THE FACTS

The applicant is a Danish citizen, born in 1926, and at present serving a life sentence in the prison at V. He is represented by Mr. J., a lawyer practising at Copenhagen.

I. The facts presented by the Parties and not in dispute between them may be summarised as follows:

1. On .. September 1964 the police discovered in the N. Lake on the island of F. two paper bags containing the dead body of a seven year old girl, M. R., who had disappeared from her home on .. August 1964. Near the body the police found a terry cloth rag. During the investigations the police came to suspect the applicant who was also found to possess certain rags and paper bags. He was arrested and, on .. March 1965 remanded in custody.

2. By indictment of 17 June 1965 (as amended in the course of the trial the Public Prosecutor charged the applicant before the High Court for Eastern Denmark (Ostre Landsret) with:

(1) violation of public decency under Section 232 of the Criminal Code (straffeloven) by having, in May 1960, accosted a fifteen year old girl;

(2) violation of the same provision by having, in September 1963, exposed himself to a twelve year old girl;

(3) and (4) two similar offenses allegedly committed in October 1963 against a fourteen year old girl and the girl mentioned in count (2) respectively;

(5) attempted violation of public decency involving a nine year old girl;

(6) "rape under Section 216 of the Criminal Code and with sexual intercourse with a child under 12 years of age under Section 222, sub-section 2, or, as a secondary charge, with sexual relations other than sexual intercourse under Section 224, Sections 216 and 222, sub-section 2, of the Criminal Code, by having on .. August 1964, shortly after 11 o'clock a.m., stopped M. R., born on .. January 1957 who was riding her bicycle through the A. Wood near H., enforcing or obtaining by violence sexual intercourse or sexual relations other than sexual intercourse with her";

(7) "homicide under Section 237 of the Criminal Code by having, on .. August 1964, after 11 o'clock a.m., after the events described under count (6), killed M. R. by some form of choking or shock by strangle-hold, upon which he put the body into two paper bags, took it to N. Lake near K. where he threw it into the water";

(8) violation of public decency under Section 232 of the Criminal Code by his conduct towards a twelve year old girl, probably in November 1956;

(9) theft under Section 276 of the Criminal Code by having in July - September 1963 stolen 100 litres of petrol and a garden trowel.

3. The applicant had previously been charged with the offenses under counts (2) and (4) above, but prosecution had been discontinued by the Public Prosecutor's decision of .. December 1963, because the investigation could not be expected to result in a conviction. The Public Prosecutor decided, however, to resume prosecution on these counts finding that new evidence of substance had been discovered (see Section 975 of the Administration of Justice Act) (1).

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(1) Section 975 of the Administration of Justice Act (retsplejeloven) provides: "When prosecution instituted against an accused person before a Court of Investigation is stopped (Section 825), or when, after a charge has been made, the prosecution has been waived without a judgment having been given, any new prosecution before a Court of Investigation can be instituted on new charges made - other than in the case referred to in Section 826 - only when new evidence of substance is discovered later or on the conditions set out in Section 976 ..."

On .. September 1965 the Public Prosecutor submitted to the High Court the question of resuming the prosecution and notified the applicant's counsel thereof. Counsel did not object at the time, but at the trial he pleaded that no evidence of substance had been discovered subsequent to the decision in 1963. The High Court found no reason to take ex officio a decision to disallow in advance resumption of the prosecution under Section 842 of the Administration of Justice Act (2).
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(2) Section 842 of the Administration of Justice Act reads as follows:
(1) "The Court may reject a case on its own initiative or upon application at any time before the case is tried if the Court, after having given the Public Prosecutor an opportunity to make a statement and, in cases involving a defect which can be remedied, to undertake the steps required to remedy any such defects, finds
(1) that circumstances exist which will cause the case to be rejected during trial; or
(2) that the Public Prosecutor has no right of action; or
(3) that an offense of the nature described in the indictment is not punishable, or that punishment is barred by statutory limitation or for similar reasons.
(2) ....."
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4. The trial began before the Jury of the High Court on .. October 1965.
In its verdict of .. October 1965, the Jury found the applicant guilty on counts (1), (2), (4), (5), (7), (8) and (9) of the indictment, but acquitted him on count (3). On count (6) the applicant was acquitted of having violated Section 216 and Section 222, sub-section 2, of the Criminal Code but he was found guilty under the secondary charge.

In their judgment of .. October 1965, the Judges acquitted the applicant on count (1) under statutory limitation, finding that as the penalty would not exceed mitigated imprisonment (haefte) criminal liability was barred by statutory limitation under the law in force at that time.

The Judges also acquitted the applicant on counts (2) and (4) finding that after the Public Prosecutor's decision of .. December 1963, no new evidence of substance had been discovered, and that accordingly the Public Prosecutor had no right of action on these charges.

The applicant was sentenced to imprisonment for life.

5. The applicant and, subsequently, the Public Prosecutor, appealed to the Supreme Court (Hojesteret) against the judgment. The applicant also requested that a new defence counsel should be assigned.

