THE FACTS

Whereas the facts presented by the applicant may be summarised as follows:

The applicant is a Norwegian citizen, born in .... and residing in Oslo. He is a mining engineer and lawyer by training.

1. In 1957 the applicant was appointed ad interim Head of Division (byråsjef) in the Ministry of Industry and Handicrafts (Department for industri og håndverk) and in 1962 this appointment was made permanent. In addition to being in charge of the Ministry's Mining Division (Bergverkskontoret) the applicant had a number of other responsibilities in connection with the Ministry's work. Inter alia, he was a member of the Board of A/S G., a mining company owned by the Norwegian State, and was responsible for the planning and execution of tests and pilot-plant projects in relation to the use of Spitsbergen coal for cooking purposes.

2. From the applicant's statements and numerous documents he has submitted, it appears that on .. October 1963, the Oslo City Court (byrett) issued a warrant authorising the search of his home in Oslo and of a summer cottage on suspicion of his having committed offenses in office. On .. October, 1963 the applicant was remanded in custody on suspicion of gross breach of confidence. The applicant remained in custody for 244 days until .. June 1964. It appears that except for the first day, the applicant was detained in a hospital during the entire period.

The applicant complains that the police seized and removed from his home about 7,000 documents, 5,000 of them being papers received from the United Nations, relating to mine security, examination papers and other irrelevant documents. He also states that he has never owned the cottage mentioned in the search warrant.

Documents seized by the police, including the papers of his private diaries were then stamped with the text "Oslo Police Authority - Criminal Investigation Department". The police also allegedly supplied the press with information emanating from documents taken from his home.

The applicant further complains that, while in detention on remand, he was kept in solitary confinement and refused permission to receive visits, read newspapers, to send or receive any letters or to listen to radio or television.

On .. December 1963, the applicant applied for permission to take out of his home his Bible in English translation and one volume of Gibbon's "Decline and Fall of the Roman Empire". This request was, however, refused.

In this connection the applicant states that he has no complaint against the prison authorities but only against the police and the Government. According to the applicant he lodged an appeal in respect of the restrictions to which he was subject during his detention but his appeal was rejected by the Eidsivating Regional Court (lagmannsrett). He has not, however, submitted copies or details of any court decisions taken with regard to his detention.

He alleges that the conditions under which he was detained amounted to a violation of Article 3 of the Convention.

3. On the day of the applicant's arrest a Member of Parliament (Stortinget) put a question to the Government concerning the conditions at the Ministry of Industry. The Prime Minister replied to this

question on .. October and stated that an enquiry would be opened. He also gave a summary of the matters in which the applicant was involved.

On .. November 1963, the Crown Prince Regent accordingly set up a Committee of Inquiry, consisting of three members, in order to examine the administration of the Ministry of Industry. Mr. F. the Chief Judge of the Oslo City court was appointed Chairman of the Committee. This judge had previously issued the search warrant of .. October 1963.

On .. August 1964 the Committee submitted its report to the Government. In addition to this report which was published, the Committee made a report on certain matters relating to the mines on Spitsbergen which was confidential for reasons of foreign policy. The former report dealt with all aspects of the Ministry's work and included a detailed examination of the matters which were the subject of the criminal proceedings against the applicant. In this connection, the report referred to statements made by the applicant and certain witnesses to the police.

4. By a Royal decree of .. May 1965, the applicant was indicted on a number of charges concerning offenses committed in office. The indictment consisted of four parts: part A dealing with matters connected with the sale of coke produced experimentally from Spitsbergen coal, part B concerning the filing of claims for travel expenses and parts C and D on matters relating to the winding-up of S. and A/S G. respectively.

The applicant's trial before the Eidsivating Regional Court opened on .. November 1965, the Court decided, however, that parts A and B should be referred to the jury (lagretten) separately, while the examination of parts C and D should be adjourned in the meantime as provided in Art. 315 of the Code of Criminal Procedure (straffeprosessloven).

