THE FACTS

Whereas the facts of the case as presented by the Applicant may be summarised as follows:

The Applicant is a German citizen, born in 1923 and at present detained in prison at Bruchsal.

It appears that on .. November, 1958 he was convicted by the Regional Court (Landgericht) of Stuttgart on numerous charges of aggravated theft and attempted aggravated theft and sentenced to 61/2 years' penal servitude (Zuchthaus) and subsequent preventive detention (Sicherungsverwahrung).

In his original Application as well as in many subsequent letters, he complains of various measures taken against him by the prison authorities during his detention at Bruchsal, and he considers that the German authorities have committed perversion of justice (Rechtsbeugung) by constantly rejecting his complaints and appeals regarding the measures taken against him in prison.

His various complaints may be summarised as follows:

1. Detention in a "silence division" (Schweigeabteilung)

The Applicant states that from .. November, 1958 he had to serve his sentence in a so-called "silence-division" (Schweigeabteilung) at the prison of Bruchsal. In such a division, prisoners are not allowed to talk to their fellow-prisoners or to attend cinema performances or similar entertainments. When in the prison yard, such prisoners are to be kept at a distance of at least 10 metres from other prisoners.

The Applicant states that he had to serve his sentence in such a division for almost 6 years. From .. September, 1964, however, he was allowed to serve his sentence under a less severe prison regime.

He maintains that detention in a "silence division" has necessarily fatal effects on any person's physical and mental state. In particular, this is so when a prisoner is kept in such a division and consequently forbidden to speak to other persons for a long period and in his own case such prohibition was enforced for six years. He submits that the establishment of the divisions concerned is not based on any law, but is a measure taken by the Bruchsal Prison Director on his own initiative in order to aggravate the sentences imposed by the courts.

In respect of his detention in a "silence division", the Applicant brought a criminal charge (Strafanzeige) against the prison administration. This charge was rejected on .. June, 1964 by the Office of the Public Prosecutor at the Regional Court (Staatsanwaltschaft bei dem Landgericht) of Karlsruhe and on .. September, 1964 by the Senior Public Prosecutor at the Court of Appeal (Generalstaatsanwalt bei dem Oberlandesgericht) of Karlsruhe. In regard to that decision, he lodged an application for a judicial decision (Antrag auf gerichtliche Entscheidung) with the Court of Appeal (Oberlandesgericht) of Karlsruhe and this application was apparently also unsuccessful.

In August, 1964, he lodged a constitutional appeal (Verfassungsbeschwerde) but, by letter of .. September, 1964 from the Federal Constitutional Court (Bundesverfassungsgericht), he was informed that his appeal did not appear to be admissible since he had not exhausted all other remedies. It was indicated to him that he should first have availed himself of the remedies laid down in the Service and Prison Rules (Dienst- und Vollzugsordnung) and that, finally, he could have lodged an application for a judicial decision according to Article 23 of the Introductory Act to the Judicature Act (Einführungsgesetz zum Gerichtsverfassungsgesetz). The Applicant again

wrote to the Federal Constitutional Court and it appears that his complaint was registered as a constitutional appeal (as to the fate of that appeal, see below under "Submissions of the Parties").

It seems that the Applicant also complained to the Ministry of Justice but he states that the Ministry did not give him any final reply, thereby, in his opinion, preventing him from exhausting the domestic remedies.

The Applicant states that as a result of his detention in a "silence division" he contracted a stomach ulcer and he also points out that during that detention he was exposed to all sorts of affronts by the prison officers.

He alleges violations of Articles 2 and 3 of the Convention.

2. Interference with right of correspondence

(a) On .. November, 1958, the Applicant received permission to correspond regularly (Regelbriefverkehr) with a certain Miss A. W whom he intended to marry and who was the mother of his two illegitimate children. He did not wish to correspond with his wife as they were no longer living together and he apparently intended to obtain a divorce from her. On one occasion, however, his wife wrote to him enclosing a short letter from his legitimate daughter. He then asked for special permission to send a letter in reply to his daughter under the address of his wife. As a result, the prison authorities withdrew, on .. December, 1959, the permission for him to correspond with Miss W. On .. February, 1960, the prison authorities seized a letter written on .. January, 1960 by Miss W to the Applicant. On .. April, 1963, after more than three years' interruption of his correspondence with Miss W, the Applicant was again allowed to correspond with her but only on condition that he did not write to his wife.

