CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

GRAND CHAMBER

DECISION

AS TO THE ADMISSIBILITY OF

Applications nos. 71916/01, 71917/01 and 10260/02
by Wolf-Ulrich von MALTZAN and Others,
Margarete von ZITZEWITZ and Others,
and MAN FERROSTAAL and ALFRED TÖPFER STIFTUNG
against Germany

The European Court of Human Rights, sitting on 2 March 2005 as a Grand Chamber composed of

Mr L. WILDHABER, *President*,
Mr C.L. ROZAKIS,
Mr J.-P. COSTA,
Mr G. RESS,
Mr L. CAFLISCH,
Mr K. JUNGWIERT,
Mr J. CASADEVALL,
Mr B. ZUPANČIČ,
Mr J. HEDIGAN,
Mr M. PELLONPÄÄ,
Mrs H.S. GREVE,
Mr A.B. BAKA,
Mr R. MARUSTE,
Mr K. TRAJA,
Mrs E. STEINER,
Mrs E. FURA-SANDSTRÖM
Mrs A. GYULUMYAN, *judges*,
and Mr E. FRIBERGH, *Deputy Registrar*,

Having regard to the above-mentioned applications lodged on 3, 17 and 18 May 2001 respectively,

Having regard to the decision of 11 March 2004 by which the Chamber of the Third Section, to which the applications had initially been assigned, relinquished jurisdiction in favour of the Grand Chamber (Article 30 of the Convention),

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having regard to the parties' oral observations at the hearing on 22 September 2004,

Having deliberated on 22 September 2004 and 2 March 2005, delivers the following decision:

THE FACTS

1. There are seventy-one applicants (see detailed list appended). Sixty-nine of them are natural persons, of whom sixty-eight are German nationals and one a Swedish national. Two of them, the Alfred Töpfer Foundation and a company, Man Ferrostaal, are legal entities incorporated under German law.

At the hearing on 22 September 2004, in respect of the first application forty-five applicants were represented by Mr T. Gertner, a lawyer. One of these applicants was also represented by Mr S. von Raumer, a lawyer. Two other applicants were represented by Mr von Raumer, one of whom was also represented by Mr M. Nettesheim, a professor. In respect of the second and third applications, the twenty-four applicants were represented by Mr C. Lenz and Mr W. Peukert, lawyers.

The respondent Government were represented by Mr K. Stoltenberg, their Agent, and by Mrs A. Wittling-Vogel, Deputy Agent, assisted by Mr J. Frowein and Mr R. Motsch, professors, as counsel, and by Mr H.-J. Rodenbach and W. Marx, as advisers.

A. The circumstances of the case

2. The facts of the case, as submitted by the parties, may be summarised as follows.

1. Background to the case

3. The applications concern one of the major issues to arise after the reunification of Germany: compensation for those whose property was expropriated either between 1945 and 1949 in the Soviet Occupied Zone of Germany following the land reform (*Bodenreform*) or after 1949 in the German Democratic Republic (GDR).

4. During the negotiations between the Governments of the Federal Republic of Germany (FRG) and the GDR (after the first democratic elections, held there on 18 March 1990) and the four former occupying powers (France, the United Kingdom, the United States and the Soviet Union), the two German Governments issued a Joint Declaration on 15 June 1990 on the Resolution of Outstanding Property Issues (*Gemeinsame Erklärung der Bundesrepublik Deutschland und der Deutschen Demokratischen Republik zur Regelung offener Vermögensfragen/ Gemeinsame Erklärung* – see paragraph 38 below), which lays down the fundamental principles (*Eckwerte*) relating to property issues.

5. These principles were subsequently implemented by the legislature, first in the Resolution of Outstanding Property Issues Act/Property Act

(*Gesetz über die Regelung offener Vermögensfragen* / *Vermögensgesetz*) of 23 September 1990 (see paragraphs 41-46 below) and secondly in the Act governing indemnification pursuant to the Resolution of Outstanding Property Issues Act and State compensation for expropriations carried out on the basis of the laws or other powers of the occupying force/Indemnification and Compensation Act (*Gesetz über die Entschädigung nach dem Gesetz zur Regelung offener Vermögensfragen und über staatliche Ausgleichsleistungen für Enteignungen auf besatzungsrechtlicher oder besatzungshoheitlicher Grundlage/ Entschädigungs–und Ausgleichsleistungsgesetz* – "*the EALG*") of 27 September 1994, which itself comprises two Acts (see paragraphs 47-55 below).

6. With regard to rehabilitation, the legislature enacted the Victims of Illegal Prosecutions on "Accession" Territory (Rehabilitation and Compensation) Act / Criminal Rehabilitation Act (*Gesetz über die Rehabilitierung und Entschädigung von Opfern rechtsstaatswidriger Strafverfolgungsmassnahmen im Beitrittsgebiet / Strafrechtliches Rehabilitierungsgesetz* – see paragraphs 57-58 below) of 29 October 1992 and the Annulment of Unlawful Administrative Decisions on "Accession" Territory (Derivative Rights) Act /Administrative Rehabilitation Act (*Gesetz über die Aufhebung rechtsstaatswidriger Verwaltungsentscheidungen im Beitrittsgebiet und die daran anknüpfenden Folgeansprüche / Verwaltungsrechtliches Rehabilitierungsgesetz* – see paragraphs 59-60 below) of 23 June 1994.

2. The applicants' position

7. Sixty-five applicants are natural persons who are the heirs of the owners of land or buildings that were expropriated under the land reform implemented in the Soviet Occupied Zone of Germany between 1945 and 1949.

The two legal entities among the applicants also owned land that was expropriated during that period.

After the reunification of Germany they unsuccessfully applied to the relevant authority for restitution of their land and/or buildings.

8. Three of these applicants also applied to the administrative authorities under the Administrative Rehabilitation Act for the rehabilitation of their ascendants.

One of them applied to the Dessau Administrative Court (*Verwaltungsgericht*), which gave judgment on 22 March 2001 dismissing the application.

In a decision of 16 May 2002 the Federal Administrative Court (*Bundesverwaltungsgericht*) refused to entertain an appeal on points of law

(*Revision*) by the applicant, referring to its two leading judgments of 21 February 2002 on the subject (see paragraph 34 below). In a decision of 12 August 2002 the Federal Constitutional Court (*Bundesverfassungsgericht*) also refused to entertain the applicant's appeal.

9. Five applicants, including one of the sixty-five claimants mentioned in paragraph 7 above, are natural persons who are the heirs of owners of land or buildings that were expropriated after 1949 pursuant to a decision of the GDR authorities.

After German reunification they applied for restitution of their land and/or buildings. The relevant authorities rejected the applications on the grounds laid down in the Property Act, namely that the third parties who had acquired the property in the meantime had done so in good faith or that restitution was impossible in practice.

10. Twenty-one of the applicants applied to the Federal Constitutional Court arguing that the Indemnification and Compensation Act was incompatible with the Basic Law (*Grundgesetz*).

In a leading judgment of 22 November 2000 the Federal Constitutional Court dismissed their application (see paragraphs 23-32 below).

3. The leading judgments of the Federal Constitutional Court on the land reform

11. The Federal Constitutional Court delivered four leading judgments on the land reform. They concern, in particular, the constitutionality of the various statutes governing property or rehabilitation issues enacted by the legislature after German reunification (for details of the provisions of these statutes, see paragraphs 41-60 below).

(a) The Federal Constitutional Court's judgment of 23 April 1991

12. In the first leading judgment on the land reform, delivered on 23 April 1991, the Federal Constitutional Court held that the exclusion of any right to restitution for persons whose property had been expropriated between 1945 and 1949 did not infringe the Basic Law.

13. The Constitutional Court found that the expropriations in question, although carried out by the German authorities, had been ordered by the Soviet occupying authorities and had consequently been based on the sovereign power of the occupying forces. The FRG Government's power to conclude the Unification Treaty and include in it the amendments to the Basic Law necessitated by unification flowed from its constitutional obligation to attain German unity. The manner in which those amendments had been made violated neither formal nor substantive law.

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

15. The expropriations had been considered legitimate by the Soviet and GDR authorities. The FRG could not be held responsible for measures taken at a time when the Basic Law had not even been in force. Under the law then in force in the zones occupied by the Western Allied Powers the complainants had also lost their standing to contest the confiscation of their property. Under that law confiscation measures effected by a foreign State were to be considered valid if carried out within that State's sovereign powers.

16. Furthermore, unless it was caused by its own organs, the FRG was not bound fully to compensate damage resulting from the Second World War. In respect of compensation payments for such damage, the FRG had a wide margin of appreciation and could take into account other expenditure and budgetary requirements.

17. The Constitutional Court also found that there had not been a 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 condition that the legality of the confiscations between 1945 and 1949 would not be called into question, which meant that restitution was effectively ruled out. It had also been the object of the GDR to ensure in the Unification Treaty that social peace was maintained on its territory after unification. The FRG had therefore had to accept that condition in order not to block the process of unification. The rule whereby property owners whose property had been confiscated between 1945 and 1949 were treated differently from those whose property had been confiscated later was, in the circumstances, sufficiently justified.

