

## THE FACTS

I. Whereas, the common elements of all above applications as presented by the applicants' lawyer may be summarised as follows:

1. The applicants are German citizens who are, or have been, serving sentences of imprisonment (Gefängnis), severe imprisonment (Zuchthaus) or preventive detention (Sicherungsverwahrung) in various German prisons. The applicant in application No. 3188/67 is the minor daughter of a prisoner but the term "applicant" when used in the following text with regard to detention refers to her father. All applicants are represented by Mr. X., a lawyer practising at Unna.

The applicants' complaint is directed - except in Application No. 3195/67 which also includes a procedural complaint - exclusively against the fact that they were refused adequate remuneration for the work which they had to perform during their detention and that no contributions under social security system were made for them in this respect by the prison authorities.

2. They applied unsuccessfully to the authorities concerned with the execution of sentences (Strafvollzugsbehörden), the competent Court of Appeal (Oberlandesgericht) and finally to the Federal Constitutional Court (Bundesverfassungsgericht). By letter of .. December, 1966, the judge rapporteur informed the applicants' lawyer that the constitutional appeal (Verfassungsbeschwerde) appeared to be unfounded for the following reasons:

A prisoner, although not losing completely his fundamental rights and freedoms by virtue of his particular status, did not have the right freely to enter into a labour contract and thus had no claim to remuneration and the prison authorities, in retaining the money paid by private firms for work carried out by prisoners, did not interfere with the prisoner's possessions;

the principle of equality was not violated since there were essential differences between the situation of a free worker and that of a working prisoner which excluded a comparison and a claim for equal treatment;

the Federal Constitutional Court could only abolish the existing system of prison labour but could not impose on the legislative branch another system with better remuneration as was, in fact, the applicants' aim. In any case, the obligation of prisoners to work was long established in German law and had been confirmed in its existing form by Article 12, paragraph 4, of the Basic Law;

the question raised by the applicants whether the essential aspects of the execution of prison sentences must be regulated by a proper act of legislation rather than by administrative rules appeared to be irrelevant in the present cases since, in the absence of such legislative provisions a decision declaring the existing administrative rules to be unconstitutional would have the result that prisoners would be entitled to no remuneration;

there was in the applicants' submissions no appearance of violation of the dignity of man (Article 1, paragraph 1, of the Basic Law), of the essential content of fundamental rights (Article 19, paragraph 2) or of the provision providing for a forfeit of fundamental rights in certain specific circumstances (Article 18 of the Basic Law). Nor did the protection of marriage and family guaranteed by Article 6 of the Basic Law require a full remuneration for prison work; any hardship arising for the family could be dealt with under the system of public relief;

the applicants' allegation that the Court of Appeal "apparently had ...

not at all taken into account their lawyer's submissions", was not a sufficient basis for a complaint that they had not been granted a fair hearing;

with regard to the applicants' claim to be included in the social insurance system, it appeared that the Court of Appeal had only rejected this claim as being outside its competence and a matter to be examined by the Social Courts. Therefore the constitutional appeal in this respect did not raise any constitutional issue but was, in fact, only directed against this finding based on the application of legal provisions of a non-constitutional character.

After the applicants' lawyer had submitted to the Commission a statement setting out their complaints in the following terms:

"While serving his sentence, the applicant was required to perform forced and compulsory labour according to Article 4, paragraph (3), of the Convention, taken in conjunction with Article 5. This took the form of work for private firms. In other words, he was obliged to work under a contract which these firms had concluded with the state. The firms contracting either on a piece price or on an hourly basis (Unternehmerbetriebe bzw Arbeitsvertragsbetriebe) always paid the prison the full wage, in accordance with Rule 11 of the Rules on the Prison Labour Administration (Arbeitsverwaltungsordnung). But of this wage, which amounted to about 20-30 DM a day, the applicant received at the most 1 DM, in accordance with Rule 21, paragraph 2; his right to remuneration for his labour was denied him by virtue of Rule 21, paragraph 9, and the rest of the earnings received by the prison went to the Treasury in accordance with Rule 93 of the Service Rules on the Execution of Sentences (Dienst- und Vollzugsordnung).

