THE FACTS

The facts of the case as submitted by the applicant may be summarised as follows:

The applicant is a citizen of the United Kingdom and Colonies, born in 1923 and at the time of his application was detained in prison at Parkhurst, Isle of Wight. He was convicted of robbery with violence in March 1965 and sentenced to fifteen years' imprisonment. He is represented by Mr. W., a solicitor practising in R.. The applicant was granted legal aid by the Commission.

He originally made submissions to the Commission alleging that he had been wrongly convicted, but has since stated that this matter is already being taken up with the authorities and for the present he only wishes to proceed with his later complaint that he was refused permission to consult a solicitor with a view to bringing proceedings for defamation against a prison officer.

The complaint arises out of disturbances at the prison on the evening of 24 October 1969. The applicant states that, because he was employed as an electrician in the prison, he did not take exercise with the other prisoners and so had little social contact with them. He therefore had no prior knowledge that a number of prisoners were going to demonstrate in the association rooms on the day of the disturbances and, when a general uproar broke out, he was taken completely by surprise.

The applicant spend the whole period of the demonstration with prison officers, whom he names, and two officers stated that he had taken no part in it. On 25 October 1969 he wrote to his Member of Parliament telling him that he was not involved in the night's events but that he feared it would spoil his chances of obtaining the examination and other facilities which his Member of Parliament was urging on his behalf. He was told by the prison authorities that this letter could not leave the prison.

On 26 October the applicant was removed to a separate wing of the prison which was being used to house those prisoners said to be involved in the disturbances. He was not charged for several days, but was told by prison officers that he was in serious trouble and he was kept in solitary confinement without any books, tools, etc. He asked the Governor, the Deputy Governor, various assistant Governors and the medical officer, of what he was accused, but no one would tell him. He wrote again on 1 November 1969 to his Member of Parliament, and also on 4 November 1969 to the Chief Constable, but both letters were stopped. On 29 October he made a statement to the police and named eight prisoners and two prison officers whom he thought could confirm that he had taken no part in the demonstration.

On 30 October, however, he was charged by a Chief Inspector of Police with assaulting an unnamed prison officer. The applicant was shocked and burst into tears. The Chief Inspector then said that he was completely satisfied that the applicant had not taken part in the disturbances and that he would recommend to the Governor that the applicant be taken back to his cell in the main prison on the same day. He was not in fact taken back until 7 November, when he was informed by the Deputy Governor that he had been completely cleared of any involvement in the disturbances.

The applicant was subsequently shown, by solicitors acting for other prisoners, a statement by a prison officer alleging that the applicant had wielded a steel chair at the barricade on the night of the disturbances. The applicant now complains that, although he was eventually cleared of any complicity in these events, his prison record will show that he was suspected of being involved in a riot at the

prison. In addition to the humiliation and mental strain he has suffered, this has affected his prospects of early release on parole and has caused him to be deprived of certain privileges.

In this connection, the applicant states that during the five years he has been in prison, most of his spare time has been spent in studying radio and television servicing, electronics, mathematics, etc. He has passed eight examinations in these subjects, of which six with distinction and two with credit. He was attempting to obtain permission to attend an examination centre at a technical college in November 1969, and also to be transferred from Parkhurst Prison to a semi-open prison where he could continue his technical education. This would have improved his prospects of release on parole.

His Member of Parliament had been pressing the Home Secretary on both matters and, at the time of the disturbances, had informed him that the first request had been granted and the second also subject to the agreement of the prison authorities concerned. Both requests, however, were subsequently refused.

The applicant contends that the statement of the prison officer, which was obviously false or grossly mistaken, was clearly defamatory. It deprived him of opportunities for which he had been working hard, gave him two weeks of terror in solitary confinement on the ground of unspecified crimes and at one time drove him seriously to contemplate suicide. He states that he now has no prospects of parole for several years and expects to serve two extra years of his sentence. All this results from the police officer's statement.

On 20 March 1970 the applicant petitioned the Home Secretary that he be allowed to consult a solicitor of his own choice to obtain advice as to whether the statement of the prison officer was actionable in civil law. This petition was refused on 6 April.

