

Press release issued by the Registrar

**JUDGMENT IN THE CASE OF
PRINCE HANS-ADAM II OF LIECHTENSTEIN v. GERMANY**

In a judgment delivered at Strasbourg on 12 July 2001 in the case of *Prince Hans-Adam II of Liechtenstein v. Germany* (application number 42527/98), the European Court of Human Rights held unanimously that there had been:

- **no violation of Article 6 § 1** (access to court and fairness of the proceedings) of the European Convention on Human Rights;
- **no violation of Article 1 of Protocol No. 1** (protection of property) to the Convention,
- **no violation of Article 14** (prohibition of discrimination).

1. Principal facts

Prince Hans-Adam II of Liechtenstein, monarch of Liechtenstein, was born in 1945 and lives in Vaduz.

A painting - "*Szene an einem römischen Kalkofen*", by Pieter van Laer - owned by the applicant's father, was confiscated by former Czechoslovakia, while it was on Czechoslovak territory, under Decree No. 12 on the "confiscation and accelerated allocation of agricultural property of German and Hungarian persons and of those having committed treason and acted as enemies of the Czech and Slovak people", issued by the President of former Czechoslovakia on 21 June 1945.

When, in 1991, the Municipality of Cologne received the painting on loan from the Czech Republic, the applicant instituted court proceedings against the Municipality in order to gain possession of the painting.

The German civil courts declared his application inadmissible on the ground that they did not have jurisdiction. The inadmissibility decision was made under Chapter 6, Article 3 §§ 1 and 3 of the Convention on the Settlement of Matters arising out of the War and the Occupation, signed in 1952, as amended in 1954, according to which claims or actions against persons having acquired or transferred title to property on the basis of measures carried out with regard to German external assets or other property, seized for the purpose of reparation or restitution, or as a result of the state of war, or on the basis of specific agreements, are not admissible. The courts considered that the confiscation of the applicant's father's property under the Decree No. 12 constituted a measure within the meaning of Chapter 6, Article 3.

The Federal Constitutional Court refused to entertain the applicant's constitutional complaint on the ground that it offered no prospect of success, considering, among other things, that the exclusion of jurisdiction did not amount to a violation of the right to property as these clauses and the Settlement Convention as a whole served to settle matters dating back to a time before the entry into force of the German Basic Law. The court also confirmed that

Chapter 6, Article 3 §§ 1 and 3, of the Settlement Convention had not been set aside by the Treaty on the Final Settlement with respect to Germany.

The painting was subsequently returned to the Czech Republic.

2. Procedure and composition of the Court

The application was lodged with the European Commission of Human Rights on 28 July 1998. The case was transmitted to the European Court of Human Rights on 1 November 1998. On 6 June 2000 it was declared admissible by a Chamber of Section Four. On 14 September 2000 the Chamber relinquished jurisdiction in favour of the Grand Chamber, none of the parties having objected to relinquishment. A hearing was held on 31 January 2001.

Judgment was given by the Grand Chamber of seventeen judges, composed as follows:

Elisabeth **Palm** (Swedish), *President*,
Christos **Rozakis** (Greek),
Georg **Ress** (German),
Jean-Paul **Costa** (French),
Antonio **Pastor Ridruejo** (Spanish),
Ireneu **Cabral Barreto** (Portuguese),
Marc **Fischbach** (Luxemburger),
Volodymyr **Butkevych** (Ukrainian),
Josep **Casadevall** (Andorran),
Boštjan **Zupančič** (Slovenian),
Nina **Vajić** (Croatian),
John **Hedigan** (Irish),
Matti **Pellonpää** (Finnish),
Margarita **Tsatsa-Nikolovska** (FYROMacedonia),
Kristaq **Traja** (Albanian),
Snejana **Botoucharova** (Bulgarian),
Anatoly **Kovler** (Russian), *judges*

and also Michele **de Salvia** , *Jurisconsult, for the Registrar.*

3. Summary of the judgment¹

Complaints

The applicant alleged, in particular, that he had had no effective access to court concerning his claim for restitution of the painting at issue. He also complained that the German courts' decisions to declare his action inadmissible, and the return of the painting to the Czech Republic, violated his right to property. He relied on Article 6 § 1 and Article 1 of Protocol No. 1, taken alone and together with Article 14.

1. This summary by the Registry does not bind the Court.

Decision of the Court

Article 6 § 1

Access to court

In the Court's view, the exclusion of German jurisdiction under Chapter 6, Article 3 of the Settlement Convention was a consequence of the particular status of Germany under public international law after the Second World War. The Court found that it was only as a result of the 1954 Paris Agreements with regard to the Federal Republic of Germany and the Treaty on the Final Settlement with respect to Germany of 1990 that the Federal Republic obtained the authority of a sovereign State over its internal and external affairs for a united Germany. In these unique circumstances, the limitation on access to a German court, as a consequence of the Settlement Convention, had a legitimate objective.

Moreover, in the Court's view, it could not be said that the interpretation of Chapter 6 Article 3 of the Settlement Convention in the applicant's case was inconsistent with previous German case-law or that its application was manifestly erroneous or was such as to reach arbitrary conclusions.

The Court further concluded that the applicant's interest in bringing litigation in the Federal Republic of Germany was not sufficient to outweigh the vital public interests in regaining sovereignty and unifying Germany. Accordingly, there was no breach of the applicant's right of access to a court within the meaning of the Court's case-law.

Fairness of the Federal Constitutional Court proceedings

The Court found that the applicant had the benefit of adversarial proceedings before the Federal Constitutional Court and that he was able to submit the arguments he considered relevant to his case. There was no indication of unfairness in the manner in which the proceedings at issue were conducted.

Article 1 of Protocol No. 1

The Court, considering that it was not competent to examine the circumstances of the expropriation in 1946 or the continuing effects produced by it up to the present date, found that the applicant as his father's heir could not, for the purposes of Article 1 of Protocol No. 1, be deemed to have retained a title to property nor a claim to restitution against the Federal Republic of Germany amounting to a "legitimate expectation" in the sense of the Court's case-law. Consequently, there had been no interference with the applicant's "possessions" within the meaning of Article 1 of Protocol No. 1.

Article 14

The Court found that Article 14 did not apply to the present case, as the facts of which the applicant complained under Article 1 of Protocol No. 1, namely the German court decisions and the return of the painting to the Czech Republic, did not amount to an interference with any of his rights under that provision.

Judge Ress, joined by Judge Zupančič, and Judge Costa expressed concurring opinions, which are annexed to the judgment.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.