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

FIFTH SECTION

DECISION

Application no. 16722/10
Christian MEYER
against Germany

The European Court of Human Rights (Fifth Section), sitting on 22 March 2016 as a Chamber composed of:

Ganna Yudkivska, *President,*
Angelika Nußberger,
Khanlar Hajiyev,
André Potocki,
Faris Vehabović,
Yonko Grozev,
Carlo Ranzoni, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having regard to the above application lodged on 22 March 2010,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Christian Meyer, is a German national who was born in 1951 and lives in Berlin. He was represented before the Court by Mr S. von Raumer, a lawyer practising in Berlin.

2. The German Government ("the Government") were represented by their Agents, Ms K. Behr and Mr H.-J. Behrens, of the Federal Ministry of Justice and Consumer Protection.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

1. Background to the case

4. The housing estate company "*Gemeinnützige Siedlungsgesellschaft Kleinmachnow GmbH*" (GSK), subsequent to its foundation in 1927, acquired a large area of land just outside Berlin. The aim of the company was to develop and divide up the land and sell it to prospective dwellers. The sale of the first plots of land began in 1930. The Jewish entrepreneur A.S., a German national, personally held 50% of GSK's shares and owned – directly or indirectly – 58.8% of the shares in another company holding the other 50% of the shares in GSK.

5. In 1933, after the National Socialist Party came to power, A.S. was forced to leave Germany and to hand over, *inter alia*, his shares in GSK, amounting to 79.4% of all shares, to representatives of the new regime. By 1943 almost all of the total of about 1500 plots had been sold by GSK.

6. After 1949 the community of Kleinmachnow became part of the former German Democratic Republic (GDR). No mechanism for restitution of land property was available to A.S. at that time.

7. In 1950 A.S. obtained the reassignment of his shares in West Germany, although at that time GSK no longer owned any property of significance.

8. In 1990, upon Germany's reunification, the Resolution of Outstanding Property Issues Act (Property Act, *Gesetz zur Regelung offener Vermögensfragen/Vermögensgesetz*,) was introduced and subsequently amended several times, offering the possibility of restitution claims regarding property situated on the territory of the former GDR (see relevant domestic law and practice, paragraphs 19-22 below).

9. In 1995 the Conference on Jewish Material Claims against Germany, Inc. (Jewish Claims Conference - JCC) specified a global application for restitution under the Property Act with the aim of regaining 79.4% of the ownership of a large number of plots of land formerly owned by GSK. The application was made under Section 2 § 1, third sentence, of the Property Act (see paragraph 20 below). A.S.'s heirs had not asserted their potential claims.

10. On 20 August 1997 the JCC transferred all rights concerning the relevant plots of land to the applicant.

11. On 12 March 1999 the competent Brandenburg Office for the Settlement of Open Property Issues (*Landesamt für offene Vermögensfragen*) rejected the applicant's restitution and compensation requests, which had originally been filed by the JCC.

2. The proceedings before the domestic courts

12. The applicant brought 1,388 cases before the Potsdam Administrative Court. Some of these concerned restitution, others compensation claims since the plots of land concerned had undisputedly been acquired in good faith by third parties after 8 May 1945 and restitution was thus ruled out by law, to protect the new owners. One of the restitution cases was chosen as a pilot case. The corresponding plot had been sold in 1934 and was never resold. Ownership had been passed on by inheritance.

13. On 18 August 2005 the Administrative Court dismissed the applicant's action in the pilot case. It held that the JCC counted as the legal successor of A.S. and had lawfully ceded the relevant rights to the applicant. Notwithstanding, a restitution claim was ruled out by section 3 § 1, eleventh sentence, of the Property Act, because the plots had previously been owned by a housing estate enterprise ("*Siedlungsunternehmen*"). The Administrative Court accepted the applicant's argument that he was treated differently to other groups of victims in the past, because the users or owners who had acquired property before 8 May 1945 had never been protected. Furthermore, other companies which had divided up land into plots but did not qualify for the narrow definition of "housing estate enterprise" were entitled to restitution. However, the Administrative Court considered that the State had a wide margin of appreciation as to how victims of the National Socialist regime should be compensated, and could not find that section 3 § 1, eleventh sentence, of the Property Act violated Article 3 of the Basic Law (see paragraph 18 below).