18. The Constitutional Court added:

> "In respect of the expropriations without compensation [between 1949 and 1990], which do not fall within the scope of no. 1, fourth sentence, of the Joint Declaration [see paragraph 38 below], the legislature has elected to compensate the former owners on the basis of the principle of restitution of the expropriated property. This may be relevant for the amount of compensation payable in lieu of restitution. If the legislature opts for that solution it cannot exclude all reparation for the expropriations carried out pursuant to the Occupation laws or the powers of the occupying authorities [between 1945 and 1949].
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> ...
>
> The applicants' complaint that the rule laid down in no. 1, fourth sentence, of the Joint Declaration infringes their fundamental rights in so far as the reference to mere compensation excludes the full reparation required by the Constitution is unfounded. As has already been stated, the rules do not specify any criteria relating to the amount of compensation. There is no principle in the Basic Law requiring full reparation for the expropriations in issue in the present case.

> In calculating the compensation the legislature is also entitled, within the scope of the margin of appreciation available to it in all cases, to take account of its financial means having regard to the other duties incumbent on the State. The principles for compensating war damage apply here *mutatis mutandis*... Accordingly, the legislature can take account of all the damage to be compensated, which includes other heads of damage besides those affecting property. In assessing the damage affecting property regard must be had to other assets – relating, for example, to life, health, freedom and occupational prospects – that were also affected during the period in question ... Besides that, the legislature is entitled to take account of additional tasks arising from the reconstruction activities in the new *Länder*. In assessing the State's economic and financial situation and the various tasks incumbent on it, the legislature has a particularly wide margin of appreciation... Faced with the disastrous economic situation in the new *Länder* which, as is already apparent, will require several hundred billion in subsidies to redress, there is no constitutional obligation at the outset to provide reparation to the same value as restitution**.** However, the legislature does have to take account of Article 3 § 1 of the Basic Law [principle of equality] in determining the global rules relating to compensation.
>
> In these circumstances, the fact that part of the property concerned belongs to the public authorities does not allow the applicants to draw any conclusions to their advantage. The economic bankruptcy brought about by the poor management of the former German Democratic Republic's economy, which does not engage the responsibility of the Federal Republic of Germany, is not cancelled out by the existence of these assets. Nor does the fact that their property happens to be still available allow the former owners to demand preferential treatment regarding the amount of compensation compared to other persons who were expropriated or to victims of unjust measures who have suffered damage of a different kind. This also applies to those who are able to reacquire their former property.
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> ...

(b) The Federal Constitutional Court's judgment of 18 April 1996

19. In the second leading judgment on the land reform the Federal Constitutional Court dismissed the appeal by the appellants who had argued that the Soviet Union had not specified any conditions regarding the non-restitution of property confiscated between 1945 and 1949 during the negotiations concerning German unification.

20. The Constitutional Court, confirming its first leading judgment on the land reform, held that the FRG had had a wide margin of appreciation during the negotiations concerning German reunification. Accordingly, in so far as the Constitutional Court had power to examine the issue, the FRG Government had not acted contrary to their obligations by considering,

having regard to the position adopted by the Soviet Union and the GDR on the expropriations under the land reform, that the expropriations carried out between 1945 and 1949 were no longer reversible.

(c) The Federal Constitutional Court's judgment of 22 November 2000

21. On 29 June 1995 some of the applicants applied to the Federal Constitutional Court for a ruling on the issue of the divergence in value between reparation in the form of restitution of the property and reparation in the form of indemnification or compensation. They submitted that some of the provisions of the Indemnification and Compensation Act were incompatible with the Basic Law in that they generally prescribed amounts that were less than the current market value of the expropriated property or property that was to be returned in accordance with the Property Act.

22. On 28 March 2000 the Federal Constitutional Court held a hearing during which it heard evidence from the claimants and the FRG Government and all the Governments of the *Länder* situated in the former GDR.

23. On 22 November 2000 the First Division (*Senat*) of the Federal Constitutional Court, composed of eight judges, delivered the third leading judgment on the land reform. It pointed out at the outset that it was not required to examine the constitutionality of reparation for injustices committed by another State from the standpoint of the protection of the right of property guaranteed by Article 14 of the Basic Law. The provisions of the Indemnification and Compensation Act had not infringed the applicants' property right since neither the Joint Declaration of the two German States nor the initial version of section 9 of the Property Act had created concrete rights protected by Article 14 of the Basic Law for persons whose property had been expropriated by the GDR and by the Soviet occupying force.

Accordingly, the sole issue which fell to be examined by the Constitutional Court was the constitutionality of the Indemnification and Compensation Act in the light of the principles of social justice and the rule of law (Article 20 §§ 1 and 3 of the Basic Law) and that of the prohibition of arbitrariness (Article 3 § 1 of the Basic Law). It stated that, in accordance with the "social justice" principle, the State community had a duty to apportion the burdens borne by certain groups of persons by means of a statute, which alone would establish concrete rights to indemnification or compensation for the victims. In setting up that system, the legislature had a very wide margin of appreciation regarding both the nature and scope of the reparation awarded. The legislature could thus determine the amount of the

indemnification or compensation according to the financial means at its disposal and could take into account its other expenditure and charges.

24. The Constitutional Court then examined the various provisions of the Indemnification and Compensation Act.

(i) The Indemnification Act

25. The Constitutional Court found, unanimously, that sections 1 (terms and conditions of payment of indemnification) and 3(1) (basis for calculating indemnification) of this Act were compatible with the Basic Law.

There were indeed objective reasons for treating persons who were entitled to restitution differently from those entitled to indemnification. The aim of restitution was to set up new property structures in the *Länder* of the former GDR, whereas in calculating indemnification payments the State could take account of the financial means available to it and of the other funds committed for reconstruction measures. As reunification had been carried out very quickly, leading to a very substantial increase in property prices, reimbursement of the current market value of the property would not have been financially feasible. Furthermore, even persons whose property had been returned had not always received the full value, given the condition of the property. Those who had only had a right of usufruct over their property under GDR law had also suffered substantial financial loss. Similarly, the decision to make the payments at a later date was acceptable as a compromise between the interests of the State and those of the persons concerned.

26. The Constitutional Court then held, by four votes to four – section 15(4), third sentence, of the Federal Constitutional Court Act (*Bundesverfassungsgerichtsgesetz*) provides that where an equal number of votes are cast no breach of the Basic Law can be established – that section 7(1) of this Act (progressive reduction of rights to indemnification according to the value of the property) was also compatible with the Basic Law.

27. Four judges found that the provision did not infringe the principle forbidding arbitrariness because the legislature was not obliged to have regard to the real value of the property in determining the amount of indemnification. It also had to situate the indemnification in the context of the other compensatory or rehabilitative measures taken and the other priority expenditure associated with German reunification, such as the creation of infrastructure in the areas of communication, information and education, and reducing unemployment in the former GDR. Furthermore, account also had to be taken of the fact that many people had suffered other injustices in the GDR, such as interference with their freedom, health or occupational prospects, which could not be indemnified in the same way. The State could support those people only through state measures designed

to give them the same chances and the same living conditions as those existing in the rest of Germany.

28. The other four judges gave a dissenting opinion. In their view, the amount of indemnification had to reflect the real value of the expropriated property, which was no longer the case if it was less than fifty per cent of the value of the property.

Thus, on grounds of providing social protection for the poorest people, the reduction percentages were still acceptable for rights to indemnification of less than DEM 90,000, and for rights to indemnification of more than DEM 500,000. However, they were not acceptable regarding rights to indemnification ranging between DEM 90,000 and DEM 500,000, where there were no objective reasons for reducing the indemnification so substantially. This concerned above all individual houses or small buildings. For the sake of social solidarity, that category of persons should be awarded an appreciable amount of indemnification and no less than fifty per cent of their rights. The financial reasons relied on did not justify such a drastic reduction in the amount of indemnification. Furthermore, the legislature could have provided for alternative solutions, such as the attribution of substitute land on favourable conditions.

(ii) The Compensation Act

29. The Constitutional Court found that limiting compensation to natural persons did not infringe the principle of social justice. For the purposes of the Property Act, persons eligible for compensation did not have to be treated identically since that Act applied only to persons who had a prima facie right to restitution but for whom restitution was impossible in practice or who did not seek it. Under the Compensation Act, however, persons whose property had been expropriated between 1945 and 1949 had no right to restitution on principle.

30. The Constitutional Court went on to hold that the fact that the nature and amount of compensation were governed by the same terms and conditions as under the Property Act did not infringe the Basic Law either.

31. It also held, by seven votes to one, that encumbrances affecting the land could be taken into account when calculating compensation without this breaching the Basic Law.

The same was true of the taking into account of amounts received in compensation, including interest, under the Equalisation of Burdens (War Losses) Act (*Lastenausgleichsgesetz* – see paragraph 50 below).

32. The Constitutional Court added that the programme for the acquisition of certain land (*Flächenerwerbsprogramm* – see paragraph 54 below) did not infringe either the principle of the rule of law or the rule forbidding arbitrariness as the legislature was pursuing two objectives: (i) to enable those whose agricultural or forestry land had been expropriated to redevelop it on preferential conditions, and (ii) to set up a support programme for agriculture and the water and forest industries in the *Länder* of the former GDR.

