[TRANSLATION]

...

THE FACTS

There are fifteen applicants.

The first thirteen, who live in the village of Horno in the *Land* of Brandenburg, are Mr Noack, Mr and Mrs Siegert, Mr and Mrs Hornig, Mr Hugler, Mr Kneschk, Mr Lindner, Mr and Mrs Naparty, Mrs Nitschke, Mr Richter and Mr Willnow.

The fourteenth applicant is the Domowina, an association for the protection of Sorbian interests, and the fifteenth, the Horno Protestant community.

The applicants are represented before the Court by Ms U. Philipp-Gerlach, of the Frankfurt Bar, and Mr R. Giebenrath, of the Freiburg (im Breisgau) Bar.

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

A. The circumstances of the case

1. Background to the case

The case concerns the transfer – scheduled to take place at the end of 2002 – of the inhabitants of Horno, a village in the *Land* of Brandenburg fifteen kilometres north of the town of Cottbus, near the Polish border. Horno has a population of 350, approximately a third of whom are from the Sorbian minority, of Slav origin. The first twelve applicants say that they are members of the Sorbian minority. Approximately 20,000 Sorbs (*Sorben*) live in the *Land* of Brandenburg. They have their own language and culture. They have their own customs (*sorbisches Brauchtum*), which are kept alive by groups performing Sorbian songs or wearing traditional costumes and by drama societies, literary circles and drawing classes. The majority of Sorbs are Protestants.

The inhabitants of Horno are to be transferred to a town some twenty kilometres away because of an expansion of lignite-mining operations (*Braunkohleabbau*) in the area, as the Jänschwalde open-cast lignite mine (*Braunkohletagebau*) is just a few kilometres from Horno. The mining rights (*Nutzungsberechtigung*) belong to the LAUBAG company (*Lausitzer Braunkohle Aktiengessellschaft*).

In 1977 the Government of the German Democratic Republic (GDR) decided that the population of Horno would have to be transferred to make a

larger area available for lignite mining, a decision opposed by the inhabitants even then.

2. The proceedings challenging continued lignite mining in the municipality of Horno after German reunification

In the early 1990s the inhabitants of Horno took part in demonstrations and signed petitions calling for an end to lignite mining in the municipality.

(a) Judicial review of the Outline Project for Lignite-Mining

On 14 March 1994 the Mining Board (*Oberbergamt*) of the *Land* of Brandenburg approved an Outline Project for Continued Open-Cast Mining at Jänschwalde 1994 until Exhaustion of the Deposits (*Rahmenbetriebsplan zur Weiterführung des Tagebaus Jänschwalde 1994 bis Auslauf*). Under the project, lignite mining in the area was to continue and as a result the inhabitants of Horno were to be transferred in 2003.

By a decision of 6 June 1994, the Mining Board dismissed an application (*Widerspruch*) by 161 landowners to have the project shelved. A large majority of these landowners, including the third, seventh, tenth, eleventh and thirteenth applicants, were from Horno.

At the beginning of July 1994 various municipal councils and the third, seventh, tenth, eleventh and thirteenth applicants lodged an application for judicial review of that decision with the Cottbus Administrative Court (*Verwaltungsgericht*).

Those proceedings were still pending when the application to the Court was made.

On 17 December 1998 the Cottbus Administrative Court held a public hearing and delivered a judgment dismissing the application. In finding against the applicants, it relied in particular on settled authority that had established that a mere decision to approve a project for mining operations did not as a matter of principle (*grundsätzlich*) infringe the rights of the owners of the land affected by the works, since the decision in question did not at that stage concern the absorption of the individual plots of land. The Administrative Court added that there was nothing to prevent the landowners challenging the legality of the mining operations in the separate procedure, known as the mining-law land-transfer procedure (*bergrechtliches Grundabtretungsverfahren*), that would follow.

(b) Entry into force of the *Land* of Brandenburg's Basic Law on Lignite

On 23 April 1997, at a public hearing, the Parliamentary Commission for the Environment, Nature Conservation and Regional Development of the *Land* of Brandenburg heard submissions from the representatives of associations, interest groups, research institutes and legal experts on the Lignite Bill.

