THE FACTS

A. Whereas the facts presented by the parties and apparently not in dispute between them may be summarised as follows:

The applicant is an Austrian citizen, born in 1921 in Hungary and resident in Vienna. He was an insurance agent and also concerned himself with dealings in real property.

I. Proceedings before the Constitutional Court

In 1961 the applicant intended to purchase certain property in Upper Austria from a couple named X. His plan was to divide this land up in plots and resell it. In accordance with this plan the applicant, on 21st August, 1961, entered into a contract with X. relating to the sale of Plot Registry No. 704 at Neubau, and on 6th February, 1962, another contract was signed by them relating to Plot Registry Nos. 57 and 222 at Annaberg. The present application is concerned with Plots Nos. 57 and 222 at Annaberg only.

However, this contract between the applicant and Mr. and Mrs. X. never took effect. Under Article 1 of the Act relating to the Approval of Transactions concerning Agricultural and Forestry Land (Gesetz über die Genehmigung des Land- und Forstwirtschaftlichen Grundverkehrs) of Upper Austria, dated 26th May, 1954, the transfer of ownership by contract inter vivos with regard to plots of land destined as a whole or in part for forestry or agricultural use is subject to approval by a Real Property Sales Commission (Grundverkehrskommission) set up for this purpose. In pursuance of this provision the applicant, on 30th March, 1962, submitted the contract of 6th February, 1962, to the District Real Property Sales Commission (Bezirksverkehrskommission) at Efording for its approval. This was refused by decision of 28th September, 1962, on the grounds that the property was acquired for speculation and would be diverted from its established use as farmland. The applicant appealed (Berufung) against this decision to the Regional Real Property Sales Commission (Landesgrundverkehrskommission) at Linz. The Commission held a non-public sitting on 12th February, 1963, and decided personally to inspect the premises. This was accomplished on 2nd April, 1963. Subsequently, on 13 May, 1963, the Regional Commission dismissed the appeal in a non-public session on the ground that the conveyance contravened Article 4, paragraph (1), of the Upper Austrian Act relating to the Approval of Transactions concerning Agricultural and Forestry Land, which provides in substance that such conveyances must correspond to the public interest in creating and maintaining areas reserved for agriculture and forestry, in maintaining and strengthening the efficiency of persons engaged in agriculture and similar purposes. At this session certain members of the Commission who had not been present at the previous sessions took part in the deliberation and decision. Upon a constitutional appeal (Verfassungsbeschwerde) lodged by the applicant with the Constitutional Court (Verfasssungsgerichtshof) the decision of the Regional Commission was set aside for the above reason, on 20th June, 1964.

On 3rd February, 1965, the Regional Property Sales Commission at Linz once more dismissed the applicant's case. By the same decision the Commission rejected the applicant's challenge of several of its members on grounds of bias. The applicant subsequently again lodged with the Federal Constitutional Court a constitutional appeal against this decision. He alleged again that his constitutional rights were violated in that the Regional Commission's decision was taken by biased members of the Commission and, having regard to the substantive issues of the case, was arbitrary. He stated that the bias of the Commission members consisted in the fact that the Presiding Member had appeared as representative of the Commission in earlier proceedings before the Constitutional Court, that another member had been heard as a witness in these proceedings, that another member had made a statement to the

effect that the contract could not be approved because another contract relating to the same premises had already been approved, that yet another member had made a statement as leading member of the Chamber of Agriculture (Landwirtschaftskammer) for Upper Austria to the effect that the contract should not be approved and, finally, that two members had participated in the previous decision of the Regional Commission rejecting his application for approval of the contract. The applicant further alleged that the same members who had decided his case on 13th May, 1963, decided it again on 3rd February, 1965, and this constituted a violation of his right to a trial by a tribunal established by law (gesetzmässiger Richter) as had been held by the Constitutional Court in its previous decision of 20th June, 1964.

The Constitutional Court, on 27th September, 1965, dismissed the appeal on the ground that, assuming that certain members of the Regional Commission had in fact been biased, the applicant had no right to challenge these members because a board does not lose its competence to take a decision even where several of its members are biased. The Court further held that no question as to the proper establishment of the Commission arose as it had given a new decision on 3rd February, 1965, and had not simply continued the previous proceedings and further, that the decision was not arbitrary.

II. Criminal proceedings

1. Proceedings for fraud etc. (19 Vr 394/63)

In the meanwhile while the proceedings before the Real Property Sales Commission were pending, the applicant had started to divide up the land which he considered that he had acquired from X. and to sell separate plots to various buyers.

However, on 13th February, 1063, Mr. and Mrs. X. laid charged against him with the Public Prosecutor's Office (Staatsanwaltschaft) at Linz. They informed the Office that the applicant had fraudulently converted to his own use the property owned by them in that he had inscribed the priority ranking (Rangvermerkung), and the registration (Eintragung), of various mortgages in the Land Registry (Grundbuch) relating to Plots Registry Nos. 52 and 222 at Annaberg. Subsequently, further charges were laid with the Public Prosecutor's Office at Linz on the ground that the applicant had made with a number of proposed purchasers contracts for the sale of real property which were not capable of being put into effect.

After charges of fraud had also been laid against the applicant by several buyers of plots, the investigating judge (Untersuchungsrichter) at Linz, on 30th July, 1963, issued a warrant for his arrest, in accordance with Article 175, paragraph (1), sub-paragraph 4, of the Code of Criminal Procedure (Strafprozessordnung) under which a warrant of arrest may be issued where there are special reasons to fear that the accused will commit further offenses. In the present case the investigating judge found that this condition was fulfilled owing to the fact that the applicant had continued to offer plots of land for sale although he knew that the Real Property Sales Commission had refused to approve the contract of 6th February, 1962, between himself and Mr. and Mrs. X.

On 5th August, 1963, the applicant was arrested at Linz and remanded in custody in accordance with Article 175, paragraph (1), sub-paragraph 4, and 180, paragraph (1), of the Code of Criminal Procedure. The order remanding him in custody was later extended to cover the ground mentioned in sub-paragraph 3 of paragraph (1) of Article 175, namely that there was also the danger of the applicant's suppressing evidence.

The applicant made an application for release pending trial (Haftbeschwerde) which was dismissed by the Judges' Chamber of the Regional Court (Ratskammer des Landesgerichts) of Linz on 4th

September, 1963. His appeal to the Court of Appeal (Oberlandesgericht) at Linz was rejected on 23rd September, 1963. Both courts considered that the grounds for the applicant's detention on remand continued to obtain.

