



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF ALTHOFF AND OTHERS v. GERMANY

(Application no. 5631/05)

JUDGMENT
(merits)

STRASBOURG

8 December 2011

FINAL

08/03/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Althoff and Others v. Germany,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Dean Spielmann, *President*,

Karel Jungwiert,

Boštjan M. Zupančič,

Mark Villiger,

Ann Power-Forde,

André Potocki, *judges*,

Klaus Köpp, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 15 November 2011,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 5631/05) against the Federal Republic of Germany lodged on 11 February 2005 with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by nine German nationals, Mrs Edith Althoff and eight others (see full list in annex) (“the applicants”).

2. The applicants were represented by Professor O. Depenheuer of Cologne University and Mr A. Birkmann, a lawyer practising in Erfurt. The German Government (“the Government”) were represented by their Agent, Mrs A. Wittling-Vogel, *Ministerialdirigentin*, of the Federal Ministry of Justice, and also by Professor J.A. Frowein, Director (emeritus) of the Max Planck Institute of Heidelberg.

3. The applicants alleged in particular that the new version of section 30a(1) of the Property Act and its application by the domestic courts had breached their right to the peaceful enjoyment of their possessions under Article 1 of Protocol No. 1. They further relied on Article 14 of the Convention.

4. Renate Jaeger, the judge elected in respect of Germany who was in office at the time of the application, decided to withdraw from the case (Rule 28 of the Rules of Court). The Government accordingly appointed Mr Klaus Köpp, a lawyer practising in Bonn, to sit as *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1 as in force at the time).

5. By a decision of 13 October 2009, the Chamber declared the application admissible.

6. The applicants and the Government each filed further written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The facts of the case, as set out by the parties, can be summarised as follows.

8. The present dispute is between Germany, which succeeded to the rights of the heirs of the original Jewish owners of the disputed property (the initial injured party – “*Erstgeschädigte*”) under the German-US Agreement of 13 May 1992, and the applicants, who are the heirs of a shopkeeper who had acquired the disputed property in 1939 (the initial sale having taken place in 1938). The property was subsequently expropriated at the time of the former German Democratic Republic (GDR). The applicants are thus the heirs of the subsequent injured party – “*Zweitgeschädigte*”.

A. Background to the case prior to German reunification

1. *National-Socialist period*

9. The disputed plots of land, having respective surface areas of 1000 sq.m, 990 sq.m and 1030 sq.m, are located at Babelsberg-Potsdam, near Berlin, on the territory of the former GDR.

10. By a notarially-registered contract of 23 April 1938, Mr A. and Mrs B., who were Jewish and partners in the limited partnership “Mitteldeutsche Gamaschenfabrik E.B. und A.”, the owner of the disputed plots of land, sold them for 66,000 reichsmarks (RM) to the Berlin company A. Wülfig. Having been the victims of persecution under the National-Socialist regime, Mr A. died in 1940 and Mrs B. in 1945. Mrs E.F., daughter of Mrs B., emigrated to the United States of America in 1939 and became a US citizen in 1951.

11. By a notarially-registered contract of 28 July 1939, the disputed plots of land were then sold for RM 61,000 to Mr G. Althoff, a shopkeeper, who was registered as the owner at the land registry, and the applicants are his heirs.

2. *Under the German Democratic Republic*

12. On 27 January 1953, in the former GDR, the land was expropriated and became “people’s property” (*Volkseigentum*) under the control of a State-owned film company.

3. *Mrs E.F.'s action to obtain compensation in the USA*

13. Mrs E.F. subsequently brought proceedings in the USA for the loss of the disputed property, in accordance with the US law of 18 October 1976 on claims against the GDR, which entitled US citizens whose property in the former GDR had been expropriated before that date or which had been sold under duress in the National-Socialist period to file claims for compensation.

14. In a final decision of 27 August 1980, the US Foreign Claims Settlement Commission acknowledged that Mrs E.F. was entitled to 5,500 US dollars (USD) in compensation, plus interest at 6% from September 1951.

B. Developments after German reunification (effective on 3 October 1990)

15. After German reunification the property was transferred to the company “dok Filmstudio GmbH”, whose sole shareholder was the Office for special reunification-related questions (*Bundesanstalt für vereinigungsbedingte Sonderaufgaben*).

16. In a decision of 17 October 1997, that Office observed that the disputed property had been sold for 1,300,000 deutschmarks (DM) for investment purposes to the company Weiland GbR, in accordance with the Investment Priority Act (*Investitionsvorrangsgesetz*) of 14 July 1992 (see relevant domestic law and practice, paragraph 32 below).

1. *Proceedings before domestic authorities and courts concerning restitution of the disputed property*

17. On 10 October 1990 the applicants filed a claim for the restitution of the property with the Office for the Resolution of Outstanding Property Issues for the Land of Brandenburg – (*Landesamt für die Regelung offener Vermögensfragen* – “Office of the Land”), in accordance with the relevant provisions of the Law on the resolution of outstanding property issues – “the Property Act” (*Gesetz zur Regelung offener Vermögensfragen – Vermögensgesetz*) of 23 September 1990 (see relevant domestic law and practice, paragraph 31 below).