The applicant alleges that this refusal to allow him access to a solicitor constitutes a violation of Article 6 (1) of the Convention. He submits that as a prisoner he is answerable to the law and the law should afford him some protection. He contends that he has the same civil rights as any free man and should be allowed to consult a solicitor about his rights. He also alleges a violation of Article 13 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The proceedings before the Commission may be summarised as follows:

The application was examined on 21 July 1970, in accordance with Rule 45, 1 of the Commission's Rules of Procedure, by a group of three members of the Commission, and in accordance with Rule 45, 3 (b), the application was communicated on 28 July 1970 to the respondent Government, which were invited to submit their observations in writing on the admissibility of the application before 22 September 1970. At the request of the Government, this time-limit was extended to 8 October 1970. The Government submitted their written observations on 1 October 1970, and these were communicated to the applicant on 9 October 1970.

The time-limit of 2 November 1970, fixed for the submission of the applicant's written observations in reply was subsequently extended to 8 January 1971, following the confirmation by the Commission's Secretary of the appointment of Mr. W. on 9 December 1970 as the applicant's legal representative. At the request of the applicant's lawyer on 18 December 1970, this time-limit was again extended to 20 January 1971. The applicant's observations were submitted under cover of his lawyer's letter dated 15 January 1970.

The Commission began its consideration of the parties' observations in

its session of February 1971, but adjourned until its session beginning on 20 March 1971 its decision on the application's admissibility.

SUBMISSIONS OF THE PARTIES

The submissions of the parties may be summarised as follows:

I. AS TO THE FACTS

1. The respondent Government do not dispute the facts as they were presented by the applicant but submit further details. A detailed account of the events in October 1969 at Parkhurst Prison is also given by the respondent Government.

The applicant's letters to his Member of Parliament were stopped because the applicant failed to raise the matter through the authorised channels beforehand. This was also the reason for the stopping of his letter to the Chief Constable.

Further, it was as a result of more detailed enquiries by the police that the disciplinary charge against the applicant was dropped and he was returned to the cell which he had occupied before the disturbances. However, it is submitted that the prison officer, by reporting in good faith on the applicant's activities, was doing no more than his duty.

The applicant petitioned the Home Secretary twice. On 7 February 1970 he requested a transfer to another prison on the ground that he was not allowed to spend as much time out of his cell as he had done formerly. The reason for this restriction was that, as a result of the disturbances on 24 October 1969, it had been considered necessary to restrict the evening and weekend association periods of all prisoners at Parkhurst. Since the applicant was in the same position as all the other prisoners in the prison in this respect, he was informed that the Home Secretary was not prepared to take any action on his request.

The applicant again petitioned the Home Secretary on 20 March 1970, asking for a transfer and saying that he was suffering from nervousness and from nightmares about the disturbances of 24 October 1969. He also said that he was in fear of reprisals by prison staff and false accusations as a result of his alleged participation in these disturbances. He added that he thought that the allegation originally made against him by the prison officer had been recorded in his prison record and that this had prevented his being recommended for parole after his application had been considered in December 1969. He asked permission to consult a solicitor with a view to bringing a civil action for libel in respect of the original statement against him by the prison officer. As an alternative he requested an independent examination of his record by a magistrate whom he named and he would then be satisfied with an assurance that the prison officer's statement was not part of his record and with an apology for the alleged libel. The report from the Governor on this petition indicated that entries in the applicant's record showed that he had been charged under the Prison Rules with gross personal violence against an officer but that the charge had not been proceeded with; that these facts were not mentioned in the dossier submitted to the local parole board when his application for parole was considered and that there was no reason to suppose that they had had any influence on the decision not to recommend that his case be submitted to the Parole Board. The Governor also reported that the applicant had not made any complaints of nightmares or nervousness to the prison medical officer.