The *Land* of Brandenburg's Basic Law on Lignite (*Braunkohlegrundlagengesetz*) came into force on 12 July 1997. Section 1 of the statute concerns lignite extraction (*Förderung der Braunkohle*) and section 2, the dissolution of the Horno Municipal Council and the incorporation of its territory into the Municipality of Jänschwalde (*Auflösung der Gemeinde Horno und Eingliederung ihres Gemeindegebietes in die Gemeinde Jänschwalde* – see Relevant Domestic Law below).

(c) Appeals on the constitutionality of the Basic Law on Lignite

On 5 September 1997 several members of the Brandenburg Parliament lodged an appeal with the Constitutional Court of the *Land* of Brandenburg (*Verfassungsgericht des Landes Brandenburg*) seeking a review of the constitutionality of the Basic Law (*Normenkontrollantrag*).

The first and fourteenth applicants also lodged a constitutional appeal (*Verfassungsbeschwerde*) with that court.

After hearings on 19 March and 18 June 1998, the Constitutional Court of the *Land* of Brandenburg held that the provisions of the Basic Law on Lignite allowing lignite mining in the municipality of Horno were consistent with the *Land*'s Constitution.

It held that the rights granted to the Sorbs by the first sentence of Article 25 § 1 of the *Land*'s Constitution regarding the protection of the area where they had originally settled did not afford them absolute protection against the absorption (*Inanspruchnahme*) of that area for the purpose of open-cast lignite mining. The role of the Constitutional Court was limited to verifying, on the basis of a detailed analysis of the circumstances of the case, that the legislature had understood the scope of the first sentence of Article 25 § 1 of the *Land*'s Constitution and struck a reasonable balance between the right it enshrined and other fundamental rights and that the result was not disproportionate. For the purposes of assessing the future evolution of the economic position, the legislature had been entitled to rely on reports by experts, provided their forecasts were plausible and reasonable.

The Constitutional Court found that the legislature's decision to dissolve Horno Municipal Council and to use the land for open-cast lignite mining remained compatible with the first sentence of Article 25 § 1, regard being had to the measures that had accompanied that decision (*Begleitregelungen*) and to the fact that the legislature had weighed the State's objectives of protecting, conserving and maintaining the area where the Sorbs had originally settled against its objectives of structural development (*Strukturförderung*), job preservation (*Arbeitssicherung*) and securing energy supplies (*Energieversorgung*).

In decisions of 16 July 1998 the Constitutional Court of the *Land* of Brandenburg also dismissed the applicants' appeals. It noted that section 3

of the Basic Law on Lignite supplemented the *Land* of Brandenburg's Law on Expropriation (*Enteignungsgesetz des Landes Brandenburg*) by adding special provisions for the lignite-mining areas and authorised expropriations for the purposes of resettlement (*Wiederansiedlung*) of the population. It further noted that, in the case of Horno, arrangements had been made for resettlement in the neighbouring villages. It added that Mr Noack, in his capacity as a citizen of Horno, did not appear to be entitled at that juncture to complain of an infringement of his right to peaceful enjoyment of his property. It referred also to its judgment of 18 June 1998 regarding the conformity of the Basic Law on Lignite with the Constitution of the *Land*.

The second, fourth, fifth, sixth, eighth, ninth, twelfth, and fifteenth applicants did not exercise any remedies before the German courts.

3. The current position

The *Land* of Brandenburg's Basic Law on Lignite laid down that the inhabitants of Horno had to be consulted regarding their preferred destination. They were given a choice between four villages, all of which were situated in the area where the Sorbs had originally settled.

On 6 September 1998 86,6 % of the population of Horno voted on that issue. The majority (71,5 % – 198 inhabitants) chose the town of Forst (Lausitz), which is approximately twenty kilometres from Horno.