18. On 13 May 1992 the Federal Republic of Germany (FRG) and the United States of America signed the German-US Agreement on the settlement of certain property claims – “the German-US Agreement” (*Abkommen zwischen den Regierungen der Bundesrepublik Deutschland und der Vereinigten Staaten von Amerika über die Regelung bestimmter Vermögensansprüche*), which provided for a global settlement of compensation claims by US citizens resulting from the US law of 18 October 1976 on claims against the GDR. By a law of 21 December 1992 the German-US Agreement became an integral part of domestic law; it entered into force on 28 December 1992 (see relevant domestic law and practice, paragraph 34 below). On 29 April 1997, the FRG paid a total sum of over 102 million US dollars in compensation.

19. On 20 October 1998 the Property Rights Clarification Act (*Vermögensrechtsbereinigungsgesetz*) retrospectively amended section 30a(1) of the Property Act, providing that the time-limit for the filing of restitution claims, initially set at 31 December 1992, did not apply to the rights of the FRG under the German-US Agreement (see relevant domestic law and practice, paragraph 33 below).

20. In a letter of 27 April 1999 the FRG indicated to the Office of the *Land* that in accordance with Article 3 § 9, second sentence, of the German-US Agreement, it had taken over Mrs E.F.’s title to the disputed property.

(a) Decision of the Office for the Resolution of Outstanding Property Issues for the Land of Brandenburg

21. In a decision of 12 July 2001 the Office of the *Land* dismissed the applicants’ restitution claim and indicated that the proceeds from the sale of the disputed property in 1997 was indeed to be paid to the FRG. It first noted that the initial sale of the disputed plots of land in 1938 had been obtained under duress, within the meaning of section 1(6) of the Property Act. Consequently, the rights pertaining to the property fell within the scope of the German-US Agreement. In accordance with sections 2(1) and 6(6a) of the Property Act, read together with Article 3 § 9, second sentence, of the German-US Agreement, the FRG had become the legal successor to Mrs E.F. She had opted for the payment of compensation and had thus renounced her claims against the FRG.

22. The applicants brought proceedings before the Potsdam Administrative Court, on the ground that they had a lawful entitlement to restitution, having regard to the fact that Mrs E.F. had not lodged any application to that effect before the time-limit of 31 December 1992, as provided for by section 30a(1), first sentence, of the Property Act, notwithstanding the subsequent amendment of that provision by the Property Rights Clarification Act of 20 October 1998.

(b) Judgment of the Potsdam Administrative Court

23. In a judgment of 28 November 2002, the Potsdam Administrative Court upheld the Office's decision on all points. In the court's view, even if the FRG's right to restitution had lapsed, because no application had been lodged to that effect before the time-limit of 31 December 1992 fixed by section 30a(1), first sentence, of the Property Act, its right had subsequently been revived following the amendment of that section in 1998. Moreover, the applicants had not acquired an irrevocable (*unabänderlich*) right under section 14 (right to property) of the Basic Law (*Grundgesetz*), because at the time of the FRG's claim in 1999, the Office of the *Land* had not yet given its decision.

(c) Judgment of the Federal Administrative Court

24. In a judgment of 21 January 2004 the Federal Administrative Court dismissed the applicants' request for judicial review. It first noted that, under the relevant provisions of the German-US Agreement, the property rights of Mrs E.F. had been transferred to the FRG. Given that Mrs E.F. had been compensated in 1976, the JCC (Jewish Claims Conference), which had also filed a restitution claim, could not claim property rights. The Administrative Court then confirmed that the FRG had not filed a valid restitution claim before the time-limit of 31 December 1992 as provided for by section 30a(1), first sentence, of the Property Act. The law on the Agreement of 21 December 1992 had not provided for any specific provisions in that connection and the letter of 1 October 1992 from the Federal Office for the Resolution of Outstanding Property Issues (*Bundesamt für die Regelung offener Vermögensfragen* – "the Federal Office") to the authorities of the *Länder* could not be regarded as a valid claim because it was not sufficiently specific. Referring to its settled case-law, the Administrative Court added that the fixing of this time-limit corresponded to a provision of substantive law, which meant that the rights of the FRG had lapsed with the expiry of the statutory time-limit. However, by amending section 30a(1) of the Property Act in 1998, the legislature had "remedied" the failure to file a claim within that time-limit. It was only from that date onwards that the property rights of Mrs E.F. could be considered to have been effectively transferred to the FRG, and not at the time of the complete payment of compensation as provided for in Article 3 § 9 of the German-US Agreement (see relevant domestic law and practice, paragraph 34 below). The aim of that legislative amendment had been to ensure the survival of the former property rights and to rectify that omission. In addition, again with reference to its settled case-law, the Administrative Court took the view that the applicants' rights to restitution under the Property Act did not benefit from the protection of Article 14 § 1 of the Basic Law, because those rights did not correspond to existing property rights but stemmed from the State's wish to provide redress for past

injustice. Lastly, in accordance with the settled case-law of the Federal Constitutional Court, it was in this case a question of “quasi-retrospective” effect (*unechte Rückwirkung*); having regard to the confused and uncertain legal situation existing at the time, the applicants had not acquired any “confidence warranting protection” (*schutzwürdiges Vertrauen*) or any legal certainty that their position as “subsequent” injured party afforded them an entitlement to the restitution of the disputed property. Moreover, the JCC had also filed a restitution claim within the statutory time-limit, and its rights would have prevailed over those of the applicants if it had been successful.

