Headnotes

to the Judgment of the First Senate of 10 April 2018

– 1 BvL 11/14 –

– 1 BvL 12/14 –

– 1 BvL 1/15 –

– 1 BvR 639/11 –

– 1 BvR 889/12 –

1. **The legislature has wide latitude when it comes to selecting a tax base and to setting out the details of valuation provisions regarding a tax, as long as they are suitable for covering the reasons for imposing the tax burden and for reflecting a realistic valuation system as regards the relation of assets to each other.**

2. **Even avoiding an administrative burden, however heavy it may be, cannot justify the use of valuation provisions that do not, in general, allow for a realistic valuation as regards the relation of assets to each other. Even if the amount of a tax is negligible, the use of such unrealistic valuation provisions is not justified.**

3. **With regard to property tax, the suspension of the periodic general assessments since 1964, which the law of standard rateable valuation had originally provided for, inevitably results in increasing unequal treatment due to value distortions that cannot be justified by avoiding the burden of new general assessments or by the negligible amount of the individual tax burden or considerations of practicability, at least since 2002.**

FEDERAL CONSTITUTIONAL COURT

– 1 BvL 11/14 –

– 1 BvL 12/14 –

– 1 BvL 1/15 –

– 1 BvR 639/11 –

– 1 BvR 889/12 –

Pronounced
on 10 April 2018
Langendörfer
Tarifbeschäftigte
as Registrar of the
Court Registry

IN THE NAME OF THE PEOPLE

In the proceedings

I. 1. for constitutional review of

whether §§ 19, 20, 21, 27 and 76(1), § 93(1) second sentence of the Valuation Act (*Bewertungsgesetz* – BewG) in conjunction with Article 2(1) third sentence of the Act of 13 August 1965 (Federal Law Gazette, *Bundesgesetzblatt* – BGBl I, p. 851) in the version of Article 2 of the Act of 22 July 1970 (BGBl I, p. 1118) have been unconstitutional since the assessment date (*Feststellungszeitpunkt*) of 1 January 2009 because they violate the right to equality (Article 3(1) of the Basic Law, *Grundgesetz* – GG).

– Order of Suspension and Referral from the Federal Finance Court (*Bundesfinanzhof*) of 22 October 2014 – II R 16/13 –

– 1 BvL 11/14 –

2. for constitutional review of

whether §§ 19, 20, 21, 23, 27, 76(1), § 93(1) second sentence of the Valuation Act in conjunction with Article 2(1) third sentence of the Act of 13 August 1965 (BGBl I, p. 851) in the version of Article 2 of the Act of 22 July 1970 (BGBl I, p. 1118) have been unconstitutional since the assessment date of 1 January 2009 because they violate the right to equality (Article 3(1) of the Basic Law).

– Order of Suspension and Referral from the Federal Finance Court of 22 October 2014 – II R 37/14 –

- 1 BvL 12/14 -,

3. for constitutional review of

   whether §§ 19, 20, 21, 22, 27, 76(1) no. 1 and 79(5) of the Valuation Act in conjunction with Article 2(1) third sentence of the Act of 13 August 1965 (BGBl I, p. 851) in the version of Article 2 of the Act of 22 July 1970 (BGBl I, p. 1118) have been unconstitutional since the assessment date of 1 January 2008 because they violate the right to equality (Article 3(1) of the Basic Law).

– Order of Suspension and Referral from the Federal Finance Court of 17 December 2014 – II R 14/13 –

- 1 BvL 1/15 -,

II. on the constitutional complaints

1. of Ms N(...),

– authorised representatives: Rechtsanwälte Schulze-Borges, Gretzinger, Garvens, Ellernstraße 34, 30175 Hannover -

against a) the Order of the Federal Finance Court of 18 January 2011 - II B 74/10 -,

b) the Judgment of the Rhineland Palatinate Finance Court (*Finanzgericht*) of 6 May 2010 - 4 K 1417/09,

c) the decision of the Kusel-Landstuhl Tax Office of 2 March 2009 on the objection of the complainant – 23/349/0/029500/000/8 - II / 8, No. 23-0161-0025-08 in the Register for Legal Remedies–

d) the standard rateable value notice and the property tax assessment notice of the Kusel-Landstuhl Tax Office of 26 March 2008 – 23/349/0/029500/000/8

– 1 BvR 639/11 –,

2. of Dr. and Ms K(...)

– authorised representatives: Rechtsanwälte altenburg, Stresemannstraße 78, 47051 Duisburg -

against a) the Order of the Federal Finance Court of 24 February 2012 - II B 110/11 -,

b) the Judgment of the Düsseldorf Finance Court of 13 October 2011 - 11 K 1484/10 Gr.BG -,

c) the decision of the Mühlheim Tax Office of 28 June 2015 on the objection of the complainant - 120/012-3-02014.0/BWBZ 2/IX -,

d) the standard rateable value notice and the property tax assessment notice of the Mühlheim Tax Office of 13 April 2004 – Number 120/012-3-02014.0 –

– 1 BvR 889/12 –

the Federal Constitutional Court – First Senate –

with the participation of Justices

Vice-President Kirchhof,

Eichberger,

Masing,

Paulus,

Baer,

Britz,

Ott,

Christ

held on the basis of the oral hearing of 16 January 2018:

Judgment:

1.§§ 19, 20, 21, 22, 23, 27, 76, 79(5), § 93(1) second sentence of the Valuation Act in conjunction with Article 2(1) first and third sentence of the Valuation Amendment Act in the version of Article 2 of the Act of 22 July 1970 (BGBl I, p. 1118) have been incompatible with Article 3(1) of the Basic Law at least since 1 January 2002, to the extent that they concern developed land that is not used for agriculture or forestry and that is not within the area referred to in Article 3 of the Unification Treaty (*Einigungsvertrag*).

