§ 1.3 of the Act on Compensation in accordance with the Act on the Settlement of Open Property Issues (*Gesetz über die Entschädigung nach dem Gesetz zur Regelung offener Vermögensfragen*) of 27 September 1994 is incompatible with the general principle of equality contained in Article 3.1 of the Basic Law (*Grundgesetz – GG*) and is null and void. For this reason, compensation is also to be granted in respect of plots of land with apartment buildings on the acceding territory which were taken into public ownership in the German Democratic Republic by means of abandonment of title, donation or disclaimer of inheritance in instances in which overindebtedness had occurred, or was directly immanent, as a result of non-cost-covering rents, and where the plots cannot be returned in kind.

Order of the First Senate of 10 October 2001

– 1 BvL 17/00 –

RULING :

§ 1.3 of the Act on Compensation in accordance with the Act on the Settlement of Open Property Issues (Compensation Act (*Entschädigungsgesetz – EntschG*]) of 27 September 1994 (Federal Law Gazette (*Bundesgesetzblatt – BGBl*) I p. 2624) is incompatible with Article 3.1 of the Basic Law, and is null and void.

EXTRACT FROM GROUNDS:

A.

The submission proceedings relate to the matter of whether it is constitutional for no compensation to be granted in respect of non-restitutable plots of land with apartment buildings on the acceding territory which were taken into public ownership in the German Democratic Republic by means of abandonment of title, donation or disclaimer of inheritance in instances in which overindebtedness had occurred, or was directly immanent, as a result of non-cost-covering rents. 1

I.

§ 1 of the Act on the Settlement of Open Property Issues (*Gesetz zur Regelung offener Vermögensfragen* (*Vermögensgesetz – VermG*)) as promulgated on 4 August 1997 (Federal Law Gazette I p. 1974), on which the initial proceedings were based, governs property claims relating to assets in the German Democratic Republic which were the subject of the measures detailed in the provision which led to the loss of ownership of the asset. In accordance with subsection 2 of the provision, these assets also include developed properties and buildings which were taken into public ownership by means, firstly, of expropriation and, secondly, of abandonment of title, donation or disclaimer of inheritance in instances in which overindebtedness had occurred, or was directly immanent, as a result of non-cost-covering rents. In accordance with § 3.1 of the Property Act, assets which were subjected to the measures within the meaning of § 1 of the Property Act and were transferred into public ownership or sold to third parties are to be returned upon request to the beneficiaries in accordance with § 2.1 of the Property Act, to the extent that such is not ruled out by statute. 2

Restitution is ruled out if retransfer is no longer possible because of the thing's own nature (§ 4.1 of the Property Act) or where natural persons, religious groups or non-profit foundations have in good faith acquired ownership of or *in rem* rights of use in the property after 8 May 1945 (§ 4.2 of the Property Act). In these cases – and in others which are of no interest here – the beneficiaries have in general a claim to compensation in accordance with § 1.1 sentence 1 of the Act on Compensation in accor- 3

dance with the Act on the Settlement of Open Property Issues which entered into force as part of the Compensation and Equalisation Payments Act (*Entschädigungs- und Ausgleichsleistungsgesetz – EALG*) of 27 September 1994 (Federal Law Gazette I p. 2624). The same applies if the beneficiary has opted for compensation in place of restitution in accordance with § 8.1 sentence 1 of the Property Act.

