



INTERNATIONAL COURT OF JUSTICE

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Summary

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LaGrand Case (Germany v. United States of America)

Summary of the Order

History of the case and submissions (paras. 1-12)

The Court begins by recalling that at 7.30 p.m. (The Hague time) on 2 March 1999 Germany instituted proceedings against the United States of America for “violations of the Vienna Convention on Consular Relations [of 24 April 1963]” (hereinafter the “Vienna Convention”) allegedly committed by the United States. Germany bases the jurisdiction of the Court on Article 36, paragraph 1, of the Statute of the Court and on Article I of the Optional Protocol concerning the Compulsory Settlement of Disputes, which accompanies the Vienna Convention on Consular Relations (“the Optional Protocol”).

In Germany’s Application, it is stated that in 1982 the authorities of the State of Arizona detained two German nationals, Karl and Walter LaGrand; it is maintained that these individuals were tried and sentenced to death without having been informed, as is required under Article 36, subparagraph 1 (b), of the Vienna Convention, of their rights under that provision; it is specified that that provision requires the competent authorities of a State party to advise, “without delay”, a national of another State party whom such authorities arrest or detain of the national’s right to consular assistance guaranteed by Article 36; it is also alleged that the failure to provide the required notification precluded Germany from protecting its nationals’ interests in the United States provided for by Articles 5 and 36 of the Vienna Convention at both the trial and the appeal level in the United States courts.

Germany states that it had been, until very recently, the contention of the authorities of the State of Arizona that they had been unaware of the fact that Karl and Walter LaGrand were nationals of Germany; and that it had accepted that contention as true. However, during the proceedings before the Arizona Mercy Committee on 23 February 1999, the State Attorney admitted that the authorities of the State of Arizona had indeed been aware since 1982 that the two detainees were German nationals. Germany further states that Karl and Walter LaGrand, finally with the assistance of German consular officers, did claim violations of the Vienna Convention before the Federal Court of First Instance; that that court, applying the municipal law doctrine of “procedural default”, decided that, because the individuals in question had not asserted their rights under the Vienna Convention in the previous legal proceedings at State level, they could not assert them in the Federal habeas corpus proceedings; and that the intermediate federal appellate court, last means of legal recourse in the United States available to them as of right, affirmed this decision.

Germany asks the Court to adjudge and declare:

“(1)that the United States, in arresting, detaining, trying, convicting and sentencing Karl and Walter LaGrand, as described in the preceding statement of facts, violated its international legal obligations to Germany, in its own right and in its right of diplomatic protection of its nationals, as provided by Articles 5 and 36 of the Vienna Convention,

(2)that Germany is therefore entitled to reparation,

(3)that the United States is under an international legal obligation not to apply the doctrine of ‘procedural default’ or any other doctrine of national law, so as to preclude the exercise of the rights accorded under Article 36 of the Vienna Convention; and

(4)that the United States is under an international obligation to carry out in conformity with the foregoing international legal obligations any future detention of or criminal proceedings against any other German national in its territory, whether by a constituent, legislative, executive, judicial or other power, whether that power holds a superior or subordinate position in the organization of the United States, and whether that power’s functions are of an international or internal character;

and that, pursuant to the foregoing international legal obligations,

(1)the criminal liability imposed on Karl and Walter LaGrand in violation of international legal obligations is void, and should be recognized as void by the legal authorities of the United States;

(2)the United States should provide reparation, in the form of compensation and satisfaction, for the execution of Karl LaGrand on 24 February 1999;

(3)the United States should restore the status quo ante in the case of Walter LaGrand, that is re-establish the situation that existed before the detention of, proceedings against, and conviction and sentencing of that German national in violation of the United States’ international legal obligation took place; and

(4)the United States should provide Germany a guarantee of the non-repetition of the illegal acts.”

On 2 March 1999, Germany also submitted an urgent request for the indication of provisional measures in order to protect its rights.

In its request for the indication of provisional measures of protection, Germany recalls that Karl LaGrand was executed on 24 February 1999, despite all appeals for clemency and numerous diplomatic interventions by the German Government at the highest level; that the date of execution of Walter LaGrand in the State of Arizona has been set for 3 March 1999; and that the request for the urgent indication of provisional measures is submitted in the interest of this latter individual. Germany emphasizes that: “The importance and sanctity of an individual human life are well established in international law. As recognized by Article 6 of the International Covenant on Civil and Political Rights, every human being has the inherent right to life and this right shall be protected by law.” Germany adds the following:

“Under the grave and exceptional circumstances of this case, and given the paramount interest of Germany in the life and liberty of its nationals, provisional measures are urgently needed to protect the life of Germany’s national Walter LaGrand and the

ability of this Court to order the relief to which Germany is entitled in the case of Walter LaGrand, namely restoration of the status quo ante. Without the provisional measures requested, the United States will execute Walter LaGrand — as it did execute his brother Karl — before this Court can consider the merits of Germany’s claims and Germany will be forever deprived of the opportunity to have this status quo ante restored in the event of a judgment in its favour.”

Germany asks that, pending final judgment in the present case, the Court indicate that:

“The United States should take all measures at its disposal to ensure that Walter LaGrand is not executed pending the final decision in these proceedings, and it should inform the Court of all the measures which it has taken in implementation of that Order.”

It asks the Court moreover to consider its request as a matter of the greatest urgency “in view of the extreme gravity and immediacy of the threat of execution of a German citizen”.