These arrangements with regard to prisoners' labour are highly objectionable, for the following reasons:

As prison experts in the Federal Republic of Germany have observed, the enterprises in which prisoners such as the applicant are employed bear the immoral stamp of traffic in persons, which in its crudest form differs not a whit from slavery. In these experts' view the labour contract system exploits prisoners' labour in the same way as the system of sweated slave labour followed by cotton planters in the USA in the last century.

On this point reference is made to the article by John Gahlen, Regierungsamtmann, in 'Blätter für Strafvollzugskunde', Beilage Heft 5, September 1966, pages 4 - 5.

This shows that the fundamental provision of Article 4, paragraph (1), of the Convention, prohibiting slavery, is violated.

By denying the right to payment for labour, the execution of prison terms in the Federal Republic amounts to partial civil death, which was already unlawful under Article 10 of the Prussian Constitution of 31st January, 1850, and which infringes the principle of human dignity laid down in Article 1 of the German Basic Law.

During the period of imprisonment the prison authorities in the Federal Republic consider prisoners' labour and the product thereof as state property. Thus not only do they deny particular legal rights; they prevent the prisoner from acquiring such rights or property by labour and they bring about the opposite of his rehabilitation. In this way the prisoner is stripped of his own legal personality; this is unconstitutional expropriation, and as far as the question of wages is concerned it is clear that a state of slavery is created.

In the Federal Republic the prison regulations are in the form of service instructions issued not by the legislative power but merely by administrative authorities. In the absence of any legislative

authority, the resultant denial of basic rights infringes Section 2 of the Fundamental Law, for the legislative provisions of the Criminal Code and the Code of Criminal Procedure cover no more than the actual deprivation of freedom.

The prison authorities charge their costs up to the prisoner to such an extent as to strip him bare. This ignores the safeguards otherwise applicable to seizure as well as the prohibition of certain forms of set-off contained in Article 393 of the Civil Code. Any private individual who acted in this way would immediately expose himself to prosecution for aggravated extortion (schwerer Sachwucher) as laid down in Article 302 (e) of the Criminal Code, which is punishable by up to 3 years' penal servitude.

Many states have regulations which provide for the remuneration of prisoners' labour in the same way as that of free workers. Even under the Prussian prison regulations of 24th October, 1837 (since superseded), prisoners had to be paid 50% of their wages. Under Section 89 of the UN standard minimum rules on the treatment of prisoners of 1955-1957 the applicant should have been paid for his labour while in detention pending investigation. That did not happen. Even before his guilt was established he was denied any proper remuneration or any legal right in respect of his labour.

In the light of the Convention this cannot be in accordance with Human Rights and Fundamental Freedoms. The Preamble to the Convention refers to the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December, 1948, Article 6 of which reads:

'Everyone has the right to recognition everywhere as a person before the law.'

It is therefore quite clear that such recognition must be granted wherever the individual concerned happens to be, whether at liberty or in captivity, in prison, penal servitude or preventive detention. He must not be sentenced or subjected to civil death, even partial. But those provisions of the service instructions mentioned above which concern remuneration for prisoners' labour and service are in fact tantamount to slavery. The applicant's treatment while under arrest is therefore not in accordance with the Convention.

The applicant claimed remuneration for his work from the prison authorities and obtained a decision from the competent Court of Appeal and, finally, a decision by the Federal Constitutional Court in Karlsruhe dated 15th December, 1966, which declared his constitutional appeal (Verfassungsbeschwerde) to be unfounded and denied him his proper wage.

The applicant has thus exhausted domestic remedies in the Federal Republic of Germany, and the way is therefore clear for the present application.

In conclusion reference should be made to Convention No. 105, BGBL (German Law Gazette) 1959, Part II, pp. 441 et seq., of the General Conference of the International Labour Office, which was ratified by the Federal Republic of Germany on 20th April, 1959. In that Convention the Federal Government undertakes to abolish forced and compulsory labour and not to resort to it in any form, certainly not in the form of social discrimination.

