THE FACTS

Whereas the facts presented by the Applicant may be summarised as follows:

The Applicant was born in 1924 in Danzig and is a lawyer now living in West Berlin. He has lodged the present Application also on behalf of his minor son, Ulrich X., born in Berlin in 1950. The Applicant affirms that he is legally entitled to represent his son, although the German courts have awarded custody to the boy's mother, his divorced wife.

The Applicant has previously lodged an Application (No. 1959/63) which was declared inadmissible by the Commission on 22nd April, 1965. The Applicant himself refers to the facts and arguments of that Application which were summarised in the decision as follows:

"During the war the Applicant was conscripted and served in the German army. At the end of hostilities he received an identity card from the allied authorities in Leipzig giving his nationality as 'a citizen of the Free State of Danzig - until determination (bis zur Klärung)'. At present he is in possession of a passport issued by the allied authorities in Berlin giving his nationality as 'undecided (ungeklärt) - Free State of Danzig'.

The Applicant was married in 1949 to a woman who was a lawyer and a German citizen, but in 1959 the marriage was dissolved. In 1960 custody of the Applicant's son was transferred to his maternal grandparents and civil suits relating to custody and alimony are apparently pending before the courts in Berlin . On .. July, 1961, the Applicant was ordered to pay alimony of 100 DM monthly to his son by a decision of the District Court of Tiergarten. The Applicant has lodged an appeal against this order.

During the proceedings the Applicant requested the application of the laws of Danzig, i.e. Article 1653 of the Civil Code (BGB) in its Danzig version. He submitted that, according to the Hague Convention of 12th June, 1902, (acceded to by Germany in 1904, by Poland and Danzig in 1929) and to German law (Article 19 of the Introductory Act to the Civil Code), questions of legal representation of minors (gesetzliche Vertretung) and custody (Sorgerecht) shall be determined by the laws of the country of which the father is a national. Consequently, these rights belong to the Applicant:

During these proceedings, the right of legal representation of the child was given to his mother, the case being termed 'Ulrich X., represented by his mother, Dr. H. X. v. Dr. G. X.'. The Applicant protested and demanded that the Danzig rules should be followed and he alleged that the non-observance of these rules implied a non-recognition of his own and his son's status as citizens of the Free State of Danzig.
At a hearing of the alimony proceedings on .. October, 1961 before the Regional Court of Berlin, the Applicant requested that the case should be adjourned pending the outcome of certain revision proceedings (Restitutions-Verfahren) pending before the Court of Appeal of Berlin, presumably concerning his divorce. This request was rejected on the same day and the Applicant announced the he would lodge an appeal (sofortige Beschwerde). As he needed time for preparing his appeal, he asked that a new session be fixed. His ex-wife opposed the appeal and, at the suggestion of the presiding judge, she requested a judgment in default arising from his failure to plead on the issue (Versäumnisurteil). This was granted to her.

On .. November, 1961, the Applicant lodged a complaint (Einspruch), as well as a request for a stay of execution, both of which were rejected by the same court on .. December, 1961, and on appeal (sofortige Beschwerde) by the Court of Appeal of Berlin on .. February,

1962.

On .. November, 1961, the Applicant lodged an application for a rectification of the facts as contained in the decision of .. October, 1961. During a hearing on .. March, 1961, the Applicant requested that two judges of the Court should withdraw from the case, but his request was rejected on .. March, 1962, by the Regional Court of Berlin. His appeals (sofortige Beschwerde) were likewise rejected by the Court of Appeal (Kammergericht) of Berlin and by the Federal Court (Bundesgerichtshof) on .. September, 1962, and .. January, 1963, respectively. During his appeals, he requested without success that the hearing of the case should be adjourned in accordance with Article 3 (2) of the Act of the Allied High Commission for Berlin of 17th March, 1950, and that certain questions concerning the application of Article 9 of the Potsdam Agreement of 1945 should be put to the British Military Commander in Berlin. A constitutional complaint was rejected by the Federal Constitutional Court on .. July, 1963. All these instances refused to rule on the question as to who had the right to represent the child legally on the ground that this issue was irrelevant in proceedings concerning the alleged lack of impartiality on the part of two judges. The Constitutional Court stated, however, in its introduction to the decision, that the Applicant's son was legally represented by the Applicant.

The Applicant states that he is of Polish origin and that he wished to give his son an education which makes the child aware of his ethnic background inter alia, by teaching him the Polish language. This aim will be frustrated by his son's being brought up by his German grandparents. In this respect, he refers to Article 2 of the Genocide Convention which prohibits the transfer of a child from one ethnic group to another. He further states that, by the non-recognition of his son's status as a citizen of Danzig, his son will be liable to German military service."

In his previous Application the Applicant had alleged violations of Articles 6, 8 and 14 of the Convention and of Article 2 of the Protocol.

By the Commission's decision of 22nd April, 1965, the complaint concerning the alleged violations of Article 8 in the proceedings relating to the custody of his son and to the payment of alimony to this divorced wife was declared inadmissible for non-exhaustion of domestic remedies, the other complaints were declared to be manifestly ill-founded.

