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Enforcement of Rehabilitation for Politically Persecuted Persons during the Soviet Occupation of Germany in the Terms of the International Covenant on Civil and Political Rights

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A. Abstract (JEL-Code 42)

19 authors have filed a communication to the UN High Commissioner for Human Rights against Germany and the Russian Federation to enforce rehabilitation of their legal predecessors, who were victims of denazification (Russian: Денацификация) measures in Post-War Germany. They reprimand that they and the persons concerned are discriminated **by the current German legislation against all other groups of comparably politically persecuted persons on the territory of the former Soviet Occupation Zone of Germany** (Russian: Советская оккупационная зона Германии), being excluded from the scope of the existing rehabilitation acts, which have come into force after the German Reunification. Whilst any other persecutees can be rehabilitated according to the existing rehabilitation acts (Criminal Rehabilitation Act and Administrative Rehabilitation Act), and whilst victims of denazification measures in the former Western Occupations Zones had been enabled to enforce their rehabilitation in the terms of German acts in the years between 1951 until 1955 after the foundation of the Federal Republic of Germany, those persons who were victims of denazification measures in the former Soviet Occupation Zone are excluded from any rehabilitation. This exclusion is justified by the German legislator and the Federal Constitutional Court with the argument that otherwise the former USSR would not have agreed to the German Reunification.

The legal consequence of this exclusion of a special group of persons from the scope of the existing rehabilitation acts is that thus the allocations of blame are perpetuated by the German authorities. It is obvious that the German authorities are aware of this legal situation, as they justify the discrimination with the supposed Soviet precondition for their consent to the German Reunification. This evident discrimination might be the reason for the reservation to the FOP¹ made in 1993 that Germany does not recognize the jurisdiction of the Committee to hear complaints resulting from Article 26 of the ICCPR, covering discrimination and equality before the law, except insofar as they relate to rights expressly affirmed in the Covenant. The authors will submit that this reservation does not bar the Committee from examining the communication, especially under the aspect of a claimed violation of Article 26 ICCPR.

1 The authors disbelieve the Soviet Government to condition that any measures of
2 denazification such as the land or the economical reform, inflicted by German authorities
3 during the Soviet Occupation period, are generally excluded from rehabilitation. If, however,
4 the statement of the Federal Government should prove as true the legal consequence would be
5 that both state parties - the Soviet Union and the two then existing German states - would
6 have discriminated the victims of sovereign measures of denazification executed by German
7 commissions when they should have collusively agreed to exclude any rehabilitation and
8 maintain the assignments of guilt without examining the individual case.
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14 The authors are of the opinion that the only reason of this exclusion from any rehabilitation of
15 their innocently persecuted legal predecessors is: The German authorities want to avoid that
16 the assignments of guilt against the authors or their legal predecessors can be legally repealed
17 as this would obligatorily establish claims on restitution due to German legislation. .
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22 This is why the petition cannot be rejected as inadmissible *ratione temporis*. For the problem
23 is not that the persons concerned were victims of unjust and discriminating sovereign
24 measures of denazification effected by German authorities during the Soviet occupation
25 period; it is rather the decisive question whether the exclusion from rehabilitation for victims
26 of such measures by the current German legislator discriminates the persons concerned and
27 their legal successors.
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32 In this communication, it has to be taken into account that the Committee is not generally in a
33 position to review the evaluation of facts and evidence by the national courts and authorities,
34 nor that it can review the interpretation of domestic legislation. The Committee is rather asked
35 to examine the legal consequences of the legislative exclusion of the persons concerned and
36 their legal successors from rehabilitation with respect to Article 26 solely and in connection
37 with Article 17 and Article 2 § 3 subpara. a) and b) ICCPR.
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45 **B. The Authors**

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48 All authors have in common that they have enforced without success the rehabilitation of their
49 legal predecessors, be it by challenging the Criminal Rehabilitation Act, be it by challenging
50 the Administrative Rehabilitation Act, be it by appealing the Federal Constitutional Court
51 reprimanding legislative omission for not including the persons concerned in the scope of
52 rehabilitation law. They explicitly do not allege that the rehabilitation courts were not allowed
53 to exclude them from the scope of the rehabilitation acts. They claim that the legislator had to
54 provide a rehabilitation act in their favour, e.g by including them in the scope of the Criminal
55 Rehabilitation Act. **Only this omission of the legislator means a discrimination of this**
56 **special group of persons.**
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C. Historical Facts

After the unconditional surrender of the German armed forces on 7 and 8 May 1945, each of the occupying powers exercised full control over the German national territory which it occupied. It was only on 5 June 1945 that the four victorious powers – the United States, the Soviet Union, the United Kingdom and France – in their Berlin Declaration of 5 June 1945 jointly assumed “*supreme authority with respect to Germany*”, including “*all the powers possessed by the German Government*”. The Allied Control Council, in which all the commanders-in-chief of the occupying forces were represented, became the highest decision-making body for Germany. The commanders exercised full sovereignty in their occupation zones. They were above all able to issue orders and introduce legislation themselves.

At the Potsdam Conference of the three victorious powers from 17 July to 2 August 1945, the Allies again emphasised that the commanders-in-chief of the armed forces, as members of the Allied Control Council, exercised the highest government power in Germany, each of them in his own occupation zone in accordance with the basic principles of his own government, and jointly in the questions relating to Germany as a whole. The following aims were agreed as goals of the occupation regime²:

“German militarism and Nazism will be extirpated, and the Allies will take in agreement together, now and in the future, the other measures necessary to assure that Germany never again will threaten her neighbours or the peace of the world.

It is not the intention of the Allies to destroy or enslave the German people. It is the intention of the Allies that the German people be given the opportunity to prepare for the eventual reconstruction of their life on a democratic and peaceful basis”.

Regarding the economy they agreed the elimination of Germany’s war potential, the elimination of the “*present excessive concentration of economic power as exemplified in particular by cartels, syndicates, trusts and other monopolistic arrangements*”. During the period of occupation, Germany should have been regarded as a homogeneous economic unit.

On 9 June 1945, “*Order № 1*” established the Soviet Military Administration in Germany (*Sowjetische Militäradministration in Deutschland – SMAD*) as the supreme organ of power. Order № 1 announced “*for general information*” that “*in order to monitor the implementation of the conditions imposed on Germany after its unconditional surrender and to administer the Soviet Occupation Zone in Germany*” the SMAD was created, with Marshal Shukov in charge. Order № 5 of 9 July 1945 created SMAD administrations in the *Länder* (states) and provinces and appointed their leaders. The SMAD was the central agency of the Soviet interests in the Soviet occupation zone³. The procedures of the SMAD were in writing

1 form or oral “*order*”. Consequently, the German authorities who were newly created could
 2 act only as auxiliary agencies of the Soviet authorities. They received direct instructions and
 3 were fully controlled by them.
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7 8 9 **I. As to the Execution of the Land Reform**

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12 A substantial step towards the alteration of the property system in the Soviet occupation zone
 13 related to land⁴. The Central Committee of the Communist Party of Germany
 14 (*Kommunistische Partei Deutschlands – KPD*) worked together with the SMAD on a land
 15 reform in the Soviet Occupation Zone from 1945 on. In this connection, the term Democratic
 16 Land Reform (*Demokratische Bodenreform*), which had already been used before 1945 in
 17 Germany, was used⁵. There was also reference to ideas of all of the Allies that the economic
 18 foundations “*of Junkerdom*” (Junker being a derisive term for landowning aristocracy in East
 19 Germany) and of the “*big capitalists*” should be eliminated in order to advance the
 20 “*democratisation*” of the German people. Under the motto “*Junker land in farmers’ hands*”,
 21 this was to cover not only National Socialists and war criminals, but all landholdings of over
 22 100 hectares as an “*urgent national, economic and social necessity*”, in order to guarantee the
 23 “*liquidation of feudal Junker large-scale landholdings*”, which had always been “*a bastion*
 24 *of reaction and fascism and one of the main sources of aggression (...) against other*
 25 *peoples* (emphasis mine).”
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34 In his address in Kyritz on 02/09/1945, the president of the Communist Party of Germany,
 35 Wilhelm Pieck, outlawed the victims of the land reform and declared them “*personae non*
 36 *gratae*” using the following words:
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40 “Retaliation against war criminals