'Discrimination' means distinct treatment, denial of rights, humiliation or exclusion. The treatment of the prisoner is tantamount to social discrimination in the sense of exclusion from society. In certain special cases courts in the Federal Republic have stated that the offender has so far transgressed against the constitutional order that he may no longer share the blessings of a constitutional state.

This is nothing more or less than social discrimination, which is contrary to Section 25 of the Basic Law under which the general rules of international law are applicable in the Federal Republic.

It is required that action be taken to ensure the applicant's remuneration for the work performed by him during his detention, at the rate paid to free workers for comparable services less 4.50 DM a day for costs incurred and less the remuneration already received by him and for him to be insured retroactively and for the past and the future under the social security laws of the Federal Republic on the basis of the full wage mentioned above."

4. In his further submissions the applicants' lawyer further elaborated his arguments in favour of an adequate remuneration for prison labour. For this purpose he also quotes from articles and books of other authors on the subject. His arguments may be summarised as follows:

the opinion that prisoners have a right to full remuneration for they labour is supported by the historical development of the prison system in Amsterdam where in 1595 and 1597, the first penitentiaries for men (Zuchthaus) and for women (Spinnhaus) were built. Detention in these houses served the purpose of rehabilitation of the prisoners and did not affect their civil rights status. The prisoners received a reward for orderly work which was partly put at their disposal and partly set aside for their maintenance after release. Later on in Germany the services of prisoners were leased out to private contractors who only sought to exploit them;

in comparison with the present rules concerning the remuneration of prisoners the Prussian prison regulations of 1837 (Instruktion vom 24.10.1837 für die Inspektoren, Aufseher und Wärter der gerichtlichen Gefangenen-Anstalten in Preussen) were much more favourable to the prisoners as they provided that the prisoners should receive half of the remuneration for their labour;

according to German jurisprudence and legal literature, prison labourers do not have any right to wages because they are not employed on the basis of a free labour contract. For the same reason they do not come under the social insurance system (see decision of the Federal Social Court of 31st October, 1967) and, in particular, they receive no unemployment benefits after their discharge from prison. The result is that the prisoners, who in general have great difficulty in obtaining employment after their discharge from prison, are likely to commit new offenses;

in fact, the possibility has been considered by the Ministers of Justice of the Länder of including prisoners in social security schemes but the prison directors objected that the employers would then have to pay social security contributions in addition to wages. This argument shows that the present system of remuneration for prisoners only serves the profit of their employers;

private enterprises employing prisoners obtain profit from the prisoners' work, as they do not have to pay the normal contributions to social security schemes or taxes on their salary;

a particularly experienced prison official had stated during a congress of the Social-Democratic Party in 1965:

"The reward for the prisoners' labour should be so high that he is able to support his family and to compensate the victims of his crime."

Other authors had claimed, in connection with proposed new legislation on the execution of prison sentences, that remuneration for prisoners should be adapted to ordinary wages;

the Federal Ministry of Justice itself had proposed with respect to

certain young offenders (Jugendarrestanten) that they should receive ordinary wages;

Reference is also made by the applicants' lawyer to the rules applied to the prisoners of Spandau who have been convicted by the Allied Forces at the Nuremberg Trials. These prisoners are not required to work but only do some garden work on a voluntary basis.

II. Whereas the particular facts of the various applications may be summarised as follows:

1. Application No. 3134/67

The applicant who was born in 1926 in Hannover is at present detained in prison at Celle serving, since 1959, two sentences together comprising a term of 8 years and 9 months of severe imprisonment (Zuchthaus).

2. Application No. 3172/67

The applicant who was born in 1912 in Essen, has served from 1961 until March, 1968, a sentence of 3 years and 6 months severe imprisonment (Zuchthaus) and subsequent preventive detention (Sicherungsverwahrung) in Werl Prison.