By a decree (*Verordnung*) of the Government of the *Land* of Brandenburg dated 8 September 1998, the Jänschwalde Open-Cast Lignite Mining Project (*Braunkohleplan Tagebau Jänschwalde*) acquired binding force and was published in the *Land*'s Official Gazette (*Gesetz- und Verordnungsblatt*).

In the course of 1998 LAUBAG began to submit offers to landowners living in Horno for the purchase (*Erwerb*) or the transfer for mining purposes (*Überlassung für bergbauliche Zwecke*) of their land.

At a meeting of the Lignite Board (*Braunkohleausschuss*) on 25 February 1999, LAUBAG offered to allocate the landowners equivalent land in the resettlement village and to bear all the transfer and resettlement costs.

On 14 June 1999 LAUBAG requested the Brandenburg Mining Board to declare that the Horno District Authority was required to license certain land to it for a twenty-five-year term. The proceedings against some of the applicants are still pending.

By a decree of 27 August 1999, published on 23 September 1999 in the *Land*'s Official Gazette, the Government of the *Land* of Brandenburg approved the part of the project dealing with the transfer of the inhabitants of Horno. The practical arrangements for the transfer were set out in that part of the project and included the following provisions: the cost of transferring the population would be borne by LAUBAG; village community life was to continue during the transfer; every effort was to be

made to assist the Horno villagers' integration into the town of Forst; measures to protect and develop the Sorbian culture and language were to be encouraged; and the transfer was to be completed by 2002.

On 30 December 1999 the Senftenberg Mining Board approved the Principal Mining Project (*Hauptbetriebsplan*) for Jänschwalde 2000/2001.

On 4 February 2000 the applicants challenged that decision.

By decisions of 21 January and 21 February 2000, the Mining Board of the *Land* of Brandenburg transferred property rights in certain plots of land belonging to inhabitants of Horno to LAUBAG.

The landowners concerned lodged applications for judicial review of those decisions with the Cottbus Administrative Court.

B. Relevant domestic law and practice

1. *Constitution of the* Land *of Brandenburg*

Article 25 of the Constitution of the *Land* of Brandenburg, which protects the rights of the Sorbian minority, provides:

> "1. The Sorbian people are entitled to the protection, preservation and perpetuation of their national identity and of the area in which they originally settled. The *Land*, municipalities and associations of municipalities shall help to give effect to those rights and in particular to secure the cultural autonomy of the Sorbian people and their effective participation in politics.
>
> 2. The *Land* shall ensure that the Sorbs are able to achieve cultural autonomy transcending the borders of the *Land*.
>
> 3. The Sorbs have a right to the preservation and development of the Sorbian language and culture in public life and to their use in schools and day nurseries.
>
> 4. In areas where the Sorbs have settled, administrative documents shall also be drafted in the Sorbian language. The colours of the Sorbian flag shall be blue, red and white.
>
> 5. The means by which the Sorbs will be able to exercise their rights shall be laid down by a statute that will guarantee the participation of Sorbian representatives in matters, and in particular legislative debate, concerning the Sorbs."

2. *The* Land of *Brandenburg's Basic Law on Lignite*

The *Land* of Brandenburg's Basic Law on Lignite (*Braunkohlegrundlagengesetz*) entered into force on 12 July 1997. The relevant sections of the Law provide:

Section 1
Law on Lignite Extraction in the *Land* of Brandenburg

(1) Lignite extraction

Lignite in the Lausitz-Spreewald area may be extracted, in accordance with the law, to secure supplies of raw materials and energy and to strengthen the economy of the *Land*, provided that usable deposits are conserved, that the natural foundations of life are protected and that considerate use is made of the land.

(2) Displacement of local populations as a result of mining works

Where the requisition of inhabited areas is unavoidable, it must be preceded by an offer of equivalent compensation. Every effort must be made to preserve village communities and social ties by moving the populations concerned together. The transfer shall be effected at the cost of the mining company.

(3) Settlement areas for Sorbs

In populated areas for which it is attested that there has been to date an unbroken tradition of Sorbian language and culture, populations displaced as a result of mining works shall be offered appropriate resettlement sites within the original Sorbian settlement area, as defined by section 3(2) of the Law on the Sorbs."