The applicant made a further application for release pending trial to the investigating judge which was refused on 7th November, 1963, and his appeal to the Judges' Chamber of the Regional Court of Linz was rejected on 19th November, 1963. The applicant then lodged with the Court of Appeal at Linz a further appeal against the decision of the Judges' Chamber and at the same time submitted evidence to the effect that he had taken measures for guaranteeing any claims for the restitution to the buyers concerned of their purchase monies. In fact, the applicant had inscribed the priority ranking of a mortgage on property owned by him at St. Peter in the Land Registry and this entry should be effective until 4th October, 1964. On 19th December, 1963, the Linz Court of Appeal decided that the applicant should be released from detention on giving his solemn undertaking in accordance with Article 191 of the Code of Criminal Procedure. This provision states that, where an accused is released from detention on remand, the investigating judge may require him to undertake not to leave his place of residence without authorization before the final termination of the proceedings against him, nor to conceal himself nor to do anything which might impair the investigation of the case.

The applicant was accordingly released on 23rd December, 1963, after having made a solemn undertaking in accordance with the above provision.

In the meanwhile, further buyers of plots had laid charges against the applicant and, during 1964 and early 1965, the investigations were continued. In August 1964 the applicant also took proceedings with a view to transferring his case to the jurisdiction of another court but without success.

By indictment of 13th April, 1965, the Public Prosecutor's Office at Linz charged the applicant as follows:

I. having falsely pretended, between 3rd November, 1958, and 5th April, 1963, to be an honest real estate seller, borrower and agent with a view to induce

A. 78 persons to acts detrimental to them, namely to make payments of some 1.4 million Schillings, and
B. 2 other persons, i.e.
1. A.
2. B. to grant loans in a total amount of AS 89,000.- and

II. having misused the power delegated to him by a contract to dispose of other people's property or engage a third party, by way of misusing, with intent of profit, the authenticated power of attorney delegated to him by Mr. and Mrs. X. on 9th August, 1962; and with having thereby caused damage to Mr. and Mrs. X, viz.

1. on 4th October, 1962, by having inscribed a priority ranking for mortgage of AS 600,000.- and on 28th December, 1962, by registration of a mortgage in respect of a loan of AS 600,000.-;

2. on 5th December, 1962, by registration of a mortgage of AS 5000,000.-;

3. on 14th May, 1963, by having inscribed a priority ranking for a mortgage of another AS 500,000.- on the real estate owned by Mr. and Mrs. X, as recorded under Nos. 57 and 222 in the land register of Annaberg;

4. by concluding a lease contract qualified for registration concerning

these real properties in favour of Mrs. C., his common-law wife (Lebensgefährtin);

5. on 23rd January, 1963, by concluding a lease contract qualified for registration in respect of the real properties owned by Mr. and Mrs. X. in favour of the couple D.

The applicant was accordingly charged with fraud (Betrug) under Articles 197, 200, 201 d, 203, and fraudulent conversion (Untreue) under Article 205 c of the Criminal Code.

When submitting the indictment the said Public Prosecutor's Office also requested that the applicant should again be remanded in custody on the grounds laid down in Article 175, paragraph (1), sub-paragraphs 2 and 4, 180, paragraph (1), of the Code of Criminal Procedure. This request was based on the fact that the priority ranking of a mortgage in the amount of two million Schillings, by which the applicant had previously guaranteed his creditors' claims and which had been decisive for his release on 23rd December, 1963, had expired on 4th October, 1964, and he had failed to cause a new such ranking to be entered in the Land Registry relating to his property at St. Peter. Furthermore, enquiries made with credit institutions at Linz had revealed that the applicant kept concealed considerable sums which he might use to abscond in view of the indictment against him. Finally, if left at large, the applicant would have an opportunity to allow the damage to become irrevocable and to commit further offenses at an time.

When making this request for his detention, the applicant had already been in custody since 15th March, 1965, with respect to the proceedings against him for fraudulent bankruptcy (see below). On 12th May, 1965, the investigating judge at Linz, pursuant to the prosecution's request, made an order for the applicant's detention on remand with respect to the proceedings against him for fraud and fraudulent conversion.

On 19th May, 1965, the Linz Court of Appeal took a decision rejecting the applicant's appeal (Einspruch) against the indictment. In this decision the Court of Appeal also decided that his detention on remand should continue. A further appeal against this decision was withdrawn by the applicant on 8th June, 1965.

In the meanwhile, he had made another application to the courts that his case should be referred to a court outside the jurisdiction of the Linz Court of Appeal. This application, submitted to the Supreme Court (Oberster Gerichtshof) on 11th June, 1965, was refused on 8th July, 1965.

Next, the Court of Appeal at Linz was called upon to take a decision as to the applicant's challenge of all the judges of the Linz Regional Court. Before taking a decision the Court of Appeal made an order to the effect that the applicant should set out in clear terms the grounds of his challenge. In compliance with this order the authorities, on 6th September, 1965, took a written statement from the applicant by which he withdrew the said challenges except as regards the one District Court Judge (Bezirksrichter), Dr. F. In this respect, his challenge was rejected by decision of the President of the Linz Regional Court, dated 13th September, 1965.

On 3rd November, 1965, the Linz Regional Court fixed the date of the applicant's trial for 13th December, 1965. The applicant refused to acknowledge this date and, at the same time, made a new request for a change of venue. He also requested that the trial should be cancelled. By three further petitions and one submission to the Regional Court entitled "complaint", all dated 4th December, 1965, the applicant repeated his above requests alleging generally that the proceedings opened against him were unlawful. On 6th December, 1965, the Regional Court declared that his request for change of venue would not be dealt with as the Supreme Court had already twice rejected his similar

requests. The applicant was further informed that under the applicable law it was not possible to cancel the trial.

Consequently, the trial opened before the Linz Regional Court on 13th December, 1965. It continued until 16th December, 1965, when the hearing was adjourned by reason of applications made by both the prosecuting authority and the counsel for the defence to the effect that further evidence should be obtained. The Court also decided that the trial should continue on 13th January, 1966.

During the period from 16th December, 1965, to 13th January, 1966, the applicant made another application for release pending trial which was refused by the Linz Regional Court on 28th December, 1965. He also requested once more that his case should be transferred to the jurisdiction of another court and submitted a plea of nullity for safeguarding the law (Nichtigkeitsbeschwerde zur Wahrung des Gesetzes) by which he accused public prosecutors and judges of having violated the law. He was informed on 10th January, 1966, that his plea of nullity would be brought to the attention of the Attorney-General's Office (Generalprokuratur) when final judgment had been passed against him.

The trial continued on 13th January, 1966, and was terminated on 14th January. On that day he was convicted for fraud with respect to counts I A (78 purchasers) and I B 1 (A.) of the indictment and sentenced to three years' severe imprisonment (hartes Lager) once every three months. He was acquitted of the other charges.

The Court also decided that the applicant should be released from detention on a solemn undertaking in accordance with Article 191 of the Code of Criminal Procedure. The Office of the Public Prosecutor lodged an appeal (Beschwerde) against this decision which was allowed by decision of the Linz Court of Appeal, dated 2nd March, 1966. The Court decided that the grounds for the applicant's detention on remand continued to obtain (danger of his absconding and committing further offenses). It appears that, under the applicable Austrian law, this decision was taken after hearing the prosecuting authority but in the absence of the applicant or his lawyer.