In the Supreme Court the applicant submitted that the High Court's judgment be quashed and the case be remitted to the High Court for a new trial. He argued that procedural mistakes had been made and that the evidence in the case was so weak that the case would probably have ended differently if the mistakes had not been made. The applicant's counsel, inter alia, pleaded that counts (2) and (4) of the indictment which had presumably been preferred solely to discredit the applicant in the eyes of the Jury, were inconsistent with the provisions of Section 975 of the Administration of Justice Act as no new evidence of

substance had been produced. Counsel also submitted that the applicant's then counsel had not given him sufficient support in the case.

On .. June 1966, the Supreme Court rejected the applicant's appeal and confirmed the judgment of the High Court. In particular, the Supreme Court held that the inclusion of counts (2) and (4) did not constitute a procedural error.

6. On .. January 1968, the applicant, through his present counsel, filed a petition with the Special Court of Revision (Den saerlige Klageret) asking for resumption (Genoptagelse) of the case. In his petition for resumption the applicant's counsel submitted inter alia:

that procedural mistakes had been made in instituting prosecution on counts (2) and (4) and that prosecution on counts (1), (3), (5) and (8) had been instituted merely to "create a psychological atmosphere that rendered a conviction on the main issue possible";

that count (7) of the indictment had not been formulated in accordance with Section 831 of the Administration of Justice Act because (i) no precise indication of the time was given;

(ii) the site was not indicated; and (iii) the manner of execution was not described adequately and clearly (1);

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(1) Section 831 reads as follows:
(1) "Prosecution is instituted by an indictment, prepared and signed by the Public Prosecutor, which shall contain:
1. indication of the court before which the case is to be brought;
2. the name of the accused and anything else required for his exact designation:
3. using the description of the crime as provided for by law and its characteristics as described by law and, if necessary, adding the grounds for increasing or decreasing the penalty, a short account of the misconduct for which prosecution is being instituted with such reference to time, site, object, method of perpetration and other further circumstances as is required for its

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that the evidence of the case had been incorrectly adjudged;

that new evidence had been provided which upset the time-table of the applicant's movements on .. August 1964, which had been established during the proceedings.

Counsel further stated that according to the content of the Presiding Judge's summing up of the case and its evidence, (see Section 893 of the Administration of Justice Act), the applicant could not be found guilty on counts (6) and (7) of the indictment, and for this reason the Judges ought, pursuant to Section 904 of the Administration of Justice Act, to have set aside the Jury's verdict on the applicant's guilt on these counts and ordered a new trial.

By its decision of .. June 1969, the Special Court of Revision refused the applicant's petition on the following grounds:

"The fresh information on the convicted person's movements on .. August 1964 invoked in support of the petition, does not warrant a resumption of the case. Moreover, since special circumstances are on not the whole found to exist that will establish, beyond a reasonable doubt, that the available evidence has not been correctly evaluated, see Section 977, sub-section 1, paragraph 3, of the Administration of Justice Act, the petition is rejected pursuant to Section 982 of the Administration of Justice Act".

II. Complaints

The applicant now complains that during the above proceedings against him, the Convention was violated in the following ways:

(1) The Prosecution acted without objectivity by including counts in the indictment which were intended solely to discredit the accused. (Alleged violation of Article 6, (1) of the Convention.)

(2) Deficient formulation of the indictment. (Alleged violation of Article 6 (1) and of Article 6 (3) (a) of the Convention.)

(3) According to the summing-up by the Presiding Judge, the applicant could not be found guilty. (Alleged violation of Article 6 (1) of the Convention.)

(4) The decision of the Special Court of Revision is deficient in that it lacks grounds. (Alleged violation of Article 6 (1) of the Convention.)

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(1) cont.
adequate and explicit description; the statutory rule or rules under which the penalty will be claimed. Alternative charges, including primary and secondary charges are permissible.
(2) The indictment shall not contain any reference to evidence or discussion of points of law".

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(5) Without making an actual complaint on this point, the applicant also claims that there was insufficient evidence to justify his conviction. He admits that there is not authority in the Convention to make such a complaint, but argues nevertheless that the Commission cannot completely ignore the assessment of evidence.

SUBMISSIONS OF THE PARTIES

A.. As regards Article 26 of the Convention

1. Relying on the decision of the Commission on the admissibility of application No. 343/57 (Nielsen v. Denmark) (2) the applicant submits that the decision of the Special Court of Revision of .. June 1969, rejecting his application for resumption, and not the judgment of the Supreme Court which was given on .. June 1966, should be regarded as the final decision for the purpose of the six months' time-limit laid down in Article 26 and that, accordingly, his application has been lodged in time.

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(2) Yearbook, Vol. 2, p. 412.

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2. The respondent Government submits that the judgment of the Supreme Court must be regarded as the final decision under Article 26, so that the six months' time-limit has been exceeded.

In this connection, the Government first refers to its submissions in the Nielsen case explaining the functions of the Special Court and why that court could not be regarded as a remedy under Article 26. It then points out that the Commission held, however, in the Nielsen case that the Special Court was to be regarded as an effective legal remedy to the extent that this court, as far as each particular ground of complaint of an application is concerned, must be deemed to offer the applicant the possibility of an effective and sufficient means of redress. The Government recalls that of the complaints made in the present application items 1, 2, 3 and 5 (see II above) were brought before the Special Court. The competence of that court in the present case must be sought in Section 977, sub-section 1, paragraph 3, of the Administration of Justice Act except as regards item 5 to which paragraph 1 of the said sub-section applies (3).