2.The legislature is required to enact new provisions by 31 December 2019 at the latest. Until that date, the provisions on standard rateable valuation declared incompatible with Article 3(1) of the Basic Law may continue to be applied. After the new provisions have been promulgated, the objectionable provisions may be applied for another five years from the date of promulgation, but no longer than until 31 December 2024.

3.Once the period during which the provisions may continue to be applied has ended, no tax burdens may be imposed that are based on the provisions of the Valuation Act declared unconstitutional for subsequent tax collection periods, not even on the basis of definitive notices.

4.The standard rateable value notice of the Kusel-Landstuhl Tax Office of 26 March 2008 (file no.: 23/349/0/029500/000/8), the decision of the Kusel-Landstuhl Tax Office of 2 March 2009 on the objection of the complainant (file no. 23/349/0/029500/000/8 - II / 8, Number 23-0161-0025-08in the Register for Legal Remedies), the Judgment of the Rhineland Palatinate Finance Court of 6 May 2010 (4 K 1417/09) and the Order of the Federal Finance Court of 18 January 2011 (II B 74/10) violate the fundamental right under Article 3(1) of the Basic Law of the complainant in proceedings 1 BvR 639/11.

5.The standard rateable value notice of the Mülheim Tax Office of 13 April 2004 (no. 120/012-3-02014.0), the decision of the Mülheim Tax Office of 28 June 2005 on the objection of the complainants (tax number 120/012-3-02014.0/BWBZ 2/IX), the Judgment of the Düsseldorf Finance Court of 13 October 2011 (11 K 1484/10 Gr,BG) and the Order of the Federal Finance Court of 24 February 2012 (II B 110/11) violate the fundamental right under Article 3(1) of the Basic Law of the complainants in proceedings 1 BvR 889/12.

6.For the rest, the constitutional complaints are rejected.

7.The Federal Republic of Germany must reimburse the complainants for their necessary expenses incurred in connection with the constitutional complaint proceedings.

R e a s o n s :

A.

The proceedings concern the question whether standard rateable valuation *(Einheitsbewertung*) of property, which governs the levying of property tax (*Grundsteuer*), is compatible with the fundamental right to equal treatment (Art. 3(1) of the Basic Law, *Grundgesetz* – GG). This particularly concerns drawing on values determined in 1

the West German *Länder* at the beginning of 1964.

I.

1. Standard rateable values (*Einheitswerte*) for domestic property are assessed on the basis of the provisions of the Valuation Act (§ 19(1) of the Valuation Act, *Bewertungsgesetz* – BewG). The original objective of this general determination of values was to use uniform values for property – so-called standard rateable values – as the basis for several types of taxes, such as wealth tax (*Vermögensteuer*), inheritance tax (*Erbschaftssteuer*), tax on business capital (*Gewerbekapitalsteuer*) and property tax. As some of these taxes are no longer levied and special provisions were inserted into the Valuation Act for other taxes, standard rateable values as such were retained, but the only area for which they are still significant is property tax. 2

Property tax is calculated in several steps. Its binding basis are standard rateable values, which are specifically determined by the tax authorities for the respective land (§§ 19, 20 BewG). They are multiplied by a tax factor (*Steuermesszahl*) that is provided for by law (§ 13(1) Property Tax Act, *Grundsteuergesetz* – GrStG). Finally, the leverage factor (*Hebesatz*) defined by the municipalities is applied to the basic tax amount which has been calculated in this way. 3

2. a) Pursuant to § 21(1) BewG, standard rateable values should generally be determined by way of so-called general assessments (*Hauptfestellungen*) carried out every six years in principle. [...] 4

[...] A complete reassessment of all land in the Federal Republic of Germany was carried out until 1 January 1964, the date of that general assessment. According to the explanatory memorandum to the draft law by the Federal Government, the new provisions at that time mostly aimed at establishing legal provisions for determining standard rateable values which are equal and close to the market value as the basis for fair taxation. [...] 5

b) As a consequence of dispensing with further general assessments, standard rateable values have only been adapted as needed since, or have been determined for the first time – for example, in the case of new buildings. [...] Each value adjustment (*Wertfortschreibung*) and each subsequent assessment (*Nachfeststellung*) has to be based on the values at the time of the general assessment [...]. Therefore, even today all valuation criteria refer to 1 January 1964; standard rateable values thus do not reflect later changes in value. 6

c) […] 7

d) […] 8

aa) […] 9

bb) The valuation of developed land relevant in these proceedings depends on the type of land [...] and is generally carried out using the rental value method (*Er-* 10

tragswertverfahren) [...].

(1) The rental value method applies to [...] rental property, commercial property, mixed-use property, single-family or two-family homes. The standard rateable value is based on [...] the value of the property, which includes the land value, the value of the building and the value of the outside facilities. The property value is calculated using a multiplier, included in the annexe to the Valuation Act, based on the expected gross annual rent, which is determined on the basis of the values of 1964, taking account of some blanket reductions or increases [...]. This valuation method is designed to calculate the land value and the value of the building in one step in a simplified and typified procedure and thus to approximately reflect the general value, i.e. the current market value, of the respective property. 11

[…] 12-13

(2) […] 14-15

e) […] 16-17

II.

Soon after carrying out the general assessment for 1 January 1964, which took until the beginning of the 1970s, initial ideas for reforming valuation law were developed. However, all reform efforts have remained unsuccessful so far. 18

[…] 19-23

III.

[…] 24-44

IV.

[…] 45-52

V.

[…] 53-77

B.

The referrals for judicial review from the Federal Finance Court that aim to clarify whether standard rateable values are constitutional are admissible (I). There is no reason to extend the questions of the referral (II). The Federation has legislative powers regarding these provisions (III). However, they are not compatible with the general guarantee of the right to equality (IV). 78

I.

[…] 79-80

II.

[…] 81

III.

The current law on standard rateable valuation for levying property taxes was enacted as federal law. The Federation has concurrent legislative powers for that matter. 82

[…] 83-91

IV.