Subsequently, the Court decided on .. December 1965 to split up the proceedings further and also adjourned the examination of part B. The jury returned its verdict as to part A on .. December. The applicant then appealed against the verdict and requested that the Regional Court should adjourn the proceedings until the Supreme Court (Hoyesterett) had decided on his appeal. The Regional Court granted this request but decided, at the same time, that part A should be disjoined from the remainder of the charges (B), (C) and (D) as provided in Art. 134 of the Code of Criminal Procedure, and that a separate judgment should be given in respect of part A.

On .. January 1966, the Regional Court accordingly convicted the applicant on two counts of aggravated breach of confidence, three counts of aggravated embezzlement and one count of false statement contrary to Art. 120 of the Penal Code (straffeloven) and sentenced him to two years' imprisonment from which the period spent in detention on remand should be deducted. He was further ordered to pay to the State damages to the amount of 53,460 Norwegian Crowns.

The applicant appealed against conviction and sentence, on the grounds, inter alia, that the different parts of the case should not have been separated under Article 315 of the Code and that he had been prevented from commenting on the details of the charges which had been adjourned.

In its judgment of .. March 1966, the Supreme Court rejected the applicant's appeal but reduced the sentence to one year and three months' imprisonment.

5. The proceedings as regards parts B, C and D were then resumed before the Regional Court but the Public Prosecutor subsequently decided to drop the charges in part B and on one of the counts in part C. Accordingly, these parts of the case were discontinued by decisions taken by the Regional Court on .. September 1966, and .. January 1967, respectively.

In September 1966, the applicant challenged two members of the jury, Mrs. R. and Mr. D., on the ground of partiality. After D. had asked to be discharged for health reasons from his duties as a juror, the applicant withdrew his challenge against him. The court then discharged D..

The applicant's challenge of Mrs. R. was only based on the fact that she was the godchild of Mr. S.., a lawyer and the owner and chairman of the board of the newspaper Agderposten, against whom the applicant had brought a number of private charges for libel in connection with articles published in the paper.

In its decision of .. September 1966, the Court first held that at that time, it had no competence to consider whether or not Mrs. R. should have taken part in the verdict given on .. December 1965, but only her ability to participate in the subsequent proceedings. The Court found, however, that the mere fact that the juror concerned was the godchild of a person who had an interest in the applicant being convicted could not as such disqualify her. Furthermore, it was clear from Mrs. R's own statements that her personal relationship with Mr. S. was so remote that the affinity between them could not affect confidence in her impartiality.

On .. June 1967, the Regional Court gave its judgment. The applicant was this time convicted on six counts of aggravated breach of confidence, on one of breach of confidence and of having committed offenses against Article 120 of the Penal Code on five occasions, whereas he was acquitted on five other counts.

Relying on the provisions of Article 62 of the Penal Code, the Court imposed a common sentence of two years and six months' imprisonment for the above offenses and the offenses for which he had been sentenced by the Supreme Court on .. March 1966. He was also ordered to pay further damages to the State to the amount of 5,000 Crowns and to A/S G. the amount of 34,130 Crowns.

The applicant's subsequent appeal against sentence and conviction was rejected by the Supreme Court on .. October 1967.

7. The applicant alleges violations of Articles 3 and 6 of the Convention. He claims, in particular, that he was not given a fair trial in accordance with Article 6 (1), and that the presumption of innocence guaranteed under (2) of the said Article was not observed during the proceedings. His separate complaints (besides the complaint concerning his detention mentioned under (1) above) may be summarised as follows:

(a) On .. August 1964 the Prime Minister, Mr. Gerhardsen, gave a radio and television speech in which he referred to the accusations of grave misadministration made by many persons against the Ministry of Industry and stated that these persons could now feel somewhat reassured since most of the charges levelled against the Ministry were connected with the applicant who was the only one who had acted dishonourably.