(d) The Federal Constitutional Court's judgment of 4 July 2003

33. In its fourth leading judgment on the land reform the Federal Constitutional Court held that the exclusion of the right to administrative rehabilitation coupled with restitution of property for those whose property had been expropriated between 1945 and 1949 (section 1 § 1, third sentence, of the Administrative Rehabilitation Act taken in conjunction with section 1(8) of the Property Act – see paragraphs 59 and 43 below) did not infringe the Basic Law.

34. In its judgment the Constitutional Court referred to the two leading judgments the Federal Administrative Court had given on 21 February 2002, in which it had ruled in the following terms:

> "2. By virtue of the reference to section 1(8) of the Property Act, the Administrative Rehabilitation Act is inapplicable to expropriations carried out under the Occupation laws or the powers of the occupying authorities (1(8)(a)). That also concerns the expropriating measures referred to in section 1(1), first sentence, of the Administrative Rehabilitation Act. Section 1(1), third sentence, of that Act is not confined to merely reiterating that the cases referred to in section 1(8) of the Property Act are also among the measures referred to in section 1(1), second sentence, which do not fall within the scope of the Administrative Rehabilitation Act. This reference was not necessary. Rather, the section specifies that, save in the cases referred to below (under 2.2), the expropriations carried out under the Occupation laws or the powers of the occupying authorities cannot in any circumstances be annulled; in that connection it is of little importance by which of the two Acts they would be governed if the clause did not exist... .
>
> 2.1. This interpretation is confirmed by the drafting history of the Administrative Rehabilitation Act. In respect of section 1(1), third sentence, the Government made the following submissions:
>
> '[Under that provision] two categories of expropriation are excluded from the scope of the Property Act and the Administrative Rehabilitation Act: expropriations without compensation in the industrial domain that were effected for the benefit of the *Länder* of the Soviet Occupied Zone and expropriations carried out under the so-called democratic land reform. That choice was due to the decisive attitude of the Soviet Union, which maintained that, in accordance with public international law, the expropriations carried out under its occupation were not a matter within the discretion of the two German States and should remain untouched (*unangetastet*). That also had to be respected in the context of the Administrative Rehabilitation Act.'

> The idea behind the Act is therefore that both categories of expropriation have to be regarded as unfair persecution and should therefore confer the right to rehabilitation under the terms of the new Act if the exclusion clause had not been inserted. The legislature decided to award compensation for any illegal interference with property under the Occupation under the Compensation Act, regardless of whether the measures in question had been persecutory. In the light of those considerations, no different conclusion can be drawn in the present case.
>
> 2.2 The applicant cannot rely on section 1(7) of the Property Act to which section 1(8)(a) of that Act taken in conjunction with section 1(1), third sentence, of the Administrative Rehabilitation Act refers. Admittedly, that provision also allows restitution of property confiscated under the Occupation laws or other powers of the occupying authorities, but it requires the expropriation decision to have been annulled under other provisions. No other provision can be found in the Administrative Rehabilitation Act, however, precisely because of the exclusion clause. If in the present case an annulment [of the expropriating measure] is not possible, the reference contained in section 1(1), third sentence, can only be to the unlimited exclusion clause, that is, section 1(8)(a), first sentence, of the Property Act. Accordingly, rehabilitation under the Administrative Rehabilitation Act in respect of the categories of expropriation concerned in the present case is expressly excluded under the provisions of that Act. It follows that the applicant cannot seek an annulment of the expropriation order concerning his father's property."

35. The Constitutional Court held that the interpretation the Federal Administrative Court had given of the exclusion clause contained in section 1(1), third sentence, of the Administrative Rehabilitation Act, after examining its wording and purpose, was not arbitrary. It pointed out that the main intention of the legislature in inserting that sentence in section 1(1) had been to prevent the exclusion of the right to restitution provided for in section 1(8) of the Property Act being circumvented by means of the Administrative Rehabilitation Act.

36. The Constitutional Court also compared the applicant's position with that of the heirs of persons who had been convicted in criminal proceedings and could apply for rehabilitation under the Criminal Rehabilitation Act and claim restitution of the property in question if the rehabilitation also concerned it. The applicant could not apply for rehabilitation of that kind because his father's property had been confiscated without there having been a criminal conviction; his administrative rehabilitation fell foul of the exclusion clause in section 1(1), third sentence, of the Administrative Rehabilitation Act.

The Constitutional Court held that the difference in treatment applied to the applicant was justified because there were objective reasons for it. A criminal conviction was a far greater and more serious interference with a person's sphere of freedom than a measure in the form of an administrative decision. This was evidenced by, among other things, the assortment of possible penalties available to the criminal courts ranging from a prison sentence and other interferences with the victim's freedom to capital punishment, and including pecuniary penalties. As a general rule, a person

who had incurred a criminal penalty was in greater need of rehabilitation than someone who had merely been expropriated, a measure which mainly affected his or her property. The German authorities could not therefore be found to have acted unconstitutionally in considering that, unlike administrative expropriations, a criminal conviction was such a serious interference that it justified the restitution of confiscated property via rehabilitation proceedings.

37. The Constitutional Court held that the interpretation of section 1(1), third sentence, of the Administrative Rehabilitation Act and its application to the instant case did not fall foul of the principles of the rule of law and social justice provided for in Article 20 §§ 1 and 3 of the Basic Law. It reiterated on that point that the heirs of victims of expropriations carried out under the Occupation laws or other powers of the occupying authorities were not wholly deprived of the right to compensation for the injustice suffered, but were entitled to compensation under the Act governing State compensation for expropriations carried out on the basis of the laws or other powers of the occupying force / Compensation Act (*Gesetz über staatliche Ausgleichsleistungen für Enteignungen auf besatzungsrechtlicher oder besatzungshoheitlicher Grundlage*) which it had found to be compatible with the Basic Law in its judgment of 22 November 2000.

B. Relevant domestic law and practice

1. The Joint Declaration of the FRG and the GDR on the Resolution of Outstanding Property Issues

38. The relevant passages of this Joint Declaration read as follows:

> "The division of Germany, the resulting population movement from East to West and the divergent legal systems in the two German States have given rise to numerous property-law problems which affect many citizens in the German Democratic Republic and the Federal Republic of Germany.
>
> In resolving the property issues ahead, the two Governments agree that various interests are to be balanced in a socially compatible manner. Legal certainty and legal clarity as well as the right of ownership are principles by which the Governments of the German Democratic Republic and the Federal Republic of Germany shall be guided in resolving the property issues ahead. Only in this way can enduring legal peace (*Rechtsfrieden*) be guaranteed in a future Germany.

The two German Governments agree on the following fundamental values (*Eckwerte*):

1. The expropriations carried out on the basis of the Occupation legislation or the other powers of the occupying authorities [between 1945 and 1949] can no longer be revoked (*die Enteignungen auf besatzungsrechtlicher bzw. besatzungshoheitlicher Grundlage sind nicht mehr rückgängig zu machen*). The Governments of the Soviet Union and the German Democratic Republic see no means of revising the measures taken at that time. The Government of the Federal Republic of Germany takes note of this in view of historical developments. It is of the opinion that a final decision on any state compensation (*etwaige staatliche Ausgleichsleistungen*) must remain a matter for a future all-German parliament.

...

3. Expropriated real estate is in principle to be returned to the former owners or their heirs, having regard to the type of case specified in sub-paragraphs (a) and (b) below.

(a) It is not possible to restore rights of ownership over land and buildings whose use or purpose has been altered, in particular by being dedicated to public purposes, used for housing developments, for commercial purposes or incorporated into new business units.

Compensation will be paid in these cases, in so far as it has not already been made pursuant to the laws and regulations applicable to citizens of the German Democratic Republic.

(b) In so far as citizens of the German Democratic Republic have in good faith acquired ownership or rights of user *in rem* (*dingliche Nutzungsrechte*) over real estate, socially acceptable indemnification (*sozialverträglicher Ausgleich*) is to be made to the former owners by substituting real estate (*Grundstücke*) of a comparable value or by paying compensation.

The same applies, *mutatis mutandis*, for real estate the ownership of which was transferred to third parties by the state trustees. The details still need to be settled.

(c) Former owners or their heirs who are entitled to restitution of their property can choose to receive compensation in lieu of restitution.

...

9. In so far as property has been seized in connection with criminal proceedings in violation of the rule of law, the GDR will create the statutory basis required to correct such seizures in proceedings that conform with the principles of justice (*justizförmiges Verfahren*).”

2. The German Unification Treaty

39. The Joint Declaration became a constituent part of the Unification Treaty (*Einigungsvertrag*) of 31 August 1990, the relevant provisions of which are worded as follows:

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 *Laïnder* of Brandenburg, Mecklenburg-West Pomerania, Saxony, Saxony-Anhalt and Thuringia, and the part of Berlin to which it has not applied hitherto."

Article 4

Amendments to the Basic Law
as a result of accession

"The Basic Law of the Federal Republic of Germany shall be amended as follows:

1. ...

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

(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... and 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 referred to in Article 3 of the Unification Treaty may only derogate from the provisions of the present Basic Law for as long as it takes, as a result of the differing conditions in the two countries, to fully adapt to the constitutional order but by 31 December 1992 at the latest. Derogations shall not infringe Article 19, paragraph 2, and shall be compatible with the principles enshrined in Article 79, paragraph 3.

(2) Derogations 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 its implementing provisions shall also remain in force to the extent that they provide that the interference with property in the territory referred to in Article 3 of that Treaty shall not be reversed."

