



Conditions of purchase by the Spanish Government of Goya's work "La Condesa de Chinchón" were compliant with the Convention

In today's Chamber judgment in the case of [Ruspoli Morenes v. Spain](#) (application no. 28979/07), 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) to the European Convention on Human Rights

The case concerns the conditions of the Spanish Government's purchase from the applicants of Goya's painting "La Condesa de Chinchón". The State had exercised its right of pre-emption over an item of cultural interest. The painting is now on display in the Prado Museum, Madrid.

Principal facts

The applicants, Carlos, Luis and Enrique Ruspoli Morenes, are three Spanish nationals who are brothers and live in Madrid. They are the former owners of the painting "La Condesa de Chinchón" (Portrait of Maria Theresa De Bourbon Y Vallabriga) by Francisco de Goya.

In December 1999, in accordance with the National Historic Heritage Act, they informed the authorities that they had agreed to sell the painting to private buyers for more than 24 million euros, to be paid in cash by 15 March 2000.

In a decision of 18 January 2000 the Ministry of Education and Culture exercised its right of pre-emption over an item of cultural interest on behalf of the Spanish Government.

A few days later the applicants informed the authorities that the conditions applicable to the sale would be the same as those agreed with the private purchasers: payment in cash on the delivery of the painting, and in the event of deferred payment, the sum would be revised in accordance with the retail price index, with statutory interest also added.

The painting was delivered to the State on 17 February 2000.

The applicants reiterated their request through administrative channels in February, April and May 2000. Not having received an answer they lodged an application for judicial review, claiming payment of the sale price.

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

While their application was pending, the authorities paid the price in two instalments, namely a first instalment of about 15 million euros on 30 January 2001 and a second of about 9 million euros on 11 July 2001.

On 11 October 2001 the *Audiencia Nacional* dismissed the applicants' claims on the ground that the National Historic Heritage Act authorised the authorities to spread payments for items of cultural interest acquired through the exercise of their right of pre-emption over two accounting periods. In a judgment of 21 November 2006 the Supreme Court upheld that decision. It found that the authorities had made the payments within the statutory time-limit of two accounting periods, without any interest being due. It further observed that the Constitutional Court had on a number of occasions found the National Historic Heritage Act to be compliant with the Constitution.

The painting is currently on display in the Prado National Museum, Madrid, which houses Spain's greatest art collection.

Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1, the Ruspoli Morenes brothers complained of the conditions in which their painting was purchased by Spain. In particular, they complained of delays in the payment and submitted that the final price should have been revised accordingly.

The application was lodged with the European Court of Human Rights on 2 July 2007.

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

Josep **Casadevall** (Andorra), *President*,
 Alvina **Gyulumyan** (Armenia),
 Egbert **Myjer** (the Netherlands),
 Ineta **Ziemele** (Latvia),
 Mihai **Poalelungi** (Moldova),
 Kristina **Pardalos** (San Marino), *Judges*,
 Alejandro **Saiz Arnaiz** (Spain), *ad hoc Judge*,

and also Santiago **Quesada**, *Section Registrar*.

Decision of the Court

In exercising its right of pre-emption when the painting "La Condesa de Chinchón" was up for sale, the Spanish Government had "controlled the use" of the work within the meaning of Article 1 of Protocol No. 1 to the Convention. Such interference was compliant with that Article if it was provided for by law and pursued a legitimate aim and if a fair balance was struck between the requirements of the general interest and the fundamental rights of the individuals affected.

The Court first noted that the right of pre-emption as exercised in today's case was provided for by the National Historic Heritage Act, whose provisions were accessible, precise and foreseeable.

The Court then emphasised that control of the art market had an interest for the State's heritage and was a legitimate aim in the context of protecting a country's cultural and artistic heritage.

It remained for the Court to examine the conditions in which the right of pre-emption had been exercised in the case of the sale of the applicants' painting. It began by

reiterating that States had a very broad margin of appreciation in controlling the use of property declared as being of cultural interest or listed among the country's historical heritage. One of the main effects of such restrictions was, in the case of the sale of a work such as "La Condesa de Chinchón", to oblige the vendor to notify the authorities of his intention to sell the painting so that they could exercise their right of pre-emption. Once the authorities had expressed their interest in the property, the transaction had to take place in accordance with the applicable rules in such matters, and the vendor could not fix the conditions of sale unilaterally. Those restrictions could be explained by the authorities' concern to centralise, as far as possible, the conservation and display of works of art, as the preferential acquisition by the State of works of art was for the benefit of a larger proportion of the general public. The general interest of the community was thus favoured. That being said, it was necessary in any event to determine whether the pecuniary damage alleged by the applicants constituted a disproportionate burden. The Court found, on that point, that the applicants had received the full amount of the painting's sale price, which had been paid before the end of the time-limit of two accounting periods provided for under the National Historic Heritage Act. That Act did not provide for any revision of the price in the event of deferred payment. The applicants could not therefore reasonably expect such revision.

The Court accordingly found that the applicants had not had to bear a disproportionate or excessive burden and that there had thus been no violation of Article 1 of Protocol No. 1.

The judgment is available only in French.

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Press contacts

echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Frédéric Dolt (tel: + 33 3 90 21 53 39)

Emma Hellyer (tel: + 33 3 90 21 42 15)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)

Nina Salomon (tel: + 33 3 90 21 49 79)

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.