In a talk at the Bergen Press Club a few months later, the Prime Minister referred to the extensive publicity given to the applicant's case. He said that it was debatable whether this had not contributed to the extent and length of the police investigations. In this connection the Prime Minister admitted that he had been in error when he had talked about the applicant's case without adding that the applicant had not yet been convicted, although the Fleischer Committee had pronounced some form of judgment.

(b) The Committee of Inquiry, presided over by Mr. F. had exceeded its mandate to inquire into the administration of the Ministry and throughout its report made groundless accusations against the

applicant. The Committee never heard the applicant himself on the matters for which he was criticised. In addition, the Committee published without authorization statements submitted by witnesses to the police before any court proceedings had taken place and thereby made it impossible for the applicant to get a fair trial.

According to the applicant, one of the three members of the Committee was a cousin of the Norwegian representative of two British firms which had lodged tenders for the construction of a coking plant, plans for which were examined by the Committee.

The police, with or without the knowledge of the Committee, asked a German firm to reply to a detailed questionnaire concerning the coking plant. This was done after the police had decided not to prefer any charges in this respect. The sole purpose of the questionnaire was to induce the German company to reveal certain vital information for the benefit of the above British firms.

The applicant submits that the members of the Committee have subsequently been convicted of libel for having given an untrue account of the contents of a certain letter. It appears that the case is at present pending before the Supreme Court.

(c) The applicant claims that he was also subjected to a "trial by newspaper" before the criminal proceedings had even started and also during the subsequent investigations. In this connection he refers to a large number of detrimental statements in the press published during the autumn of 1963 which included false claims that he had taken bribes and was living in a luxury flat above the standard he could afford on his salary. It was further alleged that he had been an "intimate friend" of a female scrap-dealer, who had originally laid accusations against him and whom he was said to have threatened and beaten. In spite of the libelous character of these articles which were partly based on information given by the authorities the police and Public Prosecutor took no action and the applicant was forced to bring proceedings against about 120 of the 156 newspapers of the country. Indeed, the Attorney General (Riksadvokaten) improperly referred to these proceedings in his handling of the case against the applicant and, in 1965, raised the question with the applicant's counsel as to whether the applicant should undergo a mental examination in view of the many libel actions.

(d) According to the applicant, the police carried out the investigations in an improper and biased manner. In particular, the police visited the applicant's female friends and asked them intimate questions about the applicant. The police also put pressure on certain witnesses to force them to change their evidence. On one occasion a witness for the prosecution was shown a personal letter written by the applicant in which the witness had been referred to unfavourably.

(e) The applicant complains that he was subjected to postal censorship as a parcel sent by him to his defence counsel had obviously been opened at the post office and part of the contents removed. It appears that the parcel concerned was mailed on 18 December 1964. On 8 March 1965 the applicant was informed by the postal authorities that a number of documents had been found in an Oslo post office on 18 December. As the documents were marked with the name of the Ministry of Industry, it was presumed that they had accidently fallen out of a parcel sent to or by the Ministry. They were therefore transmitted to the Ministry which later returned all documents to the applicant with the exception of two documents which were declared to be confidential.

(f) The applicant alleges that he was refused permission to consult documents which were to be used against him by the prosecution. When the police removed all his private documents on .. October 1963, he was not given a receipt or a list of the documents concerned. As a result he was deprived of any chance of defending himself.

It appears that the applicant addressed himself to the Minister of Justice in August 1966, in order to obtain access to the documents. He was then informed that the Ministry had no competence to interfere in this matter. The Regional Court apparently decided that the applicant should be allowed to consult the documents in the presence of his defence counsel.

According to the applicant, his counsel refused, however, to grant him permission to see the case file. It appears from the applicant's submissions that a number of documents seized in his home were returned to him in June 1967 after the Regional Court's second judgment but before he submitted his grounds of appeal. He claims that among these documents he found certain receipts the existence of which had been denied by the Public Prosecutor during the trial. Although he informed the Supreme Court of this, no action was taken by the Court.