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(3) Section 977 reads as follows:

On the petition of a convicted person a case tried by the Supreme Court of by a High Court sitting with a jury or upon appeal may be resumed:

1. if new evidence is produced and it is considered likely that if this evidence had been available at the trial, it might have caused the acquittal of the accused or the application of an essentially milder provision of the Criminal Code;
2. if any offence as mentioned in No. 2 of Section 976 is proved, and it is considered likely that such an offence may have caused, or contributed to, the conviction;
3. if in other respects special circumstances exist which make it overwhelmingly likely that the available evidence was not judged correctly;
.....

The provision contained in sub-section 1, paragraph 3, was included by an amendment to the Administration of Justice Act enacted in 1939. The preparatory work on this amendment shows that it was found desirable, in extraordinary cases, to provide a possibility for reconsideration of the adjudication of the evidence as such, even if no real new evidence had been produced.

In this connection, the Government refers to the following authoritative statement concerning the reasons for the enactment of this provision:

"This provision is intended as a safety valve to prevent miscarriage of justice which cannot be redressed in any other way because the guilty has been established by a final decision in cases where special doubt arises about the correctness of that decision even if no new information can be provided. The mistake pleaded consists of an incorrect evaluation of the evidence produced in the original case" (1)
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(1) Quoted form Professor Stephan Hurwitz' textbook on Danish Administration of Criminal Justice (Den danske Strafferetspleje) 1959. An article by Professor Hurwitz published in 1938 had been one of the reasons for the inclusion of this provision.

The Government further submits that the fact that a case may be resumed, even if new evidence has not been produced, does not mean that cases which may legally be brought before the Special Court do not have to contain any new elements or any references to changed conditions. The provision to the effect that "special circumstances which suggest, beyond a reasonable doubt, that the existing evidence has not been correctly evaluated" clearly indicates that very special circumstances must exist. The background against which this court was established as well as its composition and functions show that the intention was not merely to establish one more link in the hierarchy of law courts. In the present case, however, an attempt has in fact been made to use the Special Court of Revision, except for item 5 of the application, as a simple court of appeal, which is revealed by an examination of the particular grounds of complaint.

3. The Parties have made the following submissions as regards the separate grounds of complaint.

(a) Inclusion of counts to discredit the applicant (item 1)

The Government submits that both the High Court and the defending counsel were notified, well ahead of the trial, of the reasons that induced the Public Prosecutor to resume counts (2) and (4) of the indictment, which had previously been closed. But the defending counsel raised no objection, and the High Court decided not to disallow these counts in advance. On appeal, the Supreme Court found that no

procedural error had been committed by the High Court in this connection. The applicant has therefore had no reason to presume such special circumstances existed in this respect as would induce the Special Court to order a retrial.

The applicant admits that it may have been an error of his defence counsel not to make an objection which is supported by the fact that the High Court acquitted the applicant on counts (2) and (4). It is, however, in his opinion, unreasonable to attach any significance to the lack of objection. The fact that the High Court had not made a ruling to disallow in advance, can have no bearing on the applicant's subsequent legal status, particularly as he was later acquitted on these counts. That the Supreme Court did not consider that any procedural error had been committed in this respect does not justify the assumption that the applicant did not have occasion to regard the Special Court as an effective and reasonable remedy. If the Government's arguments were accepted, it would be extremely difficult ever to regard the Special Court as an effective remedy as a case would be submitted to that court only when the Supreme Court has rejected an applicant's appeal to it.

(b) Deficient indictment and discrepancy between the summing up of the Presiding Judge and the judgement (items 2 and 3)

The Government submits that the deficiencies alleged in the applicant's submissions under items 2 and 3 existed before or under the Jury's verdict. Nothing caused them to be noticed, or indeed to be noticeable, only at a later stage. Nevertheless, they were not, as they might have been, referred to the Supreme Court by an ordinary appeal.

It would not be compatible with purposes for which the Special Court of Revision was established if such considerations - without any change in the circumstances - were to induce the Special Court to order a retrial after a period of more than two years. Moreover, this would be tantamount to setting aside the time-limit fixed for appeal to the Supreme Court.

Hence, the applicant has had no reason, in respect of items 2 and 3 to expect the Special Court to order a retrial on account of the alleged deficiencies in previous proceedings. He has, in other words, had no reason to assume that the Special Court offered effective and sufficient means of redress.

The applicant contends that the relevant provisions of the Administration of Justice Act had clearly been violated as regards these complaints and it must therefore seem reasonable to submit these complaints to the Special Court.

(c) Evidence insufficient to justify conviction (item 5)

The Government emphasises that the High Court's assessment of the evidence was brought before the Supreme Court and the Special Court. The Supreme Court held that it had no competence to examine this question. The Special Court found that no fresh information had been produced within the meaning of Section 977, sub-section 1, paragraph 1, of the Administration of Justice Act.