By a letter dated 2 March 1999, the Vice-President of the Court addressed the Government of the United States in the following terms:

“Exercising the functions of the presidency in terms of Articles 13 and 32 of the Rules of Court, and acting in conformity with Article 74, paragraph 4, of the said Rules, I hereby draw the attention of [the] Government [of the United States] to the need to act in such a way as to enable any Order the Court will make on the request for provisional measures to have its appropriate effects.”

On 3 March 1999, at 9.00 a.m. (The Hague time), the Vice-President of the Court received the representatives of the Parties in order to obtain information from them with regard to the subsequent course of the proceedings. The representative of the German Government stated that the Governor of the State of Arizona had rejected a recommendation by the Mercy Committee that the execution of Walter LaGrand should be stayed, so that the latter would in consequence be executed that same day at 3.00 p.m. (Phoenix time); he emphasized the extreme urgency of the situation; and referring to the provisions of Article 75 of the Rules of Court, he asked the Court to indicate forthwith, and without holding any hearing, provisional measures proprio motu; the representative of the United States pointed out that the case had been the subject of lengthy proceedings in the United States, that the request for provisional measures submitted by Germany was made at a very late date and that the United States would have strong objections to any procedure such as that proposed only that very morning by the representative of Germany which would result in the Court making an Order proprio motu without having first duly heard the two Parties.

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The Court’s reasoning (paras. 13-28)

The Court begins by pointing out that on a request for the indication of provisional measures the Court need not, before deciding whether or not to indicate them, finally satisfy itself that it has jurisdiction on the merits of the case, but that it may not indicate them unless the provisions invoked by the Applicant appear, *prima facie*, to afford a basis on which the jurisdiction of the Court might be founded.

It notes that Article I of the Optional Protocol, which Germany invokes as the basis of jurisdiction of the Court in this case, is worded as follows:

“Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a Party to the present Protocol”;

and that both Germany and the United States are parties to the Vienna Convention and to the Optional Protocol.

The Court observes that in its Application Germany stated that the issues in dispute between itself and the United States concern Articles 5 and 36 of the Vienna Convention and fall within the compulsory jurisdiction of the Court under Article I of the Optional Protocol.

The Court finds that in the light of the requests submitted by Germany in its Application and of the submissions made therein, there exists *prima facie* a dispute with regard to the application of the Convention within the meaning of Article I of the Optional Protocol; and that, *prima facie*, it has jurisdiction under Article I of the aforesaid Optional Protocol to decide the dispute between Germany and the United States.

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The Court observes that the sound administration of justice requires that a request for the indication of provisional measures founded on Article 73 of the Rules of Court be submitted in good time; that Germany emphasizes that it did not become fully aware of the facts of the case until 24 February 1999 and that since then it has pursued its action at diplomatic level; that, under Article 75, paragraph 1, of its Rules, the Court “may at any time decide to examine proprio motu whether the circumstances of the case require the indication of provisional measures which ought to be taken or complied with by any or all of the parties”; that a provision of this kind has substantially featured in the Rules of Court since 1936, and that if the Court has not, to date, made use of the power conferred upon it by this provision, the latter appears nonetheless to be clearly established; that the Court may make use of this power, irrespective of whether or not it has been seized by the parties of a request for the indication of provisional measures; that in such a case it may, in the event of extreme urgency, proceed without holding oral hearings; and that it is for the Court to decide in each case if, in the light of the particular circumstances of the case, it should make use of the said power.

The Court then observes that the power to indicate provisional measures under Article 41 of its Statute is intended to preserve the respective rights of the parties pending its decision; that such measures are only justified if there is urgency and that the Court will not order interim measures in the absence of irreparable prejudice to rights which are the subject of dispute.

The Court then points out that the execution of Walter LaGrand is ordered for 3 March 1999; and that such an execution would cause irreparable harm to the rights claimed by Germany in this particular case.

In doing so the Court observes that the issues before the Court in the present case do not concern the entitlement of the federal states within the United States to resort to the death penalty for the most heinous crimes; and that further, the function of the Court is to resolve international legal disputes between States, inter alia when they arise out of the interpretation or application of international conventions, and not to act as a court of criminal appeal.

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In the light of the above considerations, the Court finds that the circumstances require it to indicate, as a matter of the greatest urgency and without any other proceedings, provisional measures in accordance with Article 41 of its Statute and with Article 75, paragraph 1, of its Rules; it recalls that measures indicated by the Court for a stay of execution would necessarily be provisional in nature and would not in any way prejudice findings the Court might make on the merits.

The Court finally observes that the international responsibility of a State is engaged by the action of the competent organs and authorities acting in that State, whatever they may be; that the United States should take all measures at its disposal to ensure that Walter LaGrand is not executed pending the final decision in the proceedings; that according to the information available to the Court, implementation of the measures indicated in the present Order falls within the jurisdiction of the Governor of Arizona; that the Government of the United States is consequently under the obligation to transmit the present Order to the said Governor; and that the Governor of Arizona is under the obligation to act in conformity with the international undertakings of the United States.

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The full text of the operative paragraph (para. 29) reads as follows:

“For these reasons,

THE COURT

Unanimously,

I.Indicates the following provisional measures:

- (a)The United States of America should take all measures at its disposal to ensure that Walter LaGrand is not executed pending the final decision in these proceedings, and should inform the Court of all the measures which it has taken in implementation of this Order;
- (b)The Government of the United States of America should transmit this Order to the Governor of the State of Arizona.

II.Decides, that, until the Court has given its final decision, it shall remain seised of the matters which form the subject-matter of this Order.”