(g) The applicant's right under Article 6 to have his case tried by an independent and impartial jury was violated when one juror, Mr. D., asked the applicant during the trial to produce evidence in order to show that the applicant had never voted in any elections. It was also improper that another juror, Mrs. .., took part in the proceedings as her godfather was one of the defendants in four criminal actions brought by the applicant and the organiser of the defence of about 50 newspapers in libel actions brought by the applicant.

(h) During the trial the Presiding Judge and the Public Prosecutor repeatedly referred to a memorial prepared by the latter which contained false information about the applicant.

This document was, however, not given to the defence an when the applicant later asked for a copy, this request was refused by the Presiding Judge on 17 August 1968, on the ground that the evidence which, in accordance with Article 292, last paragraph, of the Code of Criminal Procedure should be submitted by the Public Prosecutor in order to assist the Presiding Judge to conduct the proceedings. Such a statement was never given to the defence. For this reason, the Presiding Judge found himself unable to provide the applicant with a copy or give him any information regarding the statement.

(i) The applicant complains that he had been ordered to pay damages amounting to approximately 90,000 Crowns as compensation for the losses which had allegedly occurred through his handling of the matters concerned. He analyses in detail various items amounting to 69,130 Crowns and maintains that it has not been alleged that he or any of his colleagues had ever received a penny of this amount. The "inhuman and illegal actions" to which the authorities have subjected him are solely based on the prosecution's claim that he had embezzled a sum of 20,000 Crowns during nine years of work in which he had handled roughly a hundred million Crowns. During the period concerned he had dealt with about 9,000 cases. After four years' of investigations he had been prosecuted for having acted contrary to the law on 16 occasions and convicted on 13 of these counts. He submits that, in fact, he has never embezzled anything and the Court would never have accepted the Public Prosecutor's claim if the latter had put forward the receipts he had in his possession instead of embezzling them.

The applicant claims that he submitted detailed information in order to show that the figures relied on by the prosecution were inaccurate. The Courts failed, however, to mention any of these arguments in their decisions.

(j) The applicant also alleges that the auditor consulted by the police during the investigations and subsequently heard by the Regional Court as an expert witness, falsely stated on .. April 1967, that all the books and documents relating to the sale of certain material from A/S G. had been destroyed. However, two days later the applicant found

the books concerned and submitted copies for perjury against the auditor but was later informed that no investigations would be undertaken by the police.

(k) The applicant maintains that it must be contrary to "any legal rule" that the female scrap-dealer was allowed to give evidence to show that she had been an informer during the war and that she had been sentenced to imprisonment for blackmail. She was also allowed to give her evidence behind closed doors on the grounds that she suffered from nerve trouble. Her evidence was intended to give the impression that her income over a period of years had largely gone to "other persons" , i.e. the applicant. In fact, her money had been used for other purposes which could be proved by documents she had hidden.

(l) The applicant further complains that his official defence counsel, Mr. T. forced his sister to pay a fee of 25,000 Crowns in spite of the fact that he had already been paid. Later an amount of 3,750 Crowns was reimbursed and the applicant was given a receipt for a further 6,000 in order to present it to the Minister of Justice which, however, refused to pay the amount.

The applicant states that his counsel refused him permission to examine the documents in the case file. After the trial the applicant again requested to see the documents concerned as he was certain that a number of these had been "embezzled". However, Mr. T. and his son, who had taken over the case from his father, still refused to hand over the documents to the applicant or another lawyer instructed by him. Part of the documents had to be handed over to the applicant as a result of an order issued by the Court in a libel case.

(m) The applicant maintains that certain statements in the Regional Court's judgments of .. January 1966, and .. June 1967, were incorrect. On the ground of two such statements the applicant brought a private charge for libel against the three judges who had taken part in these decisions. On .. June 1968, the Oslo City Court dismissed, however, the case on the ground that the action had been brought one day too late and therefore was statute-barred. This decision was set aside by the Agder Regional Court on .. November 1968, but finally on .. February 1969, the Supreme Court by two votes against one, confirmed the City Court's decision.