So far as concerned the applicant's complaint against the officer who had wrongly identified him as one of his assailants, the Secretary of State took into account the fact that it is among the duties of prison officers to report promptly on acts of indiscipline and that, in the present case, there was nothing to suggest that the initial identification of the applicant by the injured officer was not made by

the latter in good faith and in the course of his duty. It was clear, that, as soon as he was able to do so, the officer had properly and promptly reported his subsequent doubts about the identity of his assailant. There thus appeared to be no grounds, on a reasonable and objective view of all the facts, on which the applicant could sustain proceedings for libel against the officer. Accordingly, the applicant was notified on 6 April 1970 that the Home Secretary was not prepared to grant his request for transfer and that he could find no grounds for taking any action in regard to the other matters raised in the applicant's petition.

As to the refusal of permission for the applicant to attend an examination in November 1969, the Government submit that this was due to the fact that, at that time, the allegations against the applicant were still under investigation.

2. The applicant first submits in reply that the wording of the Government's observations with regard to the events at Parkhurst is misleading and he has attempted a clarification on several points. He states that he made a full voluntary statement to the police on 28 October 1969, a copy of which was attached to his observations. Prison Officer L.. complained that the applicant had actually assaulted him and he did not simply state that he thought that the applicant had assaulted him. The applicant was never notified that he was charged under Rule 47 (2) of the Prison Rules 1964, nor had information of such a charge been given to a visiting committee of board of visitors as required by Rule 52 of the Prison Rules. Further, he was interviewed on two occasions on 28 and 30 October 1969 and was informed during the latter that his statement had been verified.

It is to be clearly understood from the Government's observations that Principal Officer M. and another prison officer confirmed the written statements of the applicant. It is believed by the applicant that Principal Officer M. and the other officer made their statements before 7 November and that it was only when confronted with those statements that Prison Officer L. admitted that he could have been wrong in accusing the applicant of being one of the prisoners who assaulted him. The Government's observations state that the disciplinary charge against the applicant was then dropped. According to the Government the entries on the applicant's prison record showed that he had been charged under the Prison Rules with gross personal violence against an officer but that the charge had not been proceeded with. If, in fact, a charge had been entered against the applicant in the appropriate prison books and records he was not informed of the charges as soon as possible as is provided for in Rule 49. There is no provision in Rule 52, or in any other Rule, for a charge of committing gross personal violence against an officer to be either "dropped" or "not proceeded with". There is only room for a conviction or acquittal. The Government's observations consequently disclose a violation of the Prison Rules by the Governor of Parkhurst Prison.

The applicant's two letters to his Member of Parliament of 25 October and 2 November 1969, did not contain any complaints about his treatment in prison and ought not to have been stopped. It is further alleged that the way in which his first letter to his Member of Parliament is cited in the Government's observations results in a misinterpretation of the letter and the applicant's intention. Further, the applicant's letter to the Chief Constable of 4 November 1969, was an appeal for help from a wrongly accused man and should not have been stopped or the Governor should have consulted the Chief Constable beforehand.

The applicant further submits that the summary, in the Government's observations, of his petition dated 20 March 1970 is incorrect and misleading. In this petition the applicant said that as a result he suffered nervousness at being in a small room with a mass of other prisoners because he was afraid that, if a fight occurred between prisoners, he might be subjected to indiscriminate repressive action

by the staff and liable to have unfounded accusations made against him. He also said that because of these fears he was prevented from enjoying or participating in stage facilities as this would necessitate his associating with large numbers of prisoners in small stage rooms. He was wisely avoiding any involvement in trouble and asked for a transfer to another prison where he would feel free to enjoy the facilities to which he was entitled. Additionally, the applicant said that he understood that a statement by Prison Officer L. accusing him of an offence under the Prison Rules was lodged with his prison record. Nevertheless, it is also admitted by the Government that there is on record an entry that the applicant had been charged under the Prison Rules with gross personal violence to a prison officer but that the charge had not been proceeded with. The applicant submits that failure to proceed with the charge is not a declaration of the innocence of the applicant. In this petition he had asked permission to consult a solicitor, as was confirmed in the Government's observations, and suggested, as an alternative, that he would be satisfied with an independent examination of his record by a named magistrate and an apology for the libel. The observations of the Government at no stage deny that the applicant had a prima facie case upon which to found proceedings and, according to the applicant, it is not for the Secretary of State to decide whether or not the prison officer will avail himself of any defences open to him or whether or not a court will accept any defence that may be raised.