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43 **The major offenders of the war and war criminals** have again to be called to account by our people,
 44 they must never again achieve leading influence. It was the large land owners, the “Junkers” and
 45 feudalistic owners who provided many generals of the war... We have to take care of these major
 46 offenders and war criminals, the basis of their power, their property and their assets have to be
 47 confiscated. They all made profits during Hitler’s dictatorship, and everything has to be taken from
 48 them, down to the last item.
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52 We have to take total revenge against the war criminals. We shall not leave this to foreign powers, as
 53 is intended in the Nuremberg Trials. Our people must take care of these criminals on their own....If
 54 we don’t take revenge today, it will cost our blood tomorrow....Every individual has to pay the
 55 greatest attention to this **criminal riff-raff**... (emphasis mine).”
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59 In this connection, legislation on land reform was passed in all *Länder* and provinces of the
 60 Soviet occupation zone in September 1945. In some cases, referendums were held on the
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1 subject. The lead was taken by the Province of Saxony, which issued an ordinance on land
2 reform on 03/09/1945, one day after Wilhelm Pieck's above mentioned speech in Kyritz. This
3 affected all the agricultural landholdings, including livestock, implements and machinery, of
4 the following:
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9 "1. war criminals, those responsible for the war, Nazi leaders, active supporters of the Nazi party
10 and of the leading persons in the Hitler government, including all the persons who in the period of
11 Nazi rule were members of the Reich government, the Reichstag, a German *Land* government or a
12 *Land* parliament.
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15 2. feudal and Junker big landowners with more than 100 hectares;
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18 3. the state, to the extent that the land is not dedicated to agricultural or scientific research
19 institutes, experimental stations and educational establishments."
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22 A total of 7,112 estates larger than 100 hectares were expropriated. In addition, 4,728
23 enterprises below the 100-hectare limit that belonged to suspected war criminals and National
24 Socialist functionaries, and 2,309 domains of other kinds, the overwhelming majority of
25 which were in state ownership, were also expropriated. The expropriated landholdings were
26 used to form a land fund of approximately 3.22 million hectares. The land fund therefore
27 comprised about one-third of the total acreage used for agriculture and other purposes of the
28 later German Democratic Republic. From the land fund, 2.1 million hectares of land in plots
29 was given to landless or near-landless farmers, agricultural labourers, refugees and migrants;
30 the amount of land granted was not to be more than 5 hectares, or if the land was of poor
31 quality 10 hectares⁶. As contrasted with the legal situation in the Western Occupation Zones
32 and later in the original Federal States of the Federal Republic of Germany **there were no**
33 **judicial means of legal protection against the measures. Classification as a war criminal**
34 **or active National Socialist was also subject to no judicial supervision**⁷. neither during the
35 occupation period nor after the foundation of the German Democratic Republic. The East
36 German Parliament (*Volkskammer*) never implemented rehabilitation law. Different from the
37 legal situation in the original Western Federal States of Germany, there was no legal way for
38 those who had been accused of being major war criminals and active National Socialists to
39 reconstitute their honour and reputation and to re-evaluate the assignments of guilt. During
40 the legal existence of the GDR up to the present, all victims of the Land or Industrial Reform
41 are still considered to have been war criminals and active National Socialists who either had
42 to be punished collectively or in a procedure without the guarantees due to legal process.
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56 **II. Subsequent Industrial Reform**

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59 Also owners of industrial enterprises and wealthy individuals have been treated in the same
60 way as the owners of agricultural or forest land. German Sequester commissions
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(*Sequesterkommissionen*) in the years 1946 to 1949 had to decide if those persons, listed as War Criminals or Nazis, were guilty. Members of the „*Association of Antifascist-Democratic Parties*“ (*Block der antifaschistisch-demokratischen Parteien*) as well as the new *Free German Labour Union (Freier Deutscher Gewerkschaftsbund)* played the role of prosecutors. Both groups have been dominated by the Communist Party in East Germany (*KPD*) and its successor, the Socialist Union Party of Germany (*Sozialistische Einheitspartei Deutschlands*), which was founded in 1946. Victims did not receive a bill of indictment, which could have been challenged by them and their lawyers. A proper investigation of facts, documents or hearing of witnesses did not take place. Against decisions of the said Commissions no legal challenge was allowed, in most cases the victims were not even informed about the outcome. The victims did not have a chance to review their case as stipulated in the proclamation № 3 of the Allied Council (*Alliiertes Kontrollrat*) Due to Legal Process Clause, a Court could not be appealed to.

III. Additional Remarks on Denazification in Post-War Germany

The declared purpose of the above mentioned Land and Industrial Reform according to the four victorious nations was denazification. Also in the former western zones, property was taken away of those persons who were found guilty by the Civilian Courts (*Spruchkammern*) as Major Offenders (*Hauptschuldige*) or Party Activists, Militants, Profiteers or Incriminated Persons (*Belastete*). After the foundation of the Federal Republic of Germany on 23/05/1949, the victims who were classed into one of these categories were enabled to have examined the assignments of guilt with the aim that the decisions might be suspended by the Civilian Courts. These examinations took place on legal base between 1951 and 1956. Victims of comparable measures of denazification in the Soviet Occupation Zone on the other hand never have had such a remedy. To establish an equal legal order in the new Federal States, the German Legislator had to create comparable acts. He did so by enacting the Criminal and the Administrative Rehabilitation Act, but deliberately excluded this special group of persons from the scopes of both rehabilitation acts.

D. Relevant Domestic Law and Practice

The Commission will have to be focused on the fact that the Government of the reunited Germany has not made sufficient legal arrangements for the innocently persecuted victims of the Stalinism in the former Soviet occupation zone of Germany. A rehabilitation act is still lacking which could allow the victims and their heirs to check if they were guilty or not. A formal rehabilitation would consequently lead to the repeal of those hard measures - namely the total loss of their real estate property.

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3 The relevant domestic law regarding rehabilitation and compensation may be summarized as
4 follows:
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8 **I. The German Unification Treaty**
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11 The Unification Treaty (*Einigungsvertrag*) of 31 August 1990 which came into force on
12 03/10/1990, is worded, as far as the problem of rehabilitation is concerned, as follows:
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17 **Article 17**
18 **Rehabilitation**
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21 **“The Contracting Parties reiterate their intention to create a statutory basis for the rehabilitation**
22 **of victims of a political prosecution or a judicial decision contrary to the rule of law and the**
23 **Constitution. The rehabilitation of these victims** of the unjust regime of the Socialist Unity Party of the
24 GDR (*Sozialistische Einheitspartei Deutschlands – “the SED”*) **must be accompanied by adequate**
25 **compensatory measures”** (emphasis mine).
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28 **II. The Resolution of Outstanding Property Issues Act / Property Act**
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32 On 29 September 1990 the Property Act of 23 September 1990 came into force. That Act was
33 also to be part of the Unification Treaty, which provided that the Property Act would continue
34 to exist in Germany after reunification of the two German States on 3 October 1990. The aim
35 of the Act was to resolve disputes over property situated in the former GDR in a socially
36 acceptable way in order to achieve enduring legal order in Germany.
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41 Section 1(7) provides:
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44 **“This Act applies *mutatis mutandis* to the restitution of property in connection with the annulment, under**
45 **other provisions (*nach anderen Vorschriften*), of unlawful decisions in the sphere of criminal law, criminal**
46 **administrative law and administrative law.”**
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49 The relevant part of section 1(8) provides:
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52 **“This Act does not apply ... to**

- 53
54 a) Expropriations of property carried out under the Occupation laws or the other powers of the
55 occupying authorities; **the rights provided for in sub-sections 6 and 7 of this section shall remain**
56 **intact** (*bleiben unberührt*);
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58 **...”**
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III. The Rehabilitation Acts

The legislature enacted two laws governing rehabilitation: the Criminal Rehabilitation Act of 29 October 1992 and the Administrative Rehabilitation Act of 23 June 1994. According to the actual practical law, however, there is no possibility for the victims to get a rehabilitation. This group of persons has no chance to apply to these measures in the context of these two Laws. **Against this national practice is nothing to remind in front of the Commission.** Yet if the case of this group of victims is not applicable to these two Laws the German Parliament will have to implement another form of rehabilitation which would provide the legal rights of section 1(7) of the Property Act.

1. The Rehabilitation and Indemnification of Victims of Illegal Prosecutions on “Accession” Territory (Beitrittsgebiet) Act / Criminal Rehabilitation Act

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

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.

In this context it is not at all necessary that the relevant persons have been sentenced for deeds of war crimes or against peace or humanity. The relevant section 1 StrRehaG in this context states:

(1) The legal decision of a national German Court in the Accession Territory (Beitrittsgebiet) as stated in Article 3 of the Unification Act (Einigungsvertrag) from May 8th 1945 until Oct 2nd 1990 can be on request declared as unlawful (rechtsstaatswidrig) if it was not in accordance with the basics of a lawful order especially if

(1) the decision has been used for political persecution.[...]

[...]

(5) For measures of punishment which were not based on decisions of a Court this law is likewise applicable.

2. The Annulment of Unlawful Administrative Decisions on “Accession” Territory (Derivative Rights) Act / Administrative Rehabilitation Act

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

1 “A sovereign measure taken by a German authority (*Verwaltungsentscheidung*) in an individual case on
2 the territory referred to in Article 3 of the Unification Treaty between 8 May 1945 and 2 October 1990 that
3 has caused physical damage, infringed a pecuniary right... shall be revoked on request if it is absolutely
4 (*schlechthin*) incompatible with the principles of a State based on the rule of law and has lasting direct,
5 unreasonable and intolerable effects. This Act shall not apply to administrative decisions in tax cases or to
6 measures falling within the scope of the Property Act or the Act governing indemnification pursuant to the
7 Property Act (*Gesetz über die Entschädigung nach dem Gesetz zur Regelung offener Vermögensfragen /*
8 *Entschädigungsgesetz*).

9 Nor shall it apply to the categories of cases referred to in section 1(8) of the Property Act (*Dies gilt auch für*
10 *die in § 1 Abs. 8 des Vermögensgesetzes erwähnten Fallgruppen*).”