Section 2

Law on the Dissolution of Horno Municipal Council and the Incorporation of its Territory within the Territory of the Municipality of Jänschwalde

(1) Territorial division

Horno Municipal Council (district of Spree-Neiße) shall be dissolved on the date of the next municipal-council elections in the *Land*. Thereafter, its territory shall be incorporated within the territory of the municipality of Jänschwalde (district of Spree-Neiße).

(2) Legal succession

1. Jänschwalde Municipal Council shall succeed to the rights and obligations of Horno Municipal Council from the date the territory of the municipality of Horno is incorporated into its territory.

…

*(4) Institution of a Municipal District (*Ortsteilbildung*) and a Municipal Law (*Ortsrecht*) in the Absorbed Territory*

1. From the date of its absorption into the municipality of Jänschwalde, the territory of the municipality of Horno (the absorbed territory) shall enjoy special status as a district of the municipality of Jänschwalde...

(5) Resettlement

1. In order to preserve the village community and social ties, the inhabitants of Horno should be offered suitable sites for rehousing in Jänschwalde... Before the project for working the deposits is drawn up, the Lignite Commission shall hear representations from the citizens of Horno regarding their resettlement in the municipality of Jänschwalde, the municipality of Turnow or the towns of Peitz or Forst (Lausitz).

…

(6) Institution of a municipal district in the resettlement area

1. The area allocated in accordance with section 5 subsections 1 or 2 for the resettlement of the inhabitants of Horno shall be vested with special status as an administrative district within the host municipality if at least one-third of the inhabitants of Horno are registered as having their main residence there.

…"

Section 3 of the Basic Law supplements the Law on Expropriation of the *Land* of Brandenburg (*Brandenburgisches Enteignungsgesetz*) with special provisions for areas of lignite extraction.

C. Declaration of the Federal Republic of Germany on the signature of the Framework Convention for the Protection of National Minorities on 11 May 1995

"The Framework Convention contains no definition of the notion of national minorities. It is therefore up to the individual Contracting Parties to determine the groups to which it shall apply after ratification. National Minorities in the Federal Republic of Germany are the Danes of German citizenship and the members of the Sorbian people with German citizenship..."

COMPLAINTS

The applicants maintained that (i) the decisions of the German authorities to pursue lignite mining on land situated within the municipality of Horno, (ii) the *Land* of Brandenburg's Basic Law on Lignite of 12 July 1997 and (iii) the decree issued by the Government of the *Land* on 8 September 1998 infringed Article 8 of the Convention, Article 14 taken together with Article 8, Article 1 of Protocol No.1, Article 2 of Protocol No. 4 and Article 9 of the Convention.

THE LAW

1. The applicants maintained that (i) the decisions of the German authorities to pursue lignite mining on land situated within the municipality of Horno, (ii) the *Land* of Brandenburg Basic Law on Lignite of 12 July 1997 and (iii) the decree issued by the Government of the *Land* on 8 September 1998 infringed Article 8 of the Convention, which provides:

> "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."

The applicants' primary complaint was of an infringement of their right to respect for their private life, in particular, as members of the Sorbian minority. They argued that the destruction of the village of Horno would deprive them of the chance to perpetuate their customs and speak their language. The dissolution of the original village community and the obligation to become integrated into a new community would ultimately entail the destruction of Sorbian culture. They also alleged psychological damage, interference with their right to carry on their occupations and an infringement of their right to respect for their family lives and homes.

The Government argued as their main submission that neither the regional-development measures (*raumordnungsrechtliche Massnahmen*), nor the measures implemented under mining law (*bergrechtliche Massnahmen*), constituted an interference with the rights guaranteed by the Convention.

Furthermore, the applicants had failed to exhaust domestic remedies as they could, firstly, have lodged constitutional appeals with the Federal Constitutional Court against the decisions of the Constitutional Court of the *Land* of Brandenburg and, secondly, challenged the decree issued by the Government of Brandenburg on 8 September 1998 and appealed against the Cottbus Administrative Court's ruling of 17 December 1998. Moreover, it remained open to the applicants to apply to the courts at a later date once the land-transfer procedure was under way.