I. With respect to the unequal treatment claimed in the referrals, the provisions of the Valuation Act regarding the standard rateable valuation of property in the former West German *Länder* must be measured against the general guarantee of the right to equality; they are incompatible with it. Art. 3(1) GG gives wide latitude to the legislature when it comes to setting out the details of valuation provisions regarding the tax base, but it requires a realistic valuation system as regards the relation of assets to each other (1). The fact that the legislature continues to draw on the general assessment of 1964 leads to significant and extensive unequal treatment when it comes to the valuation of property (2) which cannot be sufficiently justified (3). It is not necessary to decide whether shortcomings regarding enforcement are inherent in the valuation law on standard rateable valuation (4). At any rate, the provisions have been incompatible with Art. 3(1) GG at least since the beginning of 2002 (5). 92

1. The principles regarding the application of the general guarantee of the right to equality in the context of tax law, developed in the case-law of the Federal Constitutional Court, require an equality-based set-up for valuation, also at the level of determining the basis of taxation. 93

a) Art. 3(1) GG requires that all people be treated equally before the law. The resulting principle to treat issues which are essentially alike equally and treat essentially different issues unequally applies to unequal burdens and unequal privileges. At the same time, Art. 3(1) GG does not prevent the legislature from differentiating. However, any differentiation must always be justified by factual reasons commensurate with the aim and extent of the unequal treatment. The standard of constitutional review applicable here is a fluid one that is based on the principle of proportionality, and whose limits cannot be determined in the abstract but instead are defined by the particular subject matters and regulatory areas affected (cf. Decisions of the Federal Constitutional Court, *Entscheidungen des Bundesverfassungsgerichts* – BVerfGE 138, 136 <180 para. 121>; 139, 285 <309 para. 70>, with further references, established case-law). 94

Depending on the matter to be regulated and the criteria for differentiation, the general guarantee of the right to equality results in different constitutional requirements regarding the factual reasons justifying the unequal treatment; the legislature's limits in this respect may range from the mere prohibition of arbitrariness to strict propor- 95

tionality requirements. Stricter requirements for the legislature may arise from the freedoms affected in a given case. Moreover, where individuals have few possibilities of influencing the criteria on which the legislative differentiation is based, or where such criteria are close to those under Art. 3(3) GG, the constitutional requirements are stricter (cf. BVerfGE 138, 136 <180 para. 122>, 139, 285 <309 para. 71>, established case-law).

b) Equality considerations in the field of tax law are based on the principle of equal burdening (*Lastengleichheit*). According to this principle, taxpayers must, *de facto* and *de jur*e, be equally burdened by a tax law. The right to equality gives wide latitude to the legislature when selecting the taxable object and determining the tax rate. After a taxable object has been selected and thus a decision on a tax burden has been made, deviations from such a decision must, however, be in accordance with the right to equality (requirement of consistent design of the basic tax provision). Accordingly, such deviations require a specific factual reason that can justify unequal treatment. In this context, the requirements for the reason justifying the deviation increase in line with the extent of the deviation and with its significance for the distribution of tax burdens (cf. BVerfGE 138, 136 <181 paras. 123, 131>; 139, 285 <309 and 310 para. 72>; BVerfG, Judgment of the First Senate of 10 April 2018 – 1 BvR 1236/11 – para. 105, respectively with further references). 96

c) Art. 3(1) GG always requires that the details of the tax base are set out in an equality-based way. In order to guarantee an equal burdening of taxpayers, the tax base must be selected and its scope set out in such a way that it realistically reflects the reason for imposing the tax as regards the relation of assets to each other (cf. BVerfGE 93, 121 <136>; 93, 165 <172 and 173>; 117, 1 <33>; 139, 285 <310 para. 73>; established case-law). This particularly applies where the tax is levied on the basis of a uniform tax rate because inequalities resulting from tax assessment cannot be corrected or compensated for at a later stage of levying the tax (cf. BVerfGE 93, 121 <142 and 143>). In order to be able to review whether the statutory assessment provisions guarantee a realistic valuation of the assets covered by a tax and thus ensure comparable valuation results in the particular case, it must be possible to discern from the law the purpose of the tax assessment, which is considered relevant for the reason for imposing the tax. 97

On the basis of these requirements, the legislature has wide latitude when it comes to selecting a tax base and setting out the provisions for its assessment as long as they are generally suitable for reflecting the reasons for imposing the tax (cf. BVerfGE 123, 1 <21>; 139, 285 <310 para. 73>). In doing so, the legislature is not obliged under the Constitution to select merely one standard for assessing the tax base (cf. BVerfGE 139, 285 <310 para. 73>). Depending on the type and variety of assets affected by the tax, an equality-based set-up of the basis for tax collection will often only be possible using several standards. When choosing a suitable standard, the legislature may also take into account practicability considerations, which become more important where the number of relevant valuation procedures increases and are thus 98

able to justify typifications and generalisations to a larger extent; yet they must still respect the limits of such typifications and generalisations under constitutional law (cf. in this respect BVerfGE 137, 350 <375 and 376 para. 66>; 139, 285 <313 para. 77>). In order to guarantee an equal tax burden, the assessment system selected and designed in this manner must in any case ensure a realistic and thus equality-based assessment of the tax base overall as regards the relation of the assets to each other.

d) The requirements for an equality-based set-up of the standard rateable valuation following from Art. 3(1) GG apply throughout Germany. 99