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13 Section 7(1) of the Act provides that where property is confiscated as a result of a measure
14 described in section 1 restitution of the property or indemnification for its confiscation is
15 governed, among other things, by the Property Act.
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19 **III. The Compensation and Indemnification Act**

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24 Instead of a rehabilitation of the persons concerned their legal successors are only rewarded
25 claims on indemnification which have a far lesser value than claims on restitution, so long as
26 their legal predecessors were deemed dignified in the meaning of section 1(4) of the
27 Indemnification Act.
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31 In order to receive such a compensation the authorities have to check if a person or somebody
32 with a claim has a justifiable status. Measure for this screening process is section 1(4) of the
33 Indemnification Act with the following wording:
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37 “Compensation based on this Law will not be granted if the applicant to sections 1 and 2 or whoever
38 claims it or the confiscated company have violated the principles of humanity or lawfulness
39 (*Rechtsstaatlichkeit*). The same applies if somebody has gravely misused his position for his own
40 gain or to the detriment of others. Likewise if he has given strong support to the Nazi State or the
41 communist system in the Soviet Zone of Germany or the GDR.”
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46 The Federal Government takes the position that somebody who has been granted
47 compensation is also quasi rehabilitated. The Indemnification Act consequently replaces the
48 rehabilitation Law for all victims who had been persecuted and expropriated of their real
49 estates. Therefore the victims are considered freed from all accusations raised against them at
50 the time.
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54 The authors of this application do not accept this legal situation. They claim a violation of
55 Article 26 ICCPR, solely and in connection with Article 17 ICCPR with the aim that also the
56 victims of the Land and Economic Reform which have been denoted by the communists as
57 “*measures to free the German population of National Socialism an Militarism*” will get a
58 proper Rehabilitation Law. This would allow them to defend their right properly in the Courts
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1 to achieve a formal rehabilitation and - as a legal consequence according to sect. 1(7) of the
2 Property Act - claims on restitution.
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6 The authors will explain that such a law does not exist. Consequently, the innocent victims of
7 the communist Reform are still discriminated, in contrast to the victims of other groups which
8 have suffered comparable political persecution during the Nazi or Communist rule during the
9 legal existence of the GDR. Without a formal waiving of the assignments of guilt which was
10 the basis of the confiscations a full repeal as of section 1(7) is denied by the legal system
11 which leaves everything unchanged and allows the victims only a marginal compensation
12 whilst the Federal Republic enjoys full ownership of the said assets.
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17 18 **IV. Case-Law**

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22 The High Courts' relevant decisions regarding the application of the rehabilitation Law which
23 was used against the victims of the Reforms, and as to whether the legal authorities have to
24 issue a separate Rehabilitation Law have been the following:
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27 28 29 **1. Decisions Pertaining to the Administrative Rehabilitation Act**

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32 The application of the Administrative Rehabilitation Law Act (VwRehaG) is not allowed if
33 the rehabilitation would result in full compensation of disappropriated assets originating from
34 occupational or communist law under the rule of the Soviet occupation, see section 1(1) 3rd
35 sentence. Considerations made by the Federal Constitutional Court in its order of July 4th
36 2003 have been reconsidered by the Grand Chamber in its decision of March 2nd 2005.
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41 According to VwRehaG, an assignment of guilt can neither be checked nor perhaps revised.
42 Therefore the subject of a rehabilitation in the framework of VwRehaG cannot be guilt-related
43 but is rather based only on the administrative measures of the expropriations namely assets or
44 land taken for agricultural or housing purposes and other measures to secure the reforms.
45 Without the exclusivity norm of the section 1(1) 3rd sentence VwRehaG, all those measures
46 mentioned above in individual cases of guilt-assignments would be null and void because
47 their purpose was the political cleansing from National Socialism and Militarism, in other
48 words political persecution. Without the mentioned norm every measure against the victims
49 would be null and void by rehabilitation. This, however, would be contradictory to the Soviet
50 precondition and thus to № 1 of the joint declaration of June 15th 1990 because thereby the
51 measures implemented by the USSR in their occupation Zone - formally legitimated by the
52 Potsdam agreement - would be neglected and adversely interpreted. This is how of the authors
53 understand hints made by the BVerwG in its judgment of February 21nd 2002⁸ and of the
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1 BVerfG in its decision of July 4th 2003⁹. The wording of the relevant chapter in the decision
2 of the BVerfG is as follows:
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6 “With this it should be avoided that German Courts or other Federal Institutions should afterwards blame as
7 illegal the measures made under Soviet occupation”.

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10 The expropriations can by no means be the subject of a rehabilitation decision. As far as the
11 assignment of guilt is the subject of a rehabilitation - which was the legal reason for the
12 subsequent expropriation and other measures - this act cannot be applicable. According to the
13 definition of a punishment given in the BVerfG: It is the reaction of the State on a personal
14 unlawful, past and guilty deed combined with a personal social-ethical judgment, of guilt
15 towards this particular person. It is legally irrelevant that the suggestion of being guilty was
16 put forward by an authority, not by a court: Because so called administrative penal procedures
17 (Verwaltungsstrafverfahren) are equal to crime procedures (Strafverfahren)¹⁰.
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24 **2. Decisions in connection with the Criminal Rehabilitation Act**

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27 By implementing this act on November 4th 1992, the legislator seems to have not fulfilled the
28 will of the constitution: The practice of the relevant courts reflect this shortcoming. The
29 victims of the denazification measures have been subjected to special crime-laws which
30 cannot be reconciled with the principles according to Article 1 and 20 of the Basic Law
31 (Grundgesetz) on which the free and democratic order of this state depends.
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37 The persecution of persons in denazification proceedings especially in the former Soviet
38 Occupation Zone has violated the fundamental principles of any civilized constitution
39 because:
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43 ◆ Legal norms have been used with retroactive effect which clearly belong into the
44 category of criminal Law (violation of the principle *nulla poena sine lege praevia*);
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46 ◆ in the case of Junkers and large-scale owners the guilt of the persons concerned was
47 based on conclusive presumptions;
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49 ◆ in all cases people concerned never received a bill of indictment;
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51 ◆ they could not enter into legal arguments;
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53 ◆ they had no chance to defend their case with a solicitor;
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55 ◆ requests to proof evidence were denied to the defendants;
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57 ◆ accusations were founded on unsubstantiated grounds, often based on unfounded
58 denunciations;
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60 ◆ the sanctions as a reaction of unlawful actions (in the sense of a constitutional system)
61 were regularly disproportionate;
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63 ◆ there was no access to legal courts¹¹.
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3 Section 1(5) StrRehaG should not be applied regardless of the penologic character of the
4 measures (according to present jurisdiction of the courts for criminal rehabilitation). The
5 highest special Courts (*Fachgerichte*) in the new Federal States (*Länder*) and in Berlin also
6 restrict the application section 1(5) StrRehaG to measures in a typical penologic context.
7 Consequently will those measures aiming at the political reform as described above regardless
8 of their penologic character kept out of scope of the Criminal Rehabilitation Act. There is
9 nothing to be said against this teleological restriction of the application from the point of view
10 of constitutional law. There is e.g. also advice of section 890 of the Civil Process Order (ZPO)
11 a punishment norm, however, not in typically penologic sense but one in the legal field of
12 legal enforcement¹². The BVerfG has explained in this context:
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19 "If punishment according to section 890(1) ZPO is applied for unjust deeds legal punishment
20 principles have to be considered regardless of the context of legal enforcement. Punishment
21 demands guilt. This principle is very obvious in the modern law. Consequently the Federal High Court
22 (Bundesgerichtshof) states in its plenary votum (Plenarbeschluss) with regards to errors of
23 interdiction (Verbotsirrtum) it relates to this principle as 'an unconditional basis for all punishment'.
24 **This relates not only to criminal punishment but also for similar sanctions.** The Federal High
25 Court has also applied this principle to administrative offences (Ordnungswidrigkeiten) (Decisions of
26 the BVerfG vol. 9, p. 167 [169]. The statement '*nulla poena sine culpa*' is also relevant in the context
27 of section 890(1) ZPO" (emphasis mine).
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34 **3. Decisions of the BVerfG in connection with legislative omission**

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37 Some of the authors have complained that the legislator violates their basic rights because it
38 has failed to enact law which would enable them to adjudicate in a legal way the allocation of
39 guilt and perhaps achieve a formal rehabilitation.
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43 With its order of 14/12/2008¹³ the BVerfG has ruled not to accept several complaints for
44 decision reasoning that the act requested by the applicants would not be compliant with the
45 constitutional law. The ruling to exclude rehabilitation in connection with the Land and
46 Economic reform to be in line with constitutional law because the Soviet Union during the
47 negotiations about re-unification of Germany seemed to have insisted - according to the
48 understanding of the Federal Government - that the outcome of the measures should legally
49 not be revised. The legislator took this as a no go for any rehabilitation at all. The BVerfG
50 also said that the unlawfully understood expropriations were demonstrated to the people
51 concerned by a compensation according to the Indemnification Act.
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59 **4. Decisions in connection with the Indemnification Act**

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1 The Indemnification Act was not qualified as a Rehabilitation Act by the legislator in spite of
2 the fact that the check of the individual circumstances (*“Würdigkeitspruefung”*) according to
3 section 1(4) basically achieves what a rehabilitation law should contain. A formal
4 rehabilitation implies a decision by the authorities, defined by the legislator, who should
5 waive the assignment of guilt. According to section 1(4) Indemnification Act the check of the
6 personal circumstances means only an incident check, without the character of a sentence.
7 Consequently the result of an individual check of circumstances can never suspend an
8 assignment of guilt. The above mentioned check does not replace a rehabilitation, not even a
9 political rehabilitation.
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11 The precondition for a political rehabilitation, requested by the persons concerned, consist of
12 a number of steps. Primarily, the selection criteria which were applicable in the past have to
13 be suspended. The first step is a legal rehabilitation as the consequence of a clear political
14 will. As a second step a political and social rehabilitation is mandatory because *“a*
15 *rehabilitation of which neither the people concerned nor the relevant Federal Ministry nor*
16 *the public know is not a rehabilitation”*.¹⁴ Positive decisions of some authorities for
17 compensation in which only a positive check of the personal circumstances of the persons
18 concerned are ascertained cannot be a rehabilitation because the assignment of guilt cannot be
19 declared null and void. We therefore in summary come to the conclusion that the
20 Indemnification Act cannot be qualified as a Rehabilitation Law, and it was not made as such,
21 even if in section 1(4) a check of personal circumstances is provided.
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34 **E. Admissibility of the Communication**

35 The communication is admissible. All available domestic remedies have been exhausted, as
36 explained in the context of the domestic law and its practise. Moreover, the reservations of the
37 Federal Republic of Germany to the application of the Optional Protocol do not bar the High
38 Commission from considering the communication.
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47 **I. As to the German Reservation**

48 Upon ratification of the Optional Protocol (OP) Germany entered the following reservation:
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51 “The Federal Republic of Germany formulates a reservation concerning article 5 paragraph 2 lit. (a)
52 to the effect that the competence of the Committee shall not apply to communications (a) which
53 have already been considered under another procedure of international investigation or settlement,
54 or (b) by means of which a violation of rights is reprimanded having its origin in events occurring
55 prior to the entry into force of the Optional Protocol for the Federal Republic of Germany, or (c) by
56 means of which a violation of article 26 of the ICCPR is reprimanded, if and insofar as the
57 reprimanded violation refers to rights other than those guaranteed under the aforementioned
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Covenant.”