8. The applicant has also made frequent references to the various court proceedings brought by him against newspapers and a news agency for libel. It appears that about 70 such cases have been terminated although five cases are apparently still pending before the Supreme Court. The applicant has, however, declared that in his present application he does not wish to make any complaints in this respect.

THE LAW

Whereas, insofar as the applicant complains of his detention on remand and the conditions under which he was detained, Article 26 (Art. 26) of the Convention provides that the Commission may only deal with a matter "within a period of six months from the date on which the final decision was taken"; whereas the applicant has not submitted any information as to the decisions taken by the competent courts in respect of his detention; whereas, however, the applicant was released from detention on remand on .. June 1964, and it can, therefore, be assumed that any court decision relating to his detention was taken prior to his release; whereas the present application was not submitted to the Commission until 5 November 1967, that is more than six months after the date of any such decision; whereas, furthermore, an examination of the case does not disclose the existence of any special circumstances which might have interrupted or suspended the running of that period; whereas it follows that this part of the application has been lodged out of time (Articles 26 and 27 (3) (Art. 26, 27-3), of the Convention);

Whereas, as to the applicant's complaints regarding the seizure of documents in his house, Article 26 (Art. 26) of the Convention also provides that the Commission may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law; and whereas the applicant had the possibility of making to the City Court and, subsequently, to the Regional Court a formal application for the return of any documents which had been seized; whereas the applicant has again not submitted any information as to any decisions taken by the competent courts in this regard and he has therefore failed to show that he availed himself of the remedies available to him in this respect under Norwegian law; whereas therefore, the condition as to the exhaustion of domestic remedies laid down in Articles 26 and 27 (3) (Art. 26, 27-3) of that Convention has not been complied with by the applicant;

Whereas, the applicant then complains that the manner in which the F. Committee carried out its inquiry violated Article 6 (Art. 6) of the Convention which provides (paragraph (1) (Art. 6-1)), that in "the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law";

Whereas it is clear that the F. Committee was a committee of inquiry set up for the sole purpose of investigating and reporting to the Government on the administration of the Ministry of Industry and it was not therefore a tribunal concerned with the determination of the applicant's civil rights or obligations or of any criminal charge against him; whereas, accordingly, the provisions of Article 6 (Art. 6) of the Convention do not apply to the proceedings before this Committee and this part of the application is thus incompatible with the provisions of the Convention and must be rejected in accordance with Article 27, paragraph (2) (Art. 27-2), of the Convention;

Whereas, insofar as the applicant complains of his convictions and sentences and of the assessment of the damages he was ordered to pay, 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 rights and freedoms set forth in the Convention and especially in Article 6 (Art. 6) of the Convention which has been invoked by the applicant in this regard; whereas, in respect of the judicial decisions complained of, the Commission has frequently stated that in accordance with Article 19 (Art. 19) of the Convention its only task is to ensure observance of the obligations undertaken by the Parties in the Convention; whereas, in particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where the Commission considers that such errors might have involved a possible violation of any of the rights and freedoms limitatively listed in the Convention;

Whereas, in this respect, the Commission refers to its decisions Nos. 458/59 (X. v. Belgium - Yearbook, Vol. III, p. 233) and 1140/61 (X. v. Austria - Collection of Decisions, Vol. 8, p. 57); and whereas there is no appearance of any such violation in the proceedings complained of;

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

Whereas, however, the Commission has also examined separately the applicant's various complaints concerning the conduct of the court proceedings against him. It has first had regard to the applicant's complaints concerning the manner in which the police and the Public Prosecutor conducted the investigations and, in particular, to the allegation that the prosecution lost or suppressed documentary evidence

of vital importance; whereas the Commission has considered these complaints under the provisions of Article 6, paragraph (1) (Art. 6-1), of the Convention, cited above, which guarantee to everyone charged with a criminal offence "a fair and public hearing .... by an independent and impartial tribunal ...";