Both the Public Prosecutor's Office and the applicant, on 25th February, and 3rd March, 1966 respectively, lodged with the Supreme Court a plea of nullity (Nichtigkeitsbeschwerde) against the conviction and appeal (Berufung) against the sentence.

The case files were transmitted to the Supreme Court in Vienna on 9th March, 1966, but were subsequently sent back to Linz for the Regional Court to deal with an application for release pending appeal which the applicant, in the meanwhile, had lodged. However, this application was withdrawn by the applicant on 30th June, 1966.

On 27th July, 1966, the Supreme Court took a decision with regard to the pleas of nullity and appeals mentioned above. It decided that the Regional Court's decision should be set aside as regards the conviction for fraud under count I B (A.) and acquittal on the charge of fraudulent conversion, under count II (Mr. and Mrs. X.) of the indictment, as well as regards the sentence. However, the judgment should stand as regards the acquittal on the charges of fraud under count I B (B.) and the conviction for fraud under count I A (78 purchasers) of the indictment. The case was accordingly sent back to the Linz Regional Court for further hearing and decision.

On the application of the prosecuting authority the Linz Regional Court decided on 14th September, 1966, that the proceedings against the applicant as regards the charge of fraud under count I B (A.) and the charge of fraudulent conversion under count II of the indictment should be discontinued. Consequently, the only charge remaining was count I A (78 purchasers) of the indictment for which the applicant had been

convicted but not sentenced.

In the meanwhile, the applicant had lodged a further petition for his release pending appeal which was refused by the Regional Court of Linz on 21st September, 1966. On appeal to the Linz Court of Appeal this decision was confirmed on 28th September, 1966.

The applicant also made various petitions relating to the manner in which the further hearing of his case which had been fixed for 18th October, 1966, should be conducted. These petitions were rejected on the ground that they could not properly be dealt with under the rules of procedure.

On 14th October, 1966, the applicant requested that the hearing of 18th October, should be adjourned to a later date. This request was refused and, on 18th October, 1966, the Linz Regional Court fixed the applicant's sentence at five years' severe imprisonment with the additional penalty of fasting and "sleeping hard" once every three months. The Court further decided that the period from 5th August to 23rd December, 1963, and from 15th March, 1965, to 18th October, 1966, which the applicant had spent in detention on remand should be credited towards his sentence.

On 3rd November, 1966, the applicant lodged with the Supreme Court a plea of nullity and an appeal against this decision of the Regional Court.

Subsequently, further applications for release from detention were lodged by the applicant on 21st, 27th and 30th January, 1967. The Regional Court of Linz refused these applications on 15th February, 1967. The applicant appealed against this decision to the Linz Court of Appeal which decided on 15th March, 1967, that the appeal should be allowed. The Court ordered that the applicant should be released on a solemn undertaking in accordance with Article 191 of the Code of Criminal Procedure on the ground that, having been kept in detention on remand for two-and-a-half years, it could no longer be assumed that he would abscond in order to avoid prosecution. The applicant was released accordingly on 20th March, 1967.

It appears that, on 15th February, 1968, the Supreme Court heard the applicant's plea of nullity and appeal. It dismissed the plea of nullity, but reduced the sentence to two years' and nine months' severe imprisonment.

2. Proceedings for fraudulent bankruptcy (19 Vr 1566/64)

In 1964, while the charges under the proceedings set out above were still being investigated, the applicant was suspected of having committed further offenses with regard to his obligations towards his creditors.

It appears that the purchasers of plots had instituted civil proceedings against the applicant to recover their purchase monies after it had been clear that he was not able to transfer to them the titles of various plots. By the end of April 1964 a large number of them were in possession of final judgments on the basis of which they were entitled to execution against the applicant. The applicant was accused of having prevented some of these creditors from obtaining satisfaction of the sums owing to them.

On the application of the Public Prosecutor's Office at Linz the investigating judge decided on 31st August, 1964, that preliminary investigations (Voruntersuchung) should be instituted against him. The judge further decided that these charges should be dealt with separately from the charges of fraud referred to above.

During the period from September 1964 to March 1965 these charges were

investigated by the police. As more and more creditors laid charges against the applicant the preliminary investigations were extended to these new facts.

On 15th March, 1965, the Office of the Public Prosecutor at Linz made a request to the investigating judge that a warrant for the applicant's arrest should be issued and his detention on remand be ordered in accordance with the provisions of Article 175, paragraph (1), sub-paragraphs 3 and 4, and 180, paragraph (1) of the Code of Criminal Procedure. The investigating judge found that there existed the danger of the applicant's committing further offenses and on the same day made the order requested. Consequently, the applicant was arrested on 15th March, 1965.

On 16th March, 1965, he submitted an application by which he complained of the unlawfulness of his detention on remand and also challenged the entire circuit of the Court of Appeal of Linz (Oberlandesgerichtsprengel), the courts in that circuit, as well as the Judge of the Court of Appeal, Dr. Y. The challenges were rejected by the Supreme Court on 1st August, 1965, by the Linz Court of Appeal on 21st April, 1965, and by the President of the Linz Regional Court on 4th May, 1965, and 20th May, 1965.

On 10th and 17th May, 1965, the applicant had also repeated his complaints that his detention on remand was unlawful. On 16th May, 1965, the Judges' Chamber of the Linz Regional Court rejected these complaints. The applicant lodged with the Linz Court of Appeal an appeal against this decision which was rejected on 16th June, 1965, for the reasons stated in the Regional Court's decision of 26th May, 1965.

As was stated above under A II 1, a statement was taken from the applicant on 6th September, 1965, in order to clarify certain application made by him. This required further decisions to be taken by the Linz Regional Court and the Supreme Court (see above).

On 10th November, 1965, the Judges' Chamber of the Linz Regional Court rejected the applicant's application for release pending trial and for joinder of the two criminal proceedings against him. On appeal to the Linz Court of Appeal this decision was confirmed on 9th December, 1965.

A further petition for release pending trial lodged by the applicant on 14th December, 1965, with the investigating judge was refused on 20th December, 1965, on the ground that the danger of the applicant's committing further offenses persisted. An appeal and further appeal to the Regional Court's Judges' Chamber and the Court of Appeal at Linz were rejected on 29th December, 1965, and 9th February, 1966, respectively.

On 18th February, 1966, the applicant made a new application for release pending trial; he also requested that his case should be transferred to the jurisdiction of another court.

By indictment of 14th March, 1966, the applicant was charged with having committed fraudulent bankruptcy under Article 205 a of the Criminal Code. He made an appeal (Einspruch) against the indictment and requested that the Supreme Court or the Vienna Court of Appeal should give a decision on his appeal.

On 27th June, 1966, the Supreme Court rejected this request on the ground that it had no competence to take such decision. As to his application for a change of venue the Supreme Court decided that it should be rejected as being ill-founded.