1. No Consideration under Procedure of ECHR

Some of the authors have appealed to the ECHR without success. We refer to the decision of the Grand Chamber of 02/03/2005. In the authors' view this does not hinder the HCHR to examine this case. The authors are of the opinion that it is comparable with the case *Karakurt v. Austria*¹⁵. The HCHR has noted in that decision that the concept of the “*same matter*” within the meaning of article 5(2) (a) of the Optional Protocol must be understood as referring **to one and the same claim of the violation of a particular right concerning the same individual**¹⁶. In this case, the authors are advancing claims of discrimination relating to the right on an effective remedy (Article 2(3) (a) of the ICCPR) and to the right of protection of honour and reputation by unlawful attacks (Article 17(2) of the ICCPR), which were not, and indeed could not have been, made before the European organs. So the authors do not reprimand a discrimination against certain categories of persons on the ground of their property by excluding them from restitution. The main point is whether the authors or their legal predecessors, are discriminated against other victims of Stalinist or communist persecution by excluding them from any rehabilitation to avoid claims on restitution that are awarded to all rehabilitated persons or their heirs on the legal ground of section 1(7) of the Property Act.

2. Discrimination not Related to Denial of Property Rights

Therefore the authors maintain that the discrimination is not related to the circumstances of the confiscations but solely to the violation of honour and reputation as well as to the right on an effective remedy by excluding all victims of Stalinism from rehabilitation who have been victims of extra-judicial persecutions committed by German authorities such as Denazification, Land, and Sequestration Commissions during the Soviet occupation. Thus the right of equality before the law and the right on equal protection by the law is violated.

3. Invalidity of the German Reservation Regarding Article 26 ICCPR

In the alternative the authors maintain that the German reservation regarding Article 26 of the ICCPR, is invalid as it is particularly extensive and limits the scope of the Committee to a disproportionate extent. The reservation is incompatible with the object and purpose of the Optional Protocol, if not the Covenant itself, as it seeks to limit Germany's obligations under Article 26 of the ICCPR in a way inconsistent with the Committee's interpretation of that provision as a free-standing right. No reservation can be made to a substantive obligation

1 under the Covenant through the vehicle of the Optional Protocol¹⁷. The authors also recall that
2 the Committee had expressed regrets about Germany's reservation in its concluding
3 observations on the fourth periodic report of Germany. Furthermore it has to be stated that
4 Germany has no legitimate interest in upholding its reservation, after having signed Protocol
5 No. 12 to the European Convention, which contains a general prohibition of discrimination.
6 As a legal consequence the reservation is invalid, and the Committee is not precluded from
7 considering this claim under Article 26 of the ICCPR.
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II. Admissibility of the Communication “*ratione temporis*”

The communication is also admissible *ratione temporis*. It has to be stressed again in this context that the subject of this communication are not the sovereign measures of denazification against the authors’ legal predecessors taken by the German authorities during the Soviet occupation. The Commission is asked to examine the differentiations made by the German legislator after the German reunification by excluding the persons concerned from the scope of the implemented rehabilitation acts. These discriminating differentiations also violating honour and reputation of the authors and their legal predecessors clearly have been made place after the FOP had come into force.

F. Merits of the Communication in View of Article 17, 26, and 2 § 3 lit. a) and c)

Germany has violated the authors’ right to an effective remedy to enforce their claim on rehabilitation, combined with restitution according to section 1(7) of the Property Act. This right is violated, as the German legislator deliberately excludes the persons concerned from the scope of the Criminal Rehabilitation Act, although section 1(5) should be applicable for this group of Stalinist persecution, too. There is no other national remedy which would allow the authors to enforce rehabilitation to restore honour and reputation of the persons concerned in the meaning of Article 17 of the Covenant.

I. Violation of Article 17 of the Covenant in Connection with Article 26 of the Covenant by Denying any Claims on Rehabilitation

The persons concerned can just as rightfully claim a formal rehabilitation as other victims to rehabilitate their honour and reputation. In Article 17 of the Unification Treaty, both German States have stated their intention to implement Laws without delay as a basis to enable the rehabilitation for all persons who became victims of a politically motivated persecution. The rehabilitation of these victims of the unjust system governed by the Socialist Unity Party of Germany should be made possible by an adequate compensation.

With this commitment in the Unification Treaty, the Federal Republic has fulfilled its constitutional obligation. Based on Article 1(1) 2nd sentence of the Basic Law, she is not only obliged to forbear all measures which could violate human worthiness caused by courts or administrative authorities which violated the basic law. Moreover, the state is obliged to defend its citizens against violations of human worthiness such as caused, e.g. by foreign states. Germany therefore should be obliged to repeal and to indemnify those still lasting violations of honour and reputation by use of legally binding measures to check such

1 assignments of guilt which formed the legal basis of their political persecution. If the formal
2 rehabilitation for a certain group of people is denied, the Federal Republic of Germany
3 violates their honour and reputation and discriminates them against other groups of the
4 population who were victims of comparable unjustness but who have been legally and
5 formally rehabilitated.
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10 The problem of examining assignments of guilt arose in connection with procedures of de-
11 nazification after the Foundation of the Federal Republic of Germany. After the Basic Law
12 came into force on 23/05/1949, the Federal Diet (Bundestag) and the Federal States (Länder)
13 agreed that rules set by German authorities would be necessary for the completion of the de-
14 nazification. These institutions held that in numerous cases the civilian courts
15 (Spruchkammern) had based the assignments of guilt on the fact that the persons belonged to
16 certain categories of the society. The procedures of examination should guarantee that those
17 persons had to be rehabilitated unless the courts were able to assert concrete criminal offences
18 which allowed them to assign them to the group of Major Offenders or Activists, Militants,
19 and Profiteers, or Incriminated Persons. This was required in accordance with the Basic Law,
20 because in numerous cases the assignments of guilt were incompatible with fundamental
21 principles.
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30 Contrary to the principle "*in dubio pro reo*", the persons concerned had to prove that they as
31 individuals were blameless, or were only guilty to a minor extent. On this basis, they could
32 then be assigned to a lower category. The necessity of bringing the denazification procedures
33 to an end and, moreover, checking the outcome of denazification adjudicated by civilian
34 courts (Spruchkammern) needing legal examination based on standards of legality was
35 understood as an fundamental rule of the Basic Law. The civilian courts had assigned the
36 persons concerned in category 1 (Major Offenders) and category 2 (Activists, Profiteers,
37 Militarists and Incriminated Persons). This went along with sometimes severe reductions of
38 Human Rights. The first Chancellor of the Federal Republic of Germany, Konrad Adenauer
39 said in his Declaration of Government of 20/09/1949¹⁸:
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46 "Denazification has caused a great deal of misfortune, and grief for many. The true culprits of the
47 crimes committed during the Nazi period and during the war should be punished with all severity.
48 But, beyond that, we should no longer distinguish between two classes of Germans, those who are
49 politically correct and those who are politically incorrect. This distinction should disappear soon"
50 (emphasis mine).
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54 Germany consequently does not accept that persons, just because they were considered
55 politically "*incorrect*" were subjected to sanctions as severe as those rightfully applied only
56 to persons who have been found guilty of serious and individually committed crimes.
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2 Therefore laws were launched in the Federal States of the former Western occupation zones
3 of the FRG which enabled some groups to have the assignments of guilt against
4 them reassessed within a given period - such as those included into the categories of Major
5 Offenders or Militants, Activists, Profiteers or Incriminated Persons. If the assessment was
6 found to have been unlawful, and the persons concerned did not belong into one of these
7 categories, the decision of the civilian courts was repealed. Assets already taken were given
8 back by an act of administration. The FRG felt obliged to take these measures because the
9 frequently unlawful decisions of the civilian courts violated the human worthiness of the
10 people concerned and discriminated against them.
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16 Hence already at the time of the foundation of the FRG the legislator felt obliged to act in
17 order to fulfil the Basic (i.e. Constitutional) Law. When a violation of human worthiness has
18 been committed by German administrative authorities who at the time were not submitted to
19 the Basic Law, there is no room for administrative discretions. If the legislator were given a
20 choice between a restitution of human worthiness violated by the Land or Sequestration
21 Commissions on the one hand and legal security on the other, the consequence would violate
22 the right of the authors granted by Article 2(1) in connection with Article 1(1) 2nd sentence by
23 Basic Law. This means in final consequence that the authors were obliged to accept the fact
24 that the socially and ethically negative judgement on them would be perpetuated in order to
25 deny them an adequate compensation as stipulated in Article 17 of the Unification Treaty.
26 Without a formal rehabilitation, the condition for such demands would not be fulfilled.
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34 An adequate compensation must be measured against the restitution aimed at. This also
35 applies to the victims of serious violations of human rights committed during the Soviet
36 occupation by German authorities. This was stated by the Federal Constitutional Law in its
37 judgement of 23/11/1999¹⁹ by comparing the political persecutions during the Nazi Regime to
38 those committed during the Soviet occupation. The Court has underlined that no distinction
39 should be made during which dictatorial period violations of humans rights were committed.
40 The wording is as follows:
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46 “[...] the legal restitution of unjust measures during the Nazi regime is a very important aim for
47 society. It must be understood that the illegal confiscation of assets was only one part of much
48 greater injustice. The victims of National Socialism in many cases have not only lost assets and
49 belongings, but also experienced personal persecution and lost their lives. As the GDR has denied
50 any compensation of wealth over decades, the restitution to victims of National Socialism has been
51 a specially priority aim for the corporate good of mankind and its central demand for justice.
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55 Likewise, no other measures could be expected for those cases in which the Soviet Occupation
56 Forces or Courts or Authorities of the GDR committed grave violations of human rights and
57 confiscated assets and valuables in this context. In these cases too, the I has acknowledged the claim
58 of these victims and their desire for restitution to be a priority for the corporate good of society.”
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1 We have to underline that consequently not only victims of political judicial decisions but
2 also those persons who were politically persecuted by other extra-judicial state authorities
3 outside the courts are to receive rehabilitation as well as restitution.
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7 8 **II. Subject of a Necessary Re-evaluation in a Procedure of** 9 **Rehabilitation** 10