[…] 100-102

2. For reasons inherent in the system, suspending a new general assessment of standard rateable values over a long period of time results in substantial unequal treatment due to unequal valuation results (a). As the values drawn on are those of 1 January 1964, the distorted values resulting from the overly long general assessment period are reflected in the individual valuation elements of both the rental value method and the capital value method (*Sachwertverfahren*). 103

a) aa) The system of standard rateable valuation for property is characterised by universal valuations carried out at regular intervals (general assessments). Pursuant to § 21(1) BewG, such general assessments have to be carried out every six years for developed and undeveloped land according to the provisions of §§ 68 et seq. BewG. The aim of the valuation provisions is to determine standard rateable values that at least come close to the current market value of the land [...]. This is in accordance with the general aim of the Valuation Act laid down in § 9(1) BewG, which is to base valuations on the general value of an asset. It is largely undisputed that the Valuation Act aims to obtain results that are as close as possible to the respective market value, also with regard to the standard rateable valuation of undeveloped and developed land. When reviewing equality-based taxation, the point of reference in this system is the current market value, against which the results of standard rateable valuation must be measured with respect to the nature and extent of possible divergences. 104

bb) The legislature itself designed the valuation system in such a way that the periodic repetitions of general assessments, provided for by law, are a pivotal element of the system. It is based on the notion that the circumstances determining the current market value of land are uniformly captured as realistically as possible at the time of the general assessment. As these circumstances are typically subject to change linked to market value in the years following a general assessment period, new general assessments are required at regular intervals not too far apart. In its original set-up, the system of standard rateable valuation allowed for reactions to significant changes in the land value occurring in the period between to general assessments by way of value adjustments (§ 22 BewG) and subsequent assessments (§ 23 BewG). All other changes in value are disregarded until the next general assessment; the resulting unequal treatment is deliberately accepted. 105

cc) In the interest of the proper functioning of the valuation system, regular re-assessments are essential. The longer a general assessment period extends beyond the six years originally provided for, the bigger the individual and the more extensive the overall divergence between the actual market value of land and its standard rateable value at the time of the general assessment. [...] 106

dd) The legislature only resumed the cycle of general assessments pursuant to the 1965 Valuation Amendment Act (*Bewertungsänderungsgesetz* – BewÄndG). In this Act, 1 January 1964 was laid down as the date of the general assessment for this cycle. After that general assessment, it suspended general assessments and has not resumed them since. Art. 2(1) of the 1965 Valuation Amendment Act laid down the beginning of the calendar year 1971 as the date of the next general assessment – deviating from the amended § 21(1) no. 1 BewG. Yet taxation was only based on the new standard rateable values from 1 January 1974 (Art. 1 1971 BewÄndG). The Act of 22 July 1970 amended Art. 2(1) third sentence 1965 BewÄndG and ordered that an extra law would set the date of the next general assessment of standard rateable values of property following the assessment in 1964. To this day, such a law has not been enacted (cf. also in this respect BVerfGE 93, 121 <144 and 145>). 107

Since then, the required general assessment has been continuously suspended and has increasingly led to distorted values regarding developed and undeveloped land. This inevitably results from the applicable valuation system (see cc above). [...] 108

ee) Yet a divergence between current market values and standard rateable values is not in itself objectionable under constitutional law. If standard rateable values lagged behind the rising market values evenly in all cases, it would not in itself result in unequal treatment relevant under constitutional law, since the level of standard rateable values in relation to each other, as compared to the current market value, would remain the same. In this respect, the circumstances of the valuation of only one type of assets – in this case property – are different from wealth tax or inheritance tax. In the case of those tax types, the comparability of different assets, which must be assessed according to different standards, was concerned (cf. in this respect BVerfGE 93, 121 <122 et seq., 128, 146 and 147>; 117, 1 <68 and 69>). However, this does not apply to the provisions for standard rateable valuation of property that have been referred in this case. Rather, the case at hand concerns the value of developed and undeveloped land. The significant differences between standard rateable values that had to be expected and did occur – a fact that is undisputed – do not concern the differences between [land] value and other types of assets. They are a manifestation of value distortions within the same type of assets. There are no indications to suggest that the increasingly distorted values that necessarily result from dispensing with regular general assessments evenly reflect the development of current market values. This is also neither claimed by the Federal Government nor by the *Länder*. 109

b) The valuation parameters that are relevant to standard rateable valuation according to the Valuation Act fail to reflect these changes in value if the value determined 110

continues to relate to the date of the original general assessment. This leads to serious unequal treatment when using either the rental value method (aa) or the capital value method (bb).

aa) The rental value method must be used as the standard valuation method and is based on multiplying the rental income of the property to be assessed (see 1) below) with a defined multiplier (see 2) below) pursuant to § 78 second sentence BewG. According to their legislative set-up, both factors draw on the values at the date of the general assessment. Measured against the respective market values of the properties, this inevitably leads to distortions of standard rateable values, which typically become more severe with increasing duration. 111

(1) According to § 79(1) BewG, the relevant annual gross rent is primarily determined by the rent actually paid according to the rental agreements at the date of the general assessment. This provision can be directly applied only to land that has already been rented on 1 January 1964, the date of the general assessment. Otherwise, the annual gross rent is determined by the customary rent according to § 79(2) BewG. The more time has passed since the date of the last general assessment, the fewer the buildings for which rent was paid in 1964. Accordingly, the actual rent within the meaning of § 79(1) BewG becomes less significant. Instead, the customary rent in 1964 must increasingly be drawn on according to § 79(2) BewG [...]. This applies in particular to value adjustments and subsequent assessments for current cut-off dates, which equally draw on the values established at the time of the last general assessment (§§ 27, 79(5) BewG). According to the findings of the Federal Finance Court, more than half of all homes in Germany in 2011 were built after 1 January 1964 [...]. Regarding land that has been developed or factually changed after 1 January 1964, the values determined on 1 January 1964 as the date of the general assessment govern rent based on their actual condition at the date of the value adjustment or subsequent assessment according to § 79(5) BewG. Therefore, the rent that was customary at that time must usually be drawn on in those cases as well. This is in line with the regulatory concept of standard rateable valuation, which is to take a constant rent and price level as the basis for determining values within an ongoing general assessment period – albeit limited to six years according to the original concept – in order to ensure equal taxation […]. 112

Pursuant to § 79(2) second sentence BewG, the customary rent has to be estimated based on the annual gross rent. This is generally done on the basis of rent indexes that were compiled by the finance administration for 1 January 1964. The established case-law of the Federal Finance Court has recognised these indexes as a suitable basis for estimating the relevant customary rent in 1964 according to § 79(2) second sentence, (5) BewG [...]. 113