14. On 21 June 2007 the Federal Administrative Court rejected the applicant's appeal on points of law, mainly endorsing the Administrative Court's findings. It further held that section 3 § 1, eleventh sentence, of the Property Act did not infringe Article 14 of the Basic Law (see paragraph 17 below) since the applicant's legal predecessor had not previously acquired property rights. It referred to a previous ruling, delivered on 7 March 2007 (see paragraph 24 below), stating that the relevant 1992 version of the Property Act had not afforded compensation rights to shareholders of a company owning real estate, but only to the owner company itself. Making reference to the spirit and purpose of the amendment in 1997 the Federal Administrative Court, in the instant case, took the view that shareholders' compensation claims had been made possible for the first time in 1997 by amending section 3 § 1, fourth sentence, of the Property Act (see paragraph 22 below). Even assuming that the applicant's legal predecessor had already been entitled to compensation claims when the 1997 amendment came into force, the legislator had struck a fair balance between the interests concerned.

15. On 16 September 2009 the Federal Constitutional Court declined to consider the applicant's constitutional complaint (case no. 1 BvR 2275/07). It shared the Federal Administrative Court's view that section 3 § 1,

eleventh sentence, of the Property Act did not infringe the applicant's right under Article 3 of the Basic Law.

It further came to the conclusion that the applicant's right to property under Article 14 of the Basic Law was not violated either. With regard to the legal situation before 1997, the Federal Constitutional Court pointed out that it was subject to legal debate whether not only companies but also their shareholders had been entitled to immediate restitution claims to property which had been detached from the company in the past. While some legal authors and the Federal Administrative Court, in a judgment of 26 June 1997, saw this entitlement already guaranteed in the 1992 version of the Property Act, the Federal Administrative Court, in a judgment of 7 March 2007, thereby supported by other legal authors, took the view that shareholders were given this right to immediate restitution only in 1997. The Federal Constitutional Court considered that the determination of whether a claim existed was the responsibility of the lower courts (*Fachgerichte*) and that the change of case-law was neither arbitrary nor unreasonable. Although the reasons given by the Federal Administrative Court in this regard had been very short and without further illustration of the amendment's spirit and purpose, it had to be observed that a considerable number of legal authors agreed to its interpretation and for these reasons alone it could not be viewed as untenable *("unter keinem denkbaren Aspekt mehr rechtlich vertretbar"*).

16. On 2 February 2010 the Potsdam Administrative Court dismissed the applicant's action in 225 restitution cases which had remained pending. On the same day, in a separate judgment, it also dismissed his action in 489 cases in which the applicant had filed for compensation. On 23 March 2010 the Administrative Court found against the applicant in another 26 compensation cases. In all three judgments the Administrative Court, in its reasoning on the merits, merely referred to its own judgment and the decision of the Federal courts in the pilot case (see paragraphs 13-15 above).

B. Relevant domestic law and practice

1. The Basic Law

17. Article 14 of the Basic Law reads as follows:

> "(1) Property and the right of inheritance shall be guaranteed. Their content and limits shall be defined by the laws.
>
> (2) Property entails obligations. Its use shall also serve the public good.
>
> (3) Expropriation shall only be permissible in the public interest. It may only be ordered by or pursuant to a law that determines the nature and extent of compensation. Such compensation shall be determined by establishing an equitable balance between

the public interest and the interests of those affected. In case of dispute regarding the amount of compensation, recourse may be had to the ordinary courts."

18. Article 3 § 1 of the Basic Law reads as follows:

"All persons shall be equal before the law."

2. The Property Act

19. The Property Act of 1990 (*Vermögensgesetz*) provides that persons whose property was unlawfully expropriated during the time of the GDR are in principle entitled to restitution, unless the property was purchased in good faith by a third party. In such cases, the former owners have a right to financial compensation.

20. Section 1 § 6 extends the applicability of the Property Act in favour of persons persecuted on racial, political, religious or ideological grounds during the time of National Socialist rule and who, in this context, lost their property by expropriation or sales under duress. Section 2 § 1, third sentence, provides that where Jewish beneficiaries do not assert a claim, the JCC acts as legal successor in respect to the claim.