On 5th August, 1965, the Applicant demanded a reconsideration (Einspruch) of his Application. He was informed that no appeal was provided for and that, in accordance with Article 27, a new application could not be dealt with if it was substantially the same as a matter which had already been examined, and contained no relevant new information.

His present Application relates to two series of proceedings, one concerning the custody of his son, the other his right to be visited by his son. The facts as appearing from the Applicant's submissions and the documents submitted by him may be summarised as follows:

As concerns the custody (elterliche Gewalt), it was at first awarded to the Applicant by decision of the District Court (Amtsgericht) of Berlin-Tiergarten on .. December, 1959, but given to the mother on appeal by decision of the Regional Court (Landgericht) of Berlin on .. July, 1960. This decision was confirmed against the Applicant's further appeal by the Court of Appeal (Kammergericht) on .. October, 1960.

The Applicant subsequently submitted new arguments to the District Court of Berlin-Tempelhof-Kreuzberg and applied for a change of the previous decision. He alleged that the mother was obviously not able

to give his son a proper education and that, therefore, the custody should be given back to him. The District Court rejected his request by decision of .. April, 1961. The Applicant lodged an appeal submitting inter alia that he and his son were citizens of Danzig and that, consequently, the law of Danzig should be applied. According to Article 1636 of the old German Civil Code as it was in force in Danzig before the war, the right to the custody of his son would belong to the father. But the Regional Court confirmed the decision of the District Court on .. November, 1962. The Applicant lodged a further appeal repeating his former arguments and alleging furthermore that he had not been granted a hearing in accordance with the law, since he had not been given sufficient time to reply to a certain expert opinion (Gutachten).
The Applicant also submitted that by the decision concerned he was prevented from giving his son an education in the language and culture of his Polish ancestors. The Court of Appeal rejected the Applicant's further appeal on .. May, 1965, stating, inter alia, the following reasons:

The Applicant and his son are German citizens and consequently German law is applicable. Whether they are at the same time citizens of Danzig is of no interest. Even if he were a citizen of Danzig the Applicant could not claim the right granted by Article 1636 of the Civil Code in its Danzig version, as this particular provision is no longer in force. For the rest, however, there is no essential difference in following one or the other version of the Civil Code, as according to both versions a decision concerning the custody should not be altered unless strongly required in the interest of the child. The Applicant had not been denied a hearing in accordance with the law, as the expert opinion concerned had been known to his lawyer a long time before the Court's decision. Whether, and to what extent, the Applicant's son should be educated in the Polish language and culture is only to be decided by the parent to whom the custody has been awarded. It is up to the Applicant to try to arouse the interest of his son in the ethnic background of his ancestors during his visits.

As concerns the right of visit (Besuchsrecht) the District Court of Berlin-Tempelhof-Kreuzberg in a decision of .. December, 1961, had made the following provisions: The son may visit his father on every third Sunday of each month and on every second holiday (Feiertag) between 10 a.m. and 6 p.m. This decision was confirmed on appeal by the Regional Court on .. April, 1962. Further requests of the Applicant for a change of these decisions were rejected by the Court of Appeal on .. October, 1964, and .. July, 1966.

On .. December, 1964, the Applicant made another request to be visited by his son during every second weekend as he wanted more time to instruct his son in the Polish language and culture. He now alleged not only to be a citizen of Danzig but also to be citizen of Poland and requested the application of the Polish law. His request was rejected by the District Court on .. February, 1966, and the Court of Appeal on .. February, 1967. The Courts stated again that the Applicant was a German citizen and that there was no reason to alter the provision made by the Court in 1961. The Court of Appeal added, however, that, even if he were a Polish citizen, the Applicant could not claim a change of the provisions made with regard to the right to receive visits since there was no essential difference between German and Polish law.

It appears that under the above-mentioned decisions, the boy has lived with his mother since 1960 and that the Applicant is entitled to be visited by his son on one Sunday every month and on every second holiday. The Applicant states in his present Application that this is not sufficient time to give him an education in the Polish language and culture. He affirms that both he and his son are citizens of Danzig and Poland but not of Germany and submits a birth certificate of his father which, however, does not contain any indication of nationality.

The Applicant alleges

(1) an infringement of the "freedom to live in accordance with the thinking of one's home countries" (Article 5);

(2) a refusal of the right to a fair hearing in that his submissions were not taken into account by the courts (Article 6);

(3) refusal of instruction in the native language and of an education according to the ethnical background (Article 8);

(4) interference with the freedom of thought with regard to his own nation (Article 9).

He states that the object of his claim is to "maintain the nationality of Danzig and Poland".