As the general assessment period has continued since 1964, the rent levels given in the indexes for 1 January 1964 continue to apply, even though the values have changed in the meantime. The rent indexes thus no longer provide a sufficiently ob- 114

jective basis for estimates. The more time has passed since the date of the last general assessment and the more new buildings have therefore been built in a different construction style and with features that differ from those built in 1964, the more the application of the 1964 rent indexes leads to rent estimates that are not only outdated, but also do not reflect the actual value relations. Changes outside or within buildings, for instance, can affect the market value (see (a) below), but the value can also be impacted by external, structural circumstances (see (b) below) or obligations under rental law (see (c) below), without being appropriately reflected by the standard rateable value. Depending on their type and extent in the specific case, such value changes do not merely entail an even or general undervaluation of land. Rather, they lead to increasingly severe value distortions and thus unequal treatment within the same type of asset.

[…] 115-126

3. The overly long general assessment period results in value distortions in standard rateable valuations of property, which lead to corresponding unequal treatment with regard to property taxation; the compatibility of such unequal treatment with Art. 3(1) GG is subject to strict equality requirements (a). Neither the goal of avoiding excessive administrative burdens in general (b) nor typifications and generalisations (c) can sufficiently justify such unequal treatment. The argument that property tax was negligible, which has often been put forward, is just as unconvincing (d) as references to subsequent assessments or value adjustments that might compensate for value distortions (e). 127

a) Value distortions regarding standard rateable valuation are comprehensive, numerous and often significant regarding their respective individual extent. This inevitably follows from the fact that periodic reassessments have not been carried out for decades. Thus, significant value distortions do not only occur in isolated cases or in specific constellations; rather, they tend to occur almost universally and are increasingly significant the more the factual conditions and the related valuation of land and buildings develop in a way that can no longer reflect the valuation parameters related to the general assessment date of 1964. This is due to the extension of the period between general assessments, which sets aside the original concept of valuation. Such unequal treatment is inherent in today's application of the legislative structure of standard rateable valuation and is so extensive that it requires a strict review regarding its compatibility with Art. 3(1) GG. 128

b) Dispensing with reassessments serves to avoid a particular administrative burden (aa). While the legislature has substantial latitude in this respect (bb), this does not include accepting a dysfunctional valuation system (cc). 129

aa) The legislature has brought about the increasing value distortions of standard rateable values that ensued when it dispensed with the next general assessment that was supposed to be carried out at the beginning of the year 1971 under the 1970 Act to Amend and Supplement Valuation Law Provisions and the Income Tax Act and 130

when it refrained from setting a new general assessment date since. However, it did not indicate any purpose for the differentiation which could be reviewed as to the question whether it can justify the unequal treatment. The relevant decision of the legislature to first postpone the general assessment, which was originally due six years after the general assessment of 1 January 1964, and then to dispense with it permanently until today has obviously been motivated by the desire to avoid renewed administrative efforts, which turned out to be enormous during the general assessment of 1964 carried out in the 1960s and 70s. [...] The generally legitimate objective, which is apparently also significant in the case of standard rateable valuation, of administrative simplification is not sufficient to justify postponing a new general assessment for decades.

bb) When setting out provisions for determining the tax base, the legislature has wide latitude. In doing so, it may also, to a significant degree, consider practicabilities that aim to simplify the assessment and levying of the tax. This particularly applies to mass taxation procedures. When setting up a system for determining the tax base, the legislature may give priority to practicabilities over the elements of a precise determination of the tax base and thus also accept substantial inaccuracies with regard to the valuation and determination in order to keep tax assessment and collection manageable (regarding the broad range of value assessments for land in general, cf. BVerfGE 117, 1 <45 et seq.> with further references). The legislature's latitude is restricted by the requirement that it must create assessment provisions that realistically reflect the reason for imposing the tax as regards the relation of assets to each other (cf. BVerfGE 93, 121 <136>; 93, 165 <172 and 173>; 117, 1 <33>; 139, 285 <310 para. 73>; each with further references, see also IV 1 c above). 131

cc) Measured against these standards, the aim of administrative simplification does not justify the value distortions caused by the long-term suspension of general assessments, even if the resulting alleviation of administrative burdens is deemed especially significant. Dispensing with regular general assessments at recurrent six-year intervals is not the result of a deliberate decision to simplify administrative procedures on the part of the legislature, which aims to correct elements of standard rateable valuation to streamline the procedure while accepting a lower level of details in return. Rather, by dispensing with them, the legislature removes from the system of standard rateable valuation a central element which is indispensable for obtaining valuations that are realistic in their relation to each other (see IV 2 above). Simplifications cannot justify such a situation. 132

If a legal provision generally violates the right to equality to a substantial degree, neither the highest level of administrative simplification nor the improved cost-benefit ratio between the tax collection effort and tax revenues can justify such a violation in the long run. [...] The fact that unequal treatment structurally inherent in a tax law cannot be eliminated through reasonable administrative efforts must not lead to the unconstitutional situation being tolerated. 133

It is irrelevant whether the legislature, when it suspended general assessments, knowingly accepted this shortcoming or if it has just not realised it. The decisive factor is that the remaining arrangement is objectively dysfunctional. Accordingly, it does not matter whether doing without a new date for general assessments is to be interpreted as just an ongoing waiting period within the system of repeated general assessments or as an implied manifestation of a final dispensing with further general assessments altogether. Even to follow the second interpretation, put forward by the Federal Government, would mean changing the notion of the system of periodically renewed standard rateable valuation to a system without any periodic general assessments, which would not justify the unequal treatment that has been established. According to this interpretation, the legislature would have created an imperfect valuation system from the outset that – as shown (see 2 a, b above) – will, in the long run, result in valuations that are less and less realistic in their relation to each other given that they are still based on the values of 1964. 134

c) Suspending general assessments, and the consequences it entails, is also not justified for reasons of typification and generalisation. 135

