with a person in the court room had made a remark concerning an application under the Convention, but after the end of the trial. At that time the public had been leaving the court room. The Applicant had been calm and composed at the end of the trial.

In the present matter, besides the competent judge and the Applicant, all officials had been closely questioned who were responsible for the receipt of the letters in question, for their submission to the judge, and for their dispatch. All of the officials questioned as well as the competence judge had made convincing statements to the effect that they had not informed the press of the contents of the two letters.

With reference to the records of the prison department concerned, the Director of the Prison had reported that the Applicant on 11th October, 1965 had written a letter to the Commission and on 21st October, 1965, a letter to a certain K. These letters had been dispatched without a special permit. On 26th October, 1965, the Applicant had asked the competent judge for special dispatch of a letter, on the ground of "urgent family affairs".

As regards visitors, the Applicant had seen his defence counsel, Dr. M, on 11th October, 1965.

The Applicant contested that he had forwarded any information to the press and submitted that he had not even had the opportunity of doing so during the relevant periods. He stated that he had not received the Secretary's letter of 18th October, 1965 until 25th October, 1965 and, in support of this statement, he produced in evidence the envelope of that letter which bears the official stamp of the Regional Court dated 25th October, 1965. He also indicated that the article about this letter appeared in the newspaper Express of 26th - 27th October, 1965. The Applicant submitted that he had no opportunity of communicating with the press between the receipt of the letter and the publicity about it in the press, in particular as, having sent a letter to a friend on 21st October, he had not been allowed, according to the prison rules, to send another private letter until 4th November. He pointed out that on 26th October he had not sent any letter but only asked for permission to send one.

He maintained that the only possibility was that the newspapers had been informed by the authorities and he pointed out that the article in the Arbeiter-Zeitung contained a reference to information given by the Regional Court. He had not, in connection with the court hearing, made any declaration regarding his Application to the Commission and in any event a statement made on 8th October, 1965 could not be the source of information regarding his letter of 11th October, 1965.

THE LAW

Whereas Article 26 (Art. 26) of the Convention provides that "the Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law";

Whereas the Respondent Government has submitted that, in regard to the alleged violation of Article 8 (Art. 8) of the Convention, there were two remedies which the Applicant should have exhausted, namely, an appeal to the Constitutional Court and a criminal charge (Strafanzeige);

Whereas, as indicated above, the Commission found it necessary to ask the Government for further information as to the applicability of these remedies in the circumstances of the present case;

Whereas, on the basis of the further information provided by the

Government, the Commission is satisfied that, having regard to the jurisprudence of the Austrian Constitutional Court regarding "factual official acts" (faktische Amtshandlungen) the Applicant could have lodged a constitutional appeal in respect of the alleged disclosure by the authorities of the contents of his correspondence;

Whereas the Applicant has objected that, in a letter which he had received from the Constitutional Court, it was indicated that Court was only competent to deal with appeals against formal administrative decisions; whereas the question therefore arises as to whether the Applicant was justified, in view of this information received from the Court itself, in assuming that no appeal was available in his case;

Whereas it appears that the letter concerned was written in reply to a letter by the Applicant, in which he raised certain complaints;

Whereas the terms of this letter show clearly that these complaints did not relate to the alleged disclosure of the contents of his correspondence;

Whereas, indeed, the Applicant expressly stated in his letter to the Constitutional Court that he did not wish to raise before the Court the question of the publication of his correspondence;

Whereas, consequently, the reply which was given by the President of the Constitutional Court did not concern the present complaint and can in no way be considered to have absolved the Applicant, according to the generally recognised rules of international law, from submitting this complaint to the Constitutional Court;

Whereas it follows that, by failing to lodge a constitutional appeal, the Applicant has not satisfied the condition as to the exhaustion of domestic remedies laid down in Article 26 (Art. 26) of the Convention;

Whereas, in these circumstances, it is not necessary to examine the question whether the Applicant should also have exhausted any further remedy in order to comply with Article 26 (Art. 26) of the Convention;

Whereas similarly the Commission has not found it necessary to examine whether the Applicant's complaint was inadmissible on any other ground;

Now therefore the Commission,

Having regard to its partial decision of 1st April, 1966, declares the remainder of the Application inadmissible.