On 6th July, 1966, the Linz Court of Appeal confirmed the indictment. The Court further decided that his detention on remand should continue on the ground that the danger of his committing further offenses persisted.

On 27th July, 1966, the Linz Regional Court and on 24th August, 1966, the Judges' Chamber of the Regional Court rejected the applicant's renewed applications for release pending trial.

On 15th September, 1966, the applicant again applied for his release from detention on remand, but his application was rejected by the investigating judge on 27th September, 1966. His appeal and further appeal to the Regional Court and the Court of Appeal at Linz were rejected on 27th October, 1966, and 30th November, 1966, respectively.

On 27th January, 1967, the applicant made new applications for release pending trial and change of venue which were rejected by the Linz Regional Court on 8th February, 1967, and by the Supreme Court on 24th February, 1967.

As was stated above, on 20th March, 1967, the applicant was released on a solemn undertaking.

B. Whereas in his application form, in his written submission and at the oral hearing on 17th July, 1968, the applicant alleges violations of:

1. Article 5, paragraph (3), in that the length of his detention on remand was unreasonable;

2. Article 6, paragraph (1), in that he was not brought to trial within a reasonable time;

3. Article 6, paragraph (1), in that he did not have a fair hearing before the Constitutional Court on the question whether or not certain members of the Regional Real Property Sales Commission at Linz had been biased;

4. Article 5, paragraph (4), in that, by reason of the fact that the decisions relating to detention pending trial had been taken by the courts after hearing the prosecuting authority but in the absence of the applicant or his lawyer, there has been no "proceedings" by which the lawfulness of his detention was decided by a court.

Whereas the respondent Government has replied to these allegations in its written observations of 23rd August, 1967, and at the oral hearing on 17th July, 1968;

Whereas the arguments of the parties may be summarised as follows:

I. As regards the general objections by the respondent Government under Article 26 of the Convention (exhaustion of domestic remedies and observance of six months' rule), as regards B 1 and 3 above.

1. The respondent Government submitted that the applicant failed to exhaust the remedies which are available to him under Austrian law with regard to his complaints under Article 5, paragraph (3), of the Convention and his complaints under Article 6, paragraph (1), concerning the proceedings before the Constitutional Court.

(a) Insofar as the allegations under Article 5, paragraph (3), are concerned, the respondent Government first dealt with the period from 5th August to 23rd December, 1963. It contended that the applicant was successful in invoking domestic remedies as he was released from detention in accordance with the decision of the Linz Court of Appeal, dated 19th December, 1963. Hence, there was no reason for his complaint in regard to that detention.

Furthermore, this detention was terminated on 23rd December, 1963, and the application was not lodged until 3rd July, 1965. Consequently, this part of the application was outside the six months' period as provided

for in Article 26 of the Convention.

With regard to the subsequent period of the applicant's detention on remand the respondent Government contended that the Commission had no competence to examine the period after 3rd July, 1965, the date on which the application had been lodged with the Commission. It resulted from Articles 24 and 25 of the Convention that the Commission had competence only to consider the period which the applicant spent in detention on remand before he lodged his application with the Commission.

The respondent Government then dealt specifically with the complaint in relation to the period from 15th March, 1965 to 20th March, 1967, which the applicant spent in detention on remand during the proceedings for fraudulent bankruptcy. It submitted that the applicant had failed to exhaust the domestic remedies before 3rd July, 1965, the date on which he lodged the present application with the Commission. In this respect, the respondent Government contended that the applicant had failed to make an appeal against the decision of the Judges' Chamber of the Linz Regional Court, dated 26th May, 1965.

Finally, the respondent Government dealt with the applicant's complaint to the period from 12th May, 1965, to 20th March, 1967, which he spent in detention on remand during the proceedings for fraud. In this respect, it submitted that the applicant failed to avail himself of any remedy before lodging his application on 3rd July, 1965, that is again after the application had been lodged with the Commission. It submitted that, in accordance with the French text of Article 26 of the Convention "la Commission ne peut être saisie qu'après l'épuisement des voies de recours internes". Hence, this part of the application was inadmissible under this provision for failure to exhaust the domestic remedies.

It finally pointed out that, under Austrian law the rights and freedoms set forth in the Convention had the rank of being constitutional rights, the violation of which may be invoked before the Constitutional Court. This the applicant had failed to do. Furthermore, the Commission had already decided on previous occasions that the proceedings before the Constitutional Court constituted a remedy within the meaning of Article 26 of the Convention.

2. The applicant first submitted that the period of detention from 5th August to 23rd December, 1963, should be taken into consideration in spite of the fact that it was more than six months before the application was lodged with the Commission, as in Austria the entire period of detention was deducted from the sentence. Furthermore, this period should also be considered when deciding the question whether or not there existed a danger of the applicant's absconding.

The applicant further submitted that he repeatedly appealed to the Court of Appeal against decisions refusing his release from detention pending trial. Furthermore, the Commission should consider the facts of a case as they present themselves at the time when its decision was being taken, as it would be unrealistic to require a person to make a new application with the Commission after each final decision rejecting a request for release.

Finally, as regards the proceedings before the Constitutional Court, the applicant submitted that it was questionable whether the Constitutional Court could be considered as being a remedy within the meaning of Article 26 of the Convention, as it constituted an extraordinary remedy under Austrian law.

II. As regards the other allegations

1. As to Article 5, paragraph (3), of the Convention (right of a detained person to trial within a reasonable time)

(a) The respondent Government further submitted that, even assuming the applicant had complied with the provisions of Article 26 of the Convention, his complaints regarding the length of his detention on remand during both criminal proceedings against him were manifestly ill-founded. Reference was made to the arguments presented by the Austria Government to the European Court of Human Rights in the Neumeister Case. In particular, with regard to the present case, the respondent Government pointed out that it was largely the fault of the applicant himself that he had been kept in detention on remand as he had filed numerous applications and petitions to the courts. Especially his applications for a change of venue caused considerable delays as on each occasion the files had to be transmitted to the Supreme Court in Vienna for the decision by that Court. Similar delays were caused by his challenges of judges and by more than fifty written submissions to the President of the Linz Court of Appeal which had to be dealt with in one way or another.

(b) The applicant first pointed out that he had no previous convictions. He then gave certain details of the facts which led up to his conviction and sentence for fraud, concluding in particular that political reasons had prompted the Real Property Sales Commissions to refuse approval of his contract for the purchase of the property concerned.