The Applicant states that as a result of the long interruption of his correspondence with Miss W difficulties and misunderstandings arose between them, and Miss W even married another man from whom, however, she subsequently became divorced.

After lodging a hierarchical appeal (Dienstaufsichtsbeschwerde) which was rejected on .. May, 1963 by the Ministry of Justice in Baden-Württemberg, the Applicant instituted proceedings regarding the interference with his correspondence with the Administrative Court (Verwaltungsgericht) of Karlsruhe. The Administrative Court did not consider itself to be competent to deal with the case but transferred it, on .. January, 1964, to the Court of Appeal of Karlsruhe. On .. July, 1964, the Court of Appeal, which considered the Applicant's petition as an application lodged under Article 23 of the Introductory Act to the Judicature Act, declared it inadmissible, partly because some of the decisions complained of had been given before Article 23 of the said Act had entered into force, and partly because the Applicant had not exhausted his remedies according to the Execution Ordinance (Strafvollzugsordnung).

The Applicant alleges a violation of Article 8 of the Convention. He states that, in fact, the interference with his correspondence was an act of revenge for his refusal to participate in the divine services in prison and to accept Christmas gifts which were being distributed by the Prison Chaplain, and he therefore also alleges a violation of Article 8 of the Convention.

(b) The Applicant also complains that many letters which he had written in prison had not been forwarded because they were considered to be defamatory or offensive. He mentions, in particular, letters to his lawyer, Professor P, in East Berlin, and to his fiancée who is living in the Soviet Occupied Zone of Germany. He has submitted extracts of two such letters to his fiancée which mainly deal with the conditions

in German prisons in general and with certain particular cases of ill-treatment in a Hamburg prison.

The Applicant maintains that some of the letters seized were formal complaints and that, therefore, he was prevented from exhausting domestic remedies in regard to some allegations. He provides no further details on this point.

He alleges violations of Articles 8 and 10 of the Convention.

3. Miscellaneous complaints

(a) Certain complaints relate to the medical treatment which the Applicant has received during his detention.

He states that as he suffered from a stomach ulcer he was sent to hospital where the competent doctor ordered that he should follow a special diet ("Milchbreikost"). After he had been discharged from the hospital, the Prison Doctor, paying no attention to his state of health, permitted his return to the "silence division" although he was in fact physically unfit for such severe detention. In the "silence division", the Prison Doctor only gave him special diet once a day, although the other doctor who had treated him at the hospital had ordered that such diet should be given twice a day.

The Applicant also complains that the Prison Doctor gave him a certain injection without first consulting a surgeon.

In regard to the action of the Prison Doctor, the Applicant complained to the Medical Association (Ärztekammer) and he also lodged a hierarchical appeal (Dienstaufsichtsbeschwerde) with the Ministry of Justice, but without success. He also brought a criminal charge against the Doctor, but the Public Prosecutor refused to prosecute.

He alleges a violation of Article 2 of the Convention.

(b) On .. May, 1965, the Regional Court (Landgericht) of Karlsruhe held a hearing in regard to the divorce proceedings pending between the Applicant and his wife.

The Applicant was forced to appear at this hearing and before appearing at the court he was ill-treated and brutally handcuffed by police officers, so that one hand was injured, and he was trodden upon. In regard to his hand injury, the Doctor did not give him any treatment.

At the hearing, his lawyer protested against this violent treatment to which the Applicant had been subjected but the President merely asked his lawyer to keep calm.

The Applicant complained without success of the brutal action of the police officers and the failure of the Doctor to give him adequate treatment. The Ministry of Justice rejected his complaint on .. May, 1965. His complaint to the Local Medical Association (Bezirksärztekammer) of North-Baden was transmitted to the Ministry of Justice which, on .. June, 1965, rejected the complaint by referring to its previous decision of .. May, 1965.

The Applicant also submitted an application for a judicial decision (Antrag auf gerichtliche Entscheidung) to the Court of Appeal in Stuttgart which rejected this application on .. August, 1965.

The Applicant finally brought criminal charges in respect of the same incident, but the Public Prosecutor at the Regional Court decided on .. August, 1965 not to take any action, and this decision was upheld on .. September, 1965 by the Senior Public Prosecutor at the Court of Appeal. He asked for legal aid in order to be able to bring the case before the Court of Appeal, but on .. November, 1965, legal aid was

refused.

(c) In respect of the alleged ill-treatment of an Algerian prisoner, the Applicant complained to the Federal Parliament (Bundestag). This complaint was transmitted to the Parliament (Landtag) of Baden-Württemberg which dismissed it on .. January, 1964.

