AS TO THE ADMISSIBILITY OF

1) Application No. 19048/91
by Hans-Christoph WEIDLICH and
Bernd-Joachim FULLBRECHT

2) Application No. 19049/91
by Ortwin A. HASENKAMP

3) Application No. 19342/92
by Hartwig GOLF

4) Application No. 19549/92
by Werner KLAUSSER

5) Application No. 18890/91
by Gisela MAYER

against Germany

The European Commission of Human Rights sitting in private on 4 March 1996, the following members being present:

MM. S. TRECHSEL, President
E. BUSUTTIL
G. JÖRUNDSSON
A. WEITZEL
H.G. SCHERMERS
Mrs. G.H. THUNE
J. LIDDY
MM. L. LOUCAIDES
M.P. PELLONPÄÄ
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
J. MUCHA
E. KONSTANTINOV
D. SVÁBY
G. RESS
C. BÎRSAN
P. LORENZEN
K. HERNDL

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

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the applications introduced on 1) 16 October 1991, 2) 6 October 1991, 3) 2 January 1992, 4) 7 October 1991 and 5) 14 August 1991 by 1) Hans-Christoph WEIDLICH and Bernd-Joachim FULLBRECHT, 2) Ortwin A. HASENKAMP, 3) Hartwig GOLF, 4) Werner KLAUSSER and 5) Gisela MAYER against Germany and registered on 1) 7 November 1991, 2) 7 November 1991, 3) 15 January 1992, 4) 27 February 1992 and 5) 3 October 1991 under files No. 1) 19048/91, 2) 19049/91, 3) 19342/92, 4) 19549/92 and 5) 18890/91, respectively;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having regard to:

- the Commission's decision of 6 January 1993 to join (Rule 35 of its Rules of Procedure) and communicate the applications Nos.

19048/91, 19049/91, 19342/92 and 19549/92;

- the Commission's decision of 30 August 1994 to join application No. 18890/91 with the above applications and to communicate it without requesting further observations;

- the observations submitted by the respondent Government on 23 April 1993 and supplemented on 30 September 1993 and 5 December 1994;

- the observations in reply submitted by the applicants Weidlich and Fullbrecht on 2 June 1993 and 17 December 1993, the applicant Hasenkamp on 12 June 1993, 15 December 1993 and 21 February 1995, the applicant Golf on 13 June and 21 December 1993, 2 February 1994 and 22 March 1995, the applicant Klausser on 16 June 1993 and 10 December 1993;

- the parties' oral submissions at the hearing on 4 March 1996;

Having deliberated;

Decides as follows:

THE FACTS

The applicants, Hans-Christian Weidlich and Bernd Joachim Fullbrecht (No. 19048/91), are German citizens. Mr. Weidlich was born in 1930 and is living in Kaiserslautern. Mr. Fullbrecht was born in 1924 and is living in Wachtberg-Niederbachem. Both are represented by R. Zuck, a lawyer practising in Stuttgart.

The applicant, Ortwin A. Hasenkamp (No. 19049/91), is a German citizen, born in 1926 and living in Celle. He is represented by Mr. W. Seiffert, a law professor at the University of Kiel.

The applicant, Hartwig Golf (No. 19342/92), is a German citizen born in 1913 and living in Limburg. He is represented by Mr. T. Golf, a lawyer practising in Waldeck-Sachsenhausen.

The applicant, Werner Klausser (No. 19549/92), is a German citizen born in 1925 and living in Schwanenwede. He is also represented by Mr. R. Zuck.

The applicant, Gisela Mayer (No. 18890/91), is a German citizen, born in 1929 and living in London. She is represented by Mr. V. Nebelsieck.

A. The Particular Circumstances of the Cases

The facts which are undisputed between the parties may be summarised as follows.

The applicants were real property owners or are the legal successors of real property owners whose property was expropriated in connection with the land reform carried out between 1945 and 1949 in the former Soviet-occupied zone of Germany. The expropriations also extended to movable property on the premises such as household effects.

All applicants complain about the regulation in the Treaty on German Unification of 31 August 1990 (BGBl 1990 II, p. 889 et seq., - Einigungsvertrag, hereinafter referred to as the Unification Treaty) according to which expropriations carried out on the basis of Soviet occupational powers between 1945 and 1949 shall not be reversed.