Even if the Special Court of Revision is, in principle, a suitable remedy in cases where fresh evidence is produced, its role for the purpose cannot change the above-mentioned findings because its competence in this respect covers circumstances that are not in the Government's submission within the meaning of Article 6 of the Convention.

Should the Commission find that in any respect the Special Court affords the applicant an effective and satisfactory remedy within the meaning of Article 26, the Government submits that this remedy will

then have been used in circumstances where, in relation to the Supreme Court's decision, a petition to the Special Court can no longer prolong the time-limit stipulated in Article 26 of the Convention.

In the Nielsen case the Danish Government submitted that there is no time-limit on the filing of a petition for resumption with the Special Court and further that this could have unreasonable consequences in relation to the Convention if the Special Court's decision were to be considered as the final decision within the meaning of Article 26 of the Convention, seeing inter alia that any decision, whenever taken in the ordinary sequence of courts, could be brought before the Commission if the applicant brought it before the Special Court and then, within six months of the Special Court's decision, filed an application with the Commission.

In the Nielsen case the Commission decided to reserve the right to assess in each case the role which the existence of the Special Court may play in relation to Article 26, but the Commission's decision shows that significant consideration was given to the fact that Nielsen's counsel filed an application with the Special Court already fourteen days after the Supreme Court's decision. In the Nielsen case, there was thus continuity in the proceedings before the various instances.

In the present case the situation is entirely different: as far as item 1 of the application is concerned the Supreme Court's decision was taken on .. June 1966, while the petition to the Special Court was not filed until .. January 1968 - more than 18 months after the Supreme Court's decision.

Hence, at the time when the petition was filed with the Special Court neither the decision of the Supreme Court nor the complaint concerning the High Court proceedings could have been made the subject of an application to the Commission; only the petition to the Special Court rendered the application to the Commission possible.

Such a result is manifestly unreasonable. Section 977 of the Administration of Justice Act prescribes no time-limit because it is considered undesirable in Danish law to bar a case from being resumed if more recent circumstances give rise to strong doubts about the correctness of a judgment. But this should not preclude the considerations underlying Article 26 of the Convention from being applicable to Denmark.

This conclusion obviously applies a fortiori to the items of the application that were not referred to the Supreme Court, because more than two years elapsed between the alleged procedural mistakes and the filing of the petition for resumption with the Special Court.

Hence the Government submit that items 1 - 3 of the application be rejected under Article 27 (3) of the Convention because the applicant has failed to comply with the six months' time-limit, the decision of the Supreme Court being "final" in respect of item 1 and the High Court's decision being "final" in respect of items 2 and 3 within the meaning of Article 26 of the Convention.

The applicant denies that the case was submitted to the Special Court of Revision only with the intention of circumventing the time-limit in Article 26 and claims that it was necessary to take the case to that court in order to exhaust all domestic remedies.

The applicant's counsel in the Supreme Court was Mr. C. who had brought the Nielsen case before the Commission a few years earlier. In that case the Commission had recognised the decision of the Special Court as the relevant decision for the purpose of Article 26. Mr. C. had therefore every reason to expect that the respondent Government would argue that all domestic remedies had not been exhausted unless the case

had been brought before the Special Court. After the judgment of the Supreme Court, Mr. C. continued the case. However, his work was hampered by illness, and was interrupted by his death on .. June 1967.

The applicant then asked Mr. J., his present counsel, to take over the case, and on .. July 1967 Mr. J. applied to the Special Court that he should be appointed ex officio defence counsel but this application was refused. Counsel then worked on the case on his own account, testing evidence, etc. On .. January 1968 the petition to re-open the case was filed with the Special Court.

The applicant cannot accept the Government's argument that there is no continuity between the Supreme Court's decision, the decision of the Special Court and the submission of the case to the Commission. Neither does he accept the argument that notwithstanding the fact that there is no time-limit for submitting to the Special Court, this should not preclude the consideration underlying Article 26 from being applicable to Denmark.

It is true that there is no time-limit for submission of a case to the Special Court where fresh evidence has come to light, but this is a matter of course in a civilised society. It is therefore improper to claim that the Commission should be excluded from hearing a complaint on discovery of new evidence.

As regards the re-opening of a case on grounds provided for in Section 977, sub-section 1, paragraph 3 of the Administration of Justice Act, there is, however, a five year time-limit for submitting a case to the Special Court. This time-limit has not been exceeded.

B. As to the question whether the application is inadmissible on other grounds (Article 27, paragraph (2), of the Convention)

In the event that the Commission should not declare the above part of the application (items 1 - 3) inadmissible under Article 27 (3) of the Convention, the Government submits that these parts of the application should be rejected as manifestly ill-founded. The Government claims that the same ground of inadmissibility applies to the complaint concerning the absence of grounds for the decision of the Special Court (item 4). Finally, insofar as the application can be said to complain that the evidence was insufficient for his conviction (item 5) the Government alleges that such complaint is incompatible with the provisions of the Convention.