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13 The application of formal procedures of rehabilitation is crucial, as this is the only way in
14 which people can be distinguished between those who were only victims of political
15 persecution and others who were convicted as guilty by German authorities in the Soviet
16 Occupation Zone. Only for this latter group, the law demanded confiscation of their wealth
17 and assets as a contribution towards compensation for the damage done by the Third Reich,
18 namely by war and crimes against humanity. These measures were in accordance with the
19 demands of all the occupation forces.
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25 The authors point out that not all people subjected to measures of the Land or Sequestration
26 Commissions had been victims of grave violation of human rights. One could e.g. imagine
27 that farmers or factory-owners starved or maltreated their POWs or civil workers. Some
28 Major War Criminals such as e.g. Goering and von Ribbentrop who were sentenced to death
29 were incidentally also victims of the Land Reform. It was surely legitimate to confiscate their
30 assets as a penal measure for their individually committed serious crimes. It would have been
31 justified to confiscate their wealth, but clearly not on the grounds that they were large-scale
32 landowners. In order to verify the assignments of guilt and their legality through the German
33 Commissions, rehabilitation procedures have to be implemented, since otherwise criminals
34 will be treated just like others who are free of guilt.
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42 The authors or their legal predecessors stress that neither they nor their legal predecessors
43 committed any crimes which could justify their expulsion from of their homes under threat of
44 death and the complete dispossession of all their fortunes. Some of them were put into
45 concentration camps or killed while their wealth was confiscated as a contribution to
46 compensate for damages committed by Nazi Germany. Therefore, in restitution of their
47 honour and reputation they demand the complete restoration of their rights which can only be
48 achieved by a rehabilitation, denied to them until today.
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54 Based on the fact that sovereign measures aimed at "*Liberation the German People from*
55 *National Socialism and Militarism*" (legal definition in Article 139 of the Basic Law) which
56 cannot be subject of any revision according to Article 143(3) of the Basic Law they could not
57 achieve rehabilitation due to the fact that the authors and their legal predecessors were victims
58 of confiscations without compensation, as these confiscations had been justified as being
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1 contributions by seriously guilty persons to compensate for the damage done by the Nazi
2 Regime.
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6 Consequently, a rehabilitation does not follow automatically from the fact that those people
7 had been victims of the Land and Economic Reform. Also in the Western Zones it had been
8 provided that the wealth of the Major Offenders, Activists, Militants, Profiteers, or
9 Incriminated Persons was to be confiscated to compensate for the damage done by the Nazi
10 Regime. Rehabilitation would have to be based on the assignments of guilt on which the
11 degree of the penal measure were founded. This is how law was practised in the former
12 Western Occupation Zones. Consequently, legal examination must be applied by the same
13 criteria as in the former FRG, now that the GDR has become part of her .
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19 In case that a legal investigation should find that a former assignment of guilt was
20 unsubstantiated, it is mandatory that the person concerned is to be formally rehabilitated. All
21 subsequent measures of repression have to be repealed, and claims of restitution according to
22 section 1(7) of the Property Act to be granted.
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28 **III. No rehabilitation as a Result of a Positive Examination of** 29 **Worthiness within the Scope of Section 1(4) of the Indemnification** 30 **Act** 31 32 33

34 Contrary to publications by German institutions, the Indemnification Act is not a
35 Rehabilitation Law which fulfils the requirements for rehabilitation as derived from Article 17
36 of the Unification Treaty. It is merely an Indemnification Law. Such indemnification
37 originally concerned only the compensation for damages of any right which was perpetrated
38 under National Socialist rule. Legislators then enlarged the scope of the Law to include
39 property damages within its territory resulting from expropriations under Communist
40 dictatorship, illegal and unacceptable to any state under the rule of law. Consequently, the
41 legislators specifically declared that *“the Indemnification Law only concerns property*
42 *matters, and does not apply to rehabilitation (for injustice suffered personally)²⁰.”*
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49 The Indemnification Act relates immediately to section 1(8) lit. a 1st half sentence of the
50 Property Act which does not aim for rehabilitation of the people concerned, therefore the
51 Indemnification Act cannot be understood as a rehabilitation Law in spite of the fact that an
52 evaluation of worthiness prescribed by section 1(4) is provided. This evaluation contains
53 observations which should be the subject of a proper rehabilitation. A formal rehabilitation
54 requires a contradictory decision of the various bodies, which are determined by law which
55 would lead to lifting the suggestion of guilt. Section 1(4) of the Indemnification Act simply
56 requires an evaluation of facts the result of which cannot be subject of a sentence. Nor can the
57 result of an evaluation of worthiness lead to repeal the assignments of guilt. Consequently, an
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1 evaluation of worthiness cannot be a rehabilitation especially not for measures of political
2 nature.
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6 A political rehabilitation required by the authors is preceded by several steps. Primarily, the
7 criteria used in the past have to be repealed. The first step is a legal rehabilitation, the second
8 step requires a political and social rehabilitation, all based on clear political aims. A
9 rehabilitation of which neither the dishonoured, punished, mistreated persons are informed,
10 nor the relevant ministry of the Federal Republic of Germany, let alone the public, is worth
11 nothing.
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16 The Federal Constitutional Court does not recognise the Indemnification Act as a
17 rehabilitation act either. It follows from its order of 14/12/2008 that the Soviet preconditions
18 for their agreement to the reunification of Germany forbade **a formal rehabilitation of the**
19 **victims**. The Federal Constitutional Court declared this preclusion of rehabilitation to be
20 consistent with the constitution, since during the conference on German reunification, the
21 Soviet Union insisted on this point not to revise the lawfulness of the Reform at the decisive
22 instigation of the Federal German government. The legislator had comprehensibly been able
23 to consider an impediment to any rehabilitation²¹. The fact that the said expropriations
24 constitute a deplorable injustice to the victims is expressed through their compensation by the
25 Indemnification Act²².
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33 Since the expropriations as such cannot be the object of rehabilitation, but rather the
34 assignments of guilt preceding them, the Indemnification Act is concerned with a different
35 problem. The expropriations are a despicable injustice because they deprived the victims
36 completely of their means of subsistence, consciously exposing them to destitution. In a state
37 under the rule of law, it is unacceptable to destroy someone's entire economic basis while
38 refusing them a minimal means of subsistence. Besides, the selection criteria were not
39 conform with the Occupation Law, particularly Directive № 38 of the Allied Control Council
40 in Germany.
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46 For the Land and Sequester Commissions not only expropriated assets that were allowed to be
47 confiscated, they also took away the minimal assets necessary for dignified survival of the
48 victims and their families. Yet the Directive № 38 provided that even "*major offenders*",
49 when rightfully subjected to confiscation of their assets, must be allowed to keep a minimum
50 for subsistence according to their family status and their ability to work (Article VIII № II lit.
51 b). When mainly "*incriminated persons*" were concerned, only part of their assets could be
52 confiscated, particularly movable property, leaving them their articles for everyday life
53 (Article IX, № 2).
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60 Since the German Commissions did not comply with these regulations, particularly by not
61 differentiating between "*Major Offenders*" and "*Incriminated Persons*", and by
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expropriating all and sundry of their entire property, including their minimal means of subsistence, these expropriations are to be considered a condemnable injustice, subject to indemnification, regardless of the criteria of selection.

The expropriations infringe on the human rights and worthiness of the victims, particularly because of their excessiveness. Hence the Federal Constitutional Court declared the said expropriations to be a grave injustice, not in line with the values set out by the Basic Law by the way they were implemented, including their side effects and extent of the confiscations. This injustice has to be rectified and compensated by the Indemnification Act²³.

The Indemnification Act just concerns the correction of the unacceptable extent of the property confiscations confirmed by the Federal Constitutional Court insofar as, by indemnifying the victims and their heirs to the extent of the values which should have been left to them if the Land and Sequester Commissions had acted according to the standards of a lawful state, and within the limits set out in the Directive No 38. In this, a compensation strictly in accordance with the Equalisation of Burdens Act (Lastenausgleichsgesetz) has to be implemented.