Other expropriations effected in the German Democratic Republic without compensation subsequent to 1949 fall, according to the Unification Treaty, under the Act Regulating Unresolved Property

Questions (Gesetz zur Regelung offener Vermögensfragen, BGBl. 1990 II p. 889, 1159, amended on 3 August 1992, BGBl. I, p. 1446). This Act provides, in principle, for the return of confiscated property, including businesses, where this is still possible and does not violate user rights acquired in good faith. If a return is excluded compensation has to be paid in accordance with Sec. 6(7) and Secs. 9 et seq. while for certain cases mentioned in Sec.4 (1) and (2) new legislation was envisaged.

The Unification Treaty was adopted by the parliaments of both German States and became binding law in the Federal Republic of Germany on 3 October 1990.

The international matters concerning German unification were agreed upon in negotiations between the two German States and the four Allied Powers. In the Treaty of 12 September 1990 on the Final Settlement with respect to Germany (BGBl 1990 II, p. 1318 et seq.), the sovereignty of a united Germany was recognised. In connection with the signing of this treaty the Ministers for Foreign Affairs of the former German Democratic Republic and of the Federal Republic of Germany addressed a Joint Letter (Gemeinsamer Brief) to the Foreign Ministers of the Four Powers confirming the property regulation reached in the Joint Declaration of 15 June 1990 and aimed at being incorporated in the Unification Treaty.

By decision of 23 April 1991 the Federal Constitutional Court (Bundesverfassungsgericht) rejected several constitutional complaints of persons, among whom three of the applicants in the present case (Weidlich, Fullbrecht and Hasenkamp), who had their real estate confiscated between 1945 and 1949 in the Soviet-occupied zone of Germany. The complainants had alleged that the regulation in the Unification Treaty excluding the return of property confiscated between 1945 and 1949 under the Soviet occupation regime and providing for possible compensation payments but not for full reparation violated several constitutional rights.

The Federal Constitutional Court rejected the complaints as being unfounded.

The Court found that the expropriations in question, even where carried out by German authorities, had been effected on behalf of the Soviet occupation authorities and were consequently based on the sovereign power of the occupation force (besatzungshoheitliche Grundlage). The competence of the Federal Government to conclude the Unification Treaty and to include in it the amendments to the Basic Law necessitated by the unification followed from the Government's constitutional obligation to attain German unification. The manner in which the amendments had been made violated neither formal nor substantive law.

The Court held that the regulation in question did not violate any of the complainants' constitutional rights as they no longer had any legal position that could have been affected by it.

The expropriations had been considered legitimate (rechtmäßig) by the Soviet and the German Democratic Republic authorities. The Federal Republic of Germany could not be held responsible for measures taken at a time when the Basic Law was not even in force. Under the law then existing in the zones occupied by the Western Allied Powers the complainants had also lost their legal position with regard to the confiscated property. According to this law confiscations effected by a foreign State were to be considered valid (wirksam) if effected within that State's sovereign powers.

Furthermore, unless damage was caused by its own organs, the Federal Republic was not bound fully to compensate damage resulting from World War II. In respect of compensation payments for such damage

the Federal Republic had a wide margin of appreciation and could take into account other expenditures and budgetary requirements.

The Constitutional Court furthermore found that there was no violation of the right to equal treatment. It relied on evidence given by the Federal Minister for Foreign Affairs, Mr. Klaus Kinkel, and other high-ranking officials, showing in the Court's opinion that the Soviet Union had agreed to German unification on the condition that the legality of the confiscations effected between 1945 and 1949 would not be put in question, which meant that they should not be reversed. It had also been the object of the German Democratic Republic to ensure in the Unification Treaty that social peace on its territory was maintained after unification. This condition therefore had to be accepted by the Federal Government in order not to endanger the process of unification. The regulation whereby property owners whose property had been confiscated between 1945 and 1949 were treated differently from those whose property had been confiscated thereafter was, in these circumstances, sufficiently justified.

The Federal Constitutional Court also denied discrimination in that the complainants would eventually only receive limited compensation payments but not full reparation. It pointed out that it would be discriminatory totally to exclude any kind of compensation for those who lost property between 1945 and 1949. Nevertheless, the fact that the complainants were treated less favourably than other owners was justified in view of the economic crisis in the former German Democratic Republic. In assessing the level of compensation payable, the legislator had a large discretionary power and could, inter alia, take into account what funds were available and also the need to cope with the necessity of fulfilling new tasks arising for example from the necessity to reconstruct the new Federal States (Länder).