It is further alleged by the applicant that it appears from the Government's observations that at Parkhurst the innocent suffered the same restrictions as the guilty.

The applicant had applied, before 24 October 1969, for permission to sit for certain examinations which were to be held in January 1970 and not in November 1969 as was stated by the Government. The allegations against the applicant were not under investigation in January 1970 and therefore arrangements could have been made to enable the applicant to take the said examinations.

II. THE LAW PRACTICE CONCERNING PRISONERS' COMMUNICATIONS IN CONNECTION WITH COURT PROCEEDINGS AND PRISON PRACTICE RELATING THERETO

1. The respondent Government submit that the Prison Rules 1964, made by the Secretary of State under Section 47 of the Prison Act 1952 place certain restrictions on communications between prisoners and other persons. The relevant provisions are contained in Rules 33 and 34, the text of which is attached as Annex A to the Government's observations. In particular, Rule 34, 8 provides that a prisoner may not communicate with any person in connection with any legal or other business, or with any person other than a relative or friend, except with the leave of the Secretary of State.

A prisoner who wishes to take legal advice in connection with his treatment in prison, as with any other matter, must therefore obtain the permission of the Secretary of State before communicating with a solicitor. In deciding whether or not to grant a request for leave to seek legal advice, the Secretary of State takes into account the extent to which the particulars contained in the request reveal a possible cause of action and leave will not normally be granted if the particulars are insufficient to indicate the precise nature of the prisoner's complaint. If the particulars are not sufficient for this purpose, the prisoner is normally invited to submit further particulars. In considering whether a prisoner should be allowed to communicate with a solicitor while still serving his sentence, the Secretary of State takes into account whether any proceedings which the prisoner might wish to take would, before his release from prison, become barred by statutory limitation on account of the passage of time since the alleged cause of action arose. But in any event it is not the practice of the Secretary of State to refuse leave to communicate with a solicitor for the purpose of obtaining legal advice if the request

indicates the nature of the complaint in question and the complaint is of such a nature as, on a reasonable and objective view of the facts, to reveal a cause of action.

In considering a request to pursue action against the prison authorities or against individual prison officers it is the responsibility of the Secretary of State to satisfy himself as to the full circumstances of the case and, where appropriate, to cause such enquiries to be made as are necessary for this purpose. Where the complaint involves accusations of misconduct by prison officers (e.g. assault) it is the practice of the Secretary of State to insist that, before he entertains a request for permission to consult a solicitor with a view to bringing legal proceedings, the prescribed procedure for dealing with such allegations of disciplinary offences by the prison officers concerned (or, in appropriate cases, a criminal offence) should first be exhausted.

2. The applicant observes that under Rule 34, 8 a prisoner shall not be entitled "under this Rule" to communicate with any person in connection with any legal or other business ... except with the leave of the Secretary of State. On the other hand, Rule 37, 1 provides that the legal adviser of a prisoner in any legal proceedings, civil or criminal, to which the prisoner is a party shall be afforded reasonable facilities for interviewing him in connection with those proceedings. (A copy of this Rule is attached to the applicant's reply). It is appreciated that in the present case the applicant is only a potential party to legal proceedings against the prison officer but, if the position were reversed and the prison officer had instituted legal proceedings against the applicant for damages for injuries received, then the applicant would have been entitled under Rule 37 to have a visit from his legal adviser.