Whereas the Commission observes in particular that it results from the applicant's own submissions that the case file was made available to his counsel before the trial and that the Regional Court also ruled that the applicant should be allowed to consult the file in the presence of his counsel; whereas, accordingly, the documents on which the prosecution relied were known to the defence which also had the opportunity of producing such further documents as it found necessary;

Whereas the Commission does not find, therefore, that the courts failed in their duty to ensure that the applicant's defence could properly be carried out or that his trial for these reasons took place in such conditions as to put him unfairly at the disadvantage with the consequence that he was not given a fair hearing within the meaning of Article 6, paragraph (1) (Art. 6-1), of the Convention;

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

Whereas insofar as the applicant's complaints are directed against the auditor heard as an expert witness at the trial and insofar as he alleges that the auditor made false statements to his detriment, it results from Article 19 (Art. 19) of the Convention that the sole tasks of the Commission is to ensure the observance of the engagements undertaken in the Convention by the High Contracting Parties, being those members of the Council of Europe which have signed the Convention and deposited their instruments of ratification; whereas, moreover, it appears from Article 25 (1) (Art. 25-1), of the Convention that the Commission can properly admit an application from a individual only if that individual claims to be the victim of a violation of his right under the Convention by one of the Parties which have accepted this competence of the Commission;

Whereas it results clearly from these Articles that the Commission has not competence ratione materiae to admit applications directed against private individuals; whereas it follows that in this respect, this part of the application is incompatible with the Convention within the meaning of Article 27, paragraph (2) (Art. 27-2) (see application No. 1599/62, X. v. Austria - Yearbook, Vol. VI, p. 348);

Whereas, however, he also complains that the courts failed to take any action when he offered evidence to them that the auditor's statements were untrue and that thereby they also failed in their duty to ensure that the applicant was given a fair hearing within the meaning of Article 6 (1) (Art. 6-1) of the Convention; whereas the Commission finds that an examination of the case as it has been submitted does not disclose the appearance of any such violation of the Convention; whereas it follows that, in this respect, this part of the application is manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention;

Whereas the applicant further complains that the extensive publicity given to his case by the press before and during the trial, the public statements made by the Prime Minister and the report of the F. Committee made it impossible for him to receive a fair trial;

Whereas the Commission has previously recognised that extensive publicity in a criminal case may in certain circumstances affect the right of a person charged with a criminal offence to have a fair hearing of his case within the meaning of Article 6 (1) (Art. 6-1) of the Convention;

Whereas the Commission has pointed out, in particular, that in cases where laymen participate as jurors in the proceedings, this right may be impaired by a virulent press campaign against the accused which so influenced public opinion, and thereby the jurors, that the hearing can no longer be considered to be a fair hearing within the meaning of the said Article (see the decision on the admissibility of Application No. 1476/62, X v. Austria, Collection of Decisions, Vol. 11, p. 31);

Whereas it is clear that, in the present case, the proceedings against the applicant were widely reported in the Norwegian press and certain newspaper articles contained, particularly in connection with the applicant's arrest in 1963, detrimental statements regarding the applicant's abilities, character and private life; whereas the applicant was a high official in the Ministry of Industry the administration of which had recently given rise to criticism in Parliament and in the press and the institution of criminal proceedings against one of the Ministry's senior officials on suspicion of his having committed offenses in the exercise of his duties would inevitably be given much attention by the public; whereas the statements made by the Prime Minister in Parliament and elsewhere in reply to the accusations of mal-administration made against the Ministry and in commenting on the report of the F. Committee on conditions at the Ministry must be seen against this background and may be considered as having been designed as authoritative comment on a matter of public interest;