On 27 September 1994 the German Parliament adopted two laws regulating the legal consequences of expropriations in the territory of the former German Democratic Republic in respect of which the restitution of property was excluded. Both laws entered into force on 1 December 1994. They are:

- the Compensation Act (Entschädigungsgesetz, BGBl. 1994 I p. 2624) concerning expropriations effected in the German Democratic Republic after 1949 in respect of which the 1990 Act Regulating Unresolved Property Questions had reserved further legislation (see above);

- the Equalisation Act (Ausgleichsgesetz, BGBl. 1994 I p. 2628) providing for equalisation payments to persons who had been expropriated between 1945 and 1949. This Act also provides, under certain circumstances, for the possibility of acquiring agricultural land at a price below market value and the return of moveable property.

B. The Relevant Legal Texts

In the course of the unification negotiations involving the former German Democratic Republic, the Federal Republic of Germany, and the former four occupational powers (France, United Kingdom, U.S.S.R and U.S.A.), the then existing two German Governments issued a Joint Declaration on 15 June 1990 with a view to settling unresolved property questions (Vermögensfragen).

The relevant parts of the Joint Declaration of 15 June 1990 read as follows:

[Translation]

" In seeking a solution to the property issues to be settled, both Governments assume that it is necessary to achieve a socially just balance of conflicting interests. Legal certainty

and legal clarity, as well as the right to possess property are the principles that guide the Governments of the German Democratic Republic and the Federal Republic of Germany in seeking a solution to outstanding property issues. Only in this way will it be possible to ensure once and for all that there will be no litigation on these issues in a future united Germany.

The two German Governments agree on the following basic points:

1. Expropriations carried out on the basis of occupation law or the authority resulting from the occupational power (1945 until 1949) shall not be reversed. The Governments of the Soviet Union and the German Democratic Republic see no possibility of reviewing the measures taken at that time. The Government of the Federal Republic of Germany takes cognisance of this in the light of historical developments. It is of the opinion that a final decision on any indemnification to be paid by the State must be left to a future all-German Parliament.

2. ..."

[German]

" Bei der Lösung der anstehenden Vermögensfragen gehen beide Regierungen davon aus, daß ein sozial verträglicher Ausgleich unterschiedlicher Interessen zu schaffen ist. Rechtssicherheit und Rechtseindeutigkeit sowie das Recht auf Eigentum sind Grundsätze, von denen sich die Regierungen der Deutschen Demokratischen Republik und der Bundesrepublik Deutschland bei der Lösung der anstehenden Vermögensfragen leiten lassen. Nur so kann der Rechtsfriede in einem künftigen Deutschland dauerhaft gesichert werden.

Die beiden deutschen Regierungen sind sich über folgende Eckwerte einig:

1. Die Enteignungen auf besatzungsrechtlicher bzw. besatzungshoheitlicher Grundlage (1945 bis 1949) sind nicht mehr rückgängig zu machen. Die Regierung der Sowjetunion und der Deutschen Demokratischen Republik sehen keine Möglichkeit, die damals getroffenen Maßnahmen zu revidieren. Die Regierung der Bundesrepublik Deutschland nimmt dies im Hinblick auf die historische Entwicklung zur Kenntnis. Sie ist der Auffassung, daß einem künftigen gesamtdeutschen Parlament eine abschließende Entscheidung über etwaige staatliche Ausgleichsleistungen vorbehalten bleiben muß.

2. ..."

The Joint Declaration became part of the Unification Treaty of 31 August 1990 (BGBl 1990 III, p. 889 et seq.) which contains, inter alia, the following provisions relating to property questions:

[Translation]

" Article 3

Entry into force of the Basic Law

Provided that there is no provision in this Treaty to the contrary, when the accession takes effect the Basic Law of the Federal Republic of Germany.... shall enter into force, together with the amendments contained in Article 4, in the Länder of Brandenburg, Mecklenburg-West Pomerania, Saxony, Saxony-Anhalt and Thuringia, as well as in the part of Berlin to which it has not applied hitherto."