It is further agreed by the applicant that in the existing circumstances he required the permission of the Secretary of State before communicating with a solicitor and a petition for permission was duly lodged by the applicant . The reference to the possibility of particulars not being sufficient is not understood as the particulars contained in the petition were sufficient and the Secretary of State did not invite the applicant to submit further particulars. The particulars supplied and the information available to the Secretary of State revealed a prima facie case of defamation of the applicant's character by the prison officer concerned. The Secretary of State's decision does not give any reasons for rejection of the applicant's petition. Various matters are suggested which may or may not have influenced him in his decision. Dealing with these matters in the order presented by the Government, the first point raised is that of actions which are barred by statutory limitation on account of the passage of time since the alleged cause of action arose. According to English law (being that applicable in that part of the United Kingdom in which the cause of action arose) proceedings must be instituted within a period of six years. The cause of action arose on 24 October 1969 and the earliest date for the applicant's release from prison, subject to good behaviour, is 16 March 1975. The earliest period of time, before which the applicant will be free to take action, is almost five and a half years after the cause of action arose, leaving little time in which to apply for legal aid and comply with the necessary formalities of issuing legal process before the date on which proceedings are barred. In any event, this affluxion of time would operate against the applicant in that the memory of any witness would be substantially dimmed.

The next matter referred to by the Government is the practice of the Secretary of State not to refuse leave to communicate with a solicitor for the purpose of obtaining legal advice if the request indicates the nature of the complaint and it is of such a nature as, on a reasonable and objective view of the facts, to reveal a sustainable cause of action. In other words the Secretary of State presumes to set himself

up as a judge and jury on such unsworn evidence as he himself chooses to obtain, which in itself is contrary to all known rules of justice. The reference to the Secretary of State's duty to first apply procedure for dealing with allegations of disciplinary offences by prison officers concerned should first be exhausted is immaterial as the petition to him by the applicant did not allege or reveal any such disciplinary offense.

III. CONSIDERATION OF ADMISSIBILITY

1. Under Article 6 (1) of the Convention

The respondent Government submit that detention in a prison pursuant to a sentence passed on conviction of a criminal offence (this being a deprivation of liberty permitted under Article 5 of the Convention) necessarily involves a deprivation of liberty going beyond the mere fact of confinement. There is inherent in physical confinement a restriction on the ability of the person confined to see to the conduct of his affairs. It is therefore further submitted that the fact of confinement affects the application of provisions of the Convention beyond those of Article 5, for example those relating to family life, correspondence, assembly and marriage, and that this is a necessary consequence of the inherent characteristics of confinement and is distinct from the express qualifications on certain of the provisions of the Convention such as those set out in Articles 8 (2), 9 (2), 10 (2) and 11 (2). In support of these submissions, the respondent Government refers to the final decision of the Commission as to admissibility in application No. 2759/66, De Courcy against the United Kingdom, Yearbook, Vol.10, pp. 388, 412, and to the decision of the Commission in relation to Article 12 of the Convention (which does not contain any express qualifying provision such as is to be found in Article 8 (2)), in application No. 892/60, Yearbook, Vol. 4, pp. 240, 256.

The respondent Government further submit that the circumstances of a regime of detention are such that certain restrictions on the free access of prisoners to the machinery of civil litigations are both necessary and justifiable; that, even as regards persons who are not prisoners, it is generally accepted that there may be circumstances in which it is legitimate to impose restrictions in appropriate cases on their untrammelled recourse to the machinery of litigation. Such restrictions may be imposed on the bringing of frivolous or vexatious litigation or litigation fostered by imaginary grievances or attempts to escape the monotony of prison life or just pass time. Further, there are cases where the pursuit of litigation is seen by a prisoner as a way of circumventing prison discipline. In the case of convicted persons, for reasons set out in the Government's submissions, there is a greater necessity for such restrictions.

The respondent Government also submit that the facts of the case, as completed in their observations, indicate that the applicant has no reasonable grounds for bringing proceedings for defamation against a prison officer who was doing no more than his duty in reporting, in good faith, what he thought was the identity of his assailant.

The Government therefore request the Commission to reject the applicant's complaint under Article 6 (1) of the Convention as being either incompatible with the provisions of the Convention, or manifestly ill-founded.