The applicant submitted that the actual period of his detention on remand constituted two-and-a-half years and was, consequently, excessive within the meaning of Article 5, paragraph (3), of the Convention. In this connection he argued that the period after 14th January, 1966, the date of his conviction and sentence by the Linz Regional Court should be taken in consideration when calculating the actual length of his detention on remand. This resulted from the principle of presumption of innocence contained in Article 6, paragraph (2), of the Convention read in conjunction with the requirement of exhausting domestic remedies under Article 26. For, it followed that, if the aforesaid presumption obtained until all domestic remedies had been exhausted, a period up to the date of the final judgment must be considered in order to determine whether or not the detention was reasonable. Furthermore, when the actual length of a person's detention on remand exceeded a certain period, this gave rise to a rebuttable presumption that the detention was unreasonable. He submitted, that, where an offence is punishable with imprisonment up to ten years the detention may be considered reasonable if it lasted for six months to a year. In the present case, where the applicant was finally sentenced to two years and nine months' imprisonment, his detention on remand for a period of two-and-a-half years was clearly too long. It was true that, under the applicable provisions of the Austrian Criminal Code, it is possible to impose sentences from five to ten years for the offenses of which the applicant was accused. However, the Criminal Code dates back to 1803 when it was considered that severe sentences had a preventive effect on prospective criminals. Modern criminology had established that this is not true. Consequently, the Austrian Government recently had published the draft of a new Criminal Code in which it was expressly stated that the sentences provided in the existing law were too severe. According to this draft law the provisions relating to mitigation of sentence should be applied as a general rule and, as regards cases of fraud involving sums of more than 100,000 Schillings, a sentence of one year's imprisonment constitutes the lowest punishment.

The applicant further stated that it was not his own behaviour that caused the delays. He considered that he was innocent and that it could not be held against him that he tried to defend himself against the accusations made. Besides, as he was detained during two proceedings against him, he was obliged to make applications for his release in regard to both proceedings.

The applicant further submitted that the reasons for his arrests and detention on remand did not exist. In particular, there was no danger of his committing further offenses as, by the time he was arrested for the second time in March 1965, bankruptcy proceedings had already been opened against him. It should not be necessary that the danger of his committing further offenses existed with regard to any offence but simply with regard to that offence which gave rise to his arrest and remand in custody. It followed that in view of the bankruptcy proceedings he had no possibility to commit any further offenses of fraud or fraudulent bankruptcy.

2. As to Article 6, paragraph (1), of the Convention with regard to the criminal proceedings against the applicant (right to have his case heard within a reasonable time)

(a) The respondent Government first referred again to its legal arguments on the interpretation of Article 6, paragraph (1), of the Convention which it submitted in the Neumeister Case. It stressed, in particular, that the time to be considered in connection with this provision began when the indictment was preferred.

The respondent Government further submitted that separate handling of the two proceedings against the applicant served to accelerate the proceedings for fraud (19 Vr 394/63) which it considered to be the main proceedings. In these proceedings the indictment was preferred on 15th April, 1965, the preliminary investigation having been instituted on 16th July, 1963. Consequently, the investigations lasted for about a year and a half only, while the proceedings themselves after the indictment had been preferred took over two years and a half. This delay was caused by the applicant himself who made numerous and generally hopeless applications. In particular, the applicant himself repeatedly requested that the trial should be cancelled or adjourned.

The respondent Government further stated that the new trial had been immediately fixed by the Linz Regional Court after the files had been returned to the Supreme Court following its decision of 27th July, 1966, by which certain parts of the Regional Court's judgment of 14th January, 1966, had been set aside. Subsequently, the Public Prosecutor's Office had requested that proceedings on certain charges should be discontinued and this measure also served only to accelerate the proceedings.

The respondent Government further submitted that the criminal proceedings for fraudulent bankruptcy (19 Vr 1566/64) were dependent on the outcome of the proceedings for fraud.

(b) The applicant submitted that the time to be considered in connection with Article 6, paragraph (1), of the Convention began when the preliminary investigation was instituted against him. This represented an important step in the proceedings by which a person was being put on trial for having committed criminal offenses and corresponded to the "criminal charge" in the Anglo-American law. After preliminary investigations have been instituted it is not possible for the prosecution simply to discontinue the proceedings, but a judicial decision is necessary.

The applicant stated that the proceedings for fraud were unduly prolonged in that, in one period from 13th to 16th December, 1965, all witnesses has been heard and all applications had been dealt with. None of the witnesses were resident outside Linz and no witness had held up the proceedings. Furthermore, the applications made by the applicant himself had not caused any delay. The files had always remained in Linz and the Court of Appeal was only ten minutes' walk away from the Regional Court.

The applicant further submitted that, as regards the proceedings for fraudulent bankruptcy, no action had been taken so far and it was not

likely that any action would be taken.

3. As to Article 6, paragraph (1), of the Convention with regard to the proceedings before the Constitutional Court (right to a fair hearing before an independent and impartial tribunal)

(a) The respondent Government submitted that Article 6, paragraph (1), of the Convention did not guarantee a right to proceedings before a court of law but simply laid down basic rules of procedure where national legislation makes provisions for judicial proceedings. Furthermore, the term "civil rights" within the meaning of the aforesaid provision should be interpreted as simply referring to the national legal system.

The respondent Government further submitted that the Regional Real Property Sales Commission was organised in accordance with the principle of collective responsibility as provided in Article 133, paragraph (4), of the Federal Constitutional Act (Bundesverfassungsgesetz) and was clearly an independent and impartial authority.

However, Article 6, paragraph (1), of the Convention was not applicable to proceedings before the Real Property Sales Commission. When considering the question what is meant by the provision in Article 6, paragraph (1), relating to "the determination of civil rights and obligations" reference must be made to the French text which reads as follows: "contestations sur des droits et obligations de caractère civil." In this context "contestations" could only relate to disputes (Streitigkeiten) as regards matters concerning the relations between parties who are on an equal footing but not such concerning the subordination of persons to the state. In this connection, the respondent Government referred to the Commission's decisions on the admissibility of Applications Nos. 423/58 (Collection of Decisions, Vol. 1), 1329/62 Yearbook V. p. 208), and 1931/63 (Collection of Decisions, Vol. 15, p. 8).

The respondent Government submitted that the proceedings instituted by the applicant before the Real Property Sales Commission were not aimed at clarifying matters between himself and the sellers of the land in question. Instead, the object of these proceedings was to obtain a decision from a public authority on the question as to whether or not the transfer of title to the property concerned was compatible with certain public interests. The respondent Government concluded that such proceedings do not involve the "determination of civil rights" within the meaning of Article 6, paragraph (1), of the Convention. This question resulted from the fact that the appeal to he Constitutional Court constituted an extraordinary remedy under Austrian law. The decisions of the Regional Real Property Sales Commission were final decisions on the merits leaving only the possibility of a constitutional appeal to the Constitutional Court by alleging the violation of constitutional rights.

The applicant further submitted that the decisions of the Regional Real Property Sales Commission violated Article 6, paragraph (1), of the Convention, since it was not taken by impartial judges. Furthermore, the decision of the Constitutional Court also violated the aforesaid provision since this Court failed to deal with the question of bias on the part of certain members of the Real Property Sales Commission.