Article 4

Amendments to the Basic Law
due to the accession

The Basic Law shall be amended as follows:

1. ...

4. The present wording of Article 135 (a) (1) shall become paragraph 1 of that Article. The following paragraph shall be inserted after paragraph 1:

---

(1) Translation of Article 135 (a)

(1) The legislation reserved to the Federation in paragraph (4) of Article 134 and in paragraph (5) of Article 135 may also stipulate that the following liabilities shall not be discharged, or not to their full extent:

1. liabilities of the Reich or liabilities of the former Land of Prussia or liabilities of such corporate bodies and institutions under public law as no longer exist;
2. such liabilities of the Federation or corporate bodies and institutions under public law as are connected with the transfer of properties pursuant to Article 89, 90, 134 or 135, and such liabilities of these entities as arise from measures taken by the entities mentioned under item 1;
3. such liabilities of Leander or communes or associations of communes as have arisen from measures taken by the entities before 1 August 1945 within the framework of administrative functions incumbent upon, or delegated by, the Reich to comply with regulations of occupying Powers or to remove a state of emergency due to the war.

'(2) Paragraph 1 shall apply mutatis mutandis to liabilities of the German Democratic Republic or its controlling authorities and liabilities incurred by the Federation..... in connection with the transfer of assets of the German Democratic Republic to the Federation... as well as to liabilities resulting from measures taken by the German Democratic Republic or its controlling authorities.'

5. The following new Article 143 shall be inserted into the Basic Law:

(1) The law in the territory mentioned in Article 3 of the Unification Treaty may only deviate from the provisions of this Basic Law for as long as it takes, as a result of the differing conditions in the two countries, to achieve full adaptation to the legal order enshrined in the Basic Law, but until 31 December 1992 at the latest. Deviations shall not infringe Article 19 para. 2 and shall be compatible with the principles enshrined in Article 79 para. 3.

(2) Deviations from Sections II, VIII, VIII a, IX, X and XI shall be permissible until 31 December 1995 at the latest.

(3) Irrespective of paragraphs 1 and 2, Article 41 of the Unification Treaty and the provisions enacted for its implementation shall apply to the extent that they provide that interference with property in the territory mentioned in Article 3 of that Treaty shall not be reversed.

Article 41

Settlement of property issues

(1) The Joint Declaration on outstanding property issues made on 15 June 1990 by the Governments of the Federal Republic of Germany and the German Democratic Republic (annex III) is a constituent part of this Treaty.

(2)...

(3) Moreover, the Federal Republic of Germany shall not enact any legal rules that conflict with the Joint Declaration mentioned in paragraph 1."

[German]

" Artikel 3

Inkrafttreten des Grundgesetzes

Mit dem Wirksamwerden des Beitritts tritt das Grundgesetz für die Bundesrepublik Deutschland ... in den Ländern Brandenburg, Mecklenburg-Vorpommern, Sachsen, Sachsen-Anhalt und Thüringen sowie in dem Teil des Landes Berlin, in dem es bisher nicht galt, mit den sich aus Artikel 4 ergebenden Änderungen in Kraft, soweit in diesem Vertrag nichts anderes bestimmt ist.

Artikel 4

Beitrittsbedingte Änderungen des Grundgesetzes

Das Grundgesetz für die Bundesrepublik Deutschland wird wie folgt geändert:

1. ...

4. Der bisherige Wortlaut des Artikels 135 a (2) wird Absatz 1. Nach Absatz 1 wird folgender Absatz angefügt:

---

(2) Article 135 (a) reads

Durch die in Artikel 134 Abs. 4 and Artikel 135 Abs. 5 vorbehaltene Gesetzgebung des Bundes kann auch bestimmt werden, dass nicht oder nicht in voller Höhe zu erfüllen sind

1. Verbindlichkeiten des Reiches sowie Verbindlichkeiten des ehemaligen Landes Preussen und sonstiger nicht mehr bestehender Körperschaften und Anstalten des öffentlichen Rechts;
2. Verbundlichkeiten des Bundes oder anderer Körperschaften und Anstalten des öffentlichen Rechts, welche mit dem Übergang von Vermögenswerten nach Artikel 89, 90, 134 und 135 im Zusammenhang stehen und Verbindlichkeiten dieser Rechtsträger, die auf Massnahmen der in Nummer 1 bezeichneten Rechtsträger beruhen;
3. Verbindlichkeiten der Länder und Gemeinden (Gemeindeverbände), die aus Massnahmen entstanden sind, welche diese rechtsträger vor dem 1. August 1945 zur Durchführung von Anordnungen der Besatzungsmächte oder zur Beseitigung eines kriegsbedingten Notstandes im Rahmen dem Reich obliegender oder vom Reich übertragener Verwaltungsaufgaben getroffen haben.