An exception from the principle of compensation is regulated by § 1.3 of the Compensation Act. Accordingly, no compensation is granted for land within the meaning of § 1.2 of the Property Act which was taken into public ownership not by means of expropriation, but by abandonment of title, donation or disclaimer of inheritance. In line with this provision, which was contained in § 9.1 sentence 2 of the Property Act in the original version of the Act of 23 September 1990 (Federal Law Gazette II pp. 889, 1159) until deleted by Article 10 no. 6 letter a of the Compensation and Equalisation Payments Act, beneficiaries may not select compensation in place of retransfer in the above cases (see § 8.1 sentence 2 of the Property Act). 4

§ 1.1 to 3 of the Property Act, and § 1.1 and 3 of the Compensation Act, read as follows to the extent that they are of interest here: 5

§ 1 of the Property Act

Area of Application

(1) This Act shall govern property claims relating to assets which

a) were expropriated without compensation and transferred into public ownership;

b) were expropriated for a lower compensation than that to which citizens of the former German Democratic Republic were entitled;

c) …;

d) were transferred into public ownership on the basis of the Decree of the Presidium of the Council of Ministers of 9 February 1972 and related provisions.

(2) This Act shall furthermore apply to developed properties and buildings which were taken into public ownership in the German Democratic Republic by means of expropriation, abandonment of title, donation or disclaimer of inheritance in instances in which overindebtedness had occurred, or was directly immanent, as a result of non-cost-covering rents.

(3) This Act shall also concern claims regarding assets, as well as rights of use, which were acquired on the basis of unfair practices, such as through abuse of power, corruption, coercion or deception on the part of the acquirer, state authorities or third parties.

§ 1 of the Compensation Act

Principles of Compensation

(1) A claim to compensation shall exist if restitution is ruled out in accordance with the Act on the Settlement of Open Property Issues (Property Act) (§§ 4.1 and 4.2 … of the Property Act) or if the person entitled has elected compensation (… § 8.1 … of the Property Act) …

(3) No compensation shall be granted for land within the meaning of § 1.2 of the Property Act which was taken into public ownership by abandonment of title, donation or disclaimer of inheritance.

II.

1. The plaintiff of the initial proceedings is the legal successor of his great-grandmother, who was the pro rata owner in an undivided community of heirs with three other co-heirs of a plot of land in the German Democratic Republic on which an apartment building was built. After her death in 1959, all possible heirs, including the plaintiff, disclaimed her inheritance. The State Notary's Office thereupon determined that there was no heir other than the German Democratic Republic; the share of the inheritance of the plot was transferred into public ownership. In 1972, the land was sold to private buyers by the community of heirs. It was subsequently sold one twice more. 6

The plaintiff's motion for restitution of a one-quarter share of ownership in the above-mentioned land was rejected; it was also stated that compensation could not be considered. The administrative court rejected the action thereupon filed, which requested retransfer of the share of ownership, and alternatively the granting of compensation. The court stated that it was doubtful whether a right to restitution existed on principle in accordance with § 1.2 of the Property Act, but that this could be left open. According to the court, retransfer in accordance with § 4.2 of the Property Act was certainly ruled out because the present owner had acquired the land in good faith. Also, the alternative motion was unsuccessful because compensation was not granted in accordance with § 1.3 of the Compensation Act for land within the meaning of § 1.2 of the Property Act which had been taken into public ownership by disclaimer of inheritance. 7

2. The Federal Administrative Court *(Bundesverwaltungsgericht)* admitted the appeal on points of law only to this extent in response to the plaintiff's complaint against denial of leave to appeal which the latter had restricted to the matter of granting compensation because it was possible in the appeal proceedings on points of law to clarify whether § 1.3 of the Compensation Act was compatible with higher-ranking law. Then, it stayed the proceedings in accordance with Article 100.1 of the Basic Law and submitted the question to the Federal Constitutional Court for a decision as to whether § 1.3 of the Compensation Act is compatible with the Basic Law (see *Zeitschrift für Vermögens- und Investititionsrecht – VIZ* 2001, p. 81). 8

[…] 9-18

III.