THE LAW

Whereas, the Commission first observes that the Applicant in his previous application complained inter alia of certain proceedings relating to the custody of his son; whereas the Commission further observes that this part of the previous Application was rejected on the ground that the Applicant had not exhausted the domestic remedies within the meaning of Article 26 (Art. 26) of the Convention; whereas, in his present Application, which also relates to the custody of his son, the Applicant repeats his complaints as to the said court proceedings but has added new complaints with regard to subsequent proceedings;

Whereas, in respect of the Applicant's complaints concerning the decisions awarding the custody of his son to his divorced wife, it is true that Article 8 (Art. 8) of the Convention guarantees generally the right to respect for private and family life;

Whereas, however, paragraph (2) of Article 8 (Art. 8-2) provides "that there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the protection of health and morals, or for the protection of the rights and freedoms of others";

Whereas the Commission finds that the family life of the parents with their children does not cease owing to the divorce of the parents;

Whereas, however, with regard to divorce and other cases where the communal life of the parents is interrupted, it is legitimate, or even necessary, for the national law to provide rules governing the relationship between parents and children which differ from the rules which are applicable when the family unit is still maintained;

Whereas it is to be observed, that the competent public authorities, when called upon to give a decision in this respect, particularly take into consideration the interest of the child (see Article 1671 of the German Civil Code); whereas the Commission has frequently stated that the terms of paragraph (2) (Art. 8-2) leave a considerable measure of discretion to the domestic courts when deciding on questions concerning the custody of the children of divorced parents (see Application No. 1449/62, X v. the Netherlands - Yearbook VI, p. 262);

Whereas it is clear that the courts have in a series of proceedings taken full account of the situation of each parent in relation to the general wellbeing of the child; whereas there is no indication that the courts, in reaching their various findings, have interfered with the Applicant's family life in a manner which is not permitted under paragraph (2) (Art. 8-2);

Whereas an examination of the case as it has been submitted, including

an examination made ex officio, does not therefore disclose any appearance of a violation of the rights and freedoms set forth in the Convention;

Whereas it follows that this part of the Application is manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2) of the Convention;

Whereas, insofar as the Applicant complains that the courts refused to apply Polish law or that they misinterpreted certain provisions of national law, an examination of the case as it has been submitted, including an examination made ex officio, does not disclose any appearance of a violation of the rights and freedoms set forth in the Convention and especially in the Articles invoked by the Applicant;

Whereas, in respect of the judicial decisions complained of, the Commission has frequently stated that in accordance with Article 19 (Art. 19) of the Convention its only task is to ensure observance of the obligations undertaken by the parties in the Convention; whereas, in particular, it is not competent to deal with an application alleging the errors of law or fact have been committed by domestic courts, except where the Commission considers that such errors might have involved a possible violation of any of the rights and freedoms limitatively listed in the Convention;

Whereas, in this respect, the Commission refers to its decisions Nos. 458/59 (X. v. Belgium - Yearbook III, p. 233) and 1140/61 (X. v. Austria - Collection of decisions, Vol. 8, p. 57); and whereas there is no appearance of a violation in the proceedings complained of; whereas it follows that also this part of the Application in manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention;

Whereas, the Applicant further complains that he was not given a fair hearing in the proceedings regarding the custody of his child, that he is denied the possibility to educate his son in the Polish language and culture and complains of the decisions determining his right to be visited by his son;

Whereas, insofar as the Applicant complains that he was not given a fair hearing in the proceedings regarding the custody of his child; it is to be observed that the Applicant had; both before the lower courts and before the Court of Appeal; a full opportunity to make his submissions on all points at issue and, in particular, on the expert opinions which had been brought to the knowledge of his lawyer before the regional Court's decision;

Whereas, insofar as the Applicant complains that he has been prevented from educating his son in the Polish language and culture, it is to be observed that the right of education is an integral part of the custody which has been entrusted to the mother and the Applicant therefore no longer has a right to determine the manner in which that education is carried out;

Whereas, insofar as he complains of the decisions determining his right to be visited by his son, it is to be observed that the Applicant has, in fact, been granted the right of visit within certain limits fixed by the competent courts; in this respect, too, it is to be observed that the national courts enjoy a certain margin of appreciation which they have in no way exceeded in the present case;

Whereas, in regard to the above complaints an examination of the case as it has been submitted, including an examination made ex officio, does not disclose any appearance of a violation of the rights and freedoms set forth in the Convention and in particular in Articles 5, 6, 8 and 9 (Art. 5, 6, 8, 9); whereas it follows that these parts of the Application are manifestly ill-founded within the meaning of

Article 27, paragraph (2) (Art. 27-2), of the Convention;

Whereas, in regard to the Applicant's complaint that the German courts in their decisions refused to recognise him and his son as nationals of Danzig and Poland, it is to be observed that the Convention, under the terms of Article 1 (Art. 1); guarantees only the rights and freedoms set forth in Section I of the Convention; and whereas, under Article 25, paragraph (1) (Art. 25-1), only the alleged violation of one of those rights and freedoms by a Contracting Party can be the subject of an application presented by a person, non-governmental organisation or group of individuals;

Whereas otherwise its examination is outside the competence of the Commission ratione materiae; whereas no right to the recognition of a particular nationality is as such included among the rights and freedoms guaranteed by the Convention; whereas in this respect the Commission refers to its previous decisions, Nos. 288/57 (X. v. the Federal Republic of Germany - Yearbook I, p. 209) and 1262/61 (C v. Austria); whereas it follows that this part of the Application is incompatible with the provisions of the Convention within the meaning of Article 27, paragraph (2) (Art. 27-2) of the Convention.

Now therefore the Commission declares this application inadmissible.