`(2) Absatz 1 findet entsprechende Anwendung auf Verbindlichkeiten der Deutschen Demokratischen Republik oder ihrer Rechtsträger sowie auf Verbindlichkeiten des Bundes oder.... die mit dem Übergang von Vermögenswerten der Deutschen Demokratischen Republik auf Bund, Länder und Gemeinden im Zusammenhang stehen, und auf Verbindlichkeiten, die auf Maßnahmen der Deutschen Demokratischen Republik oder ihrer Rechtsträger beruhen.'

5. In das Grundgesetz wird folgender neuer Artikel 143 eingefügt:

Artikel 143

(1) Recht in dem in Artikel 3 des Einigungsvertrags genannten Gebiet kann längstens bis zum 31. Dezember 1992 von Bestimmungen dieses Grundgesetzes abweichen, soweit und solange infolge der unterschiedlichen Verhältnisse die völlige Anpassung an die grundgesetzliche Ordnung noch nicht erreicht werden kann. Abweichungen dürfen nicht gegen Artikel 19 Abs. 2 verstoßen und müssen mit den in Artikel 79 Abs. 3 genannten Grundsätzen vereinbar sein.

(2) Abweichungen von den Abschnitten II, VIII, VIII a, IX, X und XI sind längstens bis zum 31. Dezember 1995 zulässig.

(3) Unabhängig von Absatz 1 und 2 haben Artikel 41 des Einigungsvertrags und Regelungen zu seiner Durchführung auch insoweit Bestand, als sie vorsehen, daß Eingriffe in das Eigentum auf dem in Artikel 3 dieses Vertrags genannten Gebiet nicht mehr rückgängig gemacht werden.

Artikel 41

Regelung von Vermögensfragen

(1) Die von der Regierung der Bundesrepublik Deutschland und der Regierung der Deutschen Demokratischen Republik abgegebene Gemeinsame Erklärung vom 15. Juni 1990 zur Regelung offener Vermögensfragen (Anlage III) ist Bestandteil dieses Vertrages.

(2)...

(3) Im übrigen wird die Bundesrepublik Deutschland keine Rechtsvorschriften erlassen, die der in Absatz 1 genannten Gemeinsamen Erklärung widersprechen."

COMPLAINTS

The applicants invoke Article 1 of Protocol No. 1 to the Convention read in conjunction with Article 14 of the Convention.

They argue that the expropriations in question were incompatible with international law and constitute a continuous violation of property rights. They submit that, unlike the Treaties of Moscow (12 August 1970) and Warsaw (7 December 1970) in which the Federal Republic of Germany recognised all frontiers in Europe without regulating any property questions, the Unification Treaty expressly excludes any restitution rights and thus legalises unlawful confiscations. This amounts to a violation of their right to the peaceful enjoyment of their possessions. In this connection they point out that according to Article 25 of the Basic Law the general rules of public international law have precedence over domestic law, a principle which in their opinion has been overlooked by the Federal Constitutional Court.

They further consider themselves to be victims of discrimination

in comparison with persons whose property was confiscated in the former German Democratic Republic after 1949 and who can now claim restitution or reparation.

PROCEEDINGS BEFORE THE COMMISSION

The applications were introduced respectively on 16 October 1991 (No. 19048/91), 6 October 1991 (No. 19049/91), 2 January 1992 (No. 19342/92), 7 October 1991 (No. 19549/92) and 14 August 1991 (No. 18890/91).

They were registered respectively on 7 November 1991 (Nos. 19048/91 and 19049/91), 15 January 1992 (No. 19342/92), 27 February 1992 (No. 19549/92) and 3 October 1991 (No. 18890/91).

