



Refusal to lift restrictions on use of inheritance of historic and cultural value justified by public interest

In its decision in the case of [Fürst von Thurn und Taxis v. Germany](#) (application no. 26367/10) the European Court of Human Rights has by a majority declared the application inadmissible. The decision is final.

The case concerned the complaint by Albert Fürst von Thurn und Taxis about certain restrictions on the use of a court library and archives of high historic and cultural value, which he had inherited and which had belonged to a family trust fund until 1939.

The Court held in particular: that the preservation of an important object of cultural heritage might justify supervision by a State authority; that the applicant had not sought or been denied authorisation for any specific transaction relating to the property, it had thus not been established that he was completely deprived of making use of his property in a reasonable way; and, that he was not in a relevantly similar situation as an owner of property which had never belonged to a family trust fund.

Principal facts

The applicant, Albert Fürst von Thurn und Taxis, is a German national who was born in 1983 and lives in Regensburg.

He is the owner of a library and archives dating back to the fifteenth century, which formerly belonged to a family trust fund. The fund was dissolved under the Law on the Dissolution of Family Trust Funds, which was enacted by the Nazi Government and remained in force after the end of the Nazi era. In 1943, an appeal court, acting as the Trust Fund Court, placed the administration of the library and archives under State supervision and ordered the owner and his legal successors to obtain authorisation from the supervising authorities before changing, displacing, or disposing of the library or archives or of parts thereof. Furthermore, the respective owner was ordered to maintain the library and archives in an "orderly condition".

In 2002, Fürst von Thurn und Taxis lodged a request with the German courts to lift the measures imposed in 1943, arguing that they deprived him of making use of his property in a reasonable way. His request was rejected by the courts in a decision eventually upheld by the Federal Constitutional Court, which refused to accept his constitutional complaint for adjudication in October 2009. The courts found that he had not established that the relevant factual and legal circumstances had changed since the imposition of the measures. They had been imposed in the public interest in order to assure protection of the library and archives, which were and remained an important part of the cultural heritage.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 7 May 2010.

Relying on Article 1 of Protocol No. 1 to the European Convention on Human Rights (protection of property), Fürst von Thurn und Taxis complained that the German courts' refusal to lift the restrictive measures imposed on the use of his property violated his right to the peaceful enjoyment of his property. Relying further on Article 14 of the

Convention (prohibition of discrimination) in conjunction with Article 1 of Protocol No. 1, he complained that he was being discriminated against, since the Law on the Dissolution of Family Trust Funds exclusively concerned property which had been formerly subject to family trust funds and it did not apply to other property of equal cultural value.

The decision was given by a Chamber of seven, composed as follows:

Mark **Villiger** (Liechtenstein), *President*,
 Angelika **Nußberger** (Germany),
 Boštjan M. **Zupančič** (Slovenia),
 Ann **Power-Forde** (Ireland),
 Ganna **Yudkivska** (Ukraine),
 Helena **Jäderblom** (Sweden),
 Aleš **Pejchal** (the Czech Republic), *Judges*,

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Article 1 of Protocol No. 1

As the applicant's complaint concerned only the German courts' refusal, following his request in 2002, to lift the measures imposed in 1943 – and not the imposition of the measures itself – the Court's temporal jurisdiction was not excluded.

The Court considered that the relevant provisions of the Law on the Dissolution of Family Trust Funds, even though phrased in general terms, formed a sufficient legal basis for the restrictive measures in question. Furthermore, the applicant had not disputed that the interference with his rights pursued a legitimate aim, namely the protection of the country's cultural heritage.

As regards the balance to be struck between the demands of general interest and the protection of his rights, the Court noted that the applicant had acquired legal ownership of the library and archives, which were already subject to the restrictions imposed in 1943, by way of inheritance. He therefore had to have been aware of the restrictions in question by the time he acquired ownership by way of succession.

Regarding the first measure, the placement of property under the supervision of the Directors of the Bavarian State Library and State Archives, the Court considered that the preservation of an important object of cultural heritage might justify supervision by a competent State authority. Furthermore, the applicant had not submitted that the authority exercised their powers of supervision in any disproportionate way.

As concerns the second measure, the obligation on the owner and his legal successors to obtain authorisation from the supervising authority before changing, displacing or disposing of the library or the archives, the Court observed that the applicant had not submitted that he had sought and been denied authorisation for any specific transaction relating to the property. Accordingly, it had not been established that he was completely deprived of making use of his property in a reasonable way. The German courts had moreover examined in substance his request to lift the measures, he had therefore had the legal possibility to challenge the necessity of the restrictions.

In respect of the third measure, the obligation on the owner to maintain the library and archives in an "orderly condition", the Court acknowledged that the costs for the maintenance of the library and archives were considerable. It considered, however, that those costs of maintenance were also necessary to preserve the value of the applicant's property.

In the light of those considerations and taking into account the State's wide margin of appreciation in questions concerning the control of the use of property, the Court considered that the decision not to lift the restrictive measures had not imposed a disproportionate and excessive burden on the applicant. There was accordingly no appearance of a violation of Article 1 of Protocol No. 1. It followed that this complaint was manifestly ill-founded and had to be rejected.

Article 14 in conjunction with Article 1 of Protocol No. 1

The Court had no temporal jurisdiction to examine whether the decisions issued in 1943, before the entry into force of the Convention, discriminated against the applicant's legal predecessors. As regards the German courts' decisions, following the applicant's request in 2002, not to lift the measures, the Court took note of those courts' finding that the social and historical circumstances of the acquisition of property formerly belonging to family trust funds could not be compared to the circumstances of the acquisition of other, "civil" property. In view of that, the Court accepted that the applicant in his capacity as an owner of property formerly acquired under privileged conditions and formerly belonging to a family trust fund found himself in a relevantly different situation from an owner of property which had never belonged to such a fund. It followed that there was no appearance of a violation of Article 14 in conjunction with Article 1 of Protocol No. 1. That complaint was therefore manifestly ill-founded as well and had to be rejected.

The decision is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.