The Federal Ministry of Finance, representing the Federal Government, and the plaintiff of the initial proceedings, made statements with regard to the submission. 19

1. The Federal Ministry doubts the admissibility of the submission. It states that it has not been clarified whether the validity of § 1.3 of the Compensation Act is relevant to a ruling on the action. This is alleged to be conditional on the elements of § 1.2 of the Property Act being met. This had however remained open in the initial proceedings. 20

Certainly, the arrangement of the exclusion of compensation in § 1.3 of the Compensation Act is claimed to be constitutional. It was in particular compatible with the general principle of equality contained in Article 3.1 of the Basic Law. In adopting § 1.3 of the Compensation Act, the legislature is said to have attached diverging legal consequences to a variety of circumstances in a constitutionally permissible manner, and in so doing to have adhered to the framework of its discretion as to assessment and selection. A major reason for the possibility to reassign in accordance with § 1.2 of the Property Act had been to return without delay to sensible, local, private ownership structures in the new *Länder*. This reason is said to justify the exclusion of compensation in § 1.3 of the Compensation Act at least to the extent that a transfer to public ownership had taken place in the form of a legal transaction with the owner, as in the case of abandonment, donation or disclaimer of inheritance, and not against their will, as in the case of expropriation. 21

2. The plaintiff of the initial proceedings, by contrast, takes the view that the arrangement which is the subject of the review is not compatible with the general principle of equality. … 22

B.

The submission is admissible. 23

I.

The Federal Administrative Court gave as reasons for the ruling on the submission in line with the requirements of § 80.2 sentence 1 of the Federal Constitutional Court Act (*Bundesverfassungsgerichtsgesetz – BVerfGG*), stating in particular the degree to which its decision depends on the validity of § 1.3 of the Compensation Act. 24

The standard submitted for a review is only relevant to the ruling if the continued existence of the provision is vital for the final ruling (see Decisions of the Federal Constitutional Court (*Entscheidungen des Bundesverfassungsgerichts* – BVerfGE) 79, 240 (243) with further references). It must therefore emerge sufficiently clearly from the considerations of the submitting court that a different result is to be anticipated if the standard is valid than if it were not to be valid (see BVerfGE 88, 198 (201); 97, 49 25

(60)). This is the case in the present instance. The Federal Administrative Court has comprehensively submitted that, if § 1.3 of the Compensation Act is constitutional, the plaintiff's appeal on points of law must be rejected, whilst if the provision is unconstitutional, by contrast, the appeal on points of law will be successful if the case is referred back to the administrative court. Even if it remained open in the initial proceedings whether the land to which the action refers meets the preconditions of § 1.2 of the Property Act, the final ruling in the appeal proceedings on points of law also depends on a ruling as to the constitutionality of § 1.3 of the Compensation Act; the plaintiff's appeal on points of law can only be rejected with the consequence of denying with legal effect a right to compensation if the provision is valid. This is sufficient for admissibility (see BVerfGE 18, 257 (263)).

II.

Reservations as to the admissibility of the submission can also not be derived from the wording and scope of the question submitted. 26

1. Admittedly, the Federal Administrative Court presented § 1.3 of the Compensation Act as a whole for a constitutional review, in other words did not restrict the question submitted to the case of disclaimer of inheritance within the meaning of this provision that is of relevance to the ruling. This does not however encounter any reservations. Also, the further cases covered by § 1.3 of the Compensation Act concerning abandonment of title and donation are concerned with renouncing legal positions by means of a legal transaction which, constitutionally, can only be decided in a standard form when it comes to compensation. Hence, it furthers the peace under the law sought by virtue of the Federal Constitutional Court's ruling on the constitutionality of statutes if § 1.3 of the Compensation Act is constitutionally examined with regard to all regulatory variants (see BVerfGE 62, 354 (364)). 27

2. It is also unobjectionable that the submission only put forward § 1.3 of the Compensation Act for review. It is a matter of course that question § 1.1 sentence 1 of the Compensation Act is to be included in the question submitted because this provision determines for those beneficiaries who are not covered by § 1.3 of the Compensation Act that they are to receive compensation in accordance with the Compensation Act in the event of exclusion from restitution. The beneficial provision (§ 1.1 sentence 1 of the Compensation Act) and the disadvantageous provision (§ 1.3 of the Compensation Act) form one unit of the answer to the question submitted in the light of Article 3.1 of the Basic Law. 28

C.