(a) The Public Prosecutor's alleged lack of objectivity (item 1)

The applicant alleges that the Public Prosecutor did not show the objectivity he was obliged to do and that by including various and - in relation to the main charge - insignificant instances of violation of public decency in his address to the jury the Public Prosecutor attempted to form a picture of the applicant as a man who had been implicated in offenses against a number of small girls. Of the long list of charges in this respect, besides the main charges in counts (6) and (7), the applicant was only convicted on two counts (5) and (8). But the very composition and working of the indictment created the desired psychological atmosphere.

The applicant emphasises that the question of guilt was decided by the jury which was susceptible to such an atmosphere. Indeed the Judges acquitted the applicant on three counts (1, 2 and 4) where the jury had found the applicant guilty.

The applicant contends that, although Danish law permit the accumulation of several charges, the omission of what were in this connection minor charges would not have altered the sentence on the main charge and can therefore only have the purpose of discrediting the applicant in the eyes of the jury. The charges in counts (2) and (4)

were, in the applicant's submission, only included to enable a conviction on the main charge for which the evidence was so slender that a conviction would otherwise not have been possible. He alleges that there was a clear violation of his right to a fair hearing under Article 6 (1) of the Convention.

In addition to prosecution on the counts relating to M. R. the indictment included prosecution for violation of public decency on six counts. As far as the time element is concerned, the first of these counts (1) dates from 1960; the following three (2, 3 and 4) from late September and early October 1963; the fifth (5) from June 1964; and the last (8) from November 1964. On counts (2) and (4) the Public Prosecutor waived prosecution by his decision of .. December 1963, because investigations could not be expected to lead to a conviction. As a result of information elicited about other offenses during the investigation of the M. R. case, which motivated charges with violation of public decency in relation to little girls, the Public Prosecutor decided to resume prosecution on these counts. The Public Prosecutor had found it significant that when he decided in 1963 to waive prosecution there was no evidence to indicate that the applicant took any special interest in little girls. For one thing, he was married and had four minor children. Moreover, the applicant maintained that an operation had reduced his sexual urge. Later, however, counts (3), (5) and (8) of the indictment demonstrated his interest in little girls. The question of resumption of this part of the prosecution was, as noted previously, submitted to the High Court after the indictment had been drawn up but well ahead of the trial, and the applicant's counsel was notified of it.

Under Danish law, there is nothing to prevent the inclusion of several counts in an indictment, even if anyone of the counts may be claimed to prejudice the decision on another count. Prosecution can be waived only in the circumstances specified in Section 723 of the Administration of Justice Act, which does not provide for waiver of prosecution for this reason. Under Section 705 of the Administration of Justice Act prosecution of one person on several counts must, as far as possible, be instituted under the same case, but Section 706 authorises the Court to separate them.

As noted previously, the Supreme Court held that the inclusion of counts (2) and (4) in the indictment did not constitute a procedural mistake.

The Convention contains no rules on the resumption of cases which the prosecuting authorities has closed on account of the state of the evidence. Hence, it must be evident that resumption of such cases is not a violation of the Convention, always provided, of course, that the accused is given a fair trial in the resumed case.

Under Section 975 of the Administration of Justice Act, a case which has been closed can generally be re-opened only when fresh evidence of substance has been discovered. Whether or not this is the case is a matter for the national authorities to assess, seeing that the Convention - also the Commission in its practice - leaves the assessment of evidence in criminal cases to national authorities. Any such decision can therefore only be the subject of an application to the Commission if the real purpose of the decision is to prevent an accused person from obtaining a fair trial, and this can certainly not be contended in the present case.

For the sake of completion it should be noted that the Convention does not prohibit resumed criminal cases from being added to new cases.

The Government further draws attention to the fact that Article 14 of the United Nations International Covenant on Civil and Political Rights, which goes into more detail that the European Convention does, with regard to the rights of accused persons in criminal cases, does

not prohibit resumption of cases which the prosecuting authority has closed because of the state of evidence. The Covenant merely provides that no one shall be liable to be tried and punished again for an offence for which he has already been finally convicted or acquitted, in accordance with the law and penal procedure of the country concerned (see Article 14, Section 7). Hence, the concept of "fair hearing" in Section 1 of Article 14 of the Covenant cannot be claimed to disallow a resumption of criminal cases which a prosecuting authority has closed because of the state of the evidence; this must be concluded a contrario from the above-mentioned explicit provision of Article 14, Section 7, which prohibits trial or punishment for an offence for which he has been acquitted.

(b) Deficiencies in the indictment (item 2)

The applicant alleges that the deficiencies in the wording of count (7) of the indictment amounted to a violation of Article 6 (1) and (3) (a) of the Convention. He contends further that it did not meet the requirements of Section 831 of the Administration of Justice Act. In the indictment no precise indication of the time is given, the site is not mentioned and the method of preparation is not described in a lawful manner. The applicant submits that the cause of death given in the indictment is a mere hypothesis as it had been impossible to establish the cause because of the deterioration of the body.

The applicant further points out that the sequence of events described in the indictment could also cover offenses carrying lesser penalties and that it is unreasonable that uncertainty concerning the factual circumstances should be applied to his detriment.