21. In 1992 a fourth sentence was added to section 3 § 1, which, at the given time, provided as far as relevant:

"If assets, of which an enterprise has been deprived, which are to be returned or have already been returned according to section 1 § 6 ... do not belong to the enterprise's property any more, the beneficiary may claim, by the means of individual restitution, that he or she be granted ownership of these objects in fractional shares equivalent to the stakes of which he or she was deprived; ..."

("*Gehören Vermögensgegenstände, die mit einem nach § 1 Abs. 6 ... zurückzugebenden oder einem bereits zurückgegebenen Unternehmen entzogen ... worden sind, nicht mehr zum Vermögen des Unternehmens, so kann der Berechtigte verlangen, dass ihm an diesen Gegenständen im Wege der Einzelrestitution in Höhe der ihm entzogenen Beteiligung Bruchteilseigentum eingeräumt wird; ...*")

According to the written motivation to the bill, this amendment was made to avoid enterprises expropriated between 1933 and 1945 being returned only after having been stripped of their assets (see German Federal Parliament documents *(BTDrucks),* no. 12/2480, p. 40).

22. The Federal Parliament (*Bundestag*) passed further amendments to the Property Act which came into force on 24 July 1997.

Section 3 § 1, fourth sentence, was supplemented by, *inter alia*, another half sentence, which – as far as relevant – provides:

"...such claim shall also exist if the subject-matter of the act of deprivation according to section 1 § 6 was a direct or indirect stake in an enterprise..."

("*...dieser Anspruch besteht auch, wenn eine unmittelbare oder mittelbare Beteiligung an einem Unternehmen Gegenstand der Schädigung nach § 1 Abs. 6 ist...")*

Likewise, a new eleventh sentence was introduced which ruled out the application of the fourth sentence, *inter alia*, with regard to real estate property used for housing purposes sold for market prices to natural persons by a "housing estate enterprise" (*"Siedlungsunternehmen"*) before 8 May 1945.

3. The case-law of the Federal Administrative Court

23. In its judgment of 26 June 1997 (case no. 7 C 53/96), the Federal Administrative Court held that the 1992 version of section 3 § 1, fourth sentence, of the Property Act already enabled direct claims by company shareholders. While it found that the wording of the provision was unclear, it referred to the purpose of the law, in particular that those who had lost property due to persecution by the National Socialist regime, with the property remaining on the territory of the former GDR, should receive compensation equal to that awarded to property owners under Western Allied law after World War II. It took the view that comprehensive compensation for the so-called "aryanisation" of Jewish companies was only possible by granting immediate restitution claims.

24. On 7 March 2007 the Federal Administrative Court found in another judgment (case no. 8 C 26/05) that until 1997, shareholders of companies subject to National Socialist persecution could not have acquired claims protected under Article 14 of the Basic Law. It held that the typical National Socialist method of depriving Jewish shareholders of their property had not been addressed in the 1992 version of the law. Taking as its basis the purpose of the amendment of 24 July 1997 and the unclear wording in the 1992 version of the law, the court concluded that the new provision entitled shareholders of such companies to restitution claims for the first time. It also found that if a right had already existed in 1992 which had been taken away by the new legislation, the legislator had managed to find a fair balance between the rights involved. The Federal Administrative Court did not make a reference to its judgment of 26 June 1997 (see paragraph 23 above).

COMPLAINTS

25. The applicant complained under Article 1 of Protocol No. 1 that the 1997 amendment of section 3 § 1, eleventh sentence, of the Property Act, as interpreted by the domestic courts in the impugned decisions, disentitled his legal predecessor of restitution claims regarding 226 plots of land and compensation claims concerning 515 plots of land, all claims allegedly acquired under the 1992 version of the Property Act. He further complained under Article 14, read in conjunction with Article 1 of Protocol No. 1, that

section 3 § 1, eleventh sentence, of the Property Act subjected him to discrimination as it ruled out only claims from housing estate enterprises' former shareholders, but not those from enterprises involved in housing estate development as a secondary business. Lastly, he complained under Article 6 of the Convention that the Government interfered unfairly in ongoing judicial proceedings by changing the relevant law for the benefit of the Treasury.