§ 1.3 of the Compensation Act is incompatible with the Basic Law, and is null and void. 29

I.

The provision put forward for a review, however, as also presumed by the Federal 30

Administrative Court, is in accord both with the guarantee of property contained in Article 14.1 of the Basic Law, and with the principles of the social state and of a state based on the rule of law (Article 20.1 and 3 of the Basic Law).

1. A legal position equivalent to assets on which § 1.3 of the Compensation Act could have encroached in violation of Article 14.1 of the Basic Law never existed. This has been correctly stated by the Federal Administrative Court. 31

Article 14.1 of the Basic Law is also not violated by the federal legislature in that § 1.3 of the Compensation Act excluded the granting of compensation for land within the meaning of § 1.2 of the Property Act which was taken into public ownership in the German Democratic Republic by means of abandonment of title, donation or disclaimer of inheritance in instances in which overindebtedness had occurred, or was directly immanent, as a result of non-cost-covering rents, and was not restituted. It is not possible to derive from the fundamental rights that the Federal Republic of Germany must compensate property damage for which a state power such as the German Democratic Republic is responsible that was not bound by the Basic Law. Also, Article 14 of the Basic Law does not therefore oblige the federal legislature to make provisions which provide for compensation for such damage by granting compensation in money or money equivalents (see BVerfGE 102, 254 (297)). 32

2. § 1.3 of the Compensation Act also encounters no constitutional objections with regard to the principles of the social state and of a state based on the rule of law. The total volume of the compensation payments which the Compensation Act provides for those in the German Democratic Republic who were affected by loss of property and do not receive restitution in kind is not so low that it is no longer possible to speak of compensation for loss which is compatible with the above-mentioned constitutional principles (see BVerfGE 102, 254 (301 ff.)). This assessment is also not placed in question by virtue of the individual arrangement contained in § 1.3 of the Compensation Act. 33

II.

The statutory provision to be examined however contradicts the general principle of equality contained in Article 3.1 of the Basic Law because, accordingly, the plots of land within the meaning of § 1.2 of the Property Act which were taken into public ownership by abandonment of title, donation or disclaimer of inheritance have been excluded from compensation in accordance with the Compensation Act without adequate justification. 34

1. As the submitting court has correctly stated, the beneficiaries within the meaning of § 2.1 of the Property Act who belong to the group of persons affected by § 1.3 of the Compensation Act are treated less well in two ways than other previous owners or their legal successors. Firstly, they are placed at a disadvantage as against those who rely on one of the damaging elements of § 1.1 and 3 of the Property Act and who can claim compensation in accordance with § 1.1 sentence 1 of the Compensation 35

Act if the return of the asset is ruled out. Secondly, those concerned, such as the plaintiff of the initial proceedings, have been placed in a worse position in the internal field of § 1.2 of the Property Act in comparison to the owners or their legal successors who are also entitled to compensation in accordance with § 1.1 sentence 1 of the Compensation Act because the non-restorable land was taken into public ownership by means of expropriation under the preconditions of § 1.2 of the Property Act.

2. In both cases there is no sufficiently weighty factual reason which might justify placing at a disadvantage those who are affected by the excluding standard of § 1.3 of the Compensation Act. 36

a) The Federal Administrative Court understands § 1.2 of the Property Act as a whole as a provision which, in the same way as § 1.1 and 3 of the Property Act, is intended to make restitution for injustice which has been done to the persons concerned from a property point of view under the responsibility of the German Democratic Republic. The provision is said not only to serve the administrative policy purpose of enabling a return to normal private-use ownership structures. This is in accord with the Federal Government's commentary on the Property Act. 37