The applicant finally submitted that the proceedings concerned involved the determination of his civil rights within the meaning of Article 6, paragraph (1), of the Convention. These proceedings dealt with the question whether or not a legal condition which was stipulated in a contract was fulfilled. The contract had been made between the parties and simply required the approval of the authority concerned to the effect that agricultural concerns would not be interfered with.

4. As to Article 5, paragraph (4), of the Convention in regard to the proceedings concerning application for release pending trial (right of a detained person to take proceedings for a decision by a court on the lawfulness of his detention)

(a) During the oral hearing before the Commission the applicant also made complaints in regard to the procedure followed in deciding on application for release pending trial. He alleged that Article 5, paragraph (4), of the Convention was violated by the fact that the prosecuting authority was heard by the courts but neither he nor his lawyer were allowed to be present when the court took a decision on the lawfulness of his detention on remand. Consequently there were no "proceedings" within the meaning of the said provision and the principle of "equality of arms" was violated, in particular, where the order for the applicant's release was set aside on appeal by the Public Prosecutor's Office.

(b) The respondent Government first referred to the judgment of the European Court of Human Rights in the Neumeister Case. It also submitted that, insofar as the applicant had not previously included his point in his application, it should not now be dealt with by the Commission.

THE LAW

A. As regards the general objections made by the respondent Government under Article 26 (Art. 26) of the Convention in relation to the applicant's complaints concerning the length of his detention on remand (Article 5, paragraph (3) (Art. 5-3), of the Convention) and the proceedings before the Constitutional Court (Article 6, paragraph (1) (Art. 6-1), of the Convention);

Whereas Article 26 (Art. 26) of the Convention provides:

"The Commission may only deal with a matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken".

Whereas the respondent Government has submitted that, with regard to the applicant's complaints concerning the length of his detention on remand both during the proceedings against him for fraud and for fraudulent bankruptcy, the Commission had no competence under Articles 24 and 25 (Art. 24, 25) of the Convention to examine the period of his detention on remand after 3rd July, 1965, the date on which he lodged his application with the Commission; whereas the respondent Government has also contended that the applicant has failed to exhaust, prior to lodging his application with the Commission, the remedies available to him under Austrian law;

Whereas, in regard to the period from 5th August to 23rd December, 1963, the respondent Government further submitted that the applicant had, in fact, been released on giving a solemn undertaking and had, therefore, obtained his rights by invoking national remedies; whereas, furthermore, he had only lodged his application with the Commission on 3rd July, 1965, that is more than six months after 19th December, 1963, the date on which the final decision in this respect was given by the Linz Court of Appeal; whereas consequently, this part of the application should be declared inadmissible under Article 26 (Art. 26) of the Convention;

Whereas in respect of the above submissions, the Commission first had regard to the judgment given by the European Court of Human Rights in the "Neumeister" case on 27th June, 1968; whereas the Court stated that, where an applicant was detained during two separate periods, one of which was outside the six months time-limit laid down in Article 26 (Art. 26) of the Convention, such earlier period of detention should

nevertheless be taken into consideration in assessing the reasonableness of his later detention; whereas the Court has further stated that, insofar as the applicant complained of his detention on remand, he complained of a continuing situation, and that it would be "excessively formalistic", and also conducive to paralysing the Commission's and the Court's work, to demand that an applicant denouncing such a situation should file a new application with the Commission after each final decision rejecting a request for release.

Whereas the Commission accordingly finds that, while it would be barred by the six months' rule laid down in Article 26 (Art. 26) of the Convention from considering as a separate complaint the first period of detention on remand (5th August to 23rd December, 1963), it may consider the periods subsequent to the date of the application's introduction and may also take the first period into account in forming an opinion on the reasonableness of the applicant's later detention;

Whereas, as regards the question of exhaustion of domestic remedies, the Commission had regard to the text of Article 26 (Art. 26) of the Convention as set out above; whereas it observes that there exists a divergence in the English and French text; whereas, according not the English text, the Commission "may only deal with a matter after all domestic remedies have been exhausted ..."; whereas the French text states that the Commission "ne peut être saisie qu'après l'épuisement des voies de recours internes ..."; whereas the argument of the respondent Government that the applicant had failed to exhaust the domestic remedies before lodging his application with the Commission, is obviously based on the French text;

Whereas the rule requiring the exhaustion of domestic remedies before making an international application is based on the principle that the respondent State should first have had an opportunity to redress the alleged grievance by its own means within the framework of its own domestic legal system (cf. I.C.J., Interhandel Case, Reports 1959, p. 27); whereas the purpose of the aforesaid rule is clearly accomplished where the international tribunal is seized of a complaint by an paragraph whose proceedings before the domestic courts terminate in a reasonable time thereafter with a final decision by the competent court;

Whereas, further, it is clear that such final decision must have been given at the latest when the international authority comes to deal with, namely to decide upon, the application; whereas, consequently, the Commission finds that the English text of Article 26 (Art. 26) expresses more accurately the principle envisaged by the rule requiring exhaustion of domestic remedies;

Whereas, when examining the application's detention on remand from 12th May, 1965, to 20th March, 1967, during the proceedings against him for fraud (19 Vr 394/63) in the light of the above finding, the Commission observes that, on 19th May, 1965, the Linz Court of Appeal decided, inter alia, that the detention on remand should continue;

Whereas similar decisions were given by the Court of Appeal at Linz on 2nd March, 1966, and 28th September, 1966;

Whereas, similarly, with regard to his detention on remand from 15th March, 1965, to 20th March, 1967, during the proceedings against him for fraudulent bankruptcy (19 Vr 1566/64), the Commission observes that the applicant made an appeal to the Linz Court of Appeal against the decision of the Judges' Chamber of the Regional Court at Linz, dated 26th May, 1965; whereas on 16th June, 1965, the Court of Appeal at Linz rejected the appeal; whereas corresponding decisions were given by the said Court of Appeal on 9th December, 1965, 9th February, 1966, 6th July, 1966, and 30th November, 1966;

Whereas, consequently, both before and after the applicant had lodged

the present application with the Commission, the Court of Appeal, which is the highest judicial authority a regards applications for release pending trial, had taken decisions to the effect that the applicant's detention on remand should continue;

Whereas, therefore, the Commission finds that, as regards his complaints under Article 5, paragraph (3) (Art. 5-3), of the Convention relating to the continuing situation of his detention on remand, the applicant has exhausted the domestic remedies within the meaning of Article 26 (Art. 26) of the Convention;

Whereas the general objections of the respondent Government have also been made as to the effect of Article 26 (Art. 26) of the Convention on the applicant's complaints under Article 6, paragraph (1) (Art. 6-1), concerning the proceedings before the Constitutional Court;

Whereas, in this respect, the respondent Government submitted that the applicant failed to allege before the Constitutional Court a violation of the right guaranteed in Article 6, paragraph (1) (Art. 6-1), of the Convention, which, under Austrian law, are of the same authority as the provisions of the Constitution; whereas the applicant alleged that, in view of the fact that a constitutional appeal to the Constitutional Court constituted an extraordinary remedy, he was denied access to a tribunal as guaranteed by the aforesaid provision;