He has lodged a previous application (No. 1658/62) alleging that the institution of preventive detention violated Articles 2, 3, 4, 5, 6 and 7 of the Convention and the provisions of the German Basic Law (Grundgesetz). In the application he made inter alia the following complaint:

"The prisoners are compelled to work at ridiculous salaries which enable the Public Treasury to extract fortunes from the detainees, namely profiting from the differences between the salaries and the market value of their work."

The Commission's decision of 7th March, 1964, stated as follows:

"On .. September, 1962, the applicant lodged, apparently without success, a complaint with the Legal Committee of the Federal Parliament in Bonn. At the beginning of 1963 he filed a suit against the State of Nord Rhein-Westfalen claiming 42,000 DM as compensation for work done in prisons since 1950 and requested free legal aid. His requests were rejected in April and July 1963 by the competent courts and on .. July, 1963, he lodged a constitutional complaint (Verfassungsbeschwerde) in respect of these rejections. It appears that the Federal Constitutional Court has not yet decided on this complaint and that the above lawsuit is also still pending ...

Whereas, in regard to the applicant's allegations that Article 42 (e) of the German Criminal Code violates Articles 2, 3, 4, 5, 6 and 7 of the Convention, 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 in the Articles invoked by the applicant; Whereas, in this respect, the Commission refers to its decisions on the admissibility of Applications Nos. 99/55 (K. v. the Federal Republic of Germany - Yearbook I, p. 160) and 1158/61 (H. v. the Federal Republic of Germany);

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

The present application is directed solely against the fact that the applicant was refused adequate payment for the work which he had to perform during his detention.

3. Application No. 3188/67

The applicant is a minor girl born in 1964. The marriage of her parents has been annulled and her custody awarded to the applicant's mother, Mrs. B., living with the applicant at Kamen and acting in the present application as the child's parental representative.

Since 1964, the applicant's father has served a sentence of two years imprisonment (Gefängnis) in Münster. According to a judgment by consent (Anerkenntnisurteil) of the District Court (Amtsgericht) at Unna of .. September, 1965, the father is obliged to pay maintenance in the amount of 80 DM per month, beginning with .. December, 1964. For the payment of this obligation he has transferred to the applicant an amount of 80 DM per month as part of a claim of 425 DM which he considers he has against the prison administration for the work that he had to perform during his detention.

The applicant herself has unsuccessfully applied to the competent administrative authorities and courts for payment.

4. Application No. 3189/67

From 1965 until 1967 the applicant has served a sentence of imprisonment (Gefängnis) of two years and six months in prison at Münster.

5. Application NO. 3190/67

The applicant was born in 1914 at Neustadt-an-der-Waldnab and is now living at Dorsten. From 1957 to 1966 he served two sentences together comprising a term of 4 years severe imprisonment (Zuchthaus) and subsequent preventive detention (Sicherungsverwahrung) in Werl Prison. He has lodged a previous application, No. 254/57 (1), against one of these convictions which was declared inadmissible by the Commission on 16th December, 1957. When last heard of he was again detained in prison in Essen.

His present complaint is directed solely against the fact that he was refused adequate payment for the work which he had to perform during his detention.

6. Application No. 3191/67

The applicant is living in Münster. From 1957 to 1960 and again from 1964 to 1966 the applicant was detained in various prisons of North Rhine-Westphalia and in Bremen, serving two consecutive sentences of 2 years and 6 months and 3 years of imprisonment. The periods of his detention included a considerable time spent in detention on remand.

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(1) Yearbook I, page 150.  
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7. Application No. 3192/67

The applicant was born in 1937 and is living in Dortmund. From 1964 to 1966 he served a term of 1 year and 10 months of imprisonment at Bochum.

8. Application No. 3193/67

The applicant is at present detained in Ziegenhain Prison near Frankfurt. Since 1963 the applicant has been serving a term of severe imprisonment (Zuchthaus) and subsequent preventive detention (Sicherungsverwahrung).