(d) Decision of the Federal Constitutional Court

25. In a decision of 14 August 2004 the Federal Constitutional Court, sitting in a committee of three members, refused to allow a constitutional complaint by the applicants. It observed in particular that section 30a(1), fourth sentence, of the Property Act was compatible with Article 14 § 1 of the Basic Law, even if it were presumed in the applicants’ favour that their entitlement to restitution under the Property Act, or to the payment of the proceeds of the sale under section 16(1), first sentence, of the Investment Priority Act, enjoyed the protection of Article 14 § 1. In the Constitutional Court’s view, section 30a (1), fourth sentence, of the Property Act had to be understood as a provision defining the content and limits (*Inhalts- und Schrankenbestimmung*) of the right to property within the meaning of Article 14 § 1, second sentence, of the Basic Law, and struck a fair balance between the interests at stake. Under section 3 (2) of the Property Act, taken together with section 1(2), first sentence, of the Law of 27 September 1994 on compensation in accordance with the Property Act – “the Compensation Act” (*Gesetz über die Entschädigung nach dem Gesetz zur Regelung offener Vermögensfragen – Entschädigungsgesetz* – see domestic law and practice, paragraph 31 *in fine*, below), the applicants, being regarded as the “subsequent” injured party, were, from the outset, simply entitled to compensation. Under Article 3 § 9, second sentence, of the German-US Agreement, the FRG had succeeded to the rights of the “initial” injured parties, who, having regard to the compensation that they had already received, could no longer claim any rights based on the Property Act. In filing a claim concerning property rights based on the German-US Agreement, the FRG had thus sought to secure a property right equivalent to that of an “initial” injured party that had already materially been “claimed” and compensated for. The legislature had thus wished to clarify the situation for that kind of right.

26. The Constitutional Court added that even if a different position were adopted, namely, as the Federal Administrative Court had found, that the rights under section 1(6) of the Property Act had lapsed on 31 December 1992 and had then been revived following the amendment of section 30a(1) of the Property Act, the new version of that section had struck a fair balance between the interests at stake. The property rights under the German-US Agreement had originally been provided for by the US law of 1976 and had already been compensated for in 1980 as regards the disputed property. At the time of the ratification of the German-US Agreement it had been presumed that the total amount to be paid in compensation could reach USD 190 million. The FRG could not have been expected ultimately to renounce its property rights for which it had had to pay compensation in such a high amount – even though the transfer had not become effective until the determination of the final transfer payment (*nach Feststellung des endgültigen Überweisungsbetrags*). For this reason, the German State had in particular sent the *Länder* authorities the lists of the rights covered by the Agreement, in a letter of 2 October 1992 from the Federal Office. In addition, the law of 20 December 1993 on the acceleration of registration procedures (“*Register-Beschleunigungs-Gesetz*”) extended the possibility for the competent authorities to enter reservations in the land register (stipulating that the property could be sold only with the State’s approval) in respect of the rights arising from the German-US Agreement.

Under those circumstances, there could not have been any “confidence warranting protection” as to the maintaining of the statutory situation as it had first existed according to the initial version of section 30a(1).

2. Proceedings before the domestic authorities and courts concerning the payment of compensation

27. On 12 January 2005 the applicants filed a request for compensation for the loss of the disputed property with the Office of the *Land* of Brandenburg, in accordance with the relevant provisions of the Compensation Act.

28. In a decision of 20 March 2007 the Office of the *Land* dismissed the applicants’ request on the ground that they had not filed it within a period of six months after the final rejection of the restitution claim, as provided for by section 7a(3c) of the Property Act.

29. The applicants then appealed to the Potsdam Administrative Court, which stayed the proceedings pending the judgment of the European Court of Human Rights (“the Court”) in the present case.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Basic Law

30. Article 14 § 1 of the Basic Law reads as follows:

“Property and the right of inheritance shall be guaranteed. Their content and limits shall be defined by statute.”

B. Law on the resolution of outstanding property issues – the Property Act

31. On 29 September 1990 the Property Act of 23 September 1990, which was also to be part of the Unification Treaty (*Einigungsvertrag*), came into force. Under the Treaty the Property Act would remain in force in Germany after the reunification of the two German States on 3 October 1990. The Act’s purpose was, in particular, to settle any conflicts relating to property on the territory of the GDR in a manner that was socially acceptable, in order to ensure long-term legal security in Germany.

Section 1(1) of the Property Act provides that it is applicable to rights in respect of property that was expropriated at the time of the GDR and section 1(6) provides that it also applicable to persons against whom proceedings were brought in Germany between 30 January 1933 and 8 May 1945 on racist, political, religious or ideological grounds (*weltanschauliche Gründe*) and who had consequently lost their property “by forced sale, expropriation or other means”. Sections 2 and 3 of the Act complement section 1.

Section 3(1) of the Property Act provides that any property that became “people’s property” will be returned on request unless excluded by the law. Section 3(2) provides that if a number of parties make a request for restitution concerning the same property, it is the party that was “first” injured which is thus entitled. That means that, as in the present case, when property was sold under duress during the National-Socialist period, then subsequently expropriated in the former GDR, the heirs of the original Jewish owners have a priority right to restitution. In such a case where restitution of the property is excluded (section 4(1) of the Property Act), the heirs of the purchasers of the property during the National-Socialist period are entitled to the payment of compensation provided for by the law of 27 September 1994 on compensation according to the Property Act.