He also submitted a criminal charge against the prison officer allegedly responsible for this ill-treatment, but on .. September, 1964, the Public Prosecutor refused to institute criminal proceedings.

(d) The Applicant also brought a criminal charge against a prison officer who had allegedly made certain antisemit statements. Although his allegations were supported by another prisoner, the Public Prosecutor did not find that there were sufficient reasons to institute criminal proceedings, and this decision given on .. January, 1964 was upheld on .. March, 1964 by the Senior Public Prosecutor.

(e) From the file, it appears that the Applicant also lodged a number of other complaints in regard to various prison officers who had allegedly insulted him or had otherwise behaved improperly. He also complained that a letter sent to him by his lawyer had been opened by the prison authorities and he complained to the Bar Association about the way his lawyer had assisted him. Other complaints concerned disciplinary punishments imposed on him and on one occasion he alleged that he had not enough writing paper at his disposal. None of these complaints were apparently successful, and it is not clear to what extent he actually intends to raise these complaints before the Commission.

Proceedings before the Commission

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

By letters of 11th and 27th September and 14th October, 1965, the Applicant informed the Commission that he wished to withdraw his Application. Before the Commission had taken any decision in regard to this withdrawal, the Applicant indicated, however, by letter of 4th December, 1965, that he again wished the Commission to examine his case.

On 6th October, 1966, the Commission decided:

(a) to give notice to the Federal Government, pursuant to Rule 45, paragraph (3) (b), of the Commission's Rules of Procedure, of the Application in so far as it concerned the Applicant's complaint as to his detention in a "silence division" and to invite the Government to submit its observations on the admissibility of that part of the Application;

(b) to adjourn its examination of the remaining parts of the Application.

The Government submitted its observations on 16th December, 1966 and the Applicant's reply is dated 28th December, 1966 and was received by the Commission on 4th January, 1967.

In view of the contents of the Applicant's reply, the Government submitted, on 20th January, 1967, a further pleading which was communicated to the Applicant for his information.

Submissions of the Parties

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

The Federal Government referred to a statement which it had received

from the Ministry of Justice of Baden-Württemberg in regard to the Applicant's complaint. The Ministry had stated that this complaint should be so interpreted as to concern primarily the fact that the Applicant had not been allowed to join other prisoners in taking walks in the prison courtyard as provided for in the Service and Prison Files. In fact, the Applicant had been prohibited from mixing with his fellow-prisoners in these walks in the prison courtyard and he had to do his open-air exercise in the so-called "Normalhof" ("ordinary yard"). The Government quoted the following statement by the Ministry of Justice of Baden-Württemberg:

"While the prisoners admitted to the more informal walks in the prison courtyard are allowed to talk to each other, those spending their open-air exercise time in the so-called "Normalhof" are not allowed any conversation with their fellow-prisoners during that time."

The Government further submitted that the Applicant's complaint was inadmissible, since the domestic remedies had not been exhausted. In reply to an appeal lodged by the Applicant in August, 1964, the Federal Constitutional Court had informed him, on .. September, 1964, that, before lodging a constitutional appeal, he should exhaust all other remedies and that, in particular, he should lodge an application for a judicial decision according to Article 23 of the Introductory Act to the Judicature Act. Nevertheless, the Applicant had again written to the Federal Constitutional Court which, on .. October, 1964, had formally rejected his constitutional appeal as being inadmissible. The Applicant had not even after this decision lodged an application for a judicial decision according to Article 23 of the Introductory Act to the Judicature Act, and consequently he had not exhausted the legal remedies at his disposal.

The Applicant replied that his complaint concerned the illegal silence division in the Bruchsal prison. While the Penal Code and the Service and Prison Rules contained provisions regarding the use of solitary confinement, there were no corresponding provisions regarding the system of silence division and this system was therefore illegal.

In regard to the legal remedies, the Applicant confirmed that, in reply to his complaint of August, 1964, the Federal Constitutional Court had informed him that he should first lodge an application with the competent Court of Appeal. Nevertheless, he had immediately submitted a new complaint to the Federal Constitutional Court and had been informed that this complaint had been registered as a constitutional appeal. The Applicant maintained, however, that the decision of .. October, 1964 referred to by the Government had not concerned the present complaint but that the reference number of the case had been confused with the number of another appeal.