There, it is stated with regard to the retransfer of real estate which was taken into public ownership on the basis of economic coercion that the question concerns not the correction of discriminatory measures or measures in contravention of the rule of law, but the correction of a misguided housing and rental policy; this had affected owners of rented land in the East and in the West to the same degree (see *Bundestag* document 11/7831, p. 1). The fact that this does not permit one to deny the connection with events which led to the loss of assets in a discriminatory manner or in contravention of the rule of law is already made clear by the fact that it is simultaneously stressed that the Property Act presumes with the provision on the retransfer of the above-mentioned real estate over and above the restitution of discriminatory injustice that was in contravention of the rule of law (see *Bundestag* document (*Bundestagsdrucksache – BTDrucks*) 11/7831, p. 1). Furthermore, it is explicitly indicated re § 1.2 of the Property Act that this provision also covers cases of "cold expropriation" of real estate in which continuing to hold on to ownership in the light of the existing (or directly immanent) overindebtedness must have appeared to be economically senseless, and hence a way out had been sought via abandonment of title, donation or the disclaimer of inheritance (see *Bundestag* document 11/7831, pp. 2 ff.). With regard to this finding, the nature of § 1.2 of the Property Act is on the whole also that it is part of the law of compensation, as the Federal Administrative Court correctly presumed. 38

For assets which were affected by damaging measures as understood by § 1.1 and 3 of the Property Act, and for land within the meaning of § 1.2 of the Property Act which had formally been expropriated, this nature is consistently reflected in that they are not only subject to restitution in accordance with the Property Act, but that, if restitution is ruled out, compensation in accordance with the Compensation Act is also granted for their loss in accordance with § 1.1 sentence 1 of the Compensation Act, in 39

other words at least compensation in monetary equivalents. By means of this provision, the benchmarks in no. 3 letters a and b, as well as in no. 4, of the Joint Declaration of the Two German Governments on the Settlement of Open Property Issues (*Gemeinsame Erklärung der beiden deutschen Regierungen zur Regelung offener Vermögensfragen – GemErkl*) of 15 June 1990 (Federal Law Gazette II pp. 889, 1237; referred to hereinafter as: Joint Declaration) were placed on the statute books. Accordingly, if rights of ownership of land cannot be returned because this is made impossible by the thing's own nature, or because citizens of the German Democratic Republic acquired ownership of the asset in good faith, compensation is payable to the former owners; the same applies to the owners of land with buildings which were taken into public ownership because of economic coercion.

"Economic coercion" is however not understood here to mean only instances in which overindebtedness has already occurred, or is directly immanent, leading to the formal expropriation of the building plot. Rather, it also covers overindebtedness because of which the owner had to renounce their property as a result of abandonment or donation and the heir give up their inherited right by disclaimer (see Neuhaus, in: Fieberg/Reichenbach/ Messerschmidt/Neuhaus, *Gesetz zur Regelung offener Vermögensfragen*, § 1 *VermG* marginal no. 85 (version: April 1995)). Obviously, this was also based on the idea that the subsequently mentioned cases also relate to the restitution of injustice in the field of property law. 40

b) Against this background, it runs counter to the system for the legislature for cases falling under § 1.1 and 3 of the Property Act, and for those under § 1.2 of the Property Act, to the extent that they relate to taking into public ownership by means of expropriation, to also provide for compensation in accordance with the Compensation Act in addition to restitution in kind, but ruled out this possibility for cases falling under § 1.2 of the Property Act in which taking into public ownership was based on abandonment of title, donation or disclaimer of inheritance. The fact of a provision being contrary to the system does not by itself lead one to presume a violation of the general principle of equality. The fact of a provision being contrary to the system is however an indication of such a violation. It is essential whether the derogation from the system is sufficiently justified from a factual point of view (see BVerfGE 9, 20 (28); 81, 156 (207); consistent case-law). If compensation is ruled out in § 1.3 of the Compensation Act, this is not the case with regard to the two comparative groups named. 41