32. Section 16 § 1, first sentence, of the Investment Priority Act provides that if restitution of property is impossible because the property has been sold, the person entitled may request payment of a sum equivalent to the value of his property rights.

2. Section 30a(1)

33. Section 30a(1), first sentence, of the Property Act stipulates that restitution claims had to be filed no later than 31 December 1992. The Property Rights Clarification Act of 20 October 1998 amended the section in question by introducing a fourth sentence according to which that time-limit does not apply to rights held by the FRG under the Agreement of 13 May 1992 between the FRG and US Governments on the settlement of certain property claims.

C. Agreement of 13 May 1992 between the Federal Republic of Germany and the United States of America on the settlement of certain property claims – “the German-US Agreement”

34. Article 3 § 1 of the German-US Agreement provides that US citizens have to choose between receiving compensation or bringing proceedings before the German courts to obtain reparation in accordance with the US law of 18 October 1976 on claims against the GDR. If they opt for the first solution, they forfeit any right of action against the FRG, under Article 3 § 6, second sentence, of the Agreement. Under Article 3 § 9, second sentence, their property rights are then transferred to the FRG at the time of the complete payment of compensation. That statutory succession also applies to rights arising from any harmful measures taken under the National-Socialist regime.

By a law of 21 December 1992 the German-US Agreement became part of domestic law. It entered into force on 28 December 1992.

D. Judgment of the Federal Administrative Court of 26 May 1999

35. In a judgment of 26 May 1999 the Federal Administrative Court indicated that section 30a(1), fourth sentence, of the Property Act (which, in its new version, provides that the time-limit initially set for restitution claims does not apply to rights stemming from the German-US Agreement) did not apply if the legislative amendment had taken place after the issuance of a restitution notice by the competent authority and the transfer of the property to an entitled party other than the German Government. In that judgment it further held that, having regard to its wording, meaning and aim, section 30a(1), first sentence, of the Property Act applied at the outset to all property claims. In order to ensure legal certainty, the time-limit initially fixed also had to apply to the “derived” claims (*abgeleitete Ansprüche*) arising from the German-US Agreement.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

36. The applicants argued that the new version of section 30a(1) of the Property Act and its application by the domestic courts had infringed their right to the peaceful enjoyment of their possessions as guaranteed by Article 1 of Protocol No. 1, which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Applicability of Article 1 of Protocol No. 1

1. *The parties’ submissions*

37. The applicants argued that they alone were entitled either to restitution of the disputed property under section 3(1), first sentence, of the Property Act, or to payment of the proceeds of the sale that took place after reunification under section 16(1) of the Investment Priority Act, representing a sum of DM 1,300,000. Neither the German State nor the JCC had competing rights. As Mrs E.F. had opted for the payment of compensation in 1976, she had lost her entitlement as “initial” injured party (*Erstberechtigte*) which had then fallen to the applicants. The property rights of Mrs E.F. had not been transferred to the FRG until 1997, well after the expiry of the time-limit provided for in section 30a(1), first sentence, of the Property Act. No restitution claim had been filed within that time, so the FRG’s property rights had lapsed, as the Federal Administrative Court had indicated. As a result, the applicants, having filed a proper request within the statutory time-limit, remained the sole entitled party. The amendment with retrospective effect in 1998 – six years after the expiry of the statutory time-limit – of section 30a(1) of the Property Act to the State’s advantage could not therefore be regarded as a mere legislative clarification. Contrary to the Government’s assertion, section 30a(1), first sentence, also applied to the rights of the FRG under the German-US Agreement; thus, in drafting the new law of 1998, the *Bundesrat* had clearly indicated that the new provision

was intended to enable the Government to assert their property rights under the German-US Agreement despite any failure to file a claim within the statutory time-limit or to extend the time-limit under section 30a(1), first sentence, of the Property Act. As the German-US Agreement had been signed on 13 May 1992, the FRG would easily have had the opportunity to file a restitution claim, even by way of precaution, within the statutory time-limit.

38. As their main argument, the Government submitted that the applicants had never had a “possession” within the meaning of Article 1 of Protocol No. 1, and in particular, as there was no settled case-law of the domestic courts to that effect, that they had no legitimate expectation of obtaining restitution of their property.

Under the Property Law, the applicants, as heirs to property expropriated under the legislation of the former GDR, could have claimed restitution only if no other claimant had a prior position, which had been the case in particular for the heirs of the former Jewish owners. The applicants should have been aware that in such an eventuality they would only have had a right to compensation. The expiry of the 31 December 1992 deadline had had no automatic legal consequence, because it had been for the competent authorities to determine whether the applicants had a right to restitution or whether they were excluded on the basis of the applicable legislation. In a decision of 12 July 2001 the competent authority had rejected the applicants’ claim to that effect and that decision had been upheld by all the domestic courts. Moreover, before the expiry of the time-limit in question, there had been two events which showed that no legitimate expectation could come into existence for the applicants: the registration of a claim by the JCC, which could under certain circumstances provided for by the Property Act assert the rights of the former Jewish owners, and the enactment of the law of 21 December 1992 by which the German-US Agreement was incorporated into domestic legislation. That law provided for the transfer of the rights of the former Jewish owners to the German State if they had opted for the payment of compensation, which was the situation in the present case; the transfer had not become effective until 29 April 1997 with the determination of the final transfer payment. Moreover, the judgment of the Federal Administrative Court of 26 May 1999, before which the German State had argued that it had a claim to the property despite the fact that the amendment to the time-limit for restitution claims had occurred after the decision of the competent authority, showed how unclear the legal situation had been during that period. Lastly, the introduction of special legislation in December 1993 with the aim of securing the State’s rights, by making it possible for the competent authorities to register a special reservation in the land registry (according to which the property could be sold only with the State’s consent), had shown

that the State was of the opinion that the German-US Agreement did not require any registration of a restitution claim on its part.