9. Application No. 3194/67

The applicant is detained in Straubing Prison. Since 1956 he has been serving a life sentence of severe imprisonment (Zuchthaus).

10. Application No. 3195/67

The applicant is a German citizen living in Bad Gandersheim. From 1960 to 1966 he served a term of 6 years severe imprisonment (Zuchthaus) in Freiburg Prison.

His complaint is mainly directed against the fact that he was refused adequate payment - according to his own calculations more than 26,000 DM for the work he had to perform during his detention. Already in March, 1965, he wrote to the Commission but did not then pursue the matter.

In October, 1965, he applied without success to the prison administration. On .. December, 1965, the Court of Appeal at Karlsruhe rejected his request for a judicial decision as inadmissible since the applicant could, and should have, lodged previously an appeal to the Ministry of Justice of Baden-Württemberg and should have attacked that decision before the Court of Appeal (Oberlandesgericht) at Stuttgart. The applicant, however, submits documents from which it appears that the Court of Appeal at Stuttgart took the opposite view in a number of similar cases. The applicant states that thus, in fact, both courts rejected complaints of prisoners on formal grounds without ever examining the merits. This he considers as a violation of Article 6, paragraph (1), of the Convention.

He states that shortly after his case was dismissed by the Court of Appeal at Karlsruhe, the dispute was settled by a new law (Gefangenenbeschwerdegesetz) referring all such cases, including those already pending to the Court of Appeal at Stuttgart but that the Court of Appeal at Karlsruhe dismissed the case although he had drawn their attention to the Bill already under consideration in Parliament.

Subsequently, the applicant lodged a constitutional appeal which was rejected on .. December, 1966, by a committee of three judges of the Federal Constitutional Court (Bundesverfassungsgericht) as being clearly ill-founded (offensichtlich unbegründet). Previously, in his letter of .. December, 1966, the judge rapporteur had stated that, in these circumstances, it could be left open whether the Court of Appeal at Karlsruhe had been right in rejecting the request for a judicial decision as being inadmissible on formal grounds.

11. Application No. 3196/67

The applicant is at present detained in prison at Celle. Since 1964 he has been serving a term of 5 years severe imprisonment (Zuchthaus).

12. Application No. 3197/67

The applicant is at present detained in Werl Prison. Since 1964 he is serving two sentences, together comprising a term of 5 years and 6 months severe imprisonment (Zuchthaus).

13. Application No. 3198/67

The applicant is a German citizen, living in Cologne. From 1958 to 1966 he served a term of 2 years and 6 months severe imprisonment (Zuchthaus) and subsequent preventive detention (Sicherungsverwahrung) in Werl Prison.

14. Application No. 3199/67

The applicant is living in Amberg near Nuremberg. From 1965 to 1966 the applicant served a term of 1 year and 2 months imprisonment (Gefängnis)

in Amberg Prison.

15. Application No. 3200/67

The applicant is at present detained in Werl Prison. Since 1959 he has been serving a term of 7 years severe imprisonment (Zuchthaus) and subsequent preventive detention (Sicherheitsverwahrung).

16. Application No. 3201/67

The applicant is living at Unna. From 1965 to 1966 he served a term of 1 year and 9 months imprisonment (Gefängnis) at Münster.

17. Application No. 3202/67

The applicant is a German citizen living in Maxhütte-Haidhof. In 1965 he served a term of 6 months in the Dortmund Prison for young offenders.

18. Application No. 3203/67

The applicant is detained in Ziegenhain Prison, near Frankfurt. Since 1960 he has been serving a life sentence of severe imprisonment (Zuchthaus).

19. Application No. 3204/67

The applicant is living in Massen near Unna. From 1962 to 1964 he served a term of 2 years severe imprisonment (Zuchthaus) at Münster.

20. Application No. 3205/67

The applicant was born in 1910 and is at present detained in prison at Celle.

Since 1960 he has been serving a term of 3 years severe imprisonment (Zuchthaus) and subsequent preventive detention (Sicherheitsverwahrung) in prison at Celle. A previous application lodged against his conviction and sentence (No. 1721/62) was declared inadmissible by the Commission on 8th July, 1964.