Whereas, in any event, the Commission does not find that an examination of the case, discloses any evidence which could lead to the conclusions that the jurors or the judges were influenced by this publicity in reaching their decisions more than a year later, namely in 1965 and 1966, as to the applicant's guilt or that the applicant was in any way prejudiced by this publicity during the extensive examination of his appeals by the Supreme Court, which, it should be noted, sits without a jury;

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

Whereas the applicant has also specifically alleged that two members of the jury were prejudiced against him;

Whereas the Commission observes first, as regards the juror Mrs. R. whom the applicant challenged during the second part of the trial, that the applicant has only based his allegation of bias on her part on the ground that she was the godchild of a person who allegedly had an interest in the applicant being convicted; whereas the Supreme Court itself dealt with this question in its judgment of .. October 1967, and confirmed the trial court's rejection of the applicant's challenge; whereas the latter court had found that this circumstance alone could not disqualify her as a juror and that her personal relationship with her godfather was so remote that the connection between them could not affect confidence in her impartiality; whereas the Commission, having examined the case as it has been submitted by the applicant, finds no reason to adopt an opinion other than that of the Supreme Court; whereas, therefore, this part of the application is also manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention;

Whereas, secondly, as regards the other juror who allegedly asked the applicant whether he could prove that he had never voted in any elections, it is recalled that, under Article 26 (Art. 26) of the Convention, the Commission may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law; whereas the applicant did not formally challenge this juror on grounds of bias which he could have

done during the trial; whereas, therefore, he has not exhausted the remedies available to him under Norwegian law; whereas, therefore, the condition as to the exhaustion of domestic remedies laid down in Articles 26 and 27 (3) (Art. 26, 27-3) of the Convention has not been complied with by the applicant;

Whereas, in regard to the applicant's complaint that the female scrap-dealer was allowed to give evidence against him behind closed doors and that he was not allowed to introduce evidence in order to cast doubt on her credibility, an examination of the case as it has been submitted, including an examination made ex officio, does again not disclose any appearance of a violation of the rights and freedoms set forth in the Convention and in particular of the applicant's right to a fair hearing under Article 6 (Art. 6); whereas the Commission particularly notes the reason given by the Court for a private hearing of the witness concerned was, according to the applicant, the need for the protection of a nervous witness;

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

Whereas the applicant further complains that during the trial the Presiding Judge and the Public Prosecutor repeatedly referred to a memorial prepared by the latter which was never communicated to the applicant or his counsel and which allegedly contained a number of incorrect statements;

Whereas this complaint again raises a question as to whether there has been a violation of the applicant's right under Article 6 (1) (Art. 6-1), to a fair trial and, in particular, of the principle of equality of arms which the Commission has frequently stated to be an essential element of the notion of fair hearing mentioned in the said Article (see e.g. the Reports Ofner and Hopfinger v. Austria, Yearbook, Vol. VI, p. 696, and Nos. 596/59 and 789/60, Pataki and Dunshirn v. Austria, Yearbook, Vol. VI, p. 730-732; see also European Court of Human Rights, Neumeister judgment of 27 June 1968 "As to the Law", paragraph 22 and Delcourt judgment of 17 January 1970, "As to the Law", paragraph 28);

Whereas, the Commission notes that Article 292, last paragraph, of the Norwegian Code of Criminal Procedure stipulates that the Public Prosecutor should, before the trial, submit to the Presiding Judge together with the indictment a short statement of the case and of the evidence concerned; whereas it appears from the letter of 17 August 1968, from the Presiding Judge that the document to which the applicant refers was submitted to him by the Public Prosecutor in pursuance of this provision of the Code, the purpose of which is to provide, for administration as to the problems of law and fact which are likely to arise during the trial having regard to Article 329 (1), of the Code under which the accused shall be examined by he Presiding Judge and not by the prosecution or the defence;