However, the legislature deciding on tax matters is allowed to typify for reasons of administrative simplification and, in this context, to disregard the particular circumstances of each case, if the resulting advantages are in adequate proportion to the inequality of tax burdens necessarily linked to typification, if its decisions are realistically based on typical cases and if there are valid and plausible reasons for it (cf. BVerfGE 137, 350 <375 and 376 para. 66>; 139, 285 <313 para. 77>; 145, 106 <145 et seq. paras. 106 et seq.>; established case-law). 136

The current system of standard rateable valuation does not satisfy these requirements. When further general assessments are dispensed with, the system is not realistically based on typical cases. The value distortions are not limited to atypical exceptions or negligible corrections in marginal areas. Rather, they affect the core of valuation, they have become the general rule in large parts, and their number and extent increase as the general assessment period lengthens (see 2 above). 137

d) Neither a general undervaluation of property as compared to its current market value nor the supposedly very low property tax burden can justify the value distortions. 138

aa) It is undisputed that the provisions on standard rateable valuation regarding developed land lead to a general undervaluation of property, both when it is valued according to the rental value method and – even though usually to a lesser extent – according to the capital value method (BVerfGE 93, 121 <146> […]). However, it is irrelevant in this case to what extent and in what areas these undervaluations occur because they are not the immediate cause of the value distortions of the taxable land, which are brought about by suspending periodical reassessments. The unequal treatment that hence requires justification does not concern the general undervaluation of property, which does not entail any disadvantages regarding the property tax burden 139

anyway. Rather, the property valuation entails internal shifts because value changes since the 1964 general assessment that lead to different deviations from the current market value as the target value cannot be reflected in the context of the existing valuation system.

bb) […] 140

When it comes to determining the tax base and the associated consequences for assessing the tax, it may be true that inconsistencies and unequal treatment in marginal areas are easier to justify and more acceptable with regard to a tax burden that is low in absolute terms than with regard to taxes with substantial burdening effects. However, the requirement of equal treatment in respect of taxes under Art. 3(1) GG must in principle be given consideration, also where the tax burden is low. It is not necessary to decide conclusively to what extent such arguments of negligibility are acceptable under constitutional law at all. In any event, a negligible tax burden cannot justify substantial and far-reaching unequal treatment as in the case of the value distortions at the core of tax collection established in this case. When reviewing violations of the right to equality under constitutional law in the context of standard rateable valuation, it is therefore, in principle, also irrelevant that standard rateable values have considerably lost significance in general as they are now largely limited to property tax law. 141

Furthermore, property tax is, also in substance, not a tax of negligible dimensions. Total revenue from property tax, which has continuously increased over the last few years, from EUR 12 billion to just under EUR 14 billion most recently, and its considerable significance for the municipalities contradict such a presumption. Due to the level of municipal leverage factors common today, property tax is not insignificant for taxpayers, not least because it is payable for an indefinite period. In addition, it can be passed on to tenants according to the current legal situation so that the costs are largely incurred by persons who are not liable for property tax themselves. 142

e) […] 143

aa) Tax offices can accommodate changes to the factual conditions that occurred after the date of the general assessment and are relevant to the valuation by subsequent assessments (§ 23 BewG) or value adjustments (§ 22 BewG). [...] However, as these are also based on the values of 1964 (§ 27 BewG), they cannot address the problem of value distortions resulting from the fact that the values drawn on are those of the general assessment date of the beginning of 1964, which was a long time ago. 144

bb) In the context of the existing property tax system, the legislature can influence the overall level of property tax by determining the basic tax amount (§§ 13 et seq. GrStG); municipalities have corresponding influence based on their right to determine the leverage factor of property tax (Art. 106(6) second sentence GG; §§ 25 and 26 GrStG). Both measures co-determine the overall level of property tax. Yet due to their linear and global approach, they cannot, from the outset, offset or otherwise compen- 145

sate for the diverging value distortions that are not differentiated according to specific types of property.

4. […] 146

5. To the extent reviewed here (see B IV 2 above and C below), the provisions on standard rateable valuation of property according to the First Section of the Second Part of the Valuation Act have violated Art. 3(1) GG at least since the beginning of 2002. 147

a) The initial proceedings underlying the Federal Finance Court's referrals concern standard rateable valuations of developed land carried out according to the rental value method for 1 January 2008 and 1 January 2009. The constitutional complaints (see C below) are directed against standard rateable valuations of developed land carried out according to the capital value method for 1 January 2006 and 1 January 2002. 148

[…] 149

The unequal treatment resulting from suspending general assessments is not justified by the lower administrative efforts at least since the earliest date that is relevant for the decision in these proceedings, which is 1 January 2002 (for constitutional complaint 1 BvR 889/12). The examples of evident value distortions set out above (see B IV 2b) are not limited to the most recent decade, but demonstrate structural distortions of standard rateable values (see 2 a above), which inevitably began relatively soon after the six-year cycle originally provided for had been completed. When the period between general assessments lengthens, the number and extent of value distortions increase because the time passed since the date of the general assessment drawn upon becomes longer and the significance of factors relevant for determining the values fades and they become less realistic. The change of actual circumstances requires increasingly more value adjustments and subsequent assessments that lead to substantial value distortions due to the diverging developments of actual circumstances and outdated factors determining the values (in that respect see B IV 2 above). At least in 2002, and thus almost 40 years after the last general assessment date and more than 30 years after the last general assessment had been carried out, the limit of what is acceptable in terms of unequal treatment was exceeded. 150

[…] 151

b) In this case, it is not necessary to grant the legislature a longer period, going beyond 2002, for consideration or reaction for determining a new date for a general assessment or enacting new provisions on the valuation of property. [...] 152

At the start of 2002, such a period had long expired in any case. It was foreseeable from the outset that value distortions would arise for structural reasons when the principle of periodic reassessments not too far apart was dispensed with. [...] 153

[…] 154

c) […] 155-156

C.