IV. Soviet Precondition no Impediment for Rehabilitation Regarding the Assignments of Guilt in the Individual Case

Furthermore, it is no question that whether on the grounds of whatever preconditions set down by the USSR the German legislator is prohibited to pass any law which, analogous to those in the Federal States of former Western Occupation Zones, is to reassess the assignments of guilt made during denazification, simply because the verdicts of guilt were afterwards formally implemented by the Land and Economic Reform Commissions.

In no way can any such opinion be drawn from Article 143(3) of the Basic Law, or Article 41 of the Unification Treaty, because their conformance with the Constitution is chiefly based on the argument that these norms comply with a Soviet precondition to the Reunification of Germany. Yet these norms only apply to the Soviet precondition that **confiscated property may not be given back simply because it was at the time expropriated without any recompense. And also, that the victims may not be rehabilitated simply because they were subjected to the Land and Economic Reform.**

Both these actions differ from the expropriations without recompense after the GDR was founded insofar as these actions were intended, amongst other aims, to be an atonement to liberate the German people from National Socialism and Militarism. Comparable measures were ordered in the Federal States of the former Western Occupation Zones including West Berlin. The Land Reform regulations of the Federal States of the Soviet Occupation Zone

1 were not much different from e.g. the Law for the Acquisition of Land for Buildings, and for
2 Land Reform of the Free State of Bavaria of 18/09/1946²⁴.
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6 This Law defined in its Article II № 2 that for settlements and land reform assets and land
7 have to be provided from former members of the NSDAP and their organisations **as long as**
8 **their confiscation was legally confirmed after application of the Law for Liberation from**
9 **National Socialism and Militarism** (*Befreiungsgesetz*) by the civilian courts handling
10 denazification (*Spruchkammern*).
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15 The only relevant difference was that in the Soviet Occupation Zone a legal examination of
16 the assignments of guilt made by the Land or Sequester Commissions has never taken place.
17 The victims were therefore denied a legal judge as stipulated in the Proclamation № 3 of the
18 Allied Control Council dated 20/10/1945. If an exclusion from rehabilitation should have
19 been requested it could only be interpreted in a way that the persons subjected to
20 denazification procedures formally in the context of the land and economic reform could not
21 have been rehabilitated altogether because the rules at that time would be unacceptable today
22 on the basis of present legality. An exclusion from rehabilitation cannot be made valid on the
23 fact that a check of individual justice has not taken place. This would lead to a privileged
24 status of the Soviet Occupational Power compared to the Western Occupational Powers. Such
25 a claim has not been made by the USSR as understood correctly by the Federal Government
26 and reflected in Sect. 1(7) and (8) lit.a 2nd half sentence of the Property Act.
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35 If one had aimed for a general exclusion from rehabilitation for all possible measures of
36 German Authorities under Soviet Occupation, sect. 1(8) lit. a 2nd half sentence of the Property
37 Act which has been added later would be meaningless. Such an exclusion would violate the
38 human worthiness of the unjustly-persecuted victims in the framework of the Land and
39 Economic Reforms, not acceptable at all in the light of the Article 1(1) 2nd sentence of the
40 Basic Law. This text stipulates that confiscations based on Occupational Law allow a
41 restitution after a proper rehabilitation. This implies however the conclusion that
42 rehabilitations could be allowed especially if based on illegal persecutions especially in the
43 formal framework of measures for denazification and demilitarization as implemented by the
44 Allies during the time of Occupation.
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52 If a general exclusion of rehabilitating measures were to be assumed, then long sections of the
53 “*Land Reform Order II*” of the Federal Constitutional Court dated from 18/04/1996²⁵ would
54 lose their basis. Hereby, its context with the Land and Economic Reform, which is *per se*
55 precluded from rehabilitation, does not deny the possibility of lifting denazification decisions
56 made and carried out under the formal guise of the Land and Economic Reform, for in these
57 cases of eliminating assignments of guilt raised in a way that does not comply with the rules
58 of a state under the rule of law, the persons concerned did not suffer only the loss of their
59 assets but “*a different kind of offence*”.
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3 More particularly, assuming a generalised exclusion was intended, the verdict of the BVerfG
4 of 23/11/1999²⁶ would not make sense. We quote - repeatedly - the decisive text:
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7 „Nothing else can count for those cases in which the Soviet Occupation Power, or Courts and
8 Administrations of the GDR committed serious breaches of human rights, when in consequence
9 wealth assets were confiscated. In these cases too, the legislator might rightly consider the victims'
10 claim to restitution a priority in the interest of public welfare.”
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14 These explanations concern section 1(7) of the Property Act and Section 1(8) lit. a 2nd half
15 sentence of the Property Act. Considering from the aforesaid, that Land and Economic
16 Reform measures were not in themselves always serious breaches of human rights, but could,
17 as legal instruments of denazification, be acceptable penalties in a state under the rule of law,
18 too. Hence, the persecution of victims by acts of expropriation does not “*per se*” constitute a
19 breach of human rights. But when and if accusations of guilt were construed against victims
20 under the formal guise of the Land and Economic Reform, yet in a manner not acceptable in a
21 state under the rule of law as given in the Preamble of the Land Reform Regulations, then
22 their human rights were breached “*sub modo*”.
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29 We therefore conclude that expropriations made according to the Land and Economic Reform
30 cannot as such be worthy of, and qualified for rehabilitation, because they were simply an
31 administrative act. Only the manner of accusations raised against victims of such
32 expropriation acts qualify.
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37 Now that we know the main wording of the statement made by the erstwhile German
38 representative Kastrup during the hearing before the Federal Constitutional Court on
39 21/01/1991 it is established that the USSR wished the period of its occupation power to be
40 understood as such, aimed at denazification, demilitarization, and democratising of Germany.
41 The measures as such were not to be allowed to be queried²⁷. This condition had also been
42 ruled a pre-requisite by the Western Allies when they demanded that their measures for
43 demilitarization and de-nazification be exempt from any revising, which is why Article 139 of
44 the Basic Law had to be inserted into the constitution. In order to solve contradictions
45 between this norm and fundamental principles of states under the rule of law there was a
46 given possibility of examining individual cases to ascertain whether a victim had been guilty
47 of such personal deeds that he was rightly considered one of the Major Offenders or
48 Militarists, Activists, Profiteers and Incriminated Persons.
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57 Checking the assignments of guilt made in individual cases during denazification will in no
58 way cast doubt on the Land and Economic Reform having been suitable instruments for the
59 denazification mandatory by international law. Therefore, Soviet preconditions should permit
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1 checking of accusations in individual cases, as the former USSR Ambassador Terechov
2 outlined in writing to pharmaceutical entrepreneur Dr. Udo Madaus as follows²⁸:
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5 “You understand correctly that the Soviet side’s main objective during the 2+4-Conferences
6 concerning questions of not permitting revising of expropriations based on Occupation Force Law
7 and Occupation Power (1945 to 1949) was to ensure that neither any revision, let alone
8 indemnification of Nazi crimes would be made possible by the Treaty on Final Regulations concerning
9 Germany. It may be assumed that some irregularities may have occurred, but every case has to be
10 examined with care. **This possibility is, of course, not precluded** (emphasis mine).”
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15 The former Soviet Vice Minister for Foreign Affairs, Julij Kvizinskij, made the following
16 statement to Dr. Madaus in the presence of witnesses on 29/10/1993 in Cologne²⁹:
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19 “We, **just as the other occupation powers**, wanted indemnity (emphasis mine).”
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22 This declared will of the USSR representatives was quite correctly understood by the Federal
23 Government. The Federal Ministry of Justice, during the procedure 1 BvR 1452/90 e.g.
24 declared as follows³⁰:
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28 The irreversibility “*of the expropriations*“ between 1945 and 1949 is stated to have been a
29 precondition not open to debate. Given this conspicuously imprecise wording, the question
30 must be permitted whether in the opinion of the Federal Government the USSR only wanted
31 their own legal acts and legal regulations exempt from revision by the German authorities
32 assigned to the task, or whether every single measure carried out at the time by German
33 authorities was to be excluded from revision.
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38 But the latter is not the case, as may be concluded from further details by the Federal
39 Government: the USSR - the text continues - as one of the victorious Nations of World War
40 II particularly because of the massive losses it suffered in conquering Nazi Germany was
41 especially interested not to allow the measures taken in their Occupation Zone towards de-
42 nazification, de-militarization und democratising Germany to later become open to alterations
43 by conquered Germany. During the negotiations which led to the Two Plus Four Treaty, the
44 Soviet Union from the beginning argued with great emphasis for this point of view.
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50 But since the USSR only occasionally carried out exceptional single cases, and generally
51 restricted its actions to providing the laws and regulations they considered necessary for de-
52 nazification, demilitarization, the word “*measures*” can only be taken to mean abstract acts
53 of jurisdiction. It is elucidating when the Federal Government further differentiates as
54 follows: According to the opinion the Soviet Union always voiced, anyone who returned
55 property to former owners **simply because it was expropriated at that time without any**
56 **compensation, simultaneously denied legitimacy of the expropriations by the occupation**
57 **powers.**
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3 This makes sense because otherwise the legal aim - which led to the confiscation of wealth
4 having been to liberate the German People from "*National Socialism and Militarism*" -
5 would be null and void. This means that persons who were guilty of heavy crimes during the
6 Nazi period and have been punished by confiscations: These people should not be
7 rehabilitated only because of the non-convertible confiscations and these measures also were
8 undertaken for political aims. It is not excluded that all individual cases should be
9 reconsidered whether these measures were based on legal criteria or served Stalinist
10 persecutions. The Soviet occupational power was only entitled to re-establish law and order
11 by denazification and demilitarization according to Article 43 of the The Hague Covenant on
12 Laws and Customs of War on Land of July 29th 1899 and the Potsdam Agreement. It was
13 however forbidden for the Occupational Power to establish a new social order in their zone.
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21 It would however contradict the declared will of the USSR having just rejected Stalinism to
22 insist on the other hand to maintain all the typical measures of the class struggle during that
23 period. We are convinced that the comments of the FRG are right albeit made in an obviously
24 unclear way.
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29 **V. Summary**