Whereas the question whether or not a domestic remedies must be exhausted before the Commission may deal with a case is to be determined according to the generally recognised principles of international law; whereas this means that, if remedies which seem effective and sufficient are open to an individual within the legal system of the responsible state, he must use and exhaust such remedies in the normal way;

Whereas, indeed, the Commission has consistently held that the mere fact that the applicant has, in pursuance of Article 26 (Art. 26), submitted his case to the various competent courts does not constitute compliance with this rule, but that it is also required that any complaint made before the Commission and relating to lower courts or authorities should have been substantially raised before the competent higher court or authority (see decisions No. 263/57 - Yearbook I, p. 147, 788/60 - ibid. IV, p. 116 and 1103/61 - ibid. V, p. 168);

Whereas, furthermore, the Commission has also held on previous occasion that, under Article 26 (Art. 26) of the Convention, the applicant might be required to pursue the remedies available for an alleged breach of his human and constitutional rights by means of a direct appeal to the Constitutional Court (see final decision No. 2854/66, dated 18th December, 1967);

Whereas, however, in its decision on the admissibility of Application No. 712/50 (Yearbook IV, pages 384, 400), the Commission referred to the jurisprudence of various international judicial organs, including the Permanent Court of International Justice; whereas the Commission has stated that remedies which do not offer a possibility of redressing the alleged damage cannot be regarded as effective or sufficient and there is, therefore, no need for them to be exhausted according to the generally recognised principles of international law;

Whereas the Commission had regard to the recent jurisprudence of the Austrian Constitutional Court with regard to that Court's interpretation of Article 6, paragraph (1) (Art. 6-1), of the Convention (see Application No. 2076/63 - Collection of Decisions, Vol. 23, p. 74); whereas in its decision of 14th October, 1965, the Constitutional Court held that:

- Article 6, paragraph (1) (Art. 6-1), did not require that the decision of first instance was given by a court; it was sufficient

that this decision, where taken by an administrative authority, was subject to review by a court;

- It was not contrary to Article 6, paragraph (1) (Art. 6-1), that the Constitutional Court was competent only to confirm or to quash (nur kassatorisch entscheiden) the administrative decision under review; for, where the decision was quashed, the administrative authorities were obliged to follow the Court's interpretation of the law;

- the Constitutional Court was not bound by the findings of the administrative authorities as to the facts.

Whereas it emerges from that decision that the Constitutional Court considered itself as being the proper tribunal having competence to review decisions taken by administrative authorities; whereas, under Austrian law, there is no possibility of appeal against decisions in the present case, even if the applicant had invoked Article 6, paragraph (1) (Art. 6-1), by alleging that he had been denied access to a tribunal, he would not have been heard on this submission; whereas, therefore, he did not have an effective remedy with regard to his aforesaid complaint;

Whereas the applicant further complained in this connection that the Constitutional Court had failed to deal with his allegations of bias of certain members of the Regional Real Property Sales Commission;

Whereas, here again, the respondent Government apparently contends that the applicant should have invoked before the Constitutional Court Article 6, paragraph (1) (Art. 6-1), of the Convention;

Whereas, in this respect, the Commission observes that the applicant has, in fact, invoked before the Constitutional Court Article 83, paragraph (2), of the Federal Constitutional Act which provides that nobody shall be deprived of a hearing by the judge established by law ("Niemand darf seinem gesetzlichen Richter entzogen werden");

Whereas, therefore, the applicant had in substance brought before the Constitutional Court the issues under Article 6, paragraph (1), of the Convention relating to the composition of the Regional Real Property Sales Commission; whereas the Constitutional Court has refused, on formal legal grounds, to deal with this question; whereas, consequently, the applicant has exhausted all remedies available to him under Austrian law according to the generally recognised principles of international law;

Whereas the respondent Government further maintained that the applicant failed to comply with the provisions of Article 26 (Art. 26) of the Convention in that the remedies in regard to his complaints under Article 6, paragraph (1) (Art. 6-1), of the Convention to the composition of the Regional Real Property Sales Commission had not yet been exhausted at the time when he lodged his application with the Commission; whereas the respondent Government pointed out that the decision of the Constitutional Court was not given until 27th September, 1965, while the present application was introduced on 3rd July, 1965;

Whereas the Commission has already stated that it is sufficient for the purposes of the rule requiring the exhaustion of domestic remedies under Article 26 (Art. 26) of the Convention that the Commission should have been seized of the applicant's complaint within a reasonable time after the proceedings before the domestic courts have been terminated with a final decision by the competent court, but before the Commission, in fact, deals with, that is to say decides upon, the application;

Whereas the same reasoning applies both to complaints relating to a continuing situation and those concerning single isolated events;

Whereas the Commission finds that a question under Article 26 (Art. 26) of the Convention might arise where the period between the date on which the application was lodged with the Commission, and the date on which the final decision was taken by the domestic judicial or other authorities was extremely long; whereas, however, in the present case, less than three months have elapsed between the introduction of the application and the decision of the Constitutional Court; whereas, consequently, the Commission finds that the applicant has exhausted the domestic remedies in accordance with Article 26 (Art. 26) of the Convention;

Whereas, therefore, the Commission rejects the general objections to the admissibility of the application made by the respondent Government on the basis of Article 26 (Art. 26) of the Convention;

B. As regards the alleged violations of Article 5, paragraph (3) and Article 6, paragraph (1) (Art. 5-3, 6-1), of the Convention relating to the length of the applicant's detention on remand and the length of the criminal proceedings against him;

Whereas Article 5, paragraph (3) (Art. 5-3), of the Convention provides as follows: "Everyone arrested or detained in accordance with the provisions of paragraph (1) (c) of this Article (Art. 5-1-c) .. shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial"; and whereas Article 6, paragraph (1) (Art. 6-1), of the Convention provides: "In the determination of .... any criminal charge against him, everyone is entitled to a ..... hearing within a reasonable time by (a) .... tribunal ...;"

Whereas, first, the applicant alleged that his detention pending trial for a period of over two years violated Article 5, paragraph (3) (Art. 5-3), of the Convention; whereas the respondent Government has submitted in particular that, by reason of his numerous and to some extent hopeless applications and petitions the applicant himself had caused the delays concerned, and that therefore the application was in this respect manifestly ill-founded within the meaning of Article 27, paragraph 2 (Art. 27-2), of the Convention;

Whereas, secondly, the applicant alleged that the failure to bring him to trial on the charge of fraudulent bankruptcy and the length of the proceedings against him for fraud deprived him of a hearing in these cases within a reasonable time in accordance with Article 6, paragraph (1) (Art. 6-1), of the Convention; whereas the respondent Government has submitted that in view of the complexity of the cases concerned, of the dependence of the proceedings for fraud on the outcome of the proceedings for fraudulent bankruptcy, and of the fact that the applicant's case was carried out with the greatest possible expedition, the periods concerned were not excessive and unreasonable and that this part of the application was also manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention;

