



# INTERNATIONAL COURT OF JUSTICE

Peace Palace, 2517 KJ The Hague. Tel.(31-70-302 23 23). Cables: Intercourt, The Hague.  
Telefax (31-70-364 99 28). Telex 32323. Internet address : [http:// www.icj-cij.org](http://www.icj-cij.org)

**Communiqué**  
unofficial  
for immediate release

No. 2001/16  
27 June 2001

**LaGrand Case**  
**(Germany v. United States of America)**

**The Court finds that the United States has breached its obligations to Germany and to the LaGrand brothers under the Vienna Convention on Consular Relations**

**The Court finds, for the first time in its history, that orders indicating provisional measures are legally binding**

THE HAGUE, 27 June 2001. Today the International Court of Justice (ICJ), principal judicial organ of the United Nations, delivered its Judgment in the LaGrand Case (Germany v. United States of America).

In its Judgment, which is final, without appeal and binding for the Parties, the Court, with regard to the merits of the dispute,

- finds by fourteen votes to one that, by not informing Karl and Walter LaGrand without delay following their arrest of their rights under Article 36, paragraph 1 (b), of the Vienna Convention on Consular Relations, and by thereby depriving Germany of the possibility, in a timely fashion, to render the assistance provided for by the Convention to the individuals concerned, the United States breached its obligations to Germany and to the LaGrand brothers under Article 36, paragraph 1, of the Convention;
- finds by fourteen votes to one that, by not permitting the review and reconsideration, in the light of the rights set forth in the Convention, of the convictions and sentences of the LaGrand brothers after the violations referred to in paragraph (3) above had been established, the United States breached its obligation to Germany and to the LaGrand brothers under Article 36, paragraph 2, of the Convention;
- finds by thirteen votes to two that, by failing to take all measures at its disposal to ensure that Walter LaGrand was not executed pending the final decision of the International Court of Justice in the case, the United States breached the obligation incumbent upon it under the Order indicating provisional measures issued by the Court on 3 March 1999;
- takes note unanimously of the commitment undertaken by the United States to ensure implementation of the specific measures adopted in performance of its obligations under Article 36, paragraph 1 (b), of the Convention; and finds that this commitment must be regarded as meeting Germany's request for a general assurance of non-repetition;
- finds by fourteen votes to one that should nationals of Germany nonetheless be sentenced to severe penalties, without their rights under Article 36, paragraph 1 (b), of the Convention having been respected, the United States, by means of its own choosing, shall allow the review and reconsideration of the conviction and sentence by taking account of the violation of the rights set forth in that Convention.

### Reasoning of the Court

In its Judgment, the Court begins by outlining the history of the dispute. It recalls that the brothers Karl and Walter LaGrand — German nationals who had been permanently residing in the United States since childhood — were arrested in 1982 in Arizona for their involvement in an attempted bank robbery, in the course of which the bank manager was murdered and another bank employee seriously injured. In 1984, an Arizona court convicted both of murder in the first degree and other crimes, and sentenced them to death. The LaGrands being German nationals, the Vienna Convention on Consular Relations required the competent authorities of the United States to inform them without delay of their right to communicate with the consulate of Germany. The United States acknowledged that this did not occur. In fact, the consulate was only made aware of the case in 1992 by the LaGrands themselves, who had learnt of their rights from other sources. By that stage, the LaGrands were precluded because of the doctrine of "procedural default" in United States law from challenging their convictions and sentences by claiming that their rights under the Vienna Convention had been violated. Karl LaGrand was executed on 24 February 1999. On 2 March 1999, the day before the scheduled date of execution of Walter LaGrand, Germany brought the case to the International Court of Justice. On 3 March 1999, the Court made an Order indicating provisional measures (a kind of interim injunction), stating *inter alia* that the United States should take all measures at its disposal to ensure that Walter LaGrand was not executed pending a final decision of the Court. On that same day, Walter LaGrand was executed.

The Court then examines certain objections of the United States to the Court's jurisdiction and to the admissibility of Germany's submissions. It finds that it has jurisdiction to deal with all Germany's submissions and that they are admissible.