The Government submitted in the alternative that the interference was in accordance with the law, pursued a legitimate aim and was proportionate to the legitimate aim pursued. The legislature had examined various other lignite-mining projects before deciding on objective grounds in favour of the project that entailed transferring the population of Horno. It had heard evidence from numerous experts and carefully weighed up the different interests. It was essential to continue lignite mining in order to secure the

long-term low-cost supply of energy for the *Land* of Brandenburg and to create jobs.

The Government contended lastly that the Constitution of the *Land* of Brandenburg protected the rights of the Sorbs, who would consequently be transferred together to a town within the original Sorbian settlement area where they would be free to continue to enjoy their cultural activities and to speak their language.

The applicants replied that they had exhausted the domestic remedies available to them and could not be required to use other remedies in view, for instance, of the length of time the proceedings before the Cottbus Administrative Court had taken. Furthermore, it would not be possible in the impending land-transfer proceedings for them to plead a violation of their rights guaranteed by the Convention.

All the contested measures and the decision of the German authorities to continue lignite mining in Horno amounted to a direct interference with their rights. Transferring its inhabitants against their will would lead to destruction of the Sorbian identity, which was closely linked to life in the village.

The applicants also denied that there was an economic necessity for continued lignite mining in Horno, since the energy market had been liberalised in 1998 and the electricity market in Germany was saturated. In their view, the interference was disproportionate since continued lignite mining would seriously affect the life of the inhabitants of Horno.

The Court notes, firstly, with regard to the fourteenth applicant, that an association does not have standing to lodge an application contesting a measure that affects its members, since it cannot claim to be a victim for the purposes of Article 34 of the Convention (see, among many other authorities, Sygounis and Others, application no. 18598/91, decision of the Commission of 18 May 1994, Decisions and Reports (DR) 78, p. 71, and *Association des amis de Saint-Raphaël et de Fréjus v. France* (Dec.), no. 45053/98, 29 February 2000).

As regards the remaining applicants, the Court reiterates that Article 35 § 1 of the Convention requires them to have normal recourse to remedies which are available and sufficient to afford redress in respect of the alleged breaches. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see, among other authorities, the Akdivar and Others v. Turkey judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, pp. 1210-1211, §§ 66-68).

Furthermore, Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism (see, among other authorities, the Cardot v. France judgment of 19 March 1991, Series A no. 200, p. 18, § 34).

In the instant case, the Court notes that some of the applicants challenged the decision to approve the Outline Lignite-Mining Project by the Mining Board of the *Land* of Brandenburg on 14 March 1994, taking the matter as far as the Cottbus Administrative Court, while others lodged appeals with the Constitutional Court of the *Land* of Brandenburg contesting the constitutionality of the Basic Law on Lignite, which came into force on 12 July 1979.

In that connection, the Court notes that the proceedings before the Cottbus Administrative Court – which delivered its judgment on 17 December 1998 – related only to approval of the Outline Lignite-Mining Project and lasted for four years. It accordingly considers that the applicants could not also be required to lodge appeals with the Federal Administrative Court and the Federal Constitutional Court, since in view of the length of the proceedings before the Administrative Court and what was at stake for the applicants, they would not constitute adequate and effective remedies.

Further, the Constitutional Court of the *Land* of Brandenburg had in the meantime held in a landmark decision on 18 June 1998 that the provisions of the Basic Law on Lignite providing for continued lignite mining in Horno and the consequent transfer of its inhabitants were consistent with the provisions of the Constitution of the *Land* of Brandenburg protecting the rights of the Sorbian minority.

Without examining in detail all the domestic remedies that existed against regional-development measures or measures implemented under mining law, the Court considers that at least some of the applicants have used sufficient remedies for the purposes of Article 35 § 1 of the Convention. Consequently, the courts have had an opportunity to remedy the alleged violations. The Court accordingly dismisses the Government's preliminary objection based on non-exhaustion of domestic remedies.