The applicant submits that Article 6 (1) does not exclude its application to those persons deprived of liberty under Article 5. The examples given, and the decisions quoted by the Government are not analogous with the circumstances of the present application. The Government's observations show that the prison officer made a statement which is prima facie libellous, defaming the character of the applicant. This being so, whatever the merits or admissibility of any

defence, the applicant's complaint cannot under any circumstances be described as frivolous or vexatious or fostered by an imaginary or pretended grievance or a desire to pass the time, attempt to escape the monotony of prison life, strike back at the prison authorities or an individual officer, or circumvent prison discipline.

The applicant clearly showed a reasonable attitude in his petition by suggesting an alternative to the institution of civil proceedings against the prison officer. As the petition by the applicant was for permission to consult a solicitor, the suggestion by the Government that the unrestricted access of prisoners to persons outside their place of detention, ostensibly for the purpose of initiating or pursuing litigation, could be used for a criminal or other improper purpose, can only be interpreted as a regrettable slur on the legal profession generally. The applicant's attorney would not consider contending that the Secretary of State, in refusing the applicant's petition, was motivated by a desire to protect one of his Department's servants, yet those who are incarcerated and subjected to environmental and psychological pressures and conditions in the manner described by the Government might well be led to make wrong assumptions of actions taken by the Secretary of State. It is incumbent upon the Secretary of State for his own protection, as a matter of governmental policy and in the interests of justice, to accede to requests for permission to consult a solicitor.

In all but an insignificant number of cases any legal proceedings by a prisoner against an officer would have to be supported by legal aid and, as all applications for such aid are severely scrutinised by a panel of solicitors, legal aid would only be granted in cases where such panel is of the opinion that the said applicant has a reasonable and sustainable case. It is essential, in the interests of justice and the preservation of human rights, that any prisoner feeling himself aggrieved by the action or statements of a prison officer should be allowed to consult a solicitor, rather than that any prison officer should think that he is in the happy position of defaming the character of a prisoner who is prevented from access to legal redress.

It is further submitted by the applicant's lawyer that the applicant has a sustainable case against the prison officer who had lost his defence of privilege by neglecting, or refusing unequivocally, to withdraw his allegations against the applicant when the occasions arose for him to do so.

2. Under Article 8 of the Convention

The applicant further alleges that Article 8 has also been violated since no Prison Rule states specifically that letters complaining of treatment in prison are to be stopped. He states that this allegation is supported by the Government's observations themselves.

3. Under Article 13 of the Convention

The respondent Government submit that Article 13 relates exclusively to a remedy in respect of a violation of the rights and freedoms set forth in the Convention and that, until such a violation has been established, which is not the case in the present application, there is no basis for the application of this Article. Reference is made to application No. 1167/61, Collection of Decisions, Vol. 12, p. 70.

The applicant submits that there has been a violation of Articles 6 and 8 of the Convention and that accordingly Article 13 applies.

THE LAW

1. The Commission first examined the applicant's complaint that his letters of 25 October and 1 November 1969 to his Member of Parliament and of 4 November 1969 to the Chief Constable were stopped by the

prison authorities. The applicant alleges that this action contravenes Article 8 (Art. 8) of the Convention which provides for the right of everyone to respect for his correspondence and this allegation was first made by him in his observations of 15 January 1971 in reply to the Government's observations of 1 October 1970. The Government reserved the right to reply to this allegation.

The Commission has had regard to the terms of Article 26 (Art. 26) of the Convention under which it may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law. In this connection the Commission has ex officio taken note of Rules 33 and 34 of the Prison Rules 1964 made by the Secretary of State under section 47 of the Prison Act 1952 and also of Section 1 of the said Act.

Prison Rule 33, Section 2 states: "Except as provided by statute or these Rules, a prisoner shall not be permitted to communicate with any outside person, or that person with him, without the leave of the Secretary of State". Section 1 of the Prison Act 1952 states: "All powers and jurisdiction in relation to prisons and prisoners ... shall be exercisable by the Secretary of State".

The Commission first considers that it has no reason to suppose that the reference to third persons in Prison Rule 33 does not apply to a prisoner's correspondence with his Member of Parliament or the Chief Constable.