His present complaint is directed solely against the fact that he was refused adequate payment for the work which he had to perform during his detention.

21. Application No. 3206/67

The applicant is living in Giessen. From 1962 to 1966 he served a term of 1 year and 6 months imprisonment and subsequent preventive detention (Sicherungsverwahrung) at Bruchsal.

His complaint is directed solely against the fact that he was refused adequate payment for the work which he had to perform during his detention. In this respect he applied unsuccessfully to the competent administrative authorities (Strafvollzugsbehörden), the Court of Appeal (Oberlandesgericht) at Karlsruhe and finally to the Federal Constitutional Court (Bundesverfassungsgericht). His constitutional appeal was dismissed on .. December 1966, by a committee of three judges of the Federal Constitutional Court (Bundesverfassungsgericht) as being clearly ill-founded (offensichtlich unbegründet). From the letter of the judge rapporteur of .. December, 1966, it appears that in this case also his request for a judicial decision had been rejected by the Court of Appeal as being inadmissible on the formal grounds set out under No. 10 above and that, in deciding on the constitutional appeal, it was left open whether or not the decision of the Karlsruhe Court of Appeal had been correct.

The applicant and his lawyer, however, raise no complaint as to the question of access to a court.

## THE LAW

### I. As to the common complaints of all applicants

Whereas the applicants complain that during the detention in prison they were subjected to forced and compulsory labour within the meaning of Article 4 (Art. 4) of the Convention without receiving adequate payment and without being insured under the social security law;

Whereas the Commission has examined this complaint first in the light of Article 4, paragraphs (2) and (3) (a) (Art. 4-2, 4-3-a), which read as follows:

"(2) No one shall be required to perform forced or compulsory labour.

(3) For the purpose of this Article the term 'forced or compulsory labour' shall not include:

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 (Art. 5) of this Convention or during conditional release from such detention:"

Whereas it is not contested in the present applications that the detention concerned was imposed by the competent courts in a lawful manner and whereas the work performed during this detention is therefore covered by Article 4, para. (3)(a) (Art. 4-3-a), taken in conjunction with Article 5 (Art. 5);

Whereas it is further to be observed that Article 4 (Art. 4) does not contain any provision concerning the remuneration of prisoners for their work and, consequently, the Commission has in its constant jurisprudence rejected as being inadmissible any applications of prisoners claiming higher payment for their work (Applications No. 833/60, X. against Austria, Yearbook Vol. III, p. 440; No. 1854/63, R. against the Federal Republic of Germany, Decision of 28th September, 1964; No. 2066/63, V. against Austria, Decision of 17th December, 1965; No. 2413/65 X. against the Federal Republic of Germany, Collection of Decisions, Vol. 23, p. 8) or claiming the right to be covered by social security systems (Application No. 1451/62, G. against Austria, Decision of 23rd July, 1963).

Whereas the applicants complain particularly that part of the work required of them during their detention was performed on behalf of private firms under contracts concluded with the prison administration and whereas they allege that such labour contract system amounts to a state of slavery for the prisoners concerned;

Whereas, in this respect, it is to be observed that Article 4, paragraph (3) (a) (Art. 4-3-a), which deals with the question of prison labour, contains nothing to prevent the state from concluding such contracts or to indicate that a prisoner's obligation to work must be limited to work to be performed within the prison and for the state itself;

Whereas it is true that this provision only refers to "any work required to be done in the ordinary course of detention" ("tout travail requis normalement"); whereas, however, it appears from the preparatory work of Article 8, paragraph (3) (c) of the UN Covenant on Civil and Political Rights, which also served as the basis in drafting Article 4 (Art. 4) of the European Convention, that the underlying reason for this term was the intention to provide a "safeguard against arbitrary decision by authorities with regard to the work which might be required" (United Nations Document E/CN.4/SR.142.143); whereas, on the other hand, there is no indication in the preparatory work that the

term "normalement requis" is in any way related to the problem of prison labour carried out in conjunction with private enterprise;