THE LAW

A. Article 1 of Protocol No. 1

26. The applicant submitted that the amendment to the Property Act of 24 July 1997 had infringed his property right guaranteed by Article 1 of Protocol No. 1, which provides:

> "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."

1. The parties' submissions

(a) The Government

27. The Government referred to the Court's case-law, arguing that Germany had not interfered with the applicant's property rights protected under Article 1 of Protocol No. 1. Relying fully on the domestic courts' rulings, they pointed out that the JCC, the heirs of Mr A.S and the applicant had never acquired the claim asserted by the applicant. Consequently, from the Government's point of view, the applicant had never had a legitimate expectation of obtaining a property right protected under the Convention.

28. Making further reference to the Federal Administrative Court's ruling in the instant case (see paragraph 14 above), the Government submitted that if the provision of 1992 had indeed guaranteed an enforceable claim to the JCC, then it was within the margin of appreciation of the German legislative bodies to exempt land formerly owned by enterprises active in the field of housing estate development.

(b) The applicant

29. The applicant submitted that, at the time when the Property Act was amended in July 1997, the JCC had a legitimate expectation of obtaining restitution and compensation. The wording and the purpose of section 3 § 1, fourth sentence, of the Property Act were sufficiently clear regarding the way that former company shareholders were entitled to seek direct and immediate restitution of the company's former property, equivalent to the shares of which they had been deprived by the National Socialist regime. He also referred to the judgment of the Federal Administrative Court of 26 June 1997 (see paragraph 23 above) and stressed that when he was deprived of his claim in July 1997 there had not been any other case-law by the Federal Administrative Court. He is of the view that, at that time, he had "legitimate expectations", and that new jurisprudence delivered ten years later was retrospective and irrelevant. If the instant case had been ruled on by the administrative courts before July 1997, it would have been decided in his favour. The 1997 amendment of section 3 § 1, fourth sentence, of the Property Act (see paragraph 22 above) was intended to be merely a clarification.

Moreover, the Federal Administrative Court's 2007 judgments lacked any plausible and substantial reasoning and therefore had to be regarded as arbitrary. They could not be taken into account by the Court.

2. The Court's assessment

(a) Recapitulation of the relevant principles

30. The Court refers to the principles that have been established by the case-law of the Court under Article 1 of Protocol No. 1 and are stated in its judgment of *Kopecký v. Slovakia* ([GC], no. 44912/98, § 35, ECHR 2004-IX) and its decision of *von Maltzan and Others v. Germany* ((dec.) [GC], nos. 71916/01, 71917/01 and 10260/02, § 74, ECHR 2005-V). The essential parts read as follows:

> "...
>
> (c) An applicant can allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions related to his "possessions" within the meaning of this provision. "Possessions" can be either "existing possessions" or assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining effective enjoyment of a property right. By way of contrast, the hope of recognition of a property right which it has been impossible to exercise effectively cannot be considered a "possession" within the meaning of Article 1 of Protocol No. 1, nor can a conditional claim which lapses as a result of the non-fulfilment of the condition (see *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, §§ 82 and 83, ECHR 2001-VIII, and *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], no. 39794/98, § 69, ECHR 2002-VII).

(d) Article 1 of Protocol No. 1 cannot be interpreted as imposing any general obligation on the Contracting States to return property which was transferred to them before they ratified the Convention. Nor does Article 1 of Protocol No. 1 impose any restrictions on the Contracting States' freedom to determine the scope of property restitution and to choose the conditions under which they agree to restore property rights of former owners (see *Jantner v. Slovakia*, no. 39050/97, § 34, 4 March 2003).

In particular, the Contracting States enjoy a wide margin of appreciation with regard to the exclusion of certain categories of former owners from such entitlement. Where categories of owners are excluded in this way, their claims for restitution cannot provide the basis for a "legitimate expectation" attracting the protection of Article 1 of Protocol No. 1 (see, among other authorities, *Gratzinger and Gratzingerova*, cited above, §§ 70-74).

On the other hand, once a Contracting State, having ratified the Convention including Protocol No. 1, enacts legislation providing for the full or partial restoration of property confiscated under a previous regime, such legislation may be regarded as generating a new property right protected by Article 1 of Protocol No. 1 for persons satisfying the requirements for entitlement. ..."