Whereas, when deciding upon the admissibility of the present application, the Commission had regard in particular to the judgments of 27th June, 1967, of the European Court of Human Rights in the "Neumeister" and "Wemhoff" cases; whereas, in regard to the allegations under Article 5, paragraph (3) (Art. 5-3), the Court pointed out that it was essential on the basis of the reasons given by the national authorities in the decisions on the applications for release pending trial, and of the true facts mentioned by the applicant in his appeals, that the Court should decide whether or not there had been a violation of the provisions concerned;

Whereas, in relation to the allegations under Article 6, paragraph (1) (Art. 6-1), of the Convention, the Court had regard to the exceptional circumstances of the particular case concerned in determining the

question of a violation of this provision;

Whereas, similarly, in a series of previous decisions concerning the question of the length of detention on remand and of the proceedings themselves, the Commission has held that the reasonableness of the periods involved must be assessed not in abstracto but in the light of the particular circumstances of the case concerned (see, for example, the decisions on the application of the cases of Matznetter, Stögmüller, Neumeister, Wemhoff and Gericke);

Whereas Article 27, paragraph (2) (Art. 27-2), of the Convention in requiring the Commission to declare inadmissible any application from an individual which it considers to be "manifestly ill-founded", does not permit the Commission, at the stage of considering the admissibility, to reject a complaint whose lack of foundation cannot be so described (see, for example, Applications Nos. 1474/62 and 1769/63, Collection of Decisions, Vol. 11, pages 50 and 59);

Whereas, in the present case, the Commission has carried out a preliminary examination of the information and arguments submitted by the parties with regard to the applicant's complaints under Article 5, paragraph (3) and Article 6, paragraph (1) (Art. 5-3, 6-1), of the Convention concerning the length of his detention on remand and of the proceedings on the charges preferred against him; whereas the Commission finds that these complaints are of such complexity that their determination should depend upon an examination of their merits; whereas it follows that they cannot be regarded as manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention;

C. As regards the alleged violation of Article 6, paragraph (1) (Art. 6-1), of the Convention in relation to the proceedings before the Constitutional Court

Whereas the same reasoning applies in regard to the applicant's complaint under Article 6, paragraph (1) (Art. 6-1), of the Convention, concerning the proceedings before the Constitutional Court;

Whereas this provision states that:

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law ...;"

Whereas the applicant alleged that, insofar as the constitutional appeal was an extraordinary remedy under Austrian law, he was denied access to a court as guaranteed by the above provision; and, furthermore, that the refusal on the part of the Constitutional Court to deal with his allegations of bias of certain members of the Regional Real Property Sales Commission at Linz constituted a violation thereof; whereas the respondent Government has submitted that Article 6, paragraph (1) (Art. 6-1), of the Convention did not guarantee a right to proceedings before a court of law but simply laid down basic rules or procedure where national legislation makes provisions for judicial proceedings; whereas the respondent Government has further submitted that the aforesaid provision was not applicable to proceedings concerning the approval of sales contracts by the Regional Real Property Sales Commission as such proceedings did not involve the determination of civil rights within the meaning of that provision;

Whereas the Commission has made a preliminary examination of the information and arguments submitted by the parties with regard to the above complaints; whereas the Commission considers that these complaints raise important questions under Article 6, paragraph (1) (Art. 6-1), of the Convention; whereas, in particular, they call for an interpretation of the notion "determination of civil rights by a tribunal" within the meaning of that provision; whereas the Commission

finds again that the issues presented by the said complaints are of such complexity that their determination should depend upon an examination of their merits; whereas it follows that they also cannot be regarded as manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention;

Whereas, therefore, the applicant's complaints under Article 5, paragraph (3), and Article 6, paragraph (1) (Art. 5-3, 6-1), of the Convention in relation to the length of his detention on remand and of the criminal proceedings against him as well as his complaints under Article 6, paragraph (1) (Art. 6-1), of the Convention in relation to the proceedings before the Constitutional Court cannot be declared inadmissible as being manifestly ill-founded in accordance with Article 27, paragraph (2) (Art. 27-2), of the Convention; and whereas no other ground for declaring these parts of the application inadmissible has been found;

D. As regards the alleged violation of Article 5, paragraph (4) (Art. 5-4) of the Convention, in relation to the procedure followed in deciding on applications for release pending trial

Whereas, in regard to the applicant's complaint, submitted during the oral hearing before the Commission, that the decisions relating to his detention on remand were given after the court had heard the prosecuting authority, but in the absence of the applicant or his lawyer; whereas, in this respect, the applicant alleges a violation of Article 5, paragraph (4) (Art. 5-4) of the Convention which grants to every detained person the right "to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful" (emphasis added);

Whereas the Commission again had regard to the judgment of 27th June, 1968, given by the European Court of Human Rights in the "Neumeister" case; whereas in that case the Court held that Article 5, paragraph (4) (Art. 5-4) of the Convention simply provided that proceedings against detention on remand should be allowed and be taken before a "court", namely an authority possessing judicial character, that is being independent both of the executive and of the parties to a case, but that this provision did not relate to the procedure to be followed; whereas the Court further stated that the main concern of the above provision was that remedies concerning detention on remand should be determined speedily and that, consequently, full written proceedings or an oral hearing of the parties in the examination of such remedies were a source of delay which should be avoided in this field;

Whereas the Commission by a majority vote had reached a similar conclusion in the "Neumeister" case (cf. Report 1936/63 of 27th May, 1966, p. 87); whereas the facts and the arguments submitted by the applicant in the present case do not disclose any grounds which would compel the Commission to deviate for its previous opinion and from the holding of the European Court of Human Rights; whereas the Commission consequently finds that this part of the application does not disclose any appearance of a violation of the rights and freedoms set forth in the Convention and, in particular in Article 5, paragraph (4) (Art. 5-4) of the Convention, whereas it follows that, in this respect, the application is manifestly ill-founded and must be rejected in accordance with Article 27, paragraph (2) (Art. 27-2), of the Convention;

Now therefore the Commission

1. rejects the general objections made by the respondent Government as to the admissibility of the application in their entirety (cf. A above);

2. rejects as being manifestly ill-founded the allegations by the applicant in respect of Article 5, paragraph (4) (Art. 5-4) of the

Convention (cf. D above); but

3. declares admissible and retains without in any way prejudging the merits of the case, the allegations made by the applicant in respect of Article 5, paragraph (3) and Article 6, paragraph (1) (Art. 5-3, 6-1), of the Convention as regards the length of his detention on remand and the length of the criminal proceedings against him, and of Article 6, paragraph (1) (Art. 6-1), of the Convention, as regards the proceedings before the Constitutional Court (cf. B. and C above).