Article 17

Rehabilitation

"The Contracting Parties reiterate their intention to create a statutory basis for the rehabilitation of victims of a political prosecution or a judicial decision contrary to the rule of law and the Constitution. The rehabilitation of these victims of the unjust regime of the Socialist Unity Party of the GDR (*Sozialistische Einheitspartei Deutschlands – "the SED"*) must be accompanied by adequate compensatory measures."

Article 41

Settlement of property issues

"(1) The Joint Declaration on the resolution of outstanding property issues made on 15 June 1990 by the Government of the Federal Republic of Germany and the Government of the German Democratic Republic (Annex III) shall be a constituent part of this Treaty.

(2) ...

(3) As to the rest, the Federal Republic of Germany shall not enact legal rules that conflict with point 1 of the above-mentioned Joint Declaration."

40. The fundamental principles regarding property issues set out in the Joint Declaration were subsequently implemented by the legislature, first in the Property Act of 29 September 1990 and then in the Indemnification and Compensation Act of 27 September 1994.

3. The Resolution of Outstanding Property Issues Act / Property Act

41. On 29 September 1990 the Property Act of 23 September 1990 came into force. That Act was also to be part of the Unification Treaty, which provided that the Property Act would continue to exist in Germany after reunification of the two German States on 3 October 1990. The aim of the Act was to resolve disputes over property situated in the former GDR in a socially acceptable way in order to achieve enduring legal order in Germany.

42. Section 1(7) provides:

"This Act applies *mutatis mutandis* to the restitution of property in connection with the annulment, under other provisions (*nach anderen Vorschriften*), of unlawful decisions in the sphere of criminal law, criminal administrative law and administrative law."

43. The relevant part of section 1(8) provides:

"This Act does not apply ... to

a) Expropriations of property carried out under the Occupation laws or the other powers of the occupying authorities; the rights provided for in sub-sections 6 and 7 of this section shall remain intact (*bleiben unberührt*);

..."

44. The Property Act provides that persons whose property was unlawfully expropriated at the time of the GDR are in principle entitled to restitution of their property unless it is impossible to return it in practice or it has been purchased in good faith (section 4(2) of the Act). In such cases the former owners have a right to indemnification under the Act governing indemnification pursuant to the Resolution of Outstanding Property Issues Act / Indemnification Act of 27 September 1994 (*Gesetz über die Entschädigung nach dem Gesetz zur Regelung offener Vermögensfragen/ Entschädigungsgesetz*).

45. In the initial versions of the Property Act (1990, 1994 and 1997), section 9 provided:

"if restitution is impossible because the property has been acquired in good faith by third parties, indemnification can be effected by the transfer of land if possible of comparable value (*durch Übereignung von Grundstücken mit möglichst vergleichbarem Wert*). If this is impossible, indemnification shall be made in accordance with the provisions of the Indemnification Act."

46. That section was repealed by a law of 15 September 2000.

4. The Act governing indemnification pursuant to the Resolution of 0utstanding Property Issues Act and State compensation for expropriations carried out on the basis of the laws or sovereignty of the occupying force / Indemnification and Compensation Act

47. The Indemnification and Compensation Act (EALG) of 27 September 1994 itself comprises two Acts, namely:

(i) the Act governing indemnification pursuant to the Act governing indemnification pursuant to the Resolution of Outstanding Property Issues Act / Indemnification Act (*Gesetz über die Entschädigung nach dem Gesetz zur Regelung offener Vermögensfragen / Entschädigungsgesetz*), which governs the terms and conditions for indemnifying persons whose property was expropriated in the GDR after 1949 where the property cannot be returned or the person entitled prefers to receive indemnification;

(ii) the Act governing State compensation for expropriations carried out on the basis of the laws or other powers of the occupying force / Compensation Act (*Gesetz über staatliche Ausgleichsleistungen für Enteignungen auf besatzungsrechtlicher oder besatzungshoheitlicher Grundlage*), which governs the terms and conditions for compensating persons whose property was expropriated between 1945 and 1949 in the Soviet Occupied Zone.

(a) The Indemnification Act

48. Section 3(1) of the Indemnification Act provides that the basis for calculating the amount of indemnification is the unit value of the property prior to any damage (the reference date is generally 1935) multiplied by a statutorily prescribed factor.

49. Section 7(1) of the Act provides that if the basis of calculation (after deduction of long-term obligations and payments received) exceeds DEM 10,000 the amount of indemnification shall be reduced by a certain percentage, which increases progressively according to the unit value established at the outset. Thus the percentage is 30% if the rights to compensation are between DEM 10,000 and DEM 20,000, 80% if the rights to compensation are between DEM 100,000 and DEM 500,000 and 95% if the rights to compensation exceed DEM 3,000,000.

50. Section 8 of the Act provides that from the amount thus reduced must be deducted any amounts, including interest, received by way of compensation under the Equalisation of Burdens (War Losses) Act (*Lastenausgleichsgesetz*), which dealt with reparation for damage or loss incurred as a result of expulsions or destruction of property dating from the Second World War and the post-war period in the Soviet Occupied Zone of Germany.

51. Section 1(1) of the Act provides that indemnification shall be made in the form of state-issued transferable bonds, to be redeemed by five annual instalments bearing interest of 6% per annum and commencing in 2004.

(b) The Compensation Act

52. The Compensation Act does not provide for a different basis of calculation, but refers to the corresponding provisions of the Indemnification Act.

53. It has the following additional provisions, however:

54. Section 3 of the Act provides for the possibility of acquiring certain agricultural or forestry land on preferential conditions (*Flächenerwerbsprogramm*).

Persons eligible for compensation are, in order of priority, the former and new "developers" (*Wieder- und Neueinrichter*), that is, either local farmers who have redeveloped their former farms and persons eligible under the Indemnification Act or the Compensation Act or, alternatively, persons who

have never been farmers but now wish to run an agricultural holding and were in residence on 3 October 1990.

Next come the former owners of farms or forest land who have not been assigned to the first category. Former owners of forest land cannot acquire agricultural holdings, whereas former owners of agricultural holdings can acquire forest land.

55. Section 5(2) provides that movable property must be returned to the former owners, thereby creating an exception to the principle that property expropriated in the former Soviet Occupied Zone in Germany cannot be returned. However, cultural property intended for public exhibition must be made available to the public or for research free of charge for a period of twenty years.

5. The Rehabilitation Acts

56. The legislature enacted two laws governing rehabilitation: the Criminal Rehabilitation Act of 29 October 1992 and the Administrative Rehabilitation Act of 23 June 1994.

(a) The Rehabilitation and Indemnification of Victims of Illegal Prosecutions on "Accession" Territory (*Beitrittsgebiet*) Act / Criminal Rehabilitation Act

57. The Criminal Rehabilitation Act of 29 October 1992 provides for the rehabilitation of victims of unlawful decisions or measures.

58. Section 3(1) provides that the annulment of an unlawful decision in criminal proceedings gives rise to rights under this Act. Section 3(1) provides, *inter alia*, that if a measure confiscating property is set aside, the property must be returned in accordance with the Property Act.

(b) The Annulment of Unlawful Administrative Decisions on "Accession" Territory (Derivative Rights) Act / Administrative Rehabilitation Act

59. Section 1(1) of the Administrative Rehabilitation Act of 23 June 1994 is worded as follows:

> "A sovereign measure taken by a German authority (*Verwaltungsentscheidung*) in an individual case on the territory referred to in Article 3 of the Unification Treaty between 8 May 1945 and 2 October 1990 that has caused physical damage, infringed a pecuniary right... shall be revoked on request if it is absolutely (*schlechthin*) incompatible with the principles of a State based on the rule of law and has lasting direct, unreasonable and intolerable effects. This Act shall not apply to administrative decisions in tax cases or to measures falling within the scope of the Property Act or the Act governing indemnification pursuant to the Property Act (*Gesetz über die Entschädigung nach dem Gesetz zur Regelung offener Vermögensfragen / Entschädigungsgesetz*).
> Nor shall it apply to the categories of cases referred to in section 1(8) of the Property Act (*Dies gilt auch für die in § 1 Abs. 8 des Vermögensgesetzes erwähnten Fallgruppen*)."

60. Section 7(1) of the Act provides that where property is confiscated as a result of a measure described in section 1 restitution of the property or indemnification for its confiscation is governed, among other things, by the Property Act.

COMPLAINTS

61. The applicants submitted that the Property Act of 23 September 1990, the Indemnification and Compensation Act (EALG) of 27 September 1994 and the leading judgment of the Federal Constitutional Court of 22 November 2000 had infringed the property rights guaranteed by Article 1 of Protocol No. 1 which they had had at the time of German reunification. In their submission, the amount of compensation or indemnification they had received was far less than the real value of the property that had been unlawfully expropriated.

62. They also considered that they had been discriminated against within the meaning of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 because, unlike other categories of people, they had been unable to claim a right to restitution of their property.

63. The applicants also complained of the Administrative Rehabilitation Act of 23 June 1994 and the decisions of the Federal Administrative Court and the Federal Constitutional Court of 16 May and 12 August 2002 respectively. They relied on Article 1 of Protocol No. 1, taken alone, and Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 and Article 8 of the Convention.

64. Lastly, the applicants who had lodged an application with the Federal Constitutional Court submitted that the length of the proceedings before it had exceeded the reasonable time provided for in Article 6 § 1 of the Convention.