(b) Application of the relevant principles to the present case

31. The Court notes, at the outset, that the instant case does not concern "existing possessions" of the applicant. Mr A.S. himself had never personally been the owner of any of the plots of land in question. He was - directly and indirectly - only the shareholder of the GSK, the company which owned the land. His shares were transferred to representatives of the National Socialist regime in the 1930s and the GSK thereafter sold the plots of land to the legal predecessors of the present owners.

32. The Court further notes that it is not in dispute between the parties that the wording of section 3 § 1, eleventh sentence, of the Property Act which was introduced in July 1997 (see paragraph 22 above) rules out any claim of the applicant under section 3 § 1, fourth sentence, of the Property Act and it is not for the Court to hold otherwise. It remains for the Court to examine whether, at that time, the applicant's legal predecessor, the JCC, had a "legitimate expectation" of realising an enforceable claim by obtaining the restitution of property or compensation.

33. The Court reiterates that its case-law does not contemplate the existence of a "genuine dispute" or an "arguable claim" as a criterion for determining whether there is a "legitimate expectation" protected by Article 1 of Protocol No. 1. Where the proprietary interest is in the nature of a claim it may be regarded as an "asset" only where it has a sufficient basis in national law, for example where there is settled case-law of the domestic courts confirming it (*Kopecký*, cited above, § 52). However, no legitimate expectation can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and the applicant's submissions are subsequently rejected by the national courts (*Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 65, ECHR 2007-I).

34. Consequently, in the present case it is decisive whether, according to domestic law, the JCC had acquired an undisputed claim between 1992 and 1997. In this connection, the Court points out that its jurisdiction to verify whether domestic law has been correctly interpreted and applied is limited, and that it is not its function to take the place of the national courts, its role being rather to ensure that the decisions of those courts are not flawed by arbitrariness or otherwise manifestly unreasonable. This is particularly true when, as in this instance, the case turns upon difficult questions of interpretation of domestic law (compare *Anheuser-Busch Inc. v. Portugal*, § 83).

35. The Court observes that the Federal Administrative Court decided, in its judgment of 26 June 1997 (see paragraph 23 above), that the wording of the relevant section 3 § 1, fourth sentence, in its 1992 version (see paragraph 21 above) was subject to interpretation. It found that the provision was applicable in the case of shareholders of an affected company because, in its view, the purpose of the law called for such an interpretation. However, the Federal Administrative Court, in its judgment of 7 March 2007 (see paragraph 24 above), found that the 1992 version of section 3 § 1, fourth sentence, did not grant any entitlements to shareholders, that being the reason why that provision had been amended in 1997. The Federal Administrative Court maintained this modified case-law in its judgment in the instant case, adopted on 21 June 2007 (see paragraph 14 above).

36. The Court further observes that the Federal Constitutional Court, in its decision of 16 September 2009 in the instant case (see paragraph 15 above), found that the determination of whether a claim existed was the responsibility of the lower courts (*Fachgerichte*) and subject to constitutional supervision only with regard to the question of whether their jurisprudence showed any indications of arbitrariness. It held that the change in the Federal Administrative Court's case-law could be considered neither arbitrary nor unreasonable, even though the reasons given had been rather short.

37. The applicant argues that the Federal Administrative Court's later decisions must not be taken into account as these decisions were insufficiently reasoned and thus arbitrary, as opposed to the decision of 26 June 1997.

38. In this regard, the Court refers to the Federal Constitutional Court's decision (see paragraph 15 above) indicating that in the Federal Administrative Court's judgment, the reasons given to explain the change of case-law had been very short. However, the Court takes the view that the legal position taken by the Federal Administrative Court does neither contradict the clear wording of statutory law nor can it be said to be unreasoned (*a contrario*, *Kushoglu v. Bulgaria*, no. 48191/99, § 55, 10 May 2007). It relies on the fact that the original wording of the 1992 Act was

unclear and prompted the legislator to make the amendment in 1997. Therefore it cannot be considered arbitrary under Convention law.

39. The Court takes note of the applicant's argument that in the assessment of whether there was consistent case-law at hand, only those domestic court decisions taken before 24 July 1997, the date when section 3 § 1, eleventh sentence, of the Property Act came into force, should be taken into account and, in particular, not judgments adopted ten years later.