In the present case the applicant first failed to request the Home Secretary's permission to send the above-mentioned letters and, secondly, he failed to submit his complaint by way of petition to the Home Secretary requesting the revocation of the measures taken by the Governor to stop the letters concerned.

The Commission has already found in its previous decision on the admissibility of application No. 2749/66, De Courcy v. United Kingdom, Yearbook, Vol. 10, pp. 388, 410, states that the applicant who failed to apply in accordance with the Prison Rules to the Home Secretary for permission to send his letters has not exhausted the remedies available to him under English law and had therefore not complied with the provisions of Article 26 (Art. 26) of the Convention.

In the present case the applicant has similarly failed to petition the Home Secretary in regard to his complaints and has, therefore, not exhausted the remedies available to him under English law. Moreover, and examination of the case as it has been submitted, including an examination made ex officio, does not disclose the existence of any special circumstances which might have absolved the applicant, according to the generally recognised rules of international law, from exhausting the domestic remedy at his disposal.

It follows that the applicant has not complied with the condition as to the exhaustion of domestic remedies and his application must in this respect be rejected under Article 27 (3) (Art. 27-3) of the Convention.

2. The Commission next examined the applicant's complaint that, while detained in prison, he was refused permission to consult a solicitor with a view to bringing a legal action for defamation against a prison officer, who wrongly accused the applicant of having assaulted him. In this respect the application submits that this refusal constitutes a violation of Article 6 (1) and again of Article 8 of the Convention.

Article 6 (1) (Art. 6-1) of the Convention provides that "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing within reasonable time by an independent and impartial tribunal established by law ...".

The applicant's allegation is that, by the refusal of the United

Kingdom authorities to allow him to consult a solicitor, he was denied access to a court as guaranteed by the above provision.

The Commission observes, as it did in its decision of 16 December 1970 on the admissibility of application No. 4115/69, Knechtl v. United Kingdom, that the question whether Article 6 (1) of the Convention guarantees the right of access to the courts has never been expressly decided. The Commission again considers that the application raises an important issue concerning the interpretation of the Convention whose determination should depend upon an examination of the merits of the application. The application, therefore, cannot in this respect be considered as being manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention.

The respondent Government has further submitted that for various reasons this right must in any event be subject to certain limitations in the case of persons lawfully detained in prison in accordance with Article 5 (Art. 5) of the Convention. They contend that on this ground the refusal to allow the applicant to consult a solicitor with a view to bringing legal proceedings, was consistent with Article 6 (Art. 6).

The applicant has submitted in reply that the application of Article 6 (1) (Art. 6-1) is not excluded in regard to those persons deprived of liberty under Article 5 (Art. 5) of the Convention.

The Commission has made a preliminary examination, in the light of the facts presented by the parties, of the question whether, if Article 6 (1) (Art. 6-1) guarantees the right of access to the courts, there exist any inherent limitations in the exercise of that right which may be applicable in the present case. It finds that the issues raised by this aspect of the application should depend upon an examination of its merits and therefore the application can again not be rejected as being manifestly ill-founded under Article 27, paragraph (2) (Art. 27-2), of the Convention.

3. The remaining issue as to whether the same refusal of permission to consult his solicitor raises a question under Article 8 (1) (Art. 8-1) of the Convention, is closely connected with the wider questions of the existence of a right of access to the courts and of the scope of any such right. The Commission considers therefore that this remaining issue depends for its determination on an examination of the merits of the main issue, and that the application cannot be rejected in this respect as being manifestly ill-founded or on any other ground.

For these reasons, the Commission

1. DECLARES INADMISSIBLE THE APPLICANT'S SEPARATE COMPLAINT UNDER ARTICLE 8 (Art. 8) OF THE CONVENTION IN CONNECTION WITH THE STOPPING OF HIS LETTERS OF 25 OCTOBER AND 1 NOVEMBER 1969 TO HIS MEMBER OF PARLIAMENT AND OF 4 NOVEMBER 1969 TO THE CHIEF CONSTABLE

2. DECLARES ADMISSIBLE THE REMAINING PARTS OF THE APPLICATION.