The applicant refers to the statements made by the Commission in its Report in the Nielsen case regarding the interpretation of Article 6 (3) (a), and submits that this provision should not be given a restrictive interpretation. He maintains that, even if the Commission should not consider that there was a violation of Article 6 (3) (a), there was, in any event, a violation of paragraph (1) of the said Article.

The Government denies the allegation that the indictment was deficient.

Section 831 of the Administration of Justice Act requires an indictment to give a short account of the misconduct for which prosecution is being instituted with such reference to time, site, method of perpetration and other details of the circumstances as is required for its adequate and explicit description. The purpose if this rule is partly to identify the offence in order to prevent any subsequent prosecution for the same offence and partly to give a delimitation of the case for the purpose inter alia of the defence.

Under count (7) the applicant was charged with homicide under Section 237 of the Criminal Code by having on .. August 1964, after 11 o'clock a.m. - after the events described under count (6) - killed M. R. by some form of choking or shock by stranglehold, upon which he put the body in two paper bags, took it to N. Lake near K. where he threw it into the water.

It was uncertain when the homicide had been committed, where it had been committed, and how it had been committed. Neither the tenor nor the purpose of the provision requires complete precision in these respects. Any such requirement could render prosecution impossible, especially in cases of homicide. In such cases, where the victim's evidence is missing it will not infrequently be impossible to describe these circumstances with any accuracy.

As noted above, no objection was raised against the formulation of the indictment in the appeal case before the Supreme Court.

There can be no doubt that the provision of section 831 of the Administration of Justice Act on the formulation of the indictment as well as the indictment drawn up in the present case satisfy all the requirements of Article 6 (1) and Article 6 (3) (a) of the Convention.

(c) Discrepancy between the summing-up of the Presiding Judge and the judgment (item (3))

The applicant claims that the Judges of the High Court should have availed themselves of their right to order a new trial on the ground that there was no sufficient evidence for convicting the applicant, although the Jury had found the applicant guilty.

Press reports of the trial show that in his summing-up the Presiding Judge instructed the Jury that statements by the witnesses showed that the applicant had been at a particular office "between 10.40 a.m. and a little after 11". As the Court found it proven that the applicant had subsequently had an errand at another location, he could not possibly had been at the cross-roads where M. R. had passed at 11.06. In these circumstances, the Judges were under an obligation to order a new trial.

The Government had submitted that in jury cases the Presiding Judge's summing-up of the evidence on points of law is not recorded in writing or by shorthand or phenetic recording. Either party has, however, the right to claim, after the summing-up, that any rules of law specifically indicated by that party, be entered in the court recordings. There is no similar right as regards the summing-up of evidence.

During the trial neither party claimed any such entry in the court records under this rule. Hence, the documents of the case contain no written record of any part of the Presiding Judge's summing-up. There is no basis for assuming that there was any discrepancy between the Presiding Judge's summing-up of the facts of the case and the verdict given by the jury. The fact that three High Court Judges of equal competence unanimously accepted the jury's verdict on the question of guilt, strongly suggests that there was no such discrepancy.

(d) Absence of grounds for the Special Court's decision (item (4))

The applicant submits that he did not have a fair hearing before the Special Court of Revision. In this connection he maintains that he had gone through the case thoroughly and raised before the Court a number of points which he considered warranted re-opening of the case. In spite of this the Court's decision did not contain any reasons for rejection of his petition. He points out that under Danish law judgments and decisions must be accompanied by reasons.

It is true that a decision by the Special Court rejecting a petition for re-opening is not subject to appeal, but as such a rejection does not prevent a new petition being made, it is vitally important to learn the grounds on which the Court based its decision.

In the applicant's submission the Special Court did not give the matter as thorough and exhaustive treatment as that called for by the Administration of Justice Act. In a case attended by so many elements of doubt the Court should have availed itself of the possibility of hearing the parties and witnesses.

In particular, the Court should have taken a stand on the fresh evidence submitted by the applicant. The Court also omitted entirely to deal with the applicant's detailed observations concerning another person whose involvement in the matter had not been sufficiently elucidated.

The Government submits that the Special Court of Revision does not take

decisions on charges in respect of violations of the Criminal Code within the meaning of Article 6. The Special Court merely has to decide whether a case is to be resumed to enable a new decision to be taken on the question of guilt. It is therefore extremely doubtful whether decisions of the Supreme Court are covered at all by the requirements of Article 6 of the Convention.

But even if the decision of the Special Court should, in principle, be found to come within the purview of Article 6 (1), the Government denies the contention that the Special Court's decision, in which no grounds were given, should constitute a violation of this provision.

The primary purpose of the requirement for grounds to be given for court decisions is to enable the person affected by the decision to consider whether an appeal should be attempted and to plan his appeal in the light of the main aspects influencing the decision of the previous instance. In addition, grounds may also be useful as a means of ascertaining that the court based its decision on the evidence presented to it or on evidence which at least was known to the parties involved - even if this does not appear to be definitely required under the Convention or under the practice adopted by the Commission.