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33 It follows that the Federal Republic of Germany is violating both honour and reputation of the
34 victims by wittingly and consciously excluding a defined group of people (the victims of the
35 Land and Economic Reform carried out under Soviet Occupation) from any claims on
36 rehabilitation, simply to avoid any claims on restitution. And yet Germany acknowledges its
37 general obligation to rehabilitate all victims of political persecution, which includes the
38 innocent victims of measures taken to "*purge the German people from National Socialism*
39 *and militarism*". This was, moreover, recognised law in the original German Federal States.
40 The refusal to lift unjust assignments of guilt made by the Commissions means that the social-
41 ethical judgments of worthlessness they conferred is perpetuated. This constitutes a breach of
42 Article 17 of the Covenant.
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50 **G. Discrimination Against Certain Groups of Comparably Persecuted** 51 **Persons (Violation of Article 26 ICCPR Solely)**

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55 Germany has violated the prohibition of discrimination as in Article 26 of the Covenant
56 insofar, as the victims of serious violations of human rights in the GDR, differently from all
57 other groups, having been victims of comparable political persecutions, were excluded from
58 any formal rehabilitation for which Germany cannot give a viable reason. A Soviet
59 precondition does not exist, as explained above. The Soviet Government wanted to make clear
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1 that nobody being a victim of measures on grounds of “*liberation of the German People from*
2 *National Socialism and Militarism*” could make claims on restitution without a prior proper
3 check of the assignments of guilt (“*no restitution without prior rehabilitation*”).
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7 Hereinafter the comments to comparable groups of persons and the national legal situation:
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10 11 **I. Victims of National Socialism**

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15 Persons who were persecuted during the Nazi Regime and whose material wealth has been
16 confiscated do not need rehabilitation. According to the legal conviction of the FRG, the Nazi
17 System as such was a criminal regime. Everybody who lost his wealth during that time in the
18 area of the former GDR has the right to restitution according to Section 1(6) of the Property
19 Act. In these cases, it is refutably assumed that there is a connection between confiscation and
20 political persecution which has to be rejected by the German authorities.
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25 It cannot be questioned that such a provision of a straightforward presumption should not be
26 made for the victims of the Land and Economic Reform during the Soviet Occupation. These
27 measures were also aimed at an expropriation of the Major Offenders and the Incriminated
28 Persons to compensate for all the damages incurred by Germany. This group of victims
29 requires preceding rehabilitation procedures, in contrast to the victims of the Nazi period.
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33 34 35 **II. Victims of Judgments by Soviet Military Tribunals**

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39 Since these were foreign acts, Germany was, for international legal reasons, not entitled to
40 revise these sentences and to rehabilitate the victims. This is the task of the Russian Chief
41 Prosecutor. If his decision for a rehabilitation includes the confiscation of assets, and if it can
42 be proven that the Soviet authorities themselves executed the judgments by expropriating the
43 assets concerned, acts of restitution would be covered by section 1(7) of the Property Act.
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47 48 49 **III. Victims of Decisions by German Criminal Courts (Soviet** 50 **Occupation Zone and GDR)**

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54 Those who were victims of judgments by German Courts that were indiscriminate or serving
55 political persecution, may apply for rehabilitation according to section 1(1) of the Criminal
56 Rehabilitation Act. If those arbitrary measures included the confiscation of their assets, they
57 may also claim annulment of the expropriation. Thus, claims to restitution are founded in
58 Section 3(2) of the Criminal Rehabilitation Act combined with Section 1(7) of the Property
59 Act.
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IV. Victims of Political Persecution under GDR Authorities

After the end of occupation, it was no longer permitted to issue assignments of guilt and order expropriations according to the Land and Sequester Commissions. Ongoing denazification were exclusively carried on by German Criminal Courts. Their verdicts qualify for rehabilitation (see above).

In many cases, GDR authorities politically persecuted unwanted persons, and systematically destroyed their economic basis. These victims of administrative persecution fall into the scope of the Administrative Rehabilitation Act. If the expropriation of assets was ordered using GDR administrative regulations, arbitrarily or with the aim of political persecution, this shall be lifted by the rehabilitation administration in charge.

The lifting of such administrative actions constitutes restitution claims according to Section 7(1), 1st Sentence of the Administrative Rehabilitation Act in connection with Section 1(7) of the Property Act.

V. Victims of Denazification Measures in the Original Federal States after Foundation of the FRG

We have already pointed out that victims of decisions of Civilian Courts which have sentenced the persons concerned as Major Offenders and Nazi Activists, Militarists, and Profiteers, or Incriminated Persons were enabled to have examined the assignments of guilt on legal grounds after the foundation of the Federal Republic of Germany. For that reason, the parliaments of the original Federal States have enacted Rehabilitation Law. In case of a suspension of the assignments of guilt confiscated property, so long as it was still available, was returned.

VI. Victims of Denazification Measures During the Soviet Occupation Period

This particular group of persons is precluded from any kind of rehabilitation. Though an assessment of qualification be made under section 1(4) of the Indemnification Act, enabling the German authorities to verify the accusations, they are *not* empowered to formally lift any verdicts and thereby rehabilitate the so called culprits. Instead of claims for restitution, these persons shall receive a recompense far below the actual value of the property, and explicitly only because a state under the rule of law owes some kind of recompense. The reason given

1 being that whatever injustice was involved must be condemned, yet may not, with regard to
2 the alleged Soviet preconditions, be indemnified by restitution.
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7 **H. Only Hypothetically: Violation of the Right on Equality before the** 8 **Law (Article 26 of the Covenant) by Former USSR and Russia** 9

