



Purchaser's rights not violated by restitution of property to heirs of original owners forced to sell under Nazi regime

In today's Chamber judgment in the case **Göbel v. Germany** (application no. 35023/04), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

No violation of Article 1 of Protocol No. 1 (protection of property) of the European Convention on Human Rights

The case was brought by the purchaser of two shares in an estate under joint ownership, situated in Erfurt (Eastern Germany), which had previously belonged to Jewish owners who were forced to sell it under the Nazi regime. The applicant complained that, following the restitution of the land to the heirs of the original owners under the 1990 Property Act, he is entitled only to a small amount of compensation.

Principal facts

The applicant, Gerd Göbel, is a German national who was born in 1948 and lives in Aljezur (Portugal). In April 1992, he bought a share in a property situated in Erfurt and jointly owned by a community of heirs of an industrialist. In October 1992, he was registered in the land register as a member of the community of joint owners.

The property had originally belonged to the S. brothers, who were Jewish and had been forced to sell it under the Nazi regime in 1938; they subsequently left Germany and took refuge in Australia. After 1945, under Soviet occupation, the land was temporarily requisitioned. In 1948, the authorities entered into a friendly settlement on behalf of the S. brothers with the widow and heir of the industrialist D. who had purchased the property, under which the widow would remain the owner of two thirds of the land and the S. brothers would obtain the remaining one third, while in return waiving any claims against her. The brothers subsequently challenged the settlement, however, arguing that they had not been consulted. After the death of the widow Mrs D., her two thirds of the property were left to the community of heirs.

In the 1992 sales agreement between the heirs and Mr Göbel, it was indicated that he had been provided with a description of those events leading to the current property regime. In January 1997, Mr Göbel acquired a second share in joint ownership from a person who had bought it from the community of heirs in 1992. In June 1997, he sold his two shares in the property to a company.

In the meantime, by two letters of September and December 1992, the heirs of the S. brothers sought the restitution of the remaining two thirds of the land under the 1990 Property Act, whose purpose was to settle property conflicts on the territory of the

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

former German Democratic Republic (GDR). That Act provided that property which had been expropriated at the time of the GDR was to be returned on request if restitution claims were filed no later than 31 December 1992; it was applicable also to people who had lost their property by forced sale or expropriation under the Nazi regime.

The request by the heirs of the S. brothers was initially rejected on the grounds that the friendly settlement of 1948 had ruled out any request for restitution. The heirs challenged that decision, however, and, in October 1997, the Office for the Resolution of Outstanding Property Issues granted their request and ordered the restitution of the remaining two thirds of the land. According to the Office, Mr Göbel was entitled to a payment of consideration for a sum equivalent to the sale price of his shares in 1938.

Mr Göbel brought proceedings before the Gera administrative court, which, in April 2003, upheld the Office's decision. In January 2004, the Federal Administrative Court dismissed his appeal against the lower court's decision not to give him leave to lodge an application for review. In March 2004, the Federal Constitutional Court rejected his constitutional complaint. In July 2004 Mr Göbel filed a request for compensation under the Property Act; that procedure is still pending.

Mr Göbel alleges that on account of the restitution of the land to the heirs of the S. brothers he was unable to fulfil his undertakings under the sales agreement with the company to which he sold the shares in 1997.

Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1, Mr Göbel did not contest the restitution of the disputed land as such, but maintained that the deprivation of his property was disproportionate on account of the very small amount of compensation to which he would be entitled at the end of the proceedings which are still pending.

The application was lodged with the European Court of Human Rights on 24 September 2004.

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

Dean **Spielmann** (Luxembourg), *President*,
Karel **Jungwiert** (the Czech Republic),
Boštjan M. **Zupančič** (Slovenia),
Mark **Villiger** (Liechtenstein),
Ann **Power-Forde** (Ireland),
André **Potocki** (France), *judges*,
Klaus **Köpp** (Germany), *ad hoc Judge*,

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

Decision of the Court

Article 1 of Protocol No. 1

By having acquired shares in the estate under joint ownership, Mr Göbel had a "possession", within the meaning of Article 1 of Protocol No. 1, as was uncontested by the German Government. As a result, the restitution of the land to the heirs of the original owners constituted an interference with his right to the enjoyment of his possessions. The Court noted that the measure had been based on the Property Act, which contained clear provisions on the conditions for the restitution of land expropriated

at the time of the GDR and was also applicable to the rights of people who had lost their property by forced sale or expropriation under the Nazi regime.

The Court had no doubt – and that had not been disputed by Mr Göbel – that the aim pursued by the German legislature to return the property to the heirs of the original Jewish owners, who were victims of persecution under the Nazi regime, was in the public interest. The Court further underlined that the State had a wide margin of appreciation in the enactment of laws in the unique context of German reunification, having regard to the immense task facing the legislature to deal with all the questions that necessarily arose as a result of the changeover from a Communist regime to that of a democratic market economy.

Mr Göbel had acquired the first share in the property from the community of heirs after the entry into force of the 1990 Property Act and before the expiry of the time limit for restitution claims, fixed at 31 December 1992. In addition, he had been duly informed of the property's history. The Court therefore accepted the Government's argument that Mr Göbel had knowingly taken the risk of acquiring property against which a restitution claim could be made. That was particularly true for the acquisition of his second share in January 1997, over five years after the restitution applications had been lodged and a few months after the decision to grant the request by the heirs of the original owners.

It was true that Mr Göbel had not complained of the restitution as such but of the minimal amount of consideration provided for by the Property Act, based on the original sale price of the shares in the Nazi era. In that connection, the Court noted that he also had the possibility under the Property Act of seeking a compensation payment, the procedure for which is still pending.

In the light of those considerations, the Court found that Germany had not overstepped its margin of appreciation and had not failed to strike a fair balance between Mr Göbel's property interests and the general interest of German society. There had accordingly been no violation of Article 1 of Protocol No. 1.

The judgment is available in English and French.

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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.