

LAGRAND CASE
(Germany v United States of America)

This case is still pending.¹ The parties completed the oral pleadings in public hearings on the merits of the claim in November 2000 and are now awaiting the judgment of the Court.

HISTORY OF THE PROCEEDINGS

On 2 March 1999 Germany filed in the Registry an Application to institute proceedings for violations of the Vienna Convention on Consular Relations of 24 April 1963. Germany alleged that the United States of America had breached the Convention with respect to Karl and Walter LaGrand, two German nationals sentenced to death by the State of Arizona for the murder of a bank manager in 1982.

In its Application, Germany maintained that the two brothers had been arrested, tried and sentenced to death without being advised of their rights to consular assistance, as required by the Vienna Convention. It contended that it was only in 1992, when all legal avenues had been exhausted, that the German consular officers were made aware of the case in question, not by the authorities of the State of Arizona, but by the detainees themselves. Germany added that the failure to provide the required notification precluded it from protecting its nationals' interest in the United States.

Accordingly, Germany asked the Court to adjudge and declare following (at this time, only Karl LaGrand had been executed):

1. The United States had violated its international legal obligations under the Vienna Convention.
2. The United States should provide reparation, in the form of compensation and satisfaction, for the execution of Karl LaGrand.
3. The United States should restore the *status quo ante* in the case of Walter LaGrand, namely, re-establish the situation that existed before his detention and sentencing in violation of the United States' international legal obligations.
4. The United States should provide Germany with a guarantee of the non-repetition of the illegal acts.

¹ For more information refer to [1999] Australian International Law Journal 325-331.

As a basis for the Court's jurisdiction, Germany invoked Article I of the Vienna Convention's Optional Protocol Concerning the Compulsory Settlement of Disputes. On the same day, Germany also filed a request for provisional measures in order to obtain a postponement of the execution of Walter LaGrand.

In an Order dated 3 March 1999, which the Court adopted unanimously, the Court ruled *ex officio* in view of the urgency of the case. It called on the United States to "take all measures at its disposal" to ensure that Walter LaGrand was not executed pending a final decision in the proceedings instituted by Germany. Further, the Court requested the United States to inform the Court of all the measures taken to implement the Court's Order.

However, prior to this and unknown to the Court, Karl LaGrand had been executed on 24 February 1999. It was only on 3 March 1999 that the United States Department of State transmitted to the Governor of Arizona a copy of the Court's Order pursuant to proceedings in the United States Supreme Court.

By a letter dated 8 March 1999, the United States informed the Court that the Department of State had transmitted to the Governor of Arizona a copy of the Court's Order on 3 March 1999. However, on this same day, Walter LaGrand was executed as well, after the United States Supreme Court had issued orders disposing of the various motions and petitions before it relating to him.

Thus, during the hearings on the merits of Germany's claim, it adjusted its pleadings and requested the Court to adjudge and declare as follows:

1. By not informing Karl and Walter LaGrand without delay following their arrest of their rights under Article 36(1)(b) of the Vienna Convention on Consular Relations, and by depriving Germany of the possibility of rendering consular assistance, that ultimately resulted in the execution of Karl and Walter LaGrand, the United States violated its international legal obligations to Germany, in its own right and in its right of diplomatic protection of its nationals, under Articles 5 and 36(1) the Vienna Convention.
2. By applying rules of its own domestic law, in particular the doctrine of procedural default, which barred Karl and Walter LaGrand from raising their claims under the Vienna Convention on Consular

Relations, and by ultimately executing them, the United States violated its international legal obligation to Germany under Article 36(2) of the Convention to give full effect to the purposes for which the rights accorded under Article 36 are intended.

3. By failing to take all measures at its disposal to ensure that Walter LaGrand was not executed pending the final decision of the International Court of Justice on the matter, the United States violated its international legal obligations to comply with the Order on Provisional Measures issued by the Court on 3 March 1999, and to refrain from any action that might interfere with the subject matter of a dispute while judicial proceedings are pending.
4. Pursuant to the foregoing international legal obligations, that the United States shall provide Germany an assurance that it will not repeat its unlawful acts and that, in any future cases of detention of or criminal proceedings against German nationals, the United States will ensure in law and practice the effective exercise of the rights under Article 36 of the Vienna Convention on Consular Relations. In particular in cases involving the death penalty, this requires the United States to provide effective review of and remedies for criminal convictions impaired by a violation of the rights under Article 36.

In reply, the United States asked the Court to adjudge and declare as follows:

1. There was a breach of the United States' obligation to Germany under Article 36(1)(b) of the Vienna Convention on Consular Relations, because the competent authorities of the United States did not promptly give to Karl and Walter LaGrand the notification required by that Article, and that the United States has apologised to Germany for this breach.
2. The United States has taken substantial measures aimed at preventing any recurrence.
3. All other claims and submissions of Germany should be dismissed.

The Court is now deliberating on its Judgment in accordance with the internal judicial practice of the Court.