2. *The Court's assessment*

39. The Court must first examine the question of the applicability of Article 1 of Protocol No. 1. For that purpose it must ascertain whether the applicants had “possessions” within the meaning of this provision, which, if there are no “existing possessions”, as in the present case, extends to assets, including claims, in respect of which the applicants could argue that they had at least a “legitimate expectation” of obtaining effective enjoyment of a property right. Such a legitimate expectation, which has to be more concrete in nature than a mere hope, must “be based on a legal provision or have a solid basis in the domestic case-law” (see, among other authorities, *Von Maltzan and Others v. Germany* (dec.) [GC], nos. 71916/01, 71917/01 and 10260/02, §§ 74, 77, 78 and 112, ECHR 2005-V).

40. In the present case, the Court notes that it is not in dispute that the applicants submitted a restitution claim based on the relevant provisions of the Property Act within the statutory time-limit, which expired on 31 December 1992 under section 30a(1) of the Property Act, in its original version. By contrast, the FRG, which under the German-US Agreement (which was signed on 13 May 1992 and became effective on 28 December 1992) had succeeded to the rights of Mrs E.F., the heir of the original Jewish owners, had not submitted such a restitution claim within the statutory time-limit.

41. The Court therefore takes the view that a distinction is to be drawn between the situation before and after the expiry of the time-limit.

42. Before the expiry of the time-limit, the applicants, as heirs to property expropriated at the time of the GDR, could have obtained either the restitution of the property in question (section 3(1), first sentence, of the Property Act), or payment of the proceeds of the sale that took place after reunification (section 16(1), first sentence, of the Investment Priority Act), or compensation (section 3(2) of the Property Act in conjunction with section 1(2), first sentence, of the Compensation Act) (see relevant domestic law and practice, paragraphs 31 and 32 above). As the heirs of owners of property expropriated in the former GDR and thus being the “subsequent injured party”, they did not have a legitimate expectation that their property would be returned to them, given that the heirs of the original Jewish owners, the “initial injured party”, were also entitled to submit a restitution claim and their right took priority.

43. On the expiry of the statutory time-limit, only the applicants and the JCC had submitted a restitution claim. However, as the Federal Administrative Court observed in its judgment of 21 January 2004, the JCC was not entitled to assert any property rights, because Mrs E.F. had received

compensation in 1976 and her property rights had been transferred to the FRG under the German-US Agreement (see paragraph 24 above).

44. Admittedly, whilst the applicants had lodged their restitution claim on 10 October 1990, the Office of the *Land* did not issue its rejection until 12 July 2001, almost eleven years later and after the legislative amendment of 1998, and that decision was subsequently upheld by the domestic courts. In its judgment of 26 May 1999 in another case, the Federal Administrative Court drew a distinction according to whether the competent authority's decision on the restitution claim and the transfer of property as such had occurred before or after the legislative amendment (see relevant domestic law and practice, paragraph 35 above).

45. However, in the present case, the Federal Administrative Court observed that the Law of 21 December 1992 on the German-US Agreement had not contained any specific provisions exempting the FRG from filing such a claim; referring to its established case-law, it found that the FRG's rights had lapsed on the expiry of the statutory time-limit. And in its judgment of 26 May 1999, the Federal Administrative Court indicated that section 30a(1) of the Property Act had initially applied to all property claims, including those concerning "derived rights" stemming from the German-US Agreement.

46. As regards the nature of the property rights held by the applicants under the domestic law, whilst the Federal Administrative Court took the view that their rights to restitution under the Property Act did not benefit from the protection of Article 14 § 1 of the Basic Law, in its decision of 14 August 2004 the Federal Constitutional Court, by contrast, found that it could be assumed that the applicants' rights did benefit from the protection of Article 14 § 1, but that the legislature had struck a fair balance between the interests at stake.

47. The Court accordingly finds that, on the expiry of the statutory time-limit, in the absence of any restitution claim by the FRG, sole successor to the heirs of the original Jewish owners, the initial injured party, the applicants, even though they were the heirs of the owners of property expropriated in the former GDR and therefore the subsequent injured party, nevertheless had a "legitimate expectation" of being able to exercise a right to the restitution of the property concerned. This "legitimate expectation" was also based on the judgment of the Federal Administrative Court indicating that the Law of 21 December 1992 on the German-US Agreement did not contain any specific provisions exempting the FRG from filing such a claim, and on the decision of the Federal Constitutional Court, which took the view that it could be assumed that the applicants' rights benefited from the protection of Article 14 § 1 of the Basic Law. Having regard to the very particular circumstances of the present case, the applicants therefore had a "possession" within the meaning of the first

sentence of Article 1 of Protocol No. 1. Consequently, the guarantees of that provision are applicable in the present case.

