



INTERNATIONAL COURT OF JUSTICE

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Press Release

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Certain Property (Liechtenstein v. Germany)

Preliminary Objections

The Court finds that it has no jurisdiction to decide the dispute

THE HAGUE, 10 February 2005. The International Court of Justice (ICJ), principal judicial organ of the United Nations, today rendered its Judgment on the preliminary objections raised by Germany in the case concerning Certain Property (Liechtenstein v. Germany).

In its Judgment, the Court

— “(1) (a) by fifteen votes to one,

Rejects the preliminary objection that there is no dispute between Liechtenstein and Germany;

(b) by twelve votes to four,

Upholds the preliminary objection that Liechtenstein’s Application should be rejected on the grounds that the Court lacks jurisdiction ratione temporis to decide the dispute;

— (2) by twelve votes to four,

Finds that it has no jurisdiction to entertain the Application filed by Liechtenstein on 1 June 2001.”

Reasoning of the Court

After a brief procedural history, the Court examines the historical context of the case. In 1945 Czechoslovakia confiscated certain properties belonging to Liechtenstein nationals, including Prince Franz Josef II of Liechtenstein, pursuant to the “Beneš Decrees”, which authorized the confiscation of “agricultural property” (including buildings, installations and movable property) of “all persons belonging to the German and Hungarian people, regardless of their nationality”. A special régime with regard to German external assets and other property seized in connection with the Second World War was created under the “Convention on the Settlement of Matters Arising out of the War and the Occupation” (Chapter Six), signed in 1952 at Bonn. In 1991, a painting by the Dutch master Pieter van Laer was lent by a museum in Brno (Czechoslovakia) to a museum in Cologne (Germany) for inclusion in an exhibition. This painting had been the property of the

family of the Reigning Prince of Liechtenstein since the eighteenth century; it was confiscated in 1945 by Czechoslovakia under the Beneš Decrees. Prince Hans-Adam II of Liechtenstein then filed a lawsuit in the German courts in his personal capacity to have the painting returned to him as his property, but that action was dismissed on the basis that, under Article 3, Chapter Six, of the Settlement Convention (an Article whose paragraphs 1 and 3 are still in force), no claim or action in connection with measures taken against German external assets in the aftermath of the Second World War was admissible in German courts. A claim brought by Prince Hans-Adam II before the European Court of Human Rights concerning the decisions by the German courts was also rejected.

The Court recalls that Liechtenstein based the Court's jurisdiction on Article 1 of the European Convention for the Peaceful Settlement of Disputes and that Germany raised six preliminary objections to the jurisdiction of the Court and to the admissibility of Liechtenstein's Application.

The Court considers the first of those exceptions, according to which there is no dispute between Germany and Liechtenstein. After examining the Parties' arguments, it finds that the complaints of fact and law formulated by Liechtenstein against Germany are denied by Germany and rules that, by virtue of this denial, there is a legal dispute between the Parties. The Court then turns to identifying the subject-matter of the dispute and finds that it is whether, by applying Article 3, Chapter Six, of the Settlement Convention to Liechtenstein property that had been confiscated by Czechoslovakia in 1945, Germany was in breach of the international obligations it owed to Liechtenstein and, if so, what is Germany's international responsibility. Having established the existence of a dispute and identified its subject-matter, the Court dismisses the first preliminary objection raised by Germany.

The Court next examines the second preliminary objection, that Liechtenstein's Application should be rejected on the grounds that the Court lacks jurisdiction *ratione temporis* to decide the present dispute. The second objection requires the Court to decide, in the light of the provisions of Article 27 (a) of the European Convention for the Peaceful Settlement of Disputes, whether the present dispute relates to facts or situations that arose before or after 18 February 1980, the date on which that Convention entered into force between Germany and Liechtenstein.

While Germany argues that, were the Court to find that there exists a dispute, that dispute would relate to the Settlement Convention and the Beneš Decrees and would therefore have its source in facts and situations existing prior to 18 February 1980, Liechtenstein maintains that the decisions of the German courts in the Pieter van Laer Painting case and "Germany's decisions in the years from 1995 onwards" are the origin of the present dispute.

The Court observes that, in so far as it has to determine the facts or situations to which this dispute relates, the test of finding the source or real cause of the dispute used in previous case law is equally applicable to this case. It therefore considers whether the present dispute has its source or real cause in the Pieter van Laer Painting case or rather in the Beneš Decrees under which the painting was confiscated and the Settlement Convention, which the German courts invoked as ground for declaring themselves without jurisdiction to hear that case.

The Court notes that it is not contested that the present dispute was triggered by the decisions of the German courts in the aforementioned case. The critical issue, however, is not the date when the dispute arose, but the date of the facts or situations in relation to which the dispute arose.

In the Court's view, the present dispute could only relate to the events that transpired in the 1990s if, as argued by Liechtenstein, in this period, Germany either departed from a previous common position that the Settlement Convention did not apply to Liechtenstein property, or if German courts, by applying their earlier case law under the Settlement Convention for the first time to Liechtenstein property, applied that Convention "to a new situation" after the critical date.

With regard to the first alternative, the Court states that it has no basis for concluding that prior to the decisions of the German courts in the Pieter van Laer Painting case, there existed a common understanding or agreement between Liechtenstein and Germany that the Settlement Convention did not apply to the Liechtenstein property seized abroad as “German external assets” for the purpose of reparation or as a result of the war. As to Liechtenstein’s contention that the dispute relates to the application, for the first time, of pre-1990 German jurisprudence to Liechtenstein property in the 1990s, the Court points out that German courts did not face any “new situation” when dealing for the first time with a case concerning the confiscation of Liechtenstein property as a result of the Second World War. The Court finds that this case, like previous ones on the confiscation of German external assets, was inextricably linked to the Settlement Convention. It further finds that the decisions of the German courts in the Pieter van Laer Painting case cannot be separated from the Settlement Convention and the Beneš Decrees, and that these decisions cannot consequently be considered as the source or real cause of the dispute between Liechtenstein and Germany.

The Court concludes that, although these proceedings were instituted by Liechtenstein as a result of decisions by German courts concerning a painting by Pieter van Laer, these events have their source in specific measures taken by Czechoslovakia in 1945, which led to the confiscation of property owned by some Liechtenstein nationals, including Prince Franz Jozef II of Liechtenstein, as well as in the special régime created by the Settlement Convention. While the decisions of those courts triggered the dispute between Liechtenstein and Germany, the source or real cause of the dispute is to be found in the Settlement Convention and the Beneš Decrees. In light of the provisions of Article 27 (a) of the European Convention for the Peaceful Settlement of Disputes, the Court therefore upholds the second preliminary objection.

Having dismissed the first preliminary objection of Germany, but upheld its second, the Court finds that it is not required to consider Germany’s other objections and that it cannot rule on Liechtenstein’s claims on the merits.

Composition of the Court

The Court was composed as follows: President Shi; Vice-President Ranjeva; Judges Guillaume, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby, Owada and Tomka; Judges ad hoc Fleischhauer and Sir Franklin Berman; Registrar Couvreur.

Judges Kooijmans, Elaraby and Owada have appended dissenting opinions to the Judgment of the Court. Judge ad hoc Fleischhauer has appended a declaration to the Judgment of the Court. Judge ad hoc Sir Franklin Berman has appended a dissenting opinion to the Judgment of the Court.

A summary of the Judgment is published in the document entitled “Summary No. 2005/1”, to which summaries of the declaration and opinions attached to the Judgment are annexed. The present Press Release, the summary and the full text of the Judgment also appear on the Court’s website under the “Docket” and “Decisions” headings (www.icj-cij.org).

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