Ruling on the merits of the case, the Court observes that the United States does not deny that it violated, in relation to Germany, Article 36, paragraph 1 (b), of the Convention, which required the competent authorities of the United States to inform the LaGrands of their right to have the consulate of Germany notified of their arrest. It adds that in the present case this breach led to the violation of paragraph 1 (a) and paragraph 1 (c) of that Article, which deal respectively with mutual rights of communication and access of consular officers and their nationals, and the right of consular officers to visit their nationals in prison and to arrange for their legal representation. The Court further states that the United States not only breached its obligations to Germany as a State party to the Convention, but also that there had been a violation of the individual rights of the LaGrand brothers under Article 36, paragraph 1, which rights can be invoked in the Court by their national State.

The Court then turns to Germany's submission that the United States, by applying rules of its domestic law, in particular the doctrine of "procedural default", violated Article 36, paragraph 2, of the Convention. This provision requires the United States to "enable full effect to be given to the purposes for which the rights accorded [under Article 36] are intended". The Court states that, in itself, the rule does not violate Article 36. The problem arises, according to the Court, when the rule in question does not allow the detained individual to challenge a conviction and sentence by invoking the failure of the competent national authorities to comply with their obligations under Article 36, paragraph 1. The Court concludes that in the present case, the procedural default rule had the effect of preventing Germany, in a timely fashion, from assisting the LaGrands as provided for by the Convention. Under those circumstances, the Court holds that in the present case the above-mentioned rule violated paragraph 2 of Article 36.

With regard to the alleged violation by the United States of the Court's Order of 3 March 1999 indicating provisional measures, the Court points out that it is the first time that it is called upon to determine the legal effects of orders made under Article 41 of its Statute — the interpretation of which has been the subject of extensive controversy in the literature. After interpreting Article 41, the Court finds that such orders do have binding effect. In the present case, the Court concludes that its Order of 3 March 1999 "was not a mere exhortation" but "created a legal obligation for the United States". The Court goes on to consider the measures taken by the United States to implement the Order. It observes that the mere transmission of its Order to the Governor of Arizona without any comment was

"certainly less than could have been done even in the short time available". It finds the same to be true of the United States Solicitor General's categorical statement in his brief letter to the United States Supreme Court that "an order of the International Court of Justice indicating provisional measures is not binding". The Court further notes that the Governor of Arizona decided not to give effect to the Order, even though the Arizona Clemency Board had recommended a stay of execution for Walter LaGrand. It observes that the United States Supreme Court rejected an application by Germany for a stay of execution, "[g]iven the tardiness of the pleas and the jurisdictional barriers they implicate", while it would have been open to it, as one of its members urged, to grant a preliminary stay, which would have given it "time to consider . . . the jurisdictional and international legal issues involved". The Court concludes that the United States did not comply with the Order of 3 March 1999.

In respect of Germany's request seeking an assurance that the United States will not repeat its unlawful acts, the Court takes note of the fact that the latter repeatedly stated in all phases of these proceedings that it is carrying out a vast and detailed programme in order to ensure compliance by its competent authorities with Article 36 of the Convention. The Court considers that this commitment to ensure implementation of specific measures must be regarded as meeting the request made by Germany. The Court finds, nevertheless, that if the United States, notwithstanding this commitment, should fail in its obligation of consular notification to the detriment of German nationals, an apology would not suffice in cases where the individuals concerned have been subjected to prolonged detention or convicted and sentenced to severe penalties; in the case of such a conviction and sentence it would be incumbent upon the United States to allow the review and reconsideration of the conviction and sentence by taking account of the violation of the rights set forth in the Convention.

#### Composition of the Court

The Court was composed as follows: President Guillaume; Vice-President Shi; Judges Oda, Bedjaoui, Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal; Registrar Couvreur.

President Guillaume appends a declaration to the Judgment of the Court; Vice-President Shi appends a separate opinion to the Judgment of the Court; Judge Oda appends a dissenting opinion to the Judgment of the Court; Judges Koroma and Parra-Aranguren append separate opinions to the Judgment of the Court; Judge Buergenthal appends a dissenting opinion to the Judgment of the Court.

---

A summary of the Judgment is given in Press Communiqué No. 2001/16bis, to which a summary of the opinions is annexed. The full text of the Judgment and of the opinions is available on the Court's website (<http://www.icj-cij.org>).

---

#### Information Department:

Mr. Arthur Witteveen, First Secretary (+31 70 302 23 36)

Mrs. Laurence Blairon, Information Officer (+31 70 302 23 37)

E-mail address: [information@icj-cij.org](mailto:information@icj-cij.org)