THE LAW

A. Article 1 of Protocol No. 1

65. The applicants submitted that the Property Act of 23 September 1990, the Indemnification and Compensation Act (EALG) of 27 September 1994 and the leading judgment of the Federal Constitutional Court of 22 November 2000 had infringed their property right guaranteed by Article 1 of Protocol No. 1, which provides:

> "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 also complained of the Administrative Rehabilitation Act of 23 June 1994 and of the decisions of the Federal Administrative Court and the Federal Constitutional Court of 16 May and 12 August 2002 respectively.

1. The parties' submissions

(a) The Government

66. As their main submission, the Government raised an objection on the ground that the applications were incompatible *ratione materiae* with the Convention.

67. They referred to the Court's case-law, arguing that Germany had not interfered with the applicants' property rights protected by Article 1 of Protocol No. 1.

The applicants – who had lost their property between 1945 and 1949 or between 1949 and 1990 – had not had property rights under the legislation in force on 3 October 1990, when the Convention came into force in the new *Länder* in Germany. Regarding the issue of the compatibility of those expropriations with public international law, the Court was not competent to examine the circumstances of the expropriations or the continuing effects produced by them up to the present date, as it had stated in the case of *Prince Hans-Adam II of Liechtenstein v. Germany* ([GC], no. 42527/98, ECHR 2001-VIII). Nor had the applicants had property rights or a legitimate expectation of obtaining compensation or indemnification of a particular amount based on the Joint Declaration by the FRG and the GDR or the leading judgments of the Federal Constitutional Court on the land reform.

The Government added that the applicants could not derive a legitimate expectation from the debates in the Federal Parliament (*Bundestag*) either, for it was in the nature of a democratic regime to discuss the various systems of compensation under consideration.

68. Regarding the expropriations carried out between 1945 and 1949, the Government pointed out that whatever the position of the Soviet Union might have been at the time, it was indisputable that during the negotiations concerning German reunification the freely elected Parliament of the GDR

had insisted on preserving the outcome of the land reform implemented between 1945 and 1949.

With regard to the legal entities among the applicants, the Government pointed out that although it was true that they had not received any compensation, this was not the case for the shareholders.

As regards rehabilitation, the legislature had intended to make a clear distinction between administrative and criminal rehabilitation, the latter concerning victims of criminal convictions, which were inherently more serious than administrative decisions. Similarly, the wording of section 1(1), third sentence, of the Administrative Rehabilitation Act of 23 June 1994, taken in conjunction with section 1(8) of the Property Act, clearly indicated that the legislature had intended to prevent the clause in the Joint Declaration excluding restitution being circumvented by the Administrative Rehabilitation Act.

69. With regard to the expropriations carried out between 1949 and 1990, the Government submitted that although the Joint Declaration had stated that property would, in principle, be returned or, failing that, the owners indemnified, those principles had subsequently been implemented in the Property Act of 23 September 1990 and the Indemnification and Compensation Act of 27 September 1994. The applicants did not have rights or a legitimate expectation going beyond the framework fixed by that legislation.

(b) The applicants

70. The applicants submitted that the expropriations that had taken place between 1945 and 1949 or between 1949 and 1990 breached public international law (particularly Article 46 of the Hague Regulations on the Laws and Customs of War) and the law of the FRG, and that what was involved were actually "crimes against humanity". They referred to the Court's reasoning in the case of *Loizidou v. Turkey* (merits) (judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI) asserting that the expropriations had amounted to a continuing violation of their property rights. Moreover, the FRG had never acknowledged the expropriations on a political or legal level, as all the politicians of the FRG had constantly reaffirmed.

71. The applicants contended that at the time of German reunification they had had property rights for the purposes of Article 1 of Protocol No. 1 or at least a legitimate expectation of obtaining restitution of their property or adequate compensation or indemnification. In their submission, this was clear from the terms of the Joint Declaration and the first leading judgment of the Federal Constitutional Court on the land reform. By refusing them any possibility of restitution or adequate reparation after reunification, the FRG had expropriated them a second time in breach of their property rights guaranteed by Article 1 of Protocol No. 1.

72. With regard to the expropriations carried out between 1945 and 1949, the applicants submitted that it had been established that during the negotiations regarding German reunification the Soviet Union had never laid down conditions regarding the non-restitution of the property and still less the amount of compensation payable.

Furthermore, the expropriations had in reality amounted to political persecutions of a criminal nature and the applicants had been eligible for criminal rehabilitation coupled with restitution of their property in accordance with point 9 of the Joint Declaration taken in conjunction with Article 17 of the Unification Treaty. Under section 1(7) of the Property Act they had at least been eligible for administrative rehabilitation coupled with restitution of their property.

By denying them any possibility of rehabilitation coupled with restitution of their property, the FRG had also infringed Article 1 of Protocol No. 1. Lastly, the legal entities among the applicants pointed out that they did not have a right to restitution or compensation.

73. With regard to the expropriations carried out between 1949 and 1990, the applicants submitted that the Joint Declaration had established the principle that the property would be returned or, failing that, land of an equivalent value allocated or indemnification paid. The subsequent repeal of section 9 of the Property Act had directly interfered with their property rights.

2. The Court's assessment

(a) Recapitulation of the relevant principles

74. The Court reiterates the principles that have been established by the case-law of the Court under Article 1 of Protocol No. 1 and that it has recently stated in its *Kopecký v. Slovakia* judgment ([GC], no. 44912/98, § 35, ECHR 2004-...):

(a) Deprivation of ownership or of another right *in rem* is in principle an instantaneous act and does not produce a continuing situation of "deprivation of a right" (see *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII, with further references).

(b) Article 1 of Protocol No. 1 does not guarantee the right to acquire property (see *Van der Mussele v. Belgium*, judgment of 23 November 1983, Series A no. 70, p. 23, § 48, and *Slivenko and Others v. Latvia* (dec.) [GC], no. 48321/99, § 121, ECHR 2002-II).

(c) An applicant can allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions related to his "possessions" within the meaning of this provision. "Possessions" can be either "existing possessions" or assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining effective enjoyment of a property right. By way of contrast, the hope of

recognition of a property right which it has been impossible to exercise effectively cannot be considered a "possession" within the meaning of Article 1 of Protocol No. 1, nor can a conditional claim which lapses as a result of the non-fulfilment of the condition (see *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, §§ 82 and 83, ECHR 2001-VIII, and *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], no. 39794/98, § 69, ECHR 2002-VII).

(d) Article 1 of Protocol No. 1 cannot be interpreted as imposing any general obligation on the Contracting States to return property which was transferred to them before they ratified the Convention. Nor does Article 1 of Protocol No. 1 impose any restrictions on the Contracting States' freedom to determine the scope of property restitution and to choose the conditions under which they agree to restore property rights of former owners (see *Jantner v. Slovakia*, no. 39050/97, § 34, 4 March 2003).

In particular, the Contracting States enjoy a wide margin of appreciation with regard to the exclusion of certain categories of former owners from such entitlement. Where categories of owners are excluded in this way, their claims for restitution cannot provide the basis for a "legitimate expectation" attracting the protection of Article 1 of Protocol No. 1 (see, among other authorities, *Gratzinger and Gratzingerova*, cited above, §§ 70-74).

On the other hand, once a Contracting State, having ratified the Convention including Protocol No. 1, enacts legislation providing for the full or partial restoration of property confiscated under a previous regime, such legislation may be regarded as generating a new property right protected by Article 1 of Protocol No. 1 for persons satisfying the requirements for entitlement. The same may apply in respect of arrangements for restitution or compensation established under pre-ratification legislation, if such legislation remained in force after the Contracting State's ratification of Protocol No. 1 (see *Broniowski v. Poland* [GC], 31443/96, § 125, ECHR 2004-V).

(b) Application of the relevant principles to the present case

(i) General considerations

75. The Court first takes note of the historical context in which German reunification took place and the legislation at issue was enacted. The fall of the Berlin Wall, which had symbolised the division of Europe, on 9 November 1989 was the beginning of a huge political shake-up in the central and eastern European States and ushered in democratic regimes in those States. In Germany it led to reunification, which became effective on 3 October 1990 when the GDR acceded to the FRG.

76. As occurred in the other central and eastern European States, the transition from a communist regime to a democratic market-economy system in the new *Länder* raised many issues relating to property rights in Germany. The Joint Declaration by the FRG and the GDR of 15 June 1990 on outstanding property issues, to which the GDR adhered after the first democratic elections of its parliament and which became an integral part of the Unification Treaty, laid down the fundamental principles in that connection.

Those principles were subsequently implemented by the legislature in the Property Act of 29 September 1990 and in the Indemnification and Compensation Act of 27 September 1994. With regard to rehabilitation, the legislature enacted the Criminal Rehabilitation Act of 29 October 1992 and the Administrative Rehabilitation Act of 23 June 1994.

In its four leading judgments of 23 April 1991, 18 April 1996, 22 November 2000 and 4 July 2003 on the land reform the Federal Constitutional Court found that that legislation was compatible with the Basic Law.