On 6 January 1993 the Commission decided to join (Rule 35 of its Rules of Procedure) and communicate the applications Nos. 19048/91, 19049/91, 19342/92 and 19549/92 to the respondent Government and invite them to submit observations in writing on the admissibility and merits of the complaint under Article 1 of Protocol No. 1 read together with Article 14 of the Convention.

On 30 August 1994 the Commission decided to join application No. 18890/91 and another application, No. 19918/92, with the above applications and to communicate them to the Government without requesting further observations. Application No. 19918/92 was disjoined on 8 December 1995 and its examination adjourned at the request of the applicants in that case.

The Government's written observations were submitted on 23 April 1993 and supplemented on 30 September 1993 and 5 December 1994. Observations in reply were submitted by the applicants Weidlich and Fullbrecht on 2 June 1993 and 17 December 1993, the applicant Hasenkamp on 12 June 1993, 15 December 1993 and 21 February 1995, the applicant Golf on 13 June and 21 December 1993, 2 February 1994 and 22 March 1995, and by the applicant Klausser on 16 June 1993 and 10 December 1993.

On 10 April 1995 the Commission decided to obtain the parties' oral submissions on the applications. A hearing fixed for 8 September 1995 was adjourned at the Government's request. The hearing took place on 4 March 1996. The following persons represented the parties at the hearing:

The Government :

- Mr. J. MEYER-LADEWIG, Agent

  Federal Ministry of Justice

- Mr. M. WECKERLING, Regierungsdirektor
- Mr. G. FIEBERG, Ministerialrat
- Mr. H. REICHENBACH, Richter am Bundespatentgericht
- Mr. F. PLESSE, Regierungsdirektor

  Foreign Office

- Mr. K. J. BOSCH, Vortragender Legationsrat Erster Klasse

  President's Office

- Mr. V. ZILCH, Ministerialrat

  Federal Ministry of Finance

- Mr. O. LÖFFLER, Ministerialrat
- Ms. M. KNOLLE, Oberregierungsrätin

Federal Ministry of Agriculture, Food and Forests

- Mr. U. KUHLMANN, Ministerialrat

as advisors.

The applicants:

Application Nos. 19048/91, 19549/92 (Weidlich and Fullbrecht, Klausser)

- Mr. A. WENDENBURG, a lawyer practising in Celle
- Mr. R. ZUCK, a lawyer practising in Stuttgart
- the applicants Messrs. WEIDLICH and FULLBRECHT were also present.

Application No. 18890/91 ((Mayer)

- Mr. V. NEBELSIECK, a lawyer practising in Celle
- Mr. F. ROSENBERGER, a lawyer practising in Cologne

Application No. 19049/91 (Hasenkamp)

- Mr. W. SEIFFERT, professor of law
- the applicant was also present.

Application No. 19342/92 (Golf)

- Mr. T. GOLF, a lawyer practising in Altenburg

THE LAW

1. The applicants allege a violation of their rights under Article 1 of Protocol No. 1 (P1-1) to the Convention. This Article (P1-1) reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The applicants argue in essence that the expropriation of their property between 1945 and 1949 was invalid under public international law, in particular the Hague Convention on the Laws and Customs of War, as well as under the law of the Federal Republic of Germany, and that it resulted in a continuous violation of their property rights. Therefore the Unification Treaty, by excluding both restitution and full reparation, amounts in their submission to a violation of Article 1 of Protocol No. 1 (P1-1).

They furthermore deny that in the unification negotiations the former Soviet Union demanded that property taken between 1945 and 1949 should not be given back to its former owners. They consider that the only concern of the Soviet Union was that the legality of the expropriations concerned should not be put into question. Furthermore, they point out that the Soviet Union had ceased to exist. Consequently the Federal Republic was no longer bound by any undertaking not to retransfer properties to their legitimate owners. But even assuming that the Federal Republic had validly agreed not to return the properties to their former owners it was obliged to pay compensation in view of the illegality of the expropriations and the fact that at

least 70% of the properties concerned were now at the disposal of the authorities of the Federal Republic.

The applicant Hasenkamp submits that at the relevant time he was a citizen of the Free City of Danzig and not a German citizen. Therefore the expropriation in his case was not covered by the expropriation orders of the Soviet occupational authorities.

