THE FACTS

The applicant is a German citizen. After having been convicted of theft as a recidivist and having served a term of 7 years severe imprisonment (Zuchthaus), he has been since 29th October, 1965, detained in preventive detention (Sicherungsverwahrung) in the prison at Werl. According to German law, the detention is ordered for an unlimited period, but must be reviewed ex officio by the court every three years; it can also be reviewed in the meantime, if there is a particular reason (Articles 42 (e) and 42 (m) of the Penal Code).

The applicant is represented by Mr. S., a lawyer practising at Unna.

He has lodged a previous application (No. 3200/67) which was directed exclusively against the fact that he was refused adequate remuneration for the work which he had to perform during his detention and that no contributions under the social system were made for him in this respect by the authorities of the preventive detention institution. This application was declared inadmissible by the Commission's decision of 6th April, 1968. On .. June, 1966, the applicant requested, through his lawyer, the prison director at Werl permission for his wife to visit him on every weekend from Saturday 2 p.m. until Monday 9 a.m., and to stay with him in his cell in order to keep up their conjugal life during these weekends.

On .. July, 1966, the prison director dismissed this request because such a privilege was not provided by the Service Rules on the Execution of Sentences (Dienst- und Vollzugsordnung). This decision was confirmed on appeal by the Attorney-General (Generalstaatsanwalt) at Hamm, on .. July, 1966, who stated that the limitation of the conjugal life was a consequence of the preventive detention ordered by the Court. Conjugal community in an institution for preventive detention would interfere with the order of the institution.

The applicant requested a judicial decision by the Court of Appeal (Oberlandesgericht) at Hamm on .. August, 1966.

By decision of .. October, 1966, the Court of Appeal rejected this request as being unfounded and pointed out that according to Rule 244, paragraph (2), of the Service Rules on the Execution of Sentences, the general provisions concerning persons serving a sentence were applicable mutatis mutandis to persons in preventive detention insofar as they are compatible with the character and purpose of preventive detention. In both cases, it was necessary to keep the detainees in institutions which are isolated from the outer world. Therefore the authorities must have the same means to uphold order and discipline in both cases. Thus persons who are detained in preventive detention are also obliged to work without receiving the same payment as a free worker. Every kind of detention implied a separation of the detained person from his wife and children. As this separation was a necessary consequence of any detention, the Prison Rules provided for no permission to have conjugal intercourse. The right of the wife to conjugal community with her detained husband was necessarily limited by the inherent consequences of the existing rules of law. The permission of conjugal community in a preventive detention institution would interfere with the maintenance of order and security in the institution and at the same time reduce the deterrent effect of preventive detention.

On .. December, 1966, the applicant lodged through his lawyer a constitutional appeal (Verfassungsbeschwerde) with the Federal Constitutional Court (Bundesverfassungsgericht). The lawyer alleged in particular that preventive detention was not a kind of punishment. The only reason for preventive detention was to protect the community against the danger of further offenses committed by the detained person.

Even if the Prison Rules did not provide expressly for a permission of conjugal life, at least over a weekend, in a preventive detention institution, they did not forbid it either. He states that also his wife is very much affected by the complete disruption of their marital life and that she is, in fact, considering a divorce. It would only be for the benefit of social rehabilitation if he could be given the possibility to maintain his conjugal life, rather than to see his marriage broken up. In fact, it could not be seen how the order and security in the preventive detention institution could be disturbed or endangered by an elderly weak woman, like the applicant's wife.

By letter of .. January, 1967, the applicant's lawyer was informed by the judge rapporteur that the constitutional appeal appeared to be unfounded because the protection of marriage and family guaranteed by Article 6, paragraph (1), of the Basic Law did not call for permission for persons detained in preventive detention to have conjugal intercourse. The Federal Constitutional Court communicated the case to the Ministers of Justice of the Länder and was informed that at the time 791 men and 4 women were kept in preventive detention, of whom 109 men and 6 women were married, but that in no case had they been given a possibility to have intercourse with their spouse. On 19th October, 1967, a Committee of three judges of the 1st Senate of the Federal Constitutional Court rejected the Constitutional Appeal as manifestly ill-founded.

The applicant's lawyer refers to his arguments in the proceedings before the German Courts and alleges a violation of Article 8 of the Convention.

THE LAW

Whereas the applicant complains as to the refusal by the German Courts to permit him to receive visits from his wife in order to maintain their conjugal life; whereas he alleges that the courts thus interfered with his right to family life as guaranteed under Article 8 (Art. 8) of the Convention; whereas the Commission considered this important issue in the light of a comparative survey of the relevant domestic legislation and practice of the High Contracting Parties to the Convention;

Whereas Article 8 (Art. 8) of the Convention indeed includes for everyone the right to respect for his private and family life, his home and his correspondence; whereas, however, paragraph (2) of the said Article (Art. 8-2) provides that "there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interest of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others"; whereas the Commission noted with sympathy the reformative movement in several European countries as regards an improvement of the conditions of imprisonment and the possibilities of detained persons to continue their conjugal life to a limited extent; whereas, however, it considered that in view of the present general practice in the States members to the Convention, it would not be possible to regard the system of the Federal Republic of Germany concerning conjugal visits to persons detained in prison as being contrary to the provisions of paragraph (2) (Art. 8-2) allowing interference by the authorities in a person's right to family life on the ground that it is necessary in the interests of public safety; whereas it follows that this application is manifestly ill-founded;

Now therefore the Commission DECLARES THIS APPLICATION INADMISSIBLE