77. The enactment of laws providing for the restitution of confiscated property or the payment of indemnification or compensation or for the rehabilitation of persons who had been prosecuted in breach of the rule of law obviously involved consideration of many issues of a moral, legal, political and economic nature which are a matter of public concern and in respect of which the Contracting States have a wide margin of appreciation. In particular, the Court reiterates that the Convention imposes no specific obligation on the Contracting States to provide redress for wrongs or damage caused by a foreign occupying force or another State. That also applies to the legal situation of a State such as the FRG, which is the successor to that other State. Similarly, Article 1 of Protocol No. 1 does not restrict the freedom of the Contracting States to choose the conditions under which they agree to restore property rights to dispossessed persons or to

determine the arrangements whereby they agree to pay indemnification or compensation to the persons concerned (see, *mutatis mutandis*, *Kopecký*, cited above, §§ 37 and 38).

78. In the instant case the Court must first consider the applicability of Article 1 of Protocol No. 1. To that end it must examine, in the light of the principles set forth in paragraph 74 above, whether the applicants had "possessions" within the meaning of Article 1 of Protocol No. 1, that is, either "existing possessions" or assets, including claims, in respect of which the applicants can argue that they have at least a "legitimate expectation" of obtaining effective enjoyment of a property right.

(ii) As to whether the applicants had "possessions" within the meaning of Article 1 of Protocol No.1

79. The present case clearly does not concern "existing possessions" of the applicants. Most of them are the heirs of persons whose property was expropriated a long time ago and have thus not been in a position to exercise their ownership rights over the property concerned for more than half a century in most cases.

80. Regarding the applicants' allegation that the expropriations were contrary to public international law, the Court notes that they were carried out during two distinct periods:

(a) between 1945 and 1949, at the instigation of the Soviet occupying forces in Germany. That occupation of Germany was not an "ordinary" war-time occupation, but an occupation *sui generis*, following a war and an unconditional capitulation, which conferred powers of "sovereignty" on the occupying forces. That special regime was generally recognised by the international community; and

(b) after 1949 in the GDR, which was a separate State, distinct from the FRG, and widely recognised by the international community towards the end of its existence.

The expropriations attributable to the GDR were carried out in respect of its own nationals and are not therefore governed by international law.

81. The FRG does not have any responsibility for acts committed at the instigation of the Soviet occupying forces or for those perpetrated by another State against its own nationals, even though the GDR was subsequently succeeded by the FRG, for it is "political" obligations that are at issue in the present case.

82. Accordingly, the Court lacks competence *ratione temporis* and *ratione personae* to examine the circumstances in which the expropriations were carried out or the continuing effects produced by them up to the present date (see, *mutatis mutandis*, *Malhous*, cited above, and the Commission's case-law, for example, *Mayer and Others v. Germany*, nos. 18890/91, 19048/91, 19049/91, 19342/92 and 19549/92, Commission

decision of 4 March 1996, DR 85-A, p. 5, and *Prince Hans-Adam II of Liechtenstein*, cited above, § 85).

83. In these circumstances there is no question of a continuing violation of the Convention which could be imputable to the FRG and which could have effects as to the temporal limitations of the competence of the Court (see, *mutatis mutandis*, *Prince Hans-Adam II of Liechtenstein*, cited above, ibid.).

84. It remains for the Court to examine whether the applicants had a "legitimate expectation" of realising a current and enforceable claim, by obtaining the restitution of their property or compensation (for the 1945-1949 expropriations) or indemnification (for the post-1949 expropriations) of a particular amount commensurate with the real value of their possessions.

(α) The expropriations carried out between 1945 and 1949 in the Soviet occupied zone in Germany

85. With regard to restitution, the Court notes that the Joint Declaration by the FRG and the GDR of 15 June 1990 (see paragraph 38 above) indicates that "the expropriations carried out by the occupying authorities [between 1945 and 1949] can no longer be revoked." Subsequently the Federal Constitutional Court, in its first leading judgment, of 23 April 1991, on the land reform (see paragraphs 12-18 above), confirmed that that exclusion of any right to restitution did not breach the Basic Law.

86. Accordingly, the applicants do not appear to have any legal basis on which to ground a legitimate expectation of securing the restitution of their property. The Court also refers in this connection to the Commission's reasoning in the case of *Mayer and Others* (above-cited decision), which concerned the exclusion of any restitution in respect of expropriations carried out between 1945 and 1949.

87. With regard to compensation, the Court notes that the Joint Declaration states that "[the Government of the Federal Republic of Germany] is of the opinion that a final decision on any state compensation must remain a matter for a future all-German Parliament".

88. This shows that, unlike the approach taken by the Polish Government in the case of *Broniowski* (cited above, §§ 130-31), the German Government, at the time of reunification, deliberately left open both the question as to the actual principle of compensation payments and the question of the amount.

89. It was not until later that the Compensation Act, which is part of the Indemnification and Compensation Act of 27 September 1994 (see paragraphs 52-55 above), dealt with the details of the compensation payable to the former owners of the land and buildings in question.

In its third leading judgment, of 22 November 2000, on the land reform (see paragraphs 23-32 above), the Federal Constitutional Court held that that Act did not breach the Basic Law.

90. The applicants submitted that they had a legitimate expectation of receiving far higher compensation, commensurate with the real value of their possessions. They referred, in particular, to the first leading judgment of the Federal Constitutional Court, of 23 April 1991, on the land reform. In that judgment the Constitutional Court held that "If it [the legislature] opts for that solution [for the 1949-1990 expropriations] it cannot rule out all reparation for the expropriations carried out pursuant to the Occupation laws or the powers of the occupying authorities [1945-1949 expropriations]." It added that "the rules [stated in the Joint Declaration] do not specify any criteria relating to the amount of compensation. There is no principle in the Basic Law requiring full reparation for the expropriations in issue in the present case .... There is no constitutional obligation at the outset to provide reparation to the same value as restitution**.** However, the legislature does have to take account of Article 3 § 1 of the Basic Law [principle of equality] in determining the global rules relating to compensation".

91. In the Court's view, the applicants' rights regarding the amount of compensation they could legitimately expect to receive were clearly established in the Indemnification and Compensation Act of 27 September 1994.

92. Neither the wording of the Joint Declaration nor the content of the Federal Constitutional Court's judgment of 23 April 1991 support the contention that the applicants had a legitimate expectation going beyond the framework established by that Act and based on a current and enforceable claim which they could expect to succeed (see *Jantner,* cited above, § 29).

93. In the judgment in question the Federal Constitutional Court stressed, on the contrary, the wide margin of appreciation available to the legislature in determining a comprehensive solution regarding the consequences of German reunification. In calculating the indemnification and compensation payable to the heirs of the former owners, the legislature was entitled to have regard to its financial means in the light of the total damage to be made good.

It could also take account of the interference with assets other than the right of property, such as life, health or freedom, and the tasks related to rebuilding the country.

Similarly, in its judgment of 22 November 2000 the Federal Constitutional Court, when examining the constitutionality of the Indemnification and Compensation Act in the light of the principles of social justice and the rule of law, reiterated that the state community had an obligation to apportion the burden borne by certain groups of persons by

means of a statute which alone would establish concrete rights to indemnification or compensation. It also pointed out that, in setting up that system, the legislature had a very wide margin of appreciation regarding both the nature and scope of the reparation awarded.

94. Lastly, the claims of the legal entities among the applicants clearly fall outside the provisions of the Indemnification and Compensation Act as they are not entitled to any compensation under that Act. In its judgment of 22 November 2000 the Federal Constitutional Court held that the exclusion of legal entities did not breach the Basic Law (see paragraph 29 above). In that connection the Court notes that the shareholders of the legal entities in question did have a right to compensation under the Indemnification and Compensation Act.

95. With regard to rehabilitation coupled with restitution, the Court notes that the legislature passed two laws in this connection: the Criminal Rehabilitation Act of 29 October 1992 (see paragraphs 57-58 above) and the Administrative Rehabilitation Act of 23 June 1994 (see paragraphs 59-60 above).

96. The applicants submitted that the expropriations in question were in reality acts of criminal political persecution and that they had rights to criminal rehabilitation coupled with restitution of their property under point 9 of the Joint Declaration taken in conjunction with Article 17 of the Unification Treaty (see paragraphs 38-39 above). They declared, above all, that under section 1(7) of the Property Act (see paragraph 42 above), they were at least eligible for administrative rehabilitation coupled with restitution of the property of which they had been deprived by the exclusion clause inserted into section 1(1), third sentence of the Administrative Rehabilitation Act (see paragraph 59 above).

97. On the first point the Court reiterates that while the Joint Declaration and the Unification Treaty established the fundamental principles, these were subsequently implemented by the legislature in the various statutes which determined the concrete rights on which the applicants may rely. By enacting two different statutes concerning rehabilitation, the legislature intended to make a distinction between victims of administrative decisions and victims of criminal convictions, which are inherently more serious. In its fourth leading judgment, of 4 July 2003, on the land reform (see paragraphs 33-37 above), the Federal Constitutional Court held that a criminal conviction was such a serious interference with a person's freedom that, unlike administrative expropriations, it justified restitution of the confiscated property via the rehabilitation proceedings. In the instant case

the expropriations between 1945 and 1949 were carried out exclusively on the basis of administrative decisions.

98. Accordingly, the applicants' claims clearly do not fall within the provisions of the Criminal Rehabilitation Act and the Court does not see anything arbitrary or unfair in the distinction made by the German authorities between victims of administrative decisions and victims of criminal convictions.