As regards the applicants' complaint on the merits, the Court reiterates that the Convention does not guarantee rights that are peculiar to minorities and that the rights and freedoms set out in the Convention are, by virtue of Article 1 of the Convention, secured to "everyone" within the jurisdiction of the High Contracting Parties. The enjoyment of the rights and freedoms set forth in the Convention must, by virtue of Article 14, be secured without discrimination on any ground such as association with a national minority.

However, for the purposes of Article 8 of the Convention, a minority's way of life is, in principle, entitled to the protection guaranteed for an individual's private life, family life and home (see, among other authorities, G. and E. v. Norway, applications nos. 9278/81 and 9415/81, decision of the Commission of 3 October 1983, DR 35, p. 30; and Buckley v. the United Kingdom, application no. 20348/92, report of the Commission of 11 January 1995, § 64; and Chapman v. the United Kingdom, application no. 27238/95, report of the Commission of 25 October 1999, § 65).

Independently of the issue of the protection of minority rights – those of the Sorbs in this instance – the Court considers that transferring the population of a village raises a problem under Article 8 of the Convention, since it directly concerns the private lives and homes of the people concerned.

In the present case, the Basic Law on Lignite of the *Land* of Brandenburg (see Relevant Domestic Law above) and the decrees issued by the Government of the *Land* approving the various lignite-mining projects, which clearly provided for the transfer of the inhabitants of Horno by 2002 at the latest, amounted to an interference with the applicants' right guaranteed by Article 8 of the Convention.

Such an interference will infringe Article 8 of the Convention, unless it is "in accordance with the law", pursues one or more legitimate aims under paragraph 2 and is "necessary in a democratic society" to achieve those aims.

As to whether the interference is lawful, the Court notes that the basis for continued lignite mining within the municipality of Horno was, in particular, the Basic Law on Lignite of the *Land* of Brandenburg and the various lignite-mining projects that had acquired binding force as a result of decrees issued by the Government of the *Land*. The Basic Law expressly set out the conditions for the displacement of populations (especially those belonging to the Sorbian minority) as a result of mining operations (equivalent compensation had to be offered, the population transferred together, the Sorbs resettled in their original settlement area and a municipal district created in the resettlement territory). It also provided for the dissolution of Horno Municipal Council. The practical arrangements and timetable for the transfer were set out in detail in the various lignite-mining projects.

As to the purpose of the interference, the Court considered that it pursued a legitimate aim, namely the economic well-being of the country, in particular by ensuring a long-term low-cost energy supply for the *Land* of Brandenburg, and the creation of jobs.

As regards the necessity of the interference, the Court reiterates the general principles which it laid down in the Buckley v. the United Kingdom judgment (25 September 1996, *Reports* 1996-IV, pp. 1291-1293, §§ 74-77):

> "As is well established in the Court's case-law, it is for the national authorities to make the initial assessment of the 'necessity' for an interference, as regards both the legislative framework and the particular measure of implementation (see, *inter alia* and *mutatis mutandis*, the Leander v. Sweden judgment of 26 March 1987, Series A no. 116, p. 25, § 59, and the Miailhe v. France (no. 1) judgment of 25 February 1993, Series A no. 256-C, p. 89, § 36). Although a margin of appreciation is thereby left to the national authorities, their decision remains subject to review by the Court for conformity with the requirements of the Convention.