However, no appeal lies from the Special Court of Revision. It must therefore follow from the Commission's decision on application No. 1935/61 (Yearbook, Vol. 6, p. 192) that in the present case the right to a fair trial does not imply a right to claim that grounds be given.

Finally, with regard to the desirability of being able to ascertain the basis on which the Court took its decision, it should be noted that the applicant has not claimed that the decision was taken on an incorrect basis (1). Moreover, no evidence is given before the Special Court whose task is confined to ordering, in certain circumstances, a previous case to be resumed - and, if so, for the purpose of new production of evidence.

(e) Evidence insufficient for conviction (item 5)

The applicant states that there is such a close relationship between the complaints and the assessment of the evidence that in his opinion the Commission would scarcely be able to evaluate the complaint without making an assessment of the evidence. This does not mean, however, that the Commission requires to make a decision on the evidence.

The Government submits that the question of assessment of evidence cannot be made the subject of an application to the Commission. In this connection reference is made to the Commission's Report on the Nielsen case where the Commission said:

"It is, of course, impossible to know what has motivated the Jury to give the answers they did on the question of Schouw Nielsen's guilt. But this does not immediately concern the Commission under the Convention. Whether the Jury and the Court have appreciated the evidence correctly or not, is a question on which the Commission is not called upon to pronounce. The task under the Convention is to decide whether evidence for and against the accused has been presented in a matter, and the proceedings in general have been conducted in such a way, that he has had a fair trial". (Yearbook, Vol. 4, p. 568).

The Government states that, if the Commission so desires, it is willing to submit the data on which the High Court's decision was based as well as the data on which the Special Court of Revision relied for its decision.

C. Further submissions made by the applicant

1. In a telegram of 21 December 1970, the applicant's counsel stated that there was a new development of the case and requested that no decision on admissibility was taken until the Commission had received

a translation of a letter of the same date to the Special Court of Revision.

2. On 29 December 1970 counsel submitted a German translation of his petition to the Special Court in which he asked for a resumption of the criminal proceedings against the applicant in accordance with Section 977, sub-section 1, paragraphs 1 and 3 of the Administration of Justice Act. The basis for the new petition is a report by the German Laboratory for Materials Testing (Bundesanstalt für Materialprüfung) in Berlin concerning certain rags which formed a decisive part of the evidence against the applicant at the trial. Expert evidence had then been given to the effect that rags found in the applicant's possession came from the same factory, and most likely from the same piece of material as a rag found near the body of the murdered girl. According to the new report, no such conclusion could be made.

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(1) However, in his observations of 17 October 1970, the applicant's counsel submits that it is obvious from the complaint that the Special Court arrived at its decision on an incorrect basis.

The applicant 's counsel had also contacted Austrian, English and French textile experts but has been informed that it would be necessary for them to examine the rags concerned.

In his letter of 29 December 1970 counsel submits that the Danish Attorney General has refused permission to let the rags be examined abroad. This seems, in his opinion to be a violation of the Convention and gives the impression that the Danish Government wishes to suppress evidence which might lead to a revision of the applicant's conviction. Counsel considers that this calls for a speedy decision of the Commission declaring the application admissible.

3. Under cover of a letter of 4 January 1971, the Secretary transmitted to the Government a copy of the letter from the applicant's counsel of 29 May. Both parties were also informed that the letter would be put before the Commission which might take it into consideration when deciding on the admissibility of the application.

THE LAW

Whereas, insofar as the applicant complains that Article 6 (Art. 6) of the Convention was violated in the course of the proceedings leading to his conviction by the High Court for Eastern Denmark on .. October 1965, which conviction was upheld by the Supreme Court on .. June 1966, Article 26 (Art. 26) of the Convention provides that the Commission may only deal with a matter "within a period of six months from the date on which the final decision was taken";

Whereas the respondent Government has submitted that the applicant has failed to comply with the six months time-limit laid down in Article 26 (Art. 26) insofar as he complains of the inclusion of certain counts in the indictment (item 1; see p. above), of deficiencies in the formulation of the indictment (item 2) and of discrepancy between the summing-up of the Presiding Judge and the judgment of the High Court (item 3);

Whereas the Government further contends that the decision of the Supreme Court constituted the final decision within the meaning of Article 26 (Art. 26) in respect of the first of these complaints and the decision of the High Court was final in respect of the other two complaints.

Whereas the applicant has submitted that the decision of the Special Court of Revision of .. July 1969 whereby his application for resumption of the case was rejected, should be regarded as the final decision for the purposes of the six months' time-limit and that,

accordingly, his present application which was submitted to the Commission on 17 November 1969 has been lodged in time;