99. On the second point the Court reiterates that the Joint Declaration states that "the expropriations carried out by the occupying authorities [between 1945 and 1949] can no longer be revoked". Article 41 of the Unification Treaty provides that "the Federal Republic of Germany shall not enact legal rules that conflict with point 1 of the above-mentioned Joint Declaration" (see paragraph 39 above).

The Court also points out that it is clear from section 1(1), third sentence, of the Administrative Rehabilitation Act, taken in conjunction with section 1(8) of the Property Act, that the Administrative Rehabilitation Act does not allow restitution of property confiscated between 1945 and 1949.

100. In their leading judgments of 21 February 2002 and 4 July 2003, the Federal Administrative Court and the Federal Constitutional Court confirmed the exclusion of any right to restitution, notwithstanding the terms of section 1(7) of the Property Act. The Federal Constitutional Court reiterated that the main intention of the legislature in inserting the third sentence in section 1(1) of the Administrative Rehabilitation Act had been to prevent the exclusion of the right to restitution, as provided for in section 1(8) of the Property Act (and deriving from the exclusion clause in point 1 of the Joint Declaration), from being circumvented by means of the Administrative Rehabilitation Act. It added that in respect of the expropriations carried out during that period, the applicants were entitled to compensation under the Indemnification and Compensation Act.

101. The Court reiterates that the State has a wide margin of appreciation in the enactment of this kind of statute and in the interpretation of them by the domestic courts (see paragraph 77 above).

102. Accordingly, it cannot be claimed that the applicants had a legitimate expectation of being entitled to administrative rehabilitation coupled with restitution of their property.

β) The expropriations carried out in the GDR after 1949

103. The Court notes that the Joint Declaration establishes the principle that confiscated property must be returned unless this is impossible or third parties have acquired it in good faith. In the latter case, according to the Joint Declaration, "socially acceptable indemnification is to be made to the

former owner by substituting real estate of a comparable value or by paying indemnification". Those principles were subsequently implemented in the Property Act of 29 September 1990 (see paragraphs 41-45 above) and in the Indemnification Act, which is part of the Indemnification and Compensation Act of 27 September 1994. In its third leading judgment, of 22 November 2000, on the land reform, the Federal Constitutional Court held that those statutes did not breach the Basic Law.

104. The applicants submitted that they had had a legitimate expectation of obtaining either restitution of their property or land of an equivalent value or much higher indemnification commensurate with the real value of the property. They referred to the Joint Declaration and to the initial version of section 9 of the Property Act (see paragraph 45 above), which provided for the allocation of land of an equivalent value, and to the first leading judgment of the Federal Constitutional Court of 23 April 1991 on the land reform. In that judgment the Constitutional Court held that "in respect of the expropriations without indemnification [between 1949 and 1990], which do not fall within the scope of no. 1, fourth sentence, of the Joint Declaration, the legislature has chosen to compensate the former owners on the basis of the principle of restitution of the expropriated item. This may be relevant for the amount of indemnification payable in lieu of restitution".

105. The Court is of the opinion that the applicants' rights regarding the conditions for recovery of their property were clearly established by the Property Act. Where those conditions were not fulfilled, because restitution was impossible in practice or third parties had acquired the property in good faith, the applicants' claims clearly fall outside the scope of the Property Act.

106. The same is true of the applicants' rights regarding the amount of indemnification that they could legitimately expect to receive, which were clearly established by the Indemnification and Compensation Act of 27 September 1994.

107. Neither the terms of the Joint Declaration nor the content of the Federal Constitutional Court's judgment of 23 April 1991 support the contention that the applicants had a legitimate expectation going beyond the framework laid down by those statutes and based on a current and enforceable claim that they could expect to succeed (see *Jantner*, cited above, § 29).

108. Both point 3 (b) of the Joint Declaration and the initial version of section 9 of the Property Act provided for the allocation of land of an equivalent value or the payment of indemnification as alternatives to restitution. Similarly, in its judgment of 23 April 1991 the Federal

Constitutional Court merely indicated that the principle of restitution established in respect of the expropriations carried out between 1949 and 1990 might be relevant for the amount of indemnification payable.

109. Moreover, as the Court has stated above (see paragraph 93), in its judgments of 23 April 1991 and 22 November 2000 the Federal Constitutional Court stressed the wide margin of appreciation available to the legislature in determining an overall solution regarding the consequences of German reunification. Furthermore, it explicitly reiterated that neither the Joint Declaration nor the initial version of section 9 of the Property Act had created concrete rights protected by Article 14 [right of property] of the Basic Law for persons whose property had been expropriated by the GDR.

(iii) Conclusion

110. The Court reiterates that in a number of cases brought before it relating to German reunification it has referred to the exceptional context of that reunification and the enormous task faced by the German legislature in dealing with all the complex issues which inevitably arose at the time of transition from a communist regime to a democratic market-economy system (see, among many other authorities, *Kuna v. Germany*, (dec.), no. 52449/99, ECHR 2001-V).

In the instant case, by choosing to make good injustices or damage resulting from acts committed at the instigation of a foreign occupying force or by another sovereign State, the German legislature had to make certain choices in the light of the public interest. In that connection, by enacting legislation governing issues of property and rehabilitation after German reunification, it had regard, among other things, to the concepts of "socially acceptable balance between conflicting interests", "legal certainty and clarity", "right of ownership" and "legal peace" contained in the Joint Declaration. Similarly, in examining the compatibility of that legislation with the Basic Law, the Federal Constitutional Court referred to the principles of "social justice and the rule of law" and that of the "prohibition of arbitrariness".

111. As the Court has stated above (see paragraph 77), where a State elects to redress the consequences of certain acts that are incompatible with the principles of a democratic regime but for which it is not responsible, it has a wide margin of appreciation in the implementation of that policy.

112. In challenging the constitutionality of the statutes enacted after German reunification, the applicants hoped to obtain either restitution of their property or compensation or indemnification commensurate with the real value of their property. However, the belief that the laws then in force would be changed to the applicants' advantage cannot be regarded as a form of legitimate expectation for the purposes of Article 1 of Protocol No. 1. As the Court has stated many times, there is a difference between a mere

hope, however understandable that hope may be, and a legitimate expectation, which must be of a more concrete nature and be based on a legal provision or have a solid basis in the domestic case-law (see, *inter alia*, *Gratzinger and Gratzingerova*, cited above, § 73, and *Kopecký*, cited above, § 52). In the instant case neither the Joint Declaration nor the first leading judgment of the Federal Constitutional Court on the land reform gave the applicants rights that exceeded those conferred on them by the statutes in question.

113. The Court concludes that the applicants have not shown that they had claims that were sufficiently established to be enforceable, and they therefore cannot argue that they had "possessions" within the meaning of Article 1 of Protocol No. 1. Consequently, neither the statutes in question nor the judgments or decisions of the Federal Constitutional Court amounted to an interference with the peaceful enjoyment of their possessions, and the facts of the case do not fall within the ambit of Article 1 of Protocol No. 1.

114. It follows that the complaints under Article 1 of Protocol No. 1 are incompatible *ratione materiae* with the provisions of the Convention, within the meaning of Article 35 § 3, and must be rejected in accordance with Article 35 § 4.

B. Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1

115. The applicants also claimed to be the victims of discrimination in breach of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 because, unlike other categories of persons, they were unable to claim a right to restitution of the property that had been unlawfully expropriated and had received only a negligible amount of compensation or indemnification.

Article 14 of the Convention reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] 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."

In particular, the applicants who are the heirs of persons whose property was expropriated between 1945 and 1949 considered that they had been discriminated against compared with persons whose property was expropriated between 1949 and 1990 and who were able to recover their property under the Property Act. They also maintained that they had been discriminated against compared with persons who were eligible for criminal rehabilitation coupled with restitution of their property.

The applicants who are the heirs of persons whose property was expropriated between 1949 and 1990 and were unable to recover their property submitted that they had been discriminated against compared with those in such a position who had been able to recover their property.

116. According to the Court's settled case-law, Article 14 of the Convention 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 "enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach 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 (see *Prince Hans-Adam II of Liechtenstein*, cited above, § 91, and *Gratzinger and Gratzingerova*, cited above, § 76).

117. Having regard to the finding that Article 1 of Protocol No. 1 is inapplicable, the Court holds that Article 14 of the Convention cannot be taken into account in the present case.

118. It follows that the complaints under Article 1 of Protocol No. 1, taken in conjunction with Article 14, are also incompatible *ratione materiae* with the provisions of the Convention, within the meaning of Article 35 § 3, and must be rejected in accordance with Article 35 § 4.

C. Article 14 of the Convention taken in conjunction with Article 8

119. One of the applicants, who is the heir of a person whose property was expropriated between 1945 and 1949, claimed that the Administrative Rehabilitation Act of 23 June 1994 and the decisions of the Federal Administrative Court and the Federal Constitutional Court of 16 May and 12 August 2002 respectively had also infringed Article 14 of the Convention taken in conjunction with Article 8. That provision is worded as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

120. The Court must first rule on the applicability of Article 8 to the present case, having regard to the non-autonomous nature of Article 14.