The Government contested that the numbers of two appeals had been confused and undertook to submit the relevant file of the Federal Constitutional Court if the Commission should require further information on this point.

THE LAW

Whereas, in regard to the Applicant's complaint as to his detention in a "silence division" (paragraph 1 of the statement of facts), it is to be observed 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 Government has submitted that the Applicant had not lodged an application for a judicial decision (Antrag auf gerichtliche Entscheidung) according to Article 23 of the Introductory Act to the Judicature Act (Einführungsgesetz zum Gerichtsverfassungsgesetz); whereas the Applicant has not contested this statement by the

Government; whereas, therefore, it must be assumed that the Applicant did not use this particular remedy;

Whereas it also appears that the Federal Constitutional Court had informed the Applicant, by letter of .. September, 1964, that he should make use of this remedy before lodging a constitutional appeal;

Whereas, consequently, the Applicant has not exhausted the domestic remedies within the meaning of Article 26 (Art. 26) of the Convention, in particular, as the failure to lodge an application for a judicial decision also excluded him from having his allegations examined by the Federal Constitutional Court;

Whereas, in these circumstances, it is superfluous to examine the contents of the Federal Constitutional Court's decision of .. October, 1964 in regard to which the Parties have made contradictory statements;

Whereas, in regard to the Applicant's complaint as to interference with his correspondence with a certain A.W (paragraph 2 (a) of the statement of facts), it appears that the Applicant lodged a complaint which was treated as an application for a judicial decision according to Article 23 of the Introductory Act to the Judicature Act; whereas the competent Court of Appeal decided that this application was inadmissible since some of the decisions complained of had been given before 1st April, 1960, the day on which Article 23 of the said Act had entered into force and, further, in regard to subsequent decisions, the Applicant had not exhausted the remedies which were available to him under the Execution Ordinance (Strafvollzugsordnung);

Whereas Article 26 (Art. 26) of the Convention provides that the Commission may only deal with a matter after all domestic remedies have been exhausted, and within a period of six months from the date of the final domestic decision;

Whereas, as regards the decisions given before 1st April, 1960 in respect of the Applicant's correspondence with A.W, the Applicant failed to observe the six months' time-limit, since he did not submit his case to the Commission until 29th July, 1964, that is more than six months after the dates of the decisions complained of;

Whereas, as regards the decisions given after 1st April, 1960 in respect of that correspondence, the Applicant failed to exhaust the domestic remedies at his disposal; whereas, in particular, he did not take action according to the Execution Ordinance; whereas his failure to take such action also prevented him from having his complaint examined by the Court of Appeal;

Whereas it follows that in regard to the Applicant's complaint as to the interference with his correspondence with A.W, he did not comply with the conditions laid down in Article 26 (Art. 26) of the Convention;

Whereas, in so far as the Applicant complains of the ill-treatment of an Algerian prisoner (paragraph 3 (c) of the statement of facts), it is to be observed that, according to Article 25 (Art. 25) of the Convention, the Commission may only receive petitions from a person, organisation or group of individuals "claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention";

Whereas, in regard to the present complaint, the Applicant does not allege that he is, directly or indirectly, the victim of the ill-treatment concerned;

Whereas it follows that this part of the Application is incompatible with Article 25 (Art. 25) of the Convention and is to be rejected according to Article 27, paragraph (2) (Art. 27-2), of the Convention;

Whereas, in so far as the Applicant's complaints are directed against his lawyer (paragraph 3 (e) of the statement of facts), it appears from Article 25 (Art. 25) of the Convention that the Commission can admit an application from an individual only if that individual claims to be the victim of a violation of the Convention "by one of the High Contracting Parties"; whereas, on the other hand, the Commission has no competence ratione personae to admit applications directed against private individuals;

Whereas it follows that this part of the Application which is directed against the Applicant's lawyer is incompatible with the Convention within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention (see Application No. 1599/62, Yearbook of the European Convention on Human Rights, Volume 6, page 356);

Whereas, in regard to the remainder of the Application, including the Applicant's complaints as to interference with his correspondence with persons other than A.W, inadequate medical treatment, ill-treatment of the Applicant and antisemit statements by a prison officer (paragraphs 2 (b), 3 (a), (b), (d) and (e) of the statement of facts), an examination of the case as it has been submitted does not disclose any appearance of a violation of the rights and freedoms set forth in the Convention and, particularly in Articles 3 and 8 (Art. 3, 8);

Whereas it follows that these parts of the Application are 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.