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11 The Government of the FRG and consequently also the German Courts argue that only
12 because of conditions set by the former USSR to agree to the unification of Germany the
13 victims of the land and economic reform during the Soviet occupation are excluded from
14 rehabilitation, because this could be understood as a suggestion of injustice against the former
15 USSR.
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21 In opposition to this, we are of the opinion that this suggestion has been made knowingly and
22 not according to the truth. As mentioned above the USSR has only demanded to be
23 considered legally equal to the measures as an occupation power with the Western Powers.
24 This means that the confiscations cannot be revised because being subject to no compensation
25 or because they had the purpose of "*cleansing of the German people from National Socialism*
26 *and Militarism*". As mentioned above, the former ambassador of the USSR in Germany,
27 Terechov, has stated in writing to Udo Madaus, a pharmaceutical entrepreneur, that individual
28 cases could be revised. One could also assume that the measures at that time were not legal. It
29 would however be unacceptable if a restitution would be done without a prior rehabilitation.
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36 If Russia as the successor of the former USSR confirms these facts, the suggestion of a
37 discrimination could not be kept upright. If however Russia would put up the condition that
38 also the decisions of the former German Land and Sequestration Commissions could not be
39 revised by German Courts, Russia would in collusive collaboration with Germany
40 discriminate this particular group of victims against other victims of persecutions in both
41 dictatorial periods based on socially unequal treatment.
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46 According to the law of the RFR there is a rehabilitation provided if the persons concerned
47 were subjected to war crimes or other political offences under the Nazi Regime. If the Soviet
48 Government would have insisted that German citizens who were accordingly politically
49 persecuted could not have been rehabilitated: In this case a discrimination could have taken
50 place by putting pressure on the Government of the FRG and the former GDR. Such a
51 precondition could never have been accepted by Germany because such a regulation would be
52 null and void pursuant to Article 53 of the Vienna Convention on the Law of Treaties.
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58 Additionally the following was implemented by the High Soviet of the USSR, dated
59 16/01/1989 regarding "*additional measures to reestablish justice towards victims of forced*
60 *legal acts in the 30, 40, and beginning of the fifties*":
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3 Illegal acts of special repressive authorities in the past have been declared null and void by the
4 High Soviet. The decisions made by the same organs out of courts which had not been
5 abolished at the moment of this law will be declared void. This ruling however does not
6 apply to main Nazi or War criminals. Such persons had not been rehabilitated automatically
7 but needed a legal revision of the suggestions of guilt.
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11 By law № 1428 of the Russian Federative Socialist Soviet Republic (RSFSR) the High
12 Soviet has stated regarding "*rehabilitation of victims of political repressions*" that in the
13 years of the Soviet rule millions of people have been victims of the totalitarian regime having
14 been persecuted because of political, religious, social, national, and other reasons. The High
15 Soviet declared the terror over many years and the mass persecutions of their own people as
16 not being in line with the idea of law and justice. It expressed to these victims and their
17 relatives its deepest sympathy and the assurance to strive for Law and Justice in the future.
18 The aim of this law is the rehabilitation of all victims of political oppressions towards the
19 people concerned in the area of the RSFSR after October 25th (November 7th) 1917
20 consequently leading to a restitution of the civil rights, the removal of ongoing results of
21 persecutions, and to secure an adequate compensation of the material and moral damage.
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30 Not only court decisions but also measures of authorities which acted quasi as courts and were
31 only in charge of administrative measures can be subject of a decision of rehabilitation. These
32 special authorities of repression have caused repressive acts motivated by political aims e.g. in
33 the form of life or freedom of movement restrictions, resettlement, banning or expulsions
34 from the country. Targets of these measures were class-enemies or otherwise out of social,
35 national, religious, and other reasons declared as enemies of the political order. According to
36 art 12 of this act following a rehabilitation provides the reinstatement of social and civil rights
37 and military and other titles.
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43 Further improvements of rehabilitation measures have been implemented by laws of
44 22/12/1992 and 03/09/1993 of the Russian Federation.
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47 Even under the assumption that the USSR had demanded a general exclusion of a
48 rehabilitation for this relevant group of victims, and the Government of the FRG would have
49 accepted this without violating the prohibition of discrimination according to Article 26 of the
50 Covenant: This pre-condition could by no means justify the exclusion from every form of
51 rehabilitation.
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57 By the Act of 22/12/1992 the Russian Federation has made it quite clear that the rehabilitation
58 of foreign citizens should be executed by the relevant and interested states. It relates to
59 persons who had been persecuted by USSR court judgments or quasi court orders outside of
60 the USSR borders, based on deeds against the interest of the United Nations (which means
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1 that the persons concerned seriously violated the Human Rights Charter of 10th December
2 1948). This matters consequently: The USSR left it to the interested States – here the Federal
3 Government of Germany – to legislate the rehabilitation of their own citizens in these cases.
4 This applies also to repressive cases which have been adjudicated by Russian Courts or other
5 administrative bodies.
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10 It is obvious at the latest that based on the Act of the Russian Federation regarding the
11 rehabilitation of victims of political repression of 03/09/1993 that the Russian Federation
12 grants similar victims, having been subjected to political repression not only a rehabilitation
13 but also a compensation for expropriated assets or an adequate compensation.
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18 If the Russian Federation allows such an opportunity to those victims of Soviet special
19 repression authorities the FRG has to assume that the Russian Federation would not object if
20 those victims under the responsibility of the former USSR would have adequate legal means.
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24 It is interesting that the Russian Federation in the mentioned Act of 03/09/1993 has legislated
25 a rehabilitation for all measures of political repression independently of their legal form,
26 according to which the measures were executed.
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30 According to Article 1 of this Act, several measures were acknowledged as political
31 repressions which have been executed by the state for political reasons, e.g. by denial or
32 restrictions of human rights and freedom of people who belonged to certain social classes. It
33 is irrelevant whether these measures were court decisions or decisions of administrative
34 bodies acting similar to courts or other administrative acts by executive authorities or persons,
35 entitled to act accordingly, or social organisations resp. their organs, entitled to decide
36 administrative acts. It is therefore a wide-reaching and general rehabilitation law which is
37 applicable to all groups of the Stalinist persecutions. Consequently, there is no denial of
38 rehabilitation in these cases.
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45 According to Article 2, this act is applicable also to foreign citizens, limited however only
46 insofar, as they had been persecuted in a repressive way by a judgment resp. by courts or
47 other extra-judicial authorities of the USSR outside of her territory. These judgments were
48 based on the suggestion of acts against USSR citizens or against interests of their State and
49 led to repressive persecutions because they were blamed as class enemies.
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54 According to Article 3 lit. f, also those persons are rehabilitated who were branded as socially
55 dangerous for political motives. They were quite often victims by denial of freedom and
56 banned from or to a certain place, this without accusation of concrete crimes by decisions of
57 courts or extra-judicial authorities. Insofar, this can be compared to the group of victims of
58 the land and economic reform who were not allowed to stay in their home-districts and often
59 were detained in concentration camps far away.
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3 According to Article 16 – 1, rehabilitated persons will be awarded claims for restitution, or for
4 a full compensation of assets confiscated or lost in connection with these repressions.
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7 Hence there is no doubt that the Russian Federation has provided a means of rehabilitation for
8 those persons who had been persecuted by the repressive or special authorities of the former
9 USSR in her territory. Regarding the property law they even provide for restitution or an
10 adequate compensation.
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14 Since the authors do demand nothing else, the Soviet precondition should be void - if it ever
15 would have existed with the consequences the FRG asserts -. In this case, it would violate the
16 prohibition of discrimination according to Art 26 of the Covenant if the Russian Federation
17 would still today insist that Germany denies any rehabilitation of their citizens having been
18 victims of political extra-judicial persecution by German authorities.
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31 ¹ First Optional Protocol to the International Covenant on Civil and Political Rights of 16 December 1966, entry
32 into force in Germany on 25 November 1993, in Russia on 1 January 1992

33 ² Report of the Tripartite Conference of Berlin (Potsdam Declaration) of 2 August 1945; German version in
34 Rauschnig (ed.), *Rechtsstellung Deutschlands*, 2nd ed., 1989, no. 6, p. 24 with reference to the Official Gazette
35 of the Control Council for Germany, Supplementary Volume no. 1, pp. 13 ff.

36 ³ on the SMAD in general see Foitzik, in: W. Benz (ed.), *Deutschland unter alliierter Besatzung 1945 – 1949/55*,
37 1999, pp. 302 ff.

38 ⁴ see the accounts in Dölling, *Wende der deutschen Agrarpolitik, 1950*; Lochen, in: *Deutschland-Archiv 1991*,
39 pp. 1025 ff.; Biehler, *Die Bodenkonfiskationen in der Sovietischen Besatzungszone nach Wiederherstellung der*
40 *gesamtdutschen Rechtsordnung 1990, 1994*, pp. 32 ff.; see also Decisions of the Federal Constitutional Court
41 (*Entscheidungen des Bundesverfassungsgerichts – BVerfGE*) 84, 90 (96 ff.)

42 ⁵ Stern, *Staatsrecht*, vol. V, 1995, p. 987 with further references

43 ⁶ see Decisions of the Federal Administrative Court (*Entscheidungen des Bundesverwaltungsgerichts –*
44 *BVerwGE*) 95, 170 ff.

45 ⁷ Federal Constitutional Court (BVerfG), file № 2 BvR 955/0 an 2 BvR 1038/01, English version, § 14

46 ⁸ BVerwG, judgement of 21/02/2002, files No. 3 C 15.01 und 16.01, quoted from juris, § 18 f

47 ⁹ BVerfG, order of 04/07/2003, file No. 1 BvR 834/02, quoted from juris, § 13

48 ¹⁰ BVerfG, dec. of 06/06/1967, file No. 2 BvR 375/60, 2 BvR 53/60, 2 BvR 18/65

49 ¹¹ see BVerfG, order from 26/10/2004, file no. 2 BvR 955/00, 2 BvR 1038/01, quoted from juris, § 15

50 ¹² BVerfG, order from 25/10/1966, quoted from juris, § 38

51 ¹³ BVerfG, order of 14/12/2008, file no. 2 BvR 2338/07, 2 BvR 208/08, 2 BvR 358/08, 2 BvR 522/08, 2 BvR
52 587/08 et al.

53 ¹⁴ Kohlhofer, Reinhard: Preface, in: Kohlhofer/Moos (ed.), *Austrian Victims of the National Socialist Military*
54 *Jurisdiction*, Vienna 2003, p. 10

55 ¹⁵ see *Karakurt v. Austria*, dec. from 4 April 2002, ICCPR/C/74/D/965/2000, para. 7.4 and 7.5

56 ¹⁶ See the Committee's views in *Blom v. Sweden* (Communication 191/1985), *Sánchez López v. Spain*
57 (Communication 777/1997).

58 ¹⁷ Committee's General Comment 24, ICCPR, 52nd session (1994): "Issues relating to reservations made upon
59 ratification or accession to the Covenant or the Optional Protocol thereto, or in relation to declarations under
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4 Article 41 of the Covenant”, § 13; *Kennedy v. Trinidad and Tobago*, Communication No. 845/1998, § 6; see also
5 Article 2 § 1 lit. d, and 19 of the Vienna Convention on the Law of Treaties

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7 http://www.hdg.de/lemo/html/dokumente/JahreDesAufbausInOstUndWest_erklaerungAdenauerRegierungserklaerung1949/index.html

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9¹⁹ BVerfG, judgement of 23/11/1999, file no. 1 BvF 1/94, quoted from juris, § 105 f

10²⁰ Printed matter of the German Federal Diet № 12/4994, p. 68

11²¹ BVerfG, order of 14/12/2008, file № 2 BvR 2338/07, 2 BvR 208/08, 2 BvR 358/08, 2 BvR 522/08, 2 BvR
12 587/08 an others, quoted from juris, § 6

13²² BVerfG, loc. cit.

14²³ BVerfG, order of 09/01/2001 (file № 1 BvL 6/00 and 7/00, quoted from juris, § 24)

15²⁴ BayBS IV p. 336 (collection of acts of the Free State of Bavaria)

16²⁵ BVerfG, order from 18/04/1996, file № 1 BvR 1452/90, 1 BvR 1459/90, 1 BvR 2031/94, quoted from juris,
17 § 107

18²⁶ BVerfG, judgment from 23/11/1999, file № 1 BvF 1/94, § 106

19²⁷ quoted from Kessler/Elbe, *Runder Tisch mit scharfen Kanten*, 1993, p. 183 f

20²⁸ quoted from Madaus, *Allianz des Schweigens*, 2002, p. 224

21²⁹ Madaus, loc. cit. p. 225

22³⁰ BVerfG, order from 18/04/1996, file № 1 BvR 1452/90 et al., quoted from juris, § 64

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