aa) The fact that those affected by this exclusion who receive equivalent compensation in money in accordance with the Compensation Act are placed at a disadvantage as against those entitled to restitution in accordance with § 1.1 or 3 of the Property Act, which in cases falling under § 4.1 and 2 of the Property Act cannot be justified by the fact that ownership of land within the meaning of § 1.2 of the Property Act where it was taken into public ownership by abandonment of title, donation or disclaimer of inheritance, albeit under economic pressure, was ultimately abandoned on the basis of an independent decision. This point of view, on which the Federal Government based its commentary to the Property Act (see *Bundestag* document 11/7831, p. 9 re § 9.1 42

sentence 2 in conjunction with pp. 8-9 re § 8), fails to apply as a justification not only because the above-mentioned evaluation of the reasons for loss of § 1.3 of the Compensation Act rules out as "cold expropriation" for which restitution must be granted the presumption that the "independent decision" of the person concerned to renounce ownership was a decision which could be taken freely. The circumstance named by the Federal Government is, rather, also unsuitable as a justification because the damage elements contained in § 1.1 and 3 of the Property Act also cover circumstances where in the framework of sale in a legal transaction under pressure and coercion, loss of property was caused on the basis of the "independent decision" of the beneficiary without this having led to the provision of an exclusion of compensation as in § 1.3 of the Compensation Act. The Federal Administrative Court correctly referred in this respect to the provisions of § 1.1 letter d of the Property Act (see on this *Bundestag* document 11/7831, p. 2) and § 1.3 of the Property Act (see *Bundestag* document 11/7831, p. 3, and also back in BVerfGE 95, 48 (49, 56 ff.)).

Placing at a disadvantage of those who were affected by § 1.3 of the Compensation Act can also not be justified by the fact that the measures within the meaning of § 1.2 of the Property Act did not constitute injustice deliberately targeting the individual owners or heirs, but were only indirectly effective and were systematic injustice designed more for the long term. Apart from the fact that the events named in § 1.2 of the Property Act also led in each case to a loss of property affecting an individual requiring compensation, § 1.1 letter d of the Property Act also covers circumstances which can be regarded as systematic injustice, and which are not linked to an exclusion of compensation (see Neuhaus, *loc. cit.*, § 1 *EntschG* no. 61 (version: October 1996)). Also in this respect there are therefore no differences which could justify placing at a disadvantage the group to which the plaintiff of the initial proceedings belongs. 43

bb) The same applies to the unequal treatment of this group in relation to those who fall under § 1.2 of the Property Act as expropriated parties or their legal successors. 44

(1) Also in this respect, the point of view that, in cases falling under § 1.3 of the Compensation Act, taking into public ownership was based in the final analysis on an "independent decision" by the owner or the heir cannot be considered as justification. It would be different at best if the extent of the property damage in these cases were less than in those cases in which public ownership had been completed by means of formal expropriation. There is however no indication of this. 45

Already no. 4 of the Joint Declaration, as mentioned, made no difference for the return of the plots of land with apartment buildings which are discussed here between the cases of expropriation and the other cases governed today by § 1.3 of the Compensation Act, but covered with the term "economic coercion" overindebtedness as a cause of all events leading to taking into public ownership. The legislature acted thus in implementing this benchmark in § 1.2 of the Property Act. The equivalence of cases of "cold expropriation" with those of formal expropriation in the commentary of the 46

Federal Government to the Property Act also does not permit differences to be recognised between these groups of cases concerning the weight of the discriminatory injustice. There is also no other indication of this.