Whereas, in examining the question as to whether or not in the circumstances of the present case, the decision of the Special Court of Revision should be taken into account for the purpose of the six months' time-limit, the Commission has had particular regard to its final decision on the admissibility of application No. 343/57, Nielsen v. Denmark (Yearbook, Vol. 2, p. 412); whereas in that decision the Commission analyzed with great care the question whether the right of recourse to the Special Court was or was not a remedy within the meaning of Article 26 (Art. 26) of the Convention; whereas the Commission then stated that "the generally recognised rules of international law in principle require that before an international tribunal is seized of a claim with respect to an alleged injury to an individual the latter shall first have had recourse to all those legal remedies available to him under the local law and capable of providing an effective and adequate remedy; and whereas the Special Court of Revision is manifestly an independent tribunal established by law and empowered to give decisions binding in law and capable, within the limits of the Court's jurisdiction, of providing an effective remedy; whereas, moreover, under Section 977 of the Administration of Justice Act the Special Court of Revision is empowered to re-open a criminal case on grounds which cover a number of the matters forming the basis of the present application and under Section 982 of that Act the Court is empowered, if the case so warrants,to order a new trial on any of the grounds specified in Section 977;

Whereas, accordingly, the right of recourse to the Special Court of Revision must in principle be regarded as having offered to the applicant the possibility of an effective and adequate legal remedy with regard to some of the matters of which he complains in the present application";

Whereas, however, the Commission emphasised, in reply to certain objections made by the respondent Government in the course of those proceedings, that it had the competence in every case to appreciate in the light of the particular facts whether any given remedy at any given date appeared to offer the applicant the possibility of an effective and sufficient remedy;

Whereas in the present case the Commission has once more examined the whole question as to whether an application to the Special Court should in principle be regarded as a remedy for the purpose of Article 26 (Art. 26) of the Convention;

Whereas, in making this examination, the Commission has in particular taken into account its extensive jurisprudence, subsequent to the above decision in the Nielsen case, concerning the relevance, for the purposes of Article 26 (Art. 26) of the Convention, of an application for retrial made according to the laws of other Contracting Parties;

Whereas, in the light of this jurisprudence the Commission has considered the question whether or not to maintain the principle expressed in the Nielsen case as regards recourse to the Special Court of Revision;

Whereas, however, in the present case, the Commission has found it undesirable to base its decision on an interpretation of Article 26 (Art. 26) different from the one adopted in the Nielsen case and has decided, while leaving the question open for consideration in any future case, to pursue its examination of the present application on the bases that recourse to the Special Court could, in principle, be regarded as an effective and sufficient remedy for the purposes of Article 26 (Art. 26) of the Convention;

Whereas, however, in applying the provisions of Article 26 (Art. 26)

to the present case, the Commission points out, as was stated in its decision in the Nielsen case that, the decision of the Special Court could only be regarded as the "final decision" concerning these matters in respect of which that Court offered the applicant the possibility of an effective and sufficient means of redress;

Whereas the Commission has considered the arguments put forward by the Parties in this connection; whereas, having regard to the explanations furnished by the respondent Government, the Commission concludes that, insofar as the applicant's application to the Supreme Court was based on alleged procedural errors committed during the proceedings before the trial court (referred to as items 1 - 3 in the present case) that application virtually lacked any prospect of success and can therefore not be regarded as an effective and sufficient remedy under the generally recognised rules of international law; whereas, therefore, the decision of the Special Court of Revision in respect of these matters cannot be taken into consideration in determining the final decision for the purpose of applying the six months' time-limit;

Whereas, furthermore, an examination of the case does not disclose the existence of any special circumstances which might have interrupted or suspended the running of that six months' period;

Whereas it follows that this part of the application has been lodged out of time (Articles 26 and 27 (3) (Art. 26, 27-3) of the Convention);

Whereas, insofar as the applicant complains that the Special Court of Revision did not order the resumption of the proceedings in view of the new evidence offered by him, it is to be observed that the Convention, under the terms of Article 1 (Art. 1), guarantees only the rights and freedoms set forth in Section of the Convention; and whereas, under Article 25 (1) (Art. 25-1) only the alleged violation of one of those rights and freedoms by a Contracting Party can be the subject of an application presented by a person, non-governmental organisation or group of individuals; whereas otherwise its examination is outside the competence of the Commission ratione materiae;

Whereas the Commission has consistently held that no right to a retrial or re-opening of criminal proceedings, whether on account of fresh evidence or otherwise, is as such included among the rights and freedoms guaranteed by the Convention; whereas it follows that this part of the application is incompatible with the Convention within the meaning of Article 27, paragraph (2) (Art. 27-2), thereof;

Whereas the same ground if inadmissibility applies to the applicant's complaint that the decision of the Special Court of Revision was deficient in that it lacked motivation; whereas it is true that the Commission has recognised that the omission of reasons in a decision taken in a criminal case may in certain circumstances raise an issue under Article 6 (1) (Art. 6-1) of the Convention (see application No. 1035/61, X. v. Federal Republic of Germany, Yearbook, Vol. 6, p. 192);

Whereas, however, the Commission has repeatedly held that proceedings concerning, as in the present case, applications for retrial fall outside the scope of Article 6 (Art. 6) of the Convention, since a person applying for a retrial, having been finally convicted of a criminal offence, is no longer a person charged with that offence within the meaning of this Article (see e.g. decisions on the admissibility of applications Nos. 864/60, X. v. Austria, Collection of Decisions, Vol. 9, p. 12, and 1237/61 X. v. Austria, Yearbook, Vol. 5, p. 96)

Now therefore the Commission DECLARES THIS APPLICATION INADMISSIBLE