Whereas, in fact, such forms of prison work were at the time of the drafting of the Convention, and are still now, widely prevailing in many member states of the Council of Europe; whereas in this respect the Commission refers to the comprehensive study of this subject which was undertaken by the United Nations, Department of Economic and Social Affairs (partly in co-operation with the International Labour Office), and published as a basic document ("Prison Labour", United Nations, 1955, ST/SOA/SO/5, Sales No.: 1955.LV.7) for the First UN Congress on the Prevention of Crime and the Treatment of Offenders, and to the work of this Congress; whereas it appears from this study that in 1955 the systems of prison labour described as "lease", "contract", and "piece-price", each of which entails the presence of private enterprise interests, were still found in a number of states; whereas, within Europe, these systems appeared to provide employment for substantial proportions of prisoners, for example in Austria (21.4 per cent), Belgium (about 70 per cent), France (nearly 50 per cent of all prisoners assigned to work) and Sweden;

Whereas, after a detailed survey of the practice of various countries, the UN study further comes to the conclusion that the amounts paid to the working prisoners are, with very few exceptions, extremely small, and that normally prisoners have no legal right to remuneration which is only paid as a "reward" or "gratuity" subject to regulations governing the disposition of the money and which may, in certain circumstances, be withdrawn as a disciplinary measure; whereas in view of this general situation the Commission finds that the form of prison labour of which the applicants complain, whatever its merits or demerits from a penological point of view, clearly appears to fall within the framework of work "normally" required from prisoners within the meaning of Article 4, paragraph (3) (a) (Art. 4-3-a), of the European Convention;

Whereas this conclusion is in fact confirmed by a comparison of Article 4, paragraphs (2) and (3) (a) (Art. 4-2, 4-3-a), of the European Convention on Human Rights with Article 2 of Convention No. 29 of the International Labour Office, concerning Forced or Compulsory Labour, 1930 (in force since 1st May, 1932) and now ratified by all member states of the Council of Europe. This provides as follows:

"1. For the purposes of this Convention the term 'forced or compulsory labour' shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

2. Nevertheless, for the purposes of this Convention, the term 'forced or compulsory labour' shall not include:

- (a) ....
- (b) ....
- (c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;"

Whereas Article 4 (Art. 4) of the European Convention was drafted on the basis of the earlier projects of Article 8 of the UN Covenant which in turn was partly based on the 1930 ILO Convention; whereas, however, all drafts of the UN and of the Council of Europe omitted from the very beginning the clause of the ILO Convention that prisoners should not be "hired to or placed at the disposal of private individuals, companies or associations";

Whereas no reasons for this omission are to be found in the preparatory

work; whereas it must, however, be assumed that the drafters, in omitting this clause, had regard to the large variety of prison labour systems prevailing in the European countries, to the widespread use of prison labour in conjunction with private enterprise and to the difficulties of the ILO to obtain a definite change of the prison labour systems; finally that they had regard to the doubts which were arising even under the ILO Convention as to whether it was really necessary and desirable to exclude the employment of prisoners in conjunction with private enterprise, particularly as it had appeared that such work offered more possibilities of professional training and readaptation (see the debates conclusions of the First UN Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva, 1955, report by the Secretariat, A/CONF/6/1, Sales No. 1956.LV.4);

Whereas it is clear that the restriction contained in the ILO Convention with regard to the employment of prisoners for private firms was for these reasons not incorporated in the provision of the European Convention on Human Rights concerning "forced or compulsory labour"; whereas in this respect reference is made to the Commission's decision of 7th February, 1967, on the admissibility of Application No. 2661/65 (B. against Austria) which also concerned work done by a prisoner for private enterprises;

Whereas the applicants' lawyer seems, however, to maintain that this system of prison labour constitutes "slavery" or "servitude" within the meaning of Article 4, paragraph (1) (Art. 4-1), of the Convention;