B. Compliance with Article 1 of Protocol No. 1

1. The parties' submissions

48. The applicants argued that the amendment with retrospective effect of section 30a(1) of the Property Act to the State's advantage, without adequate compensation, clearly constituted a deprivation of property within the meaning of Article 1 of Protocol No. 1.

In their view, the deprivation did not pursue a legitimate aim, because the Government had simply sought to correct its own mistake retrospectively at the applicants' expense. Whilst such mistakes could always occur in the carrying out of the body politic's administrative tasks, the resulting burden should be assumed by all citizens alike and not passed on to individuals retrospectively by depriving them of their property.

In addition, that deprivation of property had imposed a disproportionate burden on the applicants, who had had an entitlement to restitution under the Property Act and it had been taken from them retrospectively. It was on that basis that they sought to obtain compensation through the Court. The amount of compensation provided for by the Compensation Act was irrelevant in this connection, because its purpose was to compensate original owners whose claims could not be satisfied under the Property Act – a situation that was fundamentally different from their own. It was thus only on totally alternative and preventive grounds that the applicants had filed a request for compensation – filed, according to them, within the statutory time-limit – on 28 December 1992, but this was unrelated to the present application. Lastly, the applicants argued that the compensation provided for by the Compensation Act was not proportionate to the impugned interference.

49. In the Government's submission, even assuming that the applicants had a "possession", the amendment of section 30a(1) of the Property Act could not be declared contrary to Article 1 of Protocol No. 1 because it struck a fair balance between the interests at stake, in the light of the wide margin of appreciation afforded to the State in the context of German reunification.

The purpose of that legislative amendment had been to clarify a situation which, according to the highest German courts, had remained unclear. Moreover, the purpose of the Property Law had been to give priority to the restitution of property to the heirs of the original Jewish owners and to reserve for them the actual value of the property. In the present case, however, those rights had been transferred to the FRG following the German-US Agreement and it was in the public interest for the State to secure the assets for which it had paid compensation for a total of 102 million US dollars to the United States of America. The applicants, for their part, could have claimed compensation of about DM 55,000 based on the relevant provisions of the Property Act that were applicable in the event of restitution proving impossible.

The Government took the view that it would not be correct to evaluate the proportionality of the interference on the basis of the value of the property after 1990, as the applicants had not acquired an absolute right to the property. Relying on the Court's decision in *Poznanski (Poznanski v. Germany)* (dec.), no. 25101/05, 3 July 2007), they took the view that, having regard to the uncertainty of the applicants' property rights, a sum of about DM 55,000 could be regarded as proportionate compensation. The applicants had failed to file a claim for that purpose within the statutory time-limit, but the relevant proceedings before the Administrative Court were still pending.

2. The Court's assessment

(a) Interference with the peaceful enjoyment of a "possession"

50. As it has stated on several occasions, the Court reiterates that Article 1 of Protocol No. 1 comprises three distinct rules: "the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, among other things, to control the use of property in accordance with the general interest ... The three rules are not, however, 'distinct' in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule" (see, *inter alia*, *James and Others v. the United Kingdom*, 21 February 1986, § 37, Series A no. 98, which partly reiterates the terms of the Court's reasoning in *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 61, Series A no. 52; see also *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 78, ECHR 2005-VI).

51. The Court notes that in the present case the Property Rights Clarification Act of 20 October 1998 retrospectively amended section 30a(1) of the Property Act by introducing a fourth sentence to the effect that the time-limit of 31 December 1992 stipulated in that provision did not apply to the rights stemming from the German-US Agreement.

52. That retrospective amendment led to the loss for the applicants of any entitlement to the restitution of the properties or to the payment of the proceeds of sale, representing the actual value of the properties after reunification.

53. In the Court's view, the measure thus constituted interference with the applicants' right to the peaceful enjoyment of their possessions and has to be examined under the second sentence of the first paragraph of Article 1 of Protocol No. 1.

54. The Court must therefore ascertain whether the interference complained of was justified under that provision.

(b) Justification for the interference

(i) "Provided for by law"

55. As regards the lawfulness of the interference, the Court notes that the impugned measure was based on the Property Rights Clarification Act of 20 October 1998, and its accessibility, precision and foreseeability, as required by the Convention, are not in doubt.

56. The German courts subsequently took the view that by amending section 30a(1) of the Property Act of 1998 the legislature had remedied the failure by the FRG to file a claim within the statutory time-limit, and the Federal Constitutional Court found that those decisions were compliant with the Basic Law.

57. The Court does not consider this interpretation to have been arbitrary. It reiterates in this connection that it is in the first place for the domestic authorities, notably the courts, to interpret and apply the domestic law (see, among many other authorities, *Jahn and Others*, cited above, § 86).

58. The deprivation of property was thus provided for by law, as required by Article 1 of Protocol No. 1.

59. The Court must now determine whether this deprivation of property pursued a legitimate aim, that is, whether it was "in the public interest", within the meaning of the second rule under Article 1 of Protocol No. 1.

(ii) "In the public interest"

60. The Court reiterates that, because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is "in the public interest". Under the system of protection established by the Convention, it is thus for

the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures of deprivation of property. Here, as in other fields to which the safeguards of the Convention extend, the national authorities, accordingly, enjoy a certain margin of appreciation.