> The scope of this margin of appreciation is not identical in each case but will vary according to the context (see, *inter alia* and *mutatis mutandis*, the above-mentioned Leander judgment, ibid.). Relevant factors include the nature of the Convention right in issue, its importance for the individual and the nature of the activities concerned.
>
> The Court has already had occasion to note that town and country planning schemes involve the exercise of discretionary judgment in the implementation of policies adopted in the interest of the community (in the context of Article 6 § 1, see the Bryan judgment cited above, p. 18, § 47; in the context of Article 1 of Protocol No. 1, see the Sporrong and Lönnroth v. Sweden judgment of 23 September 1982, Series A no. 52, p. 26, § 69; the Erkner and Hofauer v. Austria judgment of 23 April 1987, Series A no. 117, pp. 65-66, §§ 74-75 and 78; the Poiss v. Austria judgment of 23 April 1987, Series A no. 117, p. 108, §§ 64-65, and p. 109, § 68; the Allan Jacobsson v. Sweden judgment of 25 October 1989, Series A no. 163, p. 17, § 57, and p. 19, § 63). It is not for the Court to substitute its own view of what would be the best policy in the planning sphere or the most appropriate individual measure in planning cases (see, *mutatis mutandis*, the Klass and Others v. Germany judgment of 6 September 1978, Series A no. 28, p. 23, § 49). By reason of their direct and continuous contact with the vital forces of their countries, the national authorities are in principle better placed than an international court to evaluate local needs and conditions. In so far as the exercise of discretion involving a multitude of local factors is inherent in the choice and implementation of planning policies, the national authorities in principle enjoy a wide margin of appreciation."

The Court's task is to determine whether, on the basis of the aforementioned principles, the reasons relied upon to justify the interference in question are relevant and sufficient for the purposes of Article 8 § 2 and whether the interference was proportionate to the legitimate aim pursued.

In that connection, the Court cannot disregard the fact that in the instant case the interests of the community must be balanced against the applicants' right to respect for their private lives and homes, bearing in mind that the vast majority of the applicants are members of the Sorbian community of Horno.

The Court also notes the seriousness of the interference. Quite apart from the fact that it is an upheaval for anyone to be uprooted from the life to which they are accustomed, transferring a village population can have dramatic consequences, especially for the elderly, who find it more difficult to adapt to a new environment. The fact that the persons concerned in the present case were members of the Sorbian minority and as such were entitled to special protection – as is attested by the Constitution of the *Land* of Brandenburg – means that the Court must be especially vigilant.

However, the Court notes that the process, which ended with a decision to continue lignite mining in Horno, lasted several years and that the distinctive feature of that process was the wide debate that took place in the Parliament of the *Land* of Brandenburg and among the other leading figures in public life regarding the choice between three alternative lignite-mining projects.

Thus on 23 April 1997 the *Land* of Brandenburg Parliamentary Commission for the Environment, Nature Conservation and Regional Development heard submissions in public from the representatives of associations, interest groups, research institutes and legal experts on the Lignite Bill, which was later to become the Basic Law on Lignite. The Basic Law was supplemented by mining projects setting out the practical arrangements for implementation.

Furthermore, the applicants were able to challenge the decrees approving the various lignite-mining projects and to lodge appeals with the Constitutional Court of the *Land* of Brandenburg contesting the constitutionality of the Basic Law on Lignite.

As regards protection of the rights of the Sorbian minority, the Court notes that in its landmark decision of 18 June 1998 the Constitutional Court of the *Land* of Brandenburg carefully examined whether the legislature had understood the scope of Article 25 § 1 of the Constitution of the *Land* of Brandenburg, which protects the rights of the Sorbs, whether it had duly weighed the right it enshrined against other fundamental rights and whether the result was not disproportionate. The Constitutional Court ultimately held that the continued mining of lignite in Horno was consistent with that provision, having regard to the measures that accompanied the decision and the fact that the legislature had weighed the State's objectives of protection, conservation and maintenance of the area where the Sorbs had originally settled against the objectives of structural development, job protection and securing energy supplies.

A further decisive factor for the Court is that the inhabitants of Horno will be transferred together to a town approximately twenty kilometres from their village of origin and within the area where the Sorbs originally settled. A majority of the inhabitants opted for that town after being consulted on their choice of destination. Even though the transfer means a move and reorganising life in the resettlement area, the inhabitants will continue to live in the same region and the same cultural environment, where the protection of the rights of the Sorbs is guaranteed by Article 25 of the Constitution of the *Land* of Brandenburg (see Relevant Domestic Law above), where their language is taught in the schools and used by the administrative authorities, and where they will be able to carry on their customs and in particular to attend religious services in the Sorbian language.