Whereas, the Commission has examined the applicant's complaint concerning the application to his particular case of the provisions of Article 292, last paragraph, of the Code; whereas in this regard the Commission first observes that the applicant has only stated generally that the Public Prosecutor's submission contained inaccuracies without indicating in what way it was incorrect; whereas the Commission further observes that under the relevant provision of the Code of Criminal Procedure (Article 349) the verdict may only be based on evidence taken during the trial;

Whereas, to the extent any material from the Public Prosecutor's statement may have been referred to during the trial, neither the applicant nor his counsel seems to have made any objection during the trial itself or the ensuing appeal proceedings on account of inaccurate

information contained in the statement as now alleged by the applicant;

Whereas, in any event, the Commission finds that an examination of the particular circumstances of the present case, does not warrant the conclusion that the Public Prosecutor's submission in fact prejudiced the applicant's right to a fair hearing and thereby violated the provisions of Article 6 (Art. 6) in that respect;

Whereas it follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 27, paragraph (2) (Art. 27-2), of the Convention;

Whereas, insofar as the applicant's complaints are directed against his defence counsels, it is recalled that the Commission has no competence ratione personae to admit applications directed against private individuals;

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

Whereas the applicant also complains that his correspondence has been subject to censorship; whereas the Commission has in this connection had regard to the provisions of Article 8 (Art. 8) of the Convention which, inter alia, guarantee to everyone the right to respect for his correspondence;

Whereas the applicant has only referred to one particular occasion on which he contends that the authorities have interfered with his correspondence, i.e. the alleged opening and removal of certain documents from a parcel sent by him to his lawyer in December 1964;

Whereas the Commission finds that there is no evidence to support the applicant's allegation that the parcel concerned was opened by the authorities for the purpose of controlling his correspondence at a time when he was no longer in detention; whereas the Commission has also considered the forwarding to the Ministry of Industry of the documents which, according to the postal authorities' letter to the applicant marked with the Ministry's name but gave no indication of the sender or addressee of the mail matter concerned; whereas the Commission here finds that this was a reasonable course to be adopted by the post office and that there was thereby no interference with the applicant's right under Article 8 (Art. 8) of the Convention to respect for his correspondence; n

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

Whereas, in regard to the applicant's complaint that the Public Prosecutor refused to prosecute on the charges laid by him against the trial judges and the auditor who had been heard as an expert witness at the trial, it is to be observed that the Convention, under the terms of Article 1 (Art. 1), guarantees only the rights and freedoms set forth in Section I of the Convention; and whereas, under Article 25 (1) (Art. 25-1), only the alleged violation of one of those rights and freedoms by a Contracting Party can be the subject of an application presented by a person, non-governmental organisation or group of individuals; whereas otherwise its examination is outside the competence of the Commission ratione materiae; whereas no right to have criminal proceedings instituted against judges or private individuals is as such included among the rights and freedoms set forth in the Convention; whereas in this respect the Commission refers to its previous decisions No. 864/60, X v. Austria, Collection of Decisions, Vol. 9, p. 17 and No. 2343/64, X v. Austria, Yearbook, Vol. X, p. 176, (as regards judges) and No. 1599/62, X. v. Austria, Yearbook, Vol. VI, p. 348 and No. 2116/62, X. v. Federal Republic of Germany, Collection

of Decisions, Vol. 23, p. 10 (as regards private individuals); whereas it follows that this part of the application is incompatible with the provisions of the Convention within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention;

Whereas, finally, insofar as the applicant complains of the manner in which the courts handled the private charge brought by him against the judges who had participated at his trial, 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 rights and freedoms set forth in the Convention and in particular of the applicant's right under Article 6, paragraph (1) (Art. 6-1), of the Convention to a fair hearing of his case; whereas, in this connection, the Commission notes that the Supreme Court came to the conclusion that the applicant's action had been brought out of time; whereas it follows that the application is also in this respect manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention;

Now therefore the Commission DECLARES THIS APPLICATION INADMISSIBLE