Furthermore, the notion of “public interest” is necessarily extensive. In particular, the decision to enact laws expropriating property will commonly involve consideration of political, economic and social issues. The Court, finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, will respect the legislature’s judgment as to what is “in the public interest” unless that judgment is manifestly without reasonable foundation (see *James and Others*, cited above, § 46, and *Zvolský and Zvolská v. the Czech Republic*, no. 46129/99, § 67 *in fine*, ECHR 2002-IX). The same applies necessarily, if not *a fortiori*, to such radical changes as those occurring at the time of German reunification, when the system changed to a market economy (see *Jahn and Others*, cited above, § 80).

61. In the present case the Court has no reason to doubt that the aim of the Property Rights Clarification Act of 1998, which – as its title indicates – was to clarify a legal situation that was uncertain in the eyes of the German legislature and to secure the State’s property rights stemming from the German-US Agreement, was in the public interest.

(iii) *Proportionality of the interference*

62. The Court reiterates that an interference with the peaceful enjoyment of possessions must strike a “fair balance” between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights (see, among other authorities, *Sporrong and Lönnroth*, cited above, § 69; *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, § 69, Series A no. 301-B; and *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, 23 October 1997, § 80, *Reports of Judgments and Decisions* 1997-VII). The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole, including therefore the second sentence, which is to be read in the light of the general principle enunciated in the first sentence. In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measure depriving a person of his possessions (see *Pressos Compania Naviera S.A. and Others v. Belgium*, 20 November 1995, § 38, Series A no. 332).

In determining whether this requirement is met, the Court recognises that the State enjoys a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of the law in question (see *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 75, ECHR 1999-III). Nevertheless, the Court cannot abdicate its power of review and must determine whether the requisite balance was maintained in a manner consonant with the applicants' right to the peaceful enjoyment of their possessions, within the meaning of the first sentence of Article 1 of Protocol No. 1 (see *Zvolský and Zvolská*, cited above, § 69, and *Jahn and Others*, cited above, § 93).

63. Compensation terms under the relevant legislation are material to the assessment whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate burden on the applicants. In this connection, the Court has already found that the taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference and a total lack of compensation can be considered justifiable under Article 1 of Protocol No. 1 only in exceptional circumstances (see *Jahn and Others*, cited above, § 94).

64. The Court first observes that the Property Act, which governs disputes concerning property situated in the former GDR, grants a priority right of restitution to the heirs of the original Jewish owners, who were the initial injured party. The heirs of owners whose property was expropriated in the former GDR, who are thus the subsequent injured party, like the applicants in the present case, are entitled to compensation under the Compensation Act (see relevant domestic law and practice, paragraph 31 above).

65. In this connection the Court further points out that the State has a wide margin of appreciation as regards the enactment of laws in the exceptional context of German reunification, having regard to the enormous task faced by the legislature in dealing with all the complex issues which inevitably arose at the time of transition from a communist regime to a democratic market-economy system (see, in particular, *von Maltzan and Others*, cited above, §§ 74, 77 and 110; *Jahn and Others*, cited above, § 113; and lastly, *mutatis mutandis*, *Vistiņš and Perepjolkins v. Latvia*, no. 71243/01, § 85, 8 March 2011).

66. The particularity of the present case is that, eight years after German reunification and six years after the expiry of the statutory time-limit for restitution claims based on the Property Act, the legislature retrospectively amended section 30a(1) of the Property Act to the effect that this time-limit did not apply to the FRG's rights under the German-US Agreement. That legislative amendment, whilst admittedly being of a general nature, created

an inequality to the State's advantage and to the detriment of the applicants, who were deprived of any right to restitution of the property in question or to payment of the proceeds of the sale that took place after reunification.

67. The Court indicates that whilst, in principle, the legislature is not precluded in civil matters from adopting new retrospective provisions to regulate rights arising under existing laws, the principle of the rule of law and the notion of fair hearing enshrined in Article 6 preclude any interference by the legislature – other than on compelling grounds of general interest – with the administration of justice designed to influence the judicial determination of a dispute (see, *mutatis mutandis*, *Stran Greek Refineries and Stratis Andreadis*, cited above, § 49; *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society*, cited above, § 112; *Zielinski and Pradal and Gonzalez and Others v. France* [GC], nos. 24846/94 and 34165/96 to 34173/96, § 57, ECHR 1999-VII; and *Varnima Corporation International S.A. v. Greece*, no. 48906/06, §§ 26-35, 28 May 2009).

68. In the present case, in relation to Article 1 of Protocol No. 1, what appears decisive in the Court's view is, first, the fact that the initial time-limit under the Property Act applied to all property claims, including those arising from the German-US Agreement. The law of 21 December 1992 had not contained any special provisions exempting the FRG from filing such a claim (judgments of the Federal Administrative Court of 26 May 1999 and 21 January 2004 –see paragraphs 35 and 24 above).

69. Moreover, it is undeniable that the German State was aware of the situation before the expiry of the statutory time-limit initially fixed by the legislature on 31 December 1992, given that the German-US Agreement had been signed on 13 May 1992. The State thus had more than seven months in which to file a claim in the prescribed form.