The constitutional complaints are admissible and well-founded. 157

I.

[…] 158-159

II.

The notices of standard rateable values (*Einheitswertbescheide*) challenged in the initial proceedings preceding the constitutional complaints are based on a valuation method that has not been compatible with Art. 3(1) GG at least since the beginning of 2002, which is also the earliest date relevant to the constitutional complaints. Therefore, the official notices and the court decisions upholding them violate the complainants' fundamental right under Art. 3(1) first sentence GG. 160

[...] The unacceptable value distortions even within the respective valuation categories are sufficient in themselves for declaring the challenged decisions unconstitutional. 161

D.

I.

The provisions on standard rateable valuation of developed land by means of the rental value method referred [for judicial review] by the Federal Finance Court are incompatible with Art. 3(1) GG. This concerns §§ 19, 20, 21, 22, 23, 27, 76(1), 79(5), § 93(1) second sentence BewG. The provisions on the capital value method (§ 76(2) BewG) that are relevant in the context of the initial proceedings preceding the constitutional complaints are also unconstitutional. These provisions also violate Art. 3(1) GG due to the value distortions caused by the excessively long period between general assessments (see B IV 2 b, 3 above). 162

The dispensing with new general assessments and the resulting adherence to the general assessment date of 1 January 1964 that has continued for decades are the primary cause of the challenged value distortions. This adherence [to the old general assessment] follows from Art. 2(1) first and third sentence BewÄndG in the version of Art. 2 of the Act of 22 July 1970 (BGBl. I p. 1118). Therefore, these provisions are also incompatible with Art. 3(1) GG. 163

II.

The violation of Art. 3(1) GG by the provisions on standard rateable values does not lead to them being void; they are merely declared incompatible with the right to equal- 164

ity.

1. It is usually sufficient to merely declare an unconstitutional provision incompatible with the Basic Law if the legislature has different options to remedy the violation of the Constitution. In general, this is the case where the right to equality has been violated. If the Federal Constitutional Court finds that a provision is incompatible with Art. 3(1) GG, the legislature is consequently obliged to retroactively bring about conformity with the Constitution from the date determined by the Court. The Federal Constitutional Court may set a time limit for the legislature in this respect (cf. BVerfGE 117, 1 <70>). If the Court does not, as it did in this case, at the same time order that the provisions continue to apply, courts and administrative authorities may no longer apply the provisions to the extent that they were found to be incompatible with the Basic Law; pending proceedings must then be suspended (cf. BVerfGE 138, 136 <249 para. 286> with further references; 139, 285 <316 para. 88>). 165

2. The legislature has various options to bring about conformity with the Constitution. These range from remedying the provisions on standard rateable values objected to by the Court to completely redesigning the provisions on property tax, which the Basic Law provides for as such (Art. 106(6) GG). Therefore, the provisions are merely declared unconstitutional. 166

The legislature is obliged to remedy the unconstitutional legal situation by enacting new provisions by 31 December 2019 at the latest. [...] 167

When enacting new provisions, the legislature has wide latitude for determining the taxable object and the tax rate that is subject only to a limited review by the Federal Constitutional Court (cf. BVerfGE 138, 136 <181 paras. 123, 131>; 139, 285 <309 and 310 para. 72> respectively with further references; see B IV 1 b above). Also the overall amount of the tax revenue to be generated is for the legislature alone to decide. If it generally retains the existing structure of standard rateable valuation and property tax, the tax revenue can be determined by the legislature through the basic property tax amount and by the municipalities through the leverage factors. But also where a different approach is chosen, determining the tax amount and thus the amount of tax revenue remains the responsibility of the legislature and the municipalities that have the right under the Basic Law to determine leverage factors (Art. 106(6) second sentence GG). The overall revenue is not at all predetermined by the constitutional requirements regarding taxation bases that are realistic in their relation to each other. Moreover, the legislature also has wide latitude with regard to the provisions on determining the tax base, which is restricted by the requirement that the legislature must create assessment provisions that realistically reflect the reason for imposing the tax as regards the relation of assets to each other (cf. BVerfGE 93, 121 <136>; 93, 165 <172 and 173>; 117, 1 <33>; 139, 285 <310 para. 73>; respectively with further references, see also B IV 1 c above). 168

However, with regard to both property tax and other taxes, the legislature is not barred from pursuing non-fiscal promotion and steering objectives by means of tax 169

law (cf. BVerfGE 138, 136 <181 para. 124 with further references). In addition, the legislature has wide latitude for typifications and generalisations concerning mass procedures of this type in particular (cf. BVerfGE 139, 285 <313 para. 77> with further references).

III.

It is ordered that the objectionable provisions on standard rateable values continue to be applicable until 31 December 2019 and, in addition, for up to five years after the promulgation of the new provisions that have to be enacted by 31 December 2019 at the latest, but no longer than until 31 December 2024. 170

1. The Federal Constitutional Court has repeatedly held that the continued applicability of unconstitutional provisions is justified for the time period the legislature is granted to enact new provisions and at the latest until new provisions have been enacted if this is required by particular reasons, namely in the interest of reliable financial and budgetary planning and equal administrative processes for time periods of a largely finalised tax assessment (cf., e.g., BVerfGE 87, 153 <178>; 93, 121 <148 and 149>; 123, 1 <38>; 125, 175 <258>; 138, 136 <251 para. 287>; 139, 285 <319 para. 89>). Such a reason also applies in this case. 171

