The European Commission of Human Rights sitting in private on 5 May 1986, the following members being present:

MM. C.A. NØRGAARD, President
G. SPERDUTI
J.A. FROWEIN
M.A. TRIANTAFYLLIDES
G. JÖRUNDSSON
S. TRECHSEL
B. KIERNAN
A. WEITZEL
J.C. SOYER
H.G. SCHERMERS
H. DANELIUS
G. BATLINER
Mrs G.H. THUNE
Sir Basil HALL

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Art. 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (art. 25);
Having regard to the application introduced on 26 April 1984 by K. against the Federal Republic of Germany and registered on 18 October 1984 under file No. 11203/84;

Having regard to the report provided for in Rule 40 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The facts of the case, as they have been submitted by the applicant, may be summarised as follows:

The applicant is a German citizen born in 1902 and resident in Essen. He is a retired businessman who receives a pension on the basis of mostly voluntary contributions to the German Employees' Old Age Insurance Scheme (gesetzliche Rentenversicherung der Angestellten).

On 25 July 1978, the German legislator enacted the Pensions Adaptation Act No. 21 (21 Rentenanpassungsgesetz), which deferred from 1 July to 1 January the date of the annual adaptation of the pensions to the general increase of salaries, thereby omitting the adaptation of 1 January 1978. The Act furthermore abandoned the legislative practice to calculate the adaptation percentage on the basis of the average income of the insured. Instead, without such reference, the Act fixed 4.5% as the percentage for the year 1979 and 4% as the percentage for the years 1980 and 1981, respectively.

In 1979 the applicant lodged a constitutional complaint to the Federal Constitutional Court alleging that the Act in question violated his property rights and the principle of equality before the law. The applicant complained, in particular, about the loss of more than 13% which he had suffered in comparison with the former legislative practice. He furthermore pointed at the fact that the civil servants' pensions were not affected by these changes in legislation.

On 10 May 1983, the plenary Federal Constitutional Court pronounced a leading decision in a parallel case. The court found that pensions on the basis of the Old Age Insurance Scheme (gesetzliche Rentenversicherung) were in their substance guaranteed by the right to

respect for property. The court nevertheless left open the question whether or not the same protection had to be afforded to the adaptation of pensions. In view of the fact that in any event the German legislator had lawfully determined the extent of the right to respect for property as regards both the date and the modalities of the adaptation. These changes did not call in question the rôle of the pension in securing individual freedom. They were also not disproportionate to the aim achieved, namely to avoid a further deficit of the pension scheme. This overriding public interest also justified breaching the insured persons' trust in a continuation of the former legislative practice. Finally, the court found that the Act did not violate the principle of equality. In particular, the decisive aim of the Act in question was to secure the financial basis of the Old Age Insurance Scheme, whereas there were no financial problems with the quite different system of the Civil Servants' Pensions Scheme (Versicherung der Beamten und Angestellten des offentlichen Dienstes). Thus, a differential treatment between employees and civil servants was justified.

On 3 November 1983, the Federal Constitutional Court dismissed the applicant's constitutional complaint as offering no prospects of success. The court referred to the above-mentioned leading decision.

COMPLAINTS

1. The applicant complains under Art. 1 of Protocol No. 1 (P1-1) that the Pensions Adaptation Act No. 21 violates his right to peaceful enjoyment of his possessions.

2. The applicant furthermore alleges a violation of Art. 14 (art. 14) of the Convention in that the German legislator did not at the same time reduce the pensions of civil servants.

3. Moreover, the applicant complains that the Federal Constitutional Court rejected his constitutional complaint without a detailed consideration of his case. He relies on Art. 6, para. 1 (art. 6-1) of the Convention.

THE LAW

1. The applicant complains about the reduction of his pension due to the Pensions Adaptation Act No. 21 of 1978. He relies on Art. 1 of Protocol No. 1 (P1-1) which secures to everyone the peaceful enjoyment of his possessions.

The Commission observes that the Pensions Adaptation Act in question, as the Federal Constitutional Court pointed out, aimed at strengthening the financial resources of the general Old Age Pensions Scheme. The Act did not reduce the pensions paid at that time, but only deferred and reduced the annual increase of pensions for a period of three years.

The Commission considers that even assuming that Art. 1 of Protocol No. 1 (P1-1) guarantees persons who have paid contributions to a social insurance system the right to derive benefit from the system, it cannot be interpreted as entitling such a person to a pension of a particular amount. Because of its public importance, the social security system must take account of political considerations, in particular those of financial policy. It is conceivable, for instance, that a deflationary trend may oblige a State to reduce the nominal amount of pensions. Therefore, only a substantial reduction of the amount of the pension could be regarded as affecting the very substance of the right to retain the benefit of an old age insurance system (see Müller v. Austria, Comm. Report 1.10.75, para. 30-33, D.R. 3 p. 25).

Consequently, in this respect, the complaint does not disclose any

appearance of a violation of Art. 1 of Protocol No. 1 (P1-1).

It follows that this part of the application is manifestly ill-founded within the meaning of Art. 27, para. 2 (art. 27-2) of the Convention.

2. The applicant also complains under Art. 14 (art. 14) of the Convention in connection with Art. 1 of Protocol No. 1 (P1-1) that the Act in question discriminated against the private employees and voluntarily insured tradesmen, because it did not reduce the increase of the pensions paid to civil servants.

The Commission, however, recalls its previous case-law, in which it has recognised the basic difference between the legal situation of civil servants and that of self-employed tradesmen and private employees which can justify, under Art. 14 (art. 14) of the Convention, that the system adopted by the legislator for retirement pensions of civil servants is not based on the same principles as the social insurance schemes for tradesmen and employees (No. 7624/76, Dec. 6.7.77, D.R. 19 p. 100).

The Commission notes that, in the present case, the regulations at issue were meant to secure the financial basis of the social insurance system which was mostly financed by contributions and thereby basically differed from the civil servants' pensions based on the principle of support.

The Commission therefore concludes that the special treatment of social insurance pensions is justified in the light of these considerations in order to secure a just and secure payment of social insurance pensions in the future.

In these circumstances, there is no appearance of a violation of Art. 14 (art. 14) of the Convention combined with Art. 1 of Protocol No. 1 (P1-1).

It follows that this part of the application is also manifestly ill-founded within the meaning of Art. 27 para. 2 (art. 27-2) of the Convention.

3. The applicant has further alleged that the proceedings before the Federal Constitutional Court violated his right to a fair hearing as guaranteed by Art. 6 para. 1 (art. 6-1) of the Convention. However, according to the Commission's jurisprudence, Art. 6 (art. 6) does not apply to proceedings before a Constitutional Court (No. 8410/78, Dec. 13.12.79, D.R. 18 p. 216).

This part of the application must therefore be rejected as being incompatible ratione materiae with the provisions of the Convention within the meaning of Art. 27 para. 2 (art. 27-2) of the Convention.

For these reaons, the Commission

DECLARES THE APPLICATION INADMISSIBLE

Secretary to the Commission — President of the Commisison

(H.C. KRÜGER) — (C.A. NØRGAARD)