70. The Court further notes that the retrospective amendment of 20 October 1998 of the initial version of section 30a(1) of the Property Act took place as much as eight years after German reunification became effective on 3 October 1990 and six years after the expiry of the statutory time-limit on 31 December 1992.

71. The time taken by the legislature is a factor to be taken into consideration in assessing proportionality (see in particular *Jahn and Others*, cited above, § 116 (b), where the Court referred to the fairly short period of time (two years) that elapsed between German reunification becoming effective and the enactment of the second Property Rights Amendment Act), even though, in the present case, this belated amendment may be explained by the fact that the FRG did not pay the total sum of the compensation until 29 April 1997 (see paragraph 18 above).

72. Similarly, even though the formal decision of the Office of the *Land* of 12 July 2001 ruling on the restitution claim postdated the legislative amendment of 20 October 1998, the time that elapsed between the filing of the restitution claim on 10 October 1990 and the decision of the Office of the *Land* was ten years and six months, which also appears excessive.

73. Lastly, an essential factor in the assessment of proportionality is the burden imposed on the applicants by this legislative amendment: unlike the situation in *Jahn and Others*, cited above, where the second Property Rights Amendment Act did not provide for any compensation for the applicants (§ 110), in the present case the Compensation Act provides for the payment of compensation. However, the amount does not appear proportionate to the seriousness of the interference in question, consisting of a retrospective legislative amendment which created an inequality to the State's advantage and to the applicants' disadvantage. Moreover, it is not certain that the applicants will be able to obtain any compensation at all, as the Government alleged that they had not filed their claim within the statutory time-limit and the Administrative Court has stayed the proceedings pending the Court's judgment.

74. Having regard to the very particular circumstances of the present case, and in spite of the wide margin of appreciation afforded to the State in the exceptional context of German reunification, and of the legitimate aim of the German legislature to secure the State's assets under the German-US Agreement, the Court finds that the legislative amendment in question upset the "fair balance" that is to be struck between the protection of property and the demands of the general interest.

There has therefore been a violation of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN TOGETHER WITH ARTICLE 1 OF PROTOCOL NO. 1

75. The applicants claimed to have been victims of discrimination contrary to Article 14 of the Convention, taken together with Article 1 of Protocol No. 1. Article 14 is drafted as follows:

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

76. The applicants argued that the time-limit provided for by section 30a(1) of the Property Act applied to all restitution claims, including those of the State. The legislative amendment to the State's advantage and to the detriment of the applicants had thus constituted discrimination, for which there was no justification.

77. The Government argued that the situation of the applicants, whose rights stemmed from an expropriation enforced in the former GDR, could not be compared to that of the Government, which had succeeded to rights based on a policy of providing redress for injustice committed under the National Socialist regime. Accordingly, Article 14 of the Convention was not applicable. In the alternative, the difference in treatment was based on objective and reasonable justification having regard to the legislature's wish to clarify an unclear situation by means of the 1998 Act.

78. In view of its finding of a violation concerning the applicants' right to the peaceful enjoyment of their possessions (paragraphs 68-74 above), the Court does not find it necessary to examine the applicants' complaint under Article 14 of the Convention taken together with Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

79. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

80. Under the head of pecuniary damage the applicants claimed a sum equivalent to that of the proceeds of the sale of the property on 17 October 1997, namely 664,680 euros (EUR), plus EUR 544,060 in default interest accruing since that, for a total of EUR 1,208,740.

81. As regards the costs and expenses incurred before the domestic courts (Potsdam Administrative Court, Federal Administrative Court and Federal Constitutional Court), the applicants claimed, producing supporting documents, the sum of EUR 65,237.80, covering lawyers' fees and court costs. As to the costs and expenses incurred before the Court, the applicants claimed EUR 17,490 and produced the corresponding statement of fees.

The total amount claimed for costs and expenses is therefore EUR 82,727.80.

82. The Government left it to the Court's discretion to decide on the amount of any just satisfaction that might be awarded to the applicants.

83. The Court observes that the question of the application of Article 41 is not ready for decision. Accordingly, it should be reserved and the subsequent procedure fixed, having regard to any agreement that might be reached between the Government and the applicants.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
2. *Holds* that it is not necessary to examine the complaint under Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 to the Convention.
3. *Holds* that the question of the application of Article 41 is not ready for decision;
and accordingly,
 - (a) *reserves* the said question in whole;
 - (b) *invites* the Government and the applicants to submit, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
 - (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in French and in English, and notified in writing on 8 December 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President

Application no. 5631/05
Althoff and Others ./ Germany

List of applicants

Surname	Forename	Date of birth	Place of birth
ALTHOFF	Edith	28.11.1929	Düsseldorf – Germany
OTLEWSKI	Ingrid H.	11.11.1935	Krefeld- Germany
SCHMITZ	Heinz Ludwig Max	08.05.1942	Goa – India
MIASKOWSKI	Miriam Helene	27.05.1921	Fairfield – USA
BROICH	Hubert Max	06.12.1922	Merced – USA
FISCHER	Gertrud Franziska	25.11.1911	Nuremberg – Germany
DIETZ	Josefine Irmgard	31.08.1923	Dormagen-Gohr – Germany
BÖCKER	Hans	26.03.1910	Minden – Germany
HOLZHAUSEN- SPENCER	Louise	30.06.1930	Palm Springs – USA