The respondent Government submit that in the light of the history of the unification negotiations as a whole there can be no doubt that the Soviet Union accepted German unification only on the condition that expropriations carried out between 1945 and 1949 should not be reversed. Furthermore the respondent Government consider that Germany also has to respect its obligations under the Unification Treaty vis à vis the present Russian Federation. In this respect it has been submitted that from the Russian point of view the expropriations in question were meant as a punishment for war criminals and Nazis as well as a measure establishing a new peaceful social order.

As regards the applicants' submission that the expropriations violated international law, the respondent Government refer to the findings of the Federal Constitutional Court, according to which, under German international expropriation law, the taking of property carried out by another State is always to be considered effective if the State concerned has remained within its powers, i.e. within its territorial sovereignty. The Government stress that the Federal Constitutional Court also denied the incompatibility of the property regulations contained in the Unification Treaty with the notion of public order, having regard to the fact that the expropriations were carried out decades ago by another State.

The respondent Government finally point out that, according to the newly-enacted Compensation and Equalisation Acts of 27 September 1994, equalisation payments can be claimed by persons whose property expropriated in the former Soviet occupied zone of Germany or in the former German Democratic Republic is not returned. Under certain conditions this new legislation also allows the acquisition of limited pieces of agricultural or forestry land.

a) The Commission first notes that the original deprivation of the applicants' property occurred at the instance of the Soviet occupying forces in Germany, more than forty years ago, at a time when the Federal Republic of Germany did not even exist. Even if it is true that, as the Federal Constitutional Court observed in its decision of 23 April 1991, the authorities of both German States subsequently recognized the validity of the expropriations in question, the German authorities can in no way be held responsible for the deprivation of property as such, which is not imputable to them. In this respect the Commission lacks competence, ratione personae, to examine the circumstances in which the expropriations were carried out.

b) The Commission further observes that the expropriations took place before the entry into force of the Convention (3 September 1953) and before the ratification of Protocol No. 1 (P1) by the Federal Republic of Germany (13 February 1957). It is true that they continued to produce effect after the above dates and also after 3 October 1990, when the Unification Treaty entered into force and when the territory where the property concerned was situated became part of the Federal Republic of Germany to which the Convention and its Protocols are applicable. However, the Commission recalls its constant case-law according to which a deprivation of ownership or other rights in rem is in principle an instantaneous act and does not produce a continuing situation of "deprivation of right" (cf. No 7742/76, Dec. 4.7.78, D.R. 14, p. 146).

c) The applicants claim that the regulations of the Unification Treaty interfered with their rights under Article 1 of Protocol No. 1

(P1-1) because in their submission they retained an entitlement to the property in question, the expropriations carried out between 1945 and 1949 having allegedly been effected contrary to the rules of public international law. In this respect the question arises whether the international instruments governing the behaviour of belligerent States, such as the Hague Convention on the Laws and Customs of War, can be invoked by individuals with reference to acts performed subsequent to the end of hostilities. Doubts also exist in regard to the question whether an act allegedly performed in violation of the Hague Convention must be deemed null and void, or whether it merely obliges the State responsible to pay compensation where appropriate.

However that may be, in any event the applicants could not claim to be victims of a violation of their rights under Article 1 of Protocol No. 1 (P1-1) unless the measure complained of affected their "possessions" or their "property" within the meaning of this provision. A person complaining of an interference with his property must show that such right existed (No. 7694/76, Dec. 14.10.77, D.R. 12, p. 131).

In this respect, the Commission recalls the constant case-law of the Convention organs according to which "possessions" may be either "existing possessions" (cf. Eur. Court H.R, Van der Mussele v. Belgium judgment of 23 November 1983, Series A no. 70, p. 23, para. 48) or valuable assets, including claims, in respect of which the applicant can argue that he has at least a "legitimate expectation" that they will realise (cf. Eur. Court H. R., Pine Valley Developments Ltd and Others judgment of 29 November 1991, Series A no. 222, p. 23, para. 51, and Pressos Compania Naviera S.A. and Others judgment of 20 November 1995, Series A no. 332, para. 31).

By contrast, the hope of recognition of the survival of a former property right which has not been susceptible of effective exercise for a long period (Nos. 7655-7657/76, Dec. 4.10.77, D.R. 12, p. 111) or a conditional claim which has lapsed as a result of the non-fulfilment of the condition (No. 7775/77, Dec. 5.10.78, D.R. 15, p. 143) are not to be considered as "possessions" within the meaning of Article 1 of Protocol No 1 (P1-1).