2. The continued applicability of the provisions on standard rateable values deemed unconstitutional primarily concerns the standard rateable values determined in the past, until the date of the pronouncement of this judgment, and the collection of property tax based on them. This is supported by the risk that problems of implementation would arise where, due to the large number of persons liable for property tax, a considerable number of notices of standard rateable values that are not yet definitive – and, as a consequence, the notices of property tax assessment based on them (§ 175 of the Fiscal Code, *Abgabenordnung* – AO) – were probably to be suspended or amended or at least partially reversed (cf. also BVerfGE 117, 1 <70>). The problems would be exacerbated by the fact that these cases could only be processed after the new provisions for valuation have entered into force and been implemented – hence only many years after the pronouncement of this judgment (see 3 and 4 below). The administrative efforts required for retrospectively processing just open cases would most likely be enormous. Apart from that, persons concerned can reasonably (*zumutbar*) be expected to accept the enforcement of notices of standard rateable values that were issued on the basis of the valuation provisions deemed unconstitutional, as the property tax burden is basically recognised as legitimate under the Constitution, has traditionally “always” been provided for and thus was, and is, to be anticipated by land owners. 172

3. At the same time, the provisions objected to by the Court also continue to be applicable for the future, until new provisions have been enacted, but at the latest until 31 December 2019. 173

The continued applicability of the provisions deemed unconstitutional is also justi- 174

fied for a limited period in the future because otherwise there would be a serious risk that, without their revenues from property tax, many municipalities would run into great budgetary problems. This is due to the fact that property tax is of considerable financial significance for municipalities. With an annual revenue of between EUR 13 and 14 billion in the last few years, it is the third largest source of tax revenue after trade tax and the municipalities' share of income tax (Federal Ministry of Finance, data collection concerning tax policy, issue 2016/2017, p. 15; Federal Statistical Office, Subject Matter Series 14, edition 10.1 2016, p. 9). Property tax is also of paramount importance for municipalities given that its revenue is independent of the economic situation and that the municipalities can influence it by means of their right to set the leverage factor.

If continued applicability was not ordered, new notices of standard rateable values could no longer be issued. Even the continued levying of property tax on the basis of definitive notices of standard rateable values based on unconstitutional provisions would entail problems. Ultimately, the inapplicability of the provisions on standard rateable values would then concern the complete area of property tax because not just developed land as part of property in the West German *Länder* relevant to this case would be affected by the unconstitutionality of the provisions that have been objected to in the case at hand. As a consequence of the provisions no longer being applicable, no further standard rateable values could be determined for all other areas – i.e. in particular agricultural or forestry properties in the West German *Länder* and the East German *Länder.* It would not be compatible with Art. 3(1) GG to levy property tax on these properties if the tax was not also levied on developed land in the West German *Länder* (cf. also BVerfGE 138, 136 <248 para. 283>). 175

Apart from that, ordering that the provisions continue to be applicable in the future is reasonable for property taxpayers for the same reasons (see 2 above) as the retroactive order of continued applicability. 176

The continued applicability of the objectionable provisions is ordered for the future only until new provisions have been enacted, but at the latest until 31 December 2019, the date at which the period for the legislature to enact these new provisions expires. In view of the fact that the provisions on standard rateable values have already been incompatible with Art. 3(1) GG for an excessively long time, it cannot be justified to order their continued applicability without any time limit beyond 31 December 2019 until new provisions have actually been enacted in case the legislature does not comply with the defined time limit. 177

4. Ultimately, the continued applicability of the provisions on standard rateable values found to be incompatible with Art. 3(1) GG is ordered for up to five years after the promulgation of the new provisions that have to be enacted, but no longer than until 31 December 2024. 178

Due to the particular rationales inherent in property tax, it is required and justified as an exception to order continued applicability that is unusual as regards its duration 179

and structure. In the context of earlier efforts of reforming property tax, it has already been pointed out that carrying out a nationwide reassessment of all properties constituted an extraordinary burden regarding time and personnel (see B IV 3 b aa above). In the explanatory memorandum to the draft act to amend the Valuation Act submitted to the *Bundesrat* by the *Länder* Hesse and Lower Saxony in September 2016, it is assumed that around 35 million property units have to be reassessed. In that regard, it is estimated in the explanatory memorandum to the draft act that the automated implementation of valuation processes requires a minimum of six years from the promulgation of the act (*Bundesrat document, Bundesratsdrucksache* – BRDrucks 515/16, p. 35 and 36). In the context of these proceedings, the Federal Government and numerous statements also emphasised and substantiated that a reassessment would require particular administrative efforts, especially regarding the amount of time required. Accordingly, the Senate deems it necessary that the old legal situation continue to apply for another five years, but it also deems this period sufficient to implement the valuation rules established by new provisions and thus to avoid budgetary problems (see 3 above) that might otherwise occur during this time. Depending on their respective competences, the Federation and the *Länder* can also ensure during that period that the further implementation of new provisions as regards taxation is already prepared during the six-year time limit. The continued applicability of the valuation provisions deemed unconstitutional will definitely end five years after the promulgation of new provisions on the valuation law, but no later than 31 December 2024.

5. Considering the unusually long period of continued applicability of the provisions that are actually unconstitutional, no tax burdens may be imposed even on the basis of definitive notices for tax collection periods after the period of continued applicability of the provisions has ended. This applies to both the time limit for enacting new provisions and the subsequent time limit for their implementation. 180

IV.

In the constitutional complaint proceedings, the complainants' fundamental right under Art. 3(1) GG is violated given the fact that the provisions on standard rateable values of property regarding the capital value method are incompatible with Art. 3(1) GG. This applies due to the fact and to the extent that the administrative and judicial decisions that were admissibly challenged are based on these provisions. Nonetheless, the challenged decisions are not reversed because the continued applicability is ordered also with regard to these provisions. 181

[…] 182

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Bundesverfassungsgericht, Urteil des Ersten Senats vom 10. April 2018 - 1 BvL 11/14, 1 BvR 889/12, 1 BvR 639/11, 1 BvL 1/15, 1 BvL 12/14

Zitiervorschlag BVerfG, Urteil des Ersten Senats vom 10. April 2018 - 1 BvL 11/14, 1 BvR 889/12, 1 BvR 639/11, 1 BvL 1/15, 1 BvL 12/14 - Rn. (1 - 182), http://www.bverfg.de/e/ls20180410_1bvl001114en.html

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