In particular, it cannot be determined that the pressure of economic circumstances on the owners of plots of land with apartment buildings had been generally not so strong in cases falling under § 1.3 of the Compensation Act that those concerned still had the choice between abandoning title and retaining ownership of the land. One must hence concur with the Federal Administrative Court that abandonment of title, donation and disclaimer of inheritance within the meaning of § 1.2 of the Property Act and of § 1.3 of the Compensation Act were acts of self-denial favouring public ownership which came about not on the basis of a free decision of the person concerned in each case, but were forced by the circumstances pertaining at that time, and hence with regard to discriminatory injustice are not to be allotted a lower value than formal state expropriations. 47

(2) There are no further reasons which might justify the unequal treatment associated with § 1.3 of the Compensation Act in the internal field of § 1.2 of the Property Act. In particular, no such reason can be seen in the weighing up by the Federal Government in its commentary to the Act on the Settlement of Open Property Issues that it appeared inappropriate from the point of view of equality to treat differently those who had divested themselves of land under the pressure of the economic circumstances than those who had retained their land under the same conditions (see *Bundestag* document 11/7831, p. 9). 48

The Federal Administrative Court presumed that this consideration was based on the idea that by means of a compensation payment to those who had abandoned their overindebted land the owners who retained their property despite overindebtedness and were unable to receive compensation for their "neglected" objects after reunification might be placed at a disadvantage. Over and above this, the reference material takes the view in this context that the approval of compensation for the land named in § 8.1 sentence 2 of the Property Act and § 1.3 of the Compensation Act could oblige the legislature to correct all consequences of the 40 years of Socialist rental pricing policy in the German Democratic Republic (see Redeker/Hirtschulz, in: Fieberg/Reichenbach/Messerschmidt/Neuhaus, *loc. cit.,* § 8 *VermG* no. 16 (version: December 2000)). 49

Such consequences can however not be constitutionally drawn. Renouncing ownership of plots of land with apartment buildings by means of abandonment, donation or disclaimer of inheritance because of economic coercion, and retention of this ownership despite the same conditions, are circumstances which differ so fundamentally from one another that they do not have to be afforded equal treatment constitutionally. Apart from this, the legislature is in any event not constitutionally obliged to compensate for all disadvantages which people had to shoulder under the dominion of the German Democratic Republic in the various areas of life (see BVerfGE 102, 254 50

(313)).

D.

In accordance with § 82.1 in conjunction with § 78 sentence 1 of the Federal Constitutional Court Act, the unconstitutionality of § 1.3 of the Compensation Act leads to the provision being null and void. A simple declaration of incompatibility, as legally appropriate as a rule with violations of Article 3.1 of the Basic Law, cannot be considered appropriate here because it is conditional on the legislature having several options at its disposal to make a new constitutional provision. This is not the case, however. 51

Were those who are able to rely on the damage elements of § 1.1 or 3 of the Property Act, or on the existence of expropriation within the meaning of § 1.2 of the Property Act, and in the event of the exclusion of restitution receive compensation in accordance with § 1.1 sentence 1 of the Compensation Act, to be excluded in future as those affected by § 1.3 of the Compensation Act from compensation in accordance with the Compensation Act, the group of those entitled to compensation would be so small that this Act would very much fail to achieve its aim. It can also not remain unconsidered that the Property Act has now been largely implemented. In light of this, the only possibility remaining is to create equality among the groups of individuals named by those who are currently excluded from granting compensation in accordance with § 1.3 of the Compensation Act becoming included in the area of application of § 1.1 sentence 1 of the Compensation Act. This legal consequence applies with the determination that the provision submitted for review is null and void. Unappealable determinations by means of which motions to grant compensation in view of § 1.3 of the Compensation Act were rejected remain unaffected thereby unless otherwise provided by the legislature (see § 82.1 in conjunction with § 79.2 sentence 1 of the Federal Constitutional Court Act). 52

Judges: Papier, Jaeger, Haas, Hömig, Steiner, Hohmann-Dennhardt, Hoffmann-Riem, Bryde

Bundesverfassungsgericht, Beschluss des Ersten Senats vom 10. Oktober 2001 - 1 BvL 17/00

Zitiervorschlag BVerfG, Beschluss des Ersten Senats vom 10. Oktober 2001 - 1 BvL 17/00 - Rn. (1 - 52), http://www.bverfg.de/e/ls20011010_1bvl001700en.html

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