It is clear that the present case does not concern any "existing possessions" of the applicants. The applicants' properties were expropriated a long time ago and the applicants have been unable for decades to exercise any owners' rights in respect of the properties concerned. Despite the applicants' claim that the expropriations were contrary to international law and thus unlawful, it appears that in the German legal order these expropriations were being considered as legally valid even before the conclusion of the Unification Treaty. The provisions of the Treaty cannot therefore be seen as legalising the deprivation of the applicants' property and thereby as being the source of the deprivation for the purposes of German law.

It remains to be examined whether the applicants could have any "legitimate expectation" to realise claims, either based on a right to compensation for the loss of their property which continued to exist until the entry into force of the Unification Treaty and was affected thereby, or created by the fact that public-law bodies of the Federal Republic of Germany acquired part of the expropriated estates by virtue of the unification.

As regards any possible compensation claim generated by the loss of the property, the Commission refers to its constant jurisprudence according to which it is not competent rationae temporis and ratione materiae to examine complaints relating to the refusal or denial of compensation claims based on facts that occurred prior to the entry into force of the Convention with respect to the State concerned (cf. No. 7694/76, Dec. 14.10.77, D.R. 12, p. 131; No. 7742/76, Dec. 4.7.78, D.R. 14, p. 146). The Commission would add with regard to the particular facts of the present case that the Federal Republic of

Germany was not responsible for the expropriations in question and that therefore any compensation claims which might have existed prior to the Unification Treaty would not have been directed against that State.

As regards the existence of any claim based on the fact that, in consequence of the unification, part of the property concerned passed into the hands of public-law bodies of the Federal Republic of Germany, the Commission notes the Federal Constitutional Court's finding that despite this fact there existed no claim under German law for the restitution of the available properties and that this situation was, from the viewpoint of constitutional law, unobjectionable. There is nothing to show that this finding is arbitrary and incompatible with the applicable provisions. In particular it does not appear that the Federal Constitutional Court's conclusion was based on the Unification Treaty itself and that, without the provisions of that Treaty, the situation under German constitutional law would have been judged otherwise. Therefore it cannot be said that the Treaty interfered with any pre-existing legal position of the applicants in this respect either.

It follows that the applicants had no "existing possessions" nor any legally recognised compensation claims when the Unification Treaty came into force. In these circumstances it cannot be found that the regulation of property questions in the Unification Treaty amounted to an interference with any rights of the applicants under Article 1 of Protocol No. 1 (P1-1). The particular arguments advanced by the applicant Hasenkamp do not justify another conclusion in his case.

This part of the application is therefore incompatible ratione materiae with the provisions of the Convention and must be rejected under Article 27 para. 2 (Art. 27-2).

2. The applicants further consider that they have been discriminated against with regard to the enjoyment of their property rights in that, unlike owners of property expropriated by the authorities of the German Democratic Republic after 1949, they cannot claim restitution or reparation but only limited equalisation payments under the Equalisation Act of 27 September 1994. They invoke Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 (Art. 14+P1-1).

Article 14 (Art. 14) of the Convention reads as follows:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Commission recalls that Article 14 (Art. 14) complements the other substantive provisions of the Convention and its Protocols. It has no independent existence, since it has effect solely in relation to the "rights and freedoms" safeguarded by those provisions. Although the application of Article 14 (Art. 14) does not presuppose a breach of one or more of those provisions - and to this extent it is autonomous -, there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter (cf. Eur. Court H.R., Inze judgment of 28 October 1987, Series A no. 126, p. 17, para. 36).

As the Commission has found above that Article 1 of Protocol No. 1 (P1-1) is not applicable to the facts of which the applicants complain, they cannot claim to have been discriminated against in the enjoyment of their property rights within the meaning of this provision (cf. Eur. Court H.R., Marckx judgment of 13 June 1979, Series A no. 31, p. 23, para. 50). This part of the application must therefore also be rejected, according to Article 27 para. 2 (Art. 27-2), as being

incompatible with the provisions of the Convention.

For these reasons, the Commission, by a majority

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (S. TRECHSEL)