Likewise, it is clear that the measures regulating the transfer of the inhabitants of Horno are intended to make the transfer as painless as possible for the persons concerned. Those measures are set out *inter alia* in the lignite-mining project approved by a decree of the Government of the *Land* of Brandenburg on 27 August 1999 and duly take into account the need to preserve and sustain the village community and the Sorbian cultural identity.

Having regard to all these factors and in particular to the fact that the inhabitants of Horno are to be transferred to a town approximately twenty kilometres away that is within the original Sorbian settlement area, the Court considers that the interference in issue, though indisputably painful for the inhabitants of Horno, is not disproportionate to the legitimate aim pursued in view of the margin of appreciation which the States are afforded in this sphere.

It follows that that complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

2. The applicants also relied on Article 14 taken together with Article 8 of the Convention, arguing that the German authorities had failed to have sufficient regard to the special characteristics of the Sorbian community. Article 14 provides:

> "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."

Having regard to its reasoning under Article 8, the Court considers that no separate issue arises under Article 14 taken together with Article 8 of the Convention.

3. The applicants further alleged an infringement of their right of property, as guaranteed by Article 1 of Protocol No. 1, which reads:

> "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 Government maintained that the interests of the landowners and the general interest could not be weighed against each other until the procedure for transfer of the individual plots of land was under way and that procedure had only just commenced. They added that adopting planning measures did not at that juncture amount to an interference with the applicants' right to peaceful enjoyment. The applicants would have an opportunity of challenging the scheduled expropriations when the land-transfer procedure was under way.

The applicants submitted that there had already been an interference and that that interference was disproportionate. Since the decision of the Parliament of the GDR in 1977, the owners had been left in a state of uncertainty regarding the use of their property. They maintained that offers made in the past by the LAUBAG company to pay compensation of 1.50 to

1.80 German marks per square metre were laughable and did not enable equivalent land to be purchased elsewhere.

According to the Court's well-established case-law, an interference, including one resulting from expropriation measures adopted in furtherance of large-scale public-works projects, must strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see, among many other authorities, the National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom judgment of 23 October 1997, *Reports* 1997-VII, p. 2353, § 80).

In order to assess whether such a "fair balance" was preserved between the various interests concerned, the Court must consider the terms and conditions on which compensation is payable under domestic legislation and the manner in which they were applied in the applicant's case (see the following judgments: Lithgow and Others v. the United Kingdom of 8 July 1986, Series A no. 102, p. 50, § 120; Akkuş v. Turkey of 9 July 1997, *Reports* 1997-IV, p. 1309, §§ 27 and 29; and Aka v. Turkey of 23 September 1998, *Reports* 1998-VI, p. 2681, §§ 44-45).

In the instant case, the Court notes that section 1(2) of the *Land* of Brandenburg's Basic Law on Lignite provides for payment of equivalent compensation where populations are displaced as a result of mining operations and for the cost of resettlement to be borne by the mining company.

However, as the Government have indicated, the procedures relating to the transfer of individual plots of land have only just begun and the amount of the compensation and the nature of the resettlement arrangements on offer have yet to be clearly determined.

It follows that this complaint must be dismissed for failure to exhaust domestic remedies within the meaning of Article 35 § 1 of the Convention.

4. The applicants also relied on Article 2 of Protocol No. 4, which provides:

> "1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
>
> 2. Everyone shall be free to leave any country, including his own.
>
> 3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
>
> 4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

The Court refers to the reasoning which it followed in the complaint under Article 8 of the Convention and, for the same reasons, holds that the interference in question was proportionate to the legitimate aim pursued.

It follows that that complaint is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

5. The applicants relied lastly on Article 9 of the Convention, which provides:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

Having examined the complaint as put to it by the applicants, the Court has not found any appearance of a violation of the rights and freedoms guaranteed by the Convention or its Protocols.

It follows that that complaint is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.