121. The applicant submitted that the Administrative Rehabilitation Act fell within the scope of Article 8 and, *inter alia*, that the State had positive

obligations in that regard. Relying on that Article, he contended that he was entitled to administrative rehabilitation coupled with restitution of his property.

122. The Court notes at the outset, as it has already done regarding Article 1 of Protocol No. 1 (see paragraphs 81-82 above), that since the FRG is not responsible for acts committed between 1945 and 1949 at the instigation of a foreign occupying force, the Court does not have jurisdiction *ratione temporis* to examine the circumstances of the expropriations and whether there was a breach of Article 8.

With regard to the Administrative Rehabilitation Act, which was passed after German reunification, and to the decisions of the Federal Administrative Court and the relevant ones of the Federal Constitutional Court, the Court considers that this complaint does not raise an issue distinct from the one raised under Article 1 of Protocol No. 1.

123. The Court therefore concludes that Article 8 of the Convention is inapplicable, which means that Article 14 does not come into play in the present case.

124. It follows that the complaints under Article 14 of the Convention taken in conjunction with Article 8 are also incompatible *ratione materiae* with the provisions of the Convention, within the meaning of Article 35 § 3, and must be rejected in accordance with Article 35 § 4.

D. Article 6 § 1 of the Convention

125. The twenty-one applicants who had applied to the Federal Constitutional Court complained that the length of the proceedings before that court had exceeded the reasonable time required by Article 6 § 1 of the Convention, which provides:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

126. The Court notes that the applicants applied directly to the Federal Constitutional Court for a ruling on the constitutionality of the Indemnification and Compensation Act.

127. The period to be considered began on 29 June 1995, when the applicants lodged their application, and ended on 22 November 2000, when the Federal Constitutional Court delivered its judgment. It therefore lasted nearly five years and five months.

128. The Court reiterates that the "reasonableness" of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria established by its case-law: the complexity of the case, the conduct of the parties and of the relevant authorities and what was at stake for the parties in the dispute (see *Süssmann v. Germany*, judgment of 16 September 1996,

Reports 1996-IV, p. 1172, § 48; *Gast and Popp v. Germany*, no. 29357/95, § 64, ECHR 2000-II; and *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

129. The Government maintained that the case was of considerable complexity, particularly as the application had been directly lodged against a statute. The Federal Constitutional Court had thus been the first and only judicial body to examine the case and had had to analyse in detail all the different types of situation that could arise under the Indemnification and Compensation Act in the light of the Basic Law. It could not be criticised for grouping together applications that had been pending since 1995. Lastly, the Government submitted that since the payments in question had not been due before 2004 under the Indemnification and Compensation Act, there had been no need to give priority to the matter.

130. The applicants replied that, having regard to the importance of the issues in question, the Federal Constitutional Court should have given a decision speedily, as it had done in its first leading judgment, of 23 April 1991, on the land reform. As these issues affected hundreds of thousands of victims, many of whom were very elderly people, the Constitutional Court should even have given priority to the applications.

131. The Court notes, firstly, that the case was one of forty-two applications to the Federal Constitutional Court regarding the Indemnification and Compensation Act, and that it raised fundamental questions about the criteria adopted by the legislature after reunification for compensating the heirs of persons whose property had been expropriated during the Soviet Occupation or in the GDR. The great complexity of the case is also apparent from the fact that the Federal Constitutional Court delivered four leading judgments over a period of ten years on the land reform. Before delivering the judgment in question, which was the third leading judgment on the issue, it held a hearing during which submissions were heard from the FRG Government and all the Governments of the *Länder* in the former GDR.

132. The Court reiterates that it has repeatedly held that Article 6 § 1 imposes on Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time. Although this obligation also applies to a Constitutional Court, it cannot be construed in the same way as for an ordinary court. Its role as guardian of the Constitution makes it particularly necessary for a Constitutional Court sometimes to take into account considerations other than the mere chronological order in which cases are entered on the list, such as the nature of a case and its importance in political and social terms. Furthermore, while Article 6 requires that judicial proceedings be expeditious, it also lays emphasis on the more general principle of the proper administration of justice

(see *Süssmann*, cited above, p. 1174, §§ 55-56; *Gast and Popp*, cited above, § 75; and *Goretzki v. Germany*, (*dec.*), no. 52447/02, 24 January 2002).

133. Given the importance in the present case of the judgment of the Federal Constitutional Court, the impact of which went well beyond the individual applications, this principle is particularly relevant here. The Court finds that it was reasonable for the Federal Constitutional Court to have grouped together all cases on similar issues so as to obtain a comprehensive view of the matter, especially as it was the only judicial body dealing with the cases.

134. Moreover, this case was one of many applications to the Federal Constitutional Court following German reunification (see *Süssmann*, cited above, p. 1174, § 60).

135. Lastly, the undeniable importance of what was at stake in the proceedings in question for the applicants, many of whom are very elderly, is also a factor to be taken into consideration. However, since the payments of indemnification and compensation in question were not in any event scheduled to be made before 2004, the stakes were not so important as to impose on the court concerned a duty to deal with this case as a matter of very great urgency, as is true of certain types of litigation (see *Süssmann*, cited above, p. 1175, § 61 *in fine; Gast and Popp*, cited above, § 80; and *Goretzki*, cited above).

136. In the light of all the circumstances of the case, and particularly the exceptional context of German reunification, the Court finds that the "reasonable time" prescribed by Article 6 § 1 was not exceeded and that there has therefore not been an appearance of a violation of that provision on this point.

137. It follows that this complaint must be rejected as manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, by a majority,

Declares the applications inadmissible.

Erik FRIBERGH
Deputy Registrar

Luzius WILDHABER
President

APPENDIX

Application no. 71916/01
von MALTZAN and Others v. Germany

List of applicants

The vast majority of the applicants complained of expropriations carried out between 1945 and 1949. The three applicants who complained of post-1949 expropriations are indicated below.

1.	Wolf-Ulrich von MALTZAN	
2.	Peter RUESS	
3.	Christoph von SCHLIPPENBACH	
4.	Jörg von LÜDINGHAUSEN	
5.	Christoph and Natascha von WINTERFELD	
6.	Sophie HESSE	
7.	Wolfgang HUPERTZ	
8.	Hanno von WULFFEN	
9.	Winfried von SCHUTZBAR-MILCHLING	
10.	Marion NEUMANN	
11.	Jürgen GRAUE	
12.	Hannelore WAGNER-HEPP	
13.	Jaspar von MALTZAHN	
14.	Horst FIKENTSCHER	
15.	Rosemarie von EINSIEDEL	
16.	Horst APFEL	
17.	Irmgard KNOPF	After 1949
18.	Gerhard HEEREN	
19.	Ralph MAENNICKE	
20.	Johann-Detloff HESSE	
21.	Marie-Louise von ROSEN	Swedish national
22.	Gudrun Freiin von SOBECK	
23.	Ingeborg VONHOFF-STREHLE	
24.	Manfred von MALTZAHN	
25.	Horst GROSS	

26.	Anita REISS	After 1949
27.	Maria von MALTZAHN	
28.	Ursula GROSS-NILGES	
29.	Franz HEUER	
30.	Fritz HÜLSSE	
31.	Rolf MARTIN	
32.	Dietrich von WERTHERN-WIEHE	
33.	Günter STANG	
34.	Bernhard von PLESSEN	
35.	Krafft von RIGAL	
36.	Jürgen QUAST	
37.	Anneliese GRONAU	
38.	Gottfried STRIEGLER	
39.	Irmgard STURM	
40.	Ruth BARTHEL	Before and after 1949
41.	Hans-Wolfgang von BYERN	
42.	Sabine POMMEREHNE	
43.	Dr. Hermann KOEBE	
44.	Manfred LORENZ	
45.	Dr. Reginald HANSEN	
46.	Christoph von ZEHMEN	
47.	Hans von REICHE	

Applications nos. 71917/01 and 10260/02
Von ZITZEWITZ and Others, and MAN FERROSTAAL and ALFRED TÖPFER STIFTUNG v. Germany

List of applicants

The vast majority of applicants complained of expropriations carried out between 1945 and 1949. The two applicants who complained of post-1949 expropriations are indicated below.

A. Natural persons

	Names
1.	Margarete von ZITZEWITZ after 1949
2.	Werner KLAUSSER after 1949
3.	Dora BAUMGARTEN
4.	Ingeborg KRETZMANN
5.	Hans KATHE
6.	Wolfgang KATHE
7.	Hans-Jochen WINTERFELDT
8.	Sabine FRANKE née WINTERFELDT
9.	Ute WINTERFELDT
10.	Hubertus von HEYDEN
11.	Friedrich-Wilhelm SCHAEPER
12.	Elard SCHAEPER
13.	Elisabeth-Charlotte WIERSDORFF
14.	Iris WIERSDORFF
15.	Hans-Hennig WIERSDORFF
16.	Freia WIERSDORFF
17.	Swantje JÖRDENING née WIERSDORFF
18.	Gebhard von DAVIER
19.	Otto von BOYNEBURGK
20.	Dr. med. Joachim vom DAHL
21.	Dr. med. Dieter vom DAHL
22.	Erika LAUTERBACH née vom DAHL

B. Legal entities

	Names
23.	The Alfred Toepfer-Stiftung Foundation F.V.S.
24.	Deutsche Industrie-Anlagen Gesellschaft GmbH, which subsequently became Man Ferrostaal