Whereas the Commission finds that both these terms are inapplicable to a situation normally imposed upon a convicted person in most countries of the world and expressly recognised by the Convention in the context of its prohibition of "forced or compulsory labour";

Whereas, in conclusion, the Commission finds that an examination of the common complaint of all the cases 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 in Article 4 (Art. 4); it follows that the complaint is manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention;

II. As to the particular elements of certain of the applications

1. With regard to Application No. 3172/67

Whereas, it is first to be observed that, in Application No. 1658/62, the applicant also complained as to an inadequate remuneration for his work during detention and that, on 7th March, 1964, the Commission rejected that application as being manifestly ill-founded;

Whereas, on the other hand, the present application concerns, in particular, the work which the applicant was required to do during the subsequent period of detention not yet covered by the previous decision;

Whereas, however, his present complaint concerning the new period must also be rejected for the reason set out above in Part I;

With regard to Application No. 3195/67

Whereas in this case the applicant is a minor child of a prisoner who has transferred to her his claim for remuneration; whereas in this respect the Commission observes that it is clear that in this case the applicant cannot reasonably invoke Article 4, paragraphs (1) or (2) (Art. 4-1, 4-2), since she has not in any way been subjected to prison labour; whereas therefore this application must therefore be rejected for this reason as being manifestly ill-founded;

3. With regard to Application No. 3191/67

Whereas this applicant also appears to complain particularly that, even during the periods of his detention on remand, he did not receive adequate remuneration for the work performed by him;

Whereas, under the relevant German provisions, prisoners in detention on remand are not obliged to work; whereas the applicant does not allege that, contrary to these provisions, he was forced to work during the period of his detention on remand, but on the contrary he worked voluntarily as is possible for prisoners in detention on remand; whereas therefore no question of forced or compulsory labour under Article 4 (Art. 4) can arise with regard to the work carried out by him during his detention on remand; whereas consequently this complaint must also be rejected as being manifestly ill-founded;

4. With regard to Application No. 3195/67

Whereas this applicant further complains that, with regard to his claim for adequate payment for the work done by him in prison, he was denied a hearing by a tribunal as is provided for in Article 6, paragraph (1) (Art. 6-1), of the Convention; whereas he submits that the Court of Appeal at Karlsruhe refused to examine the merits of his claim and that, under the constant jurisprudence of the Court of Appeal of Stuttgart, he was also prevented from bringing his claim before that Court;

Whereas in this respect, it is to be observed that Article 6, paragraph (1) (Art. 6-1), of the Convention only applies to proceedings concerning the determination of "civil rights and obligations" or of "any criminal charge"; whereas, consequently, the question arises whether a prisoner's claim against the state for adequate payment for his work is to be considered as a "civil right" within the meaning of this provision;

Whereas the Commission has pointed out in a number of previous decisions (Applications NO. 1931/63, X. against Austria, Yearbook Vol. VII, p. 222; No. 2145/64, X. against Belgium, Collection of Decisions, Vol. 18, p. 17), that it is not decisive whether the right claimed by the applicant constitutes a "civil right" in the country concerned;

Whereas the term "civil rights and obligations" cannot be construed as a mere reference to the domestic law of the High Contracting Party concerned but relates to an autonomous concept which must be interpreted independently, even though the general principles of the domestic law of the High Contracting Parties must necessarily be taken into consideration in any such interpretation;

Whereas, as regards a prisoner's obligations and rights against the state in respect of the work which he is required to do during his detention, it is clear that this is a matter falling under public law and not under private law even if the system of payment for the applicant's work has had repercussions on his financial situation;

Whereas the proceedings in question concerned both a duty imposed on the applicant by public authorities in the exercise of their powers under public law and any rights of the applicant arising out of that same relationship;

Whereas it follows that the proceedings were not concerned with the determination of the applicant's "civil rights or obligations" and therefore fall outside the competence of the Commission *ratione materiae*; whereas, consequently, 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;

Now therefore the Commission declares these applications inadmissible.