40. The Court observes in this regard that it may well be that the judgment of the Federal Administrative Court, delivered on 26 June 1997, raised the applicant's predecessor's hopes, but could not be regarded as finally settling the problem of the interpretation of section 3 § 3 of the Property Act. Mere hope does not suffice to assume "legitimate expectations" in the meaning of the Court's case-law (see paragraph 30 above). The term "legitimate" rather refers to the firm basis in domestic law the claim must have. Contrary to the applicant's submissions, the Court must make its assessment in this regard on the basis of the domestic courts' interpretation of the relevant domestic provisions taken as a whole, even if the courts were called upon to interpret the original wording of a law after its amendment.

41. The Court is thus not persuaded that the wording of the relevant statutory law was sufficiently clear to assume that the JCC's alleged claim under domestic law existed. The highest domestic court which had to decide about the matter, the Federal Administrative Court, delivered conflicting judgments about the decisive legal question, ultimately ruling that the 1992 version of the Property Act had not granted any entitlement for compensation to the applicant as shareholder of a company. In consequence, the applicant's claim might have been arguable, but has not been supported by consistent case-law.

42. The Court concludes that the applicant has not shown that he had a claim that was sufficiently established to be enforceable. He therefore cannot argue that he had "possessions" within the meaning of Article 1 of Protocol No. 1. Consequently, neither the introduction of section 3 § 1, eleventh sentence, nor the impugned decisions of the domestic courts amounted to an interference with the peaceful enjoyment of his possessions, and the facts of the case therefore do not fall within the ambit of Article 1 of Protocol No. 1.

43. It follows that the complaint under Article 1 of Protocol 1 is incompatible *ratione materiae* with the provisions of the Convention, within the meaning of Article 35 § 3 (a), and must be rejected in accordance with Article 35 § 4.

B. Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1

44. The applicant also claimed to be the victim of discrimination in breach of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 because, unlike other categories of persons, he was unable to claim a right to restitution of the property that had been unlawfully expropriated.

Article 14 of the Convention reads 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."

45. According to the Court's settled case-law, Article 14 of the Convention complements the other substantive provisions of the Convention and its Protocols. It has no independent existence since it has effect solely in relation to the "enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter (see *Prince Hans Adam II of Liechtenstein*, cited above, § 91, and *von Maltzan and Others*, cited above, § 116).

46. Having regard to the finding that Article 1 of Protocol No. 1 is inapplicable, the Court holds that Article 14 of the Convention cannot be taken into account in the present case.

47. It follows that the complaints under Article 1 of Protocol No. 1, taken in conjunction with Article 14, are also incompatible *ratione materiae* with the provisions of the Convention, within the meaning of Article 35 § 3 (a), and must be rejected in accordance with Article 35 § 4.

C. Article 6 of the Convention

48. The applicant further complained that the Government had unfairly influenced the ongoing proceedings before the Administrative Court by amending the relevant law and thus infringed the applicant's right to a fair trial under Article 6 § 1 of the Convention, which provides:

> "In the determination of his civil rights ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

49. The applicant referred to the Court's case-law, *inter alia*, in *Stran Greek Refineries and Stratis Andreadis v. Greece* (9 December 1994, § 47, Series A no. 301-B) and *Papageorgiou v. Greece* (22 October

1997, § 37, *Reports of Judgments and Decisions* 1997-VI) and maintained that it had submitted this complaint in substance before the Federal Constitutional Court.

50. The Government objected that the applicant had not exhausted domestic remedies and disputed that the applicant's constitutional complaint included this particular complaint.

51. The Court observes that neither in the summary of facts nor in the legal arguments of the applicant's constitutional complaint was it mentioned that the applicant claimed an unfair interference with his proceedings before the Potsdam Administrative Court by the German Government or legislature. The constitutional complaint was wholly based on the allegations that the applicant's rights under Articles 3 and 14 of the Basic Law had been infringed. Consequently, the Federal Constitutional Court was not placed in a position to rule on this matter.

52. It follows that, regarding the complaint under Article 6, the applicant has not exhausted domestic remedies as prescribed in Article 35 § 1 of the Convention. This part of the application must therefore likewise be rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 21 April 2016.

Claudia Westerdiek
Registrar

Ganna Yudkivska
President