



COUR EUROPÉENNE DES DROITS DE L'HOMME  
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 13410/07  
by Franz HEUER  
against Poland

The European Court of Human Rights (Fourth Section), sitting on  
9 December 2008 as a Chamber composed of:

Nicolas Bratza, *President*,  
Lech Garlicki,  
Giovanni Bonello,  
Ljiljana Mijović,  
David Thór Björgvinsson,  
Ledi Bianku,  
Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having regard to the above application lodged on 22 February 2007,

Having regard to its decision in the case of *Preussische Treuhand GmbH  
& CO. Kg A. A. v. Poland* (no. 47550/06) of 7 October 2008,

Having deliberated, decides as follows:

## THE FACTS

The applicant, Mr Franz Heuer, is a German national who was born in 1941 and lives in Neu Isenburg. He was represented before the Court by Mr T. Gertner, a lawyer practising in Bad Ems.

### A. Historical background

A summary account of historical events in which the present application originated can be found in the Court's decision on admissibility in the case of *Preussische Treuhand GmbH & CO. Kg A. A. v. Poland* (see *Preussische Treuhand GmbH & CO. Kg A. A. v. Poland* (dec.), no. 47550/06, 7 October 2008, §§ 3-5, ECHR 2008-...).

### B. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant submits that he is an heir of Rudolf Graf von Ingenheim, who was the owner of an impressive art collection. According to the applicant, Mr von Ingenheim was killed by the Nazis in a mental hospital in 1943.

At the end of the Second World War the paintings belonging to the Ingenheim collection were stored in different places which are now within the Polish territory. They were confiscated by the Polish State under the Decree of 8 March 1946 on Abandoned or Post-German Property (*dekret o majątkach opuszczonych i poniemieckich* – “the March 1946 Decree”) as property belonging to Germans. At present the paintings are exhibited in various museums in Poland. The most important part of the Ingenheim collection included the following paintings:

1) Alessandro Allori, Portrait of Francesco I de Medici.

On 24 November 1944 the painting was taken to the Palace in Kuhna (at present Kunów in Poland). In 1946 the painting was transferred to the National Art Museum at the Wawel Royal Castle.

2) Sandro Botticelli, The Virgin with Child, St. John the Baptist and an Angel.

In 1940 the painting was on loan to the Silesian Museum of Fine Arts in Breslau (at present Wrocław). On 2 June 1942 it was taken to Kamenz (at present Kamieniec Ząbkowicki). After the war the Polish authorities confiscated it under the March 1946 Decree. It was taken to the Warsaw National Museum.

3) Giovanni Filippo Criscuolo, Madonna with Child, Angels and Saints.

Before the war the painting was in the Silesian Museum of Fine Arts in Breslau. In 1946 it was confiscated and taken to the Warsaw National Museum.

4) Fra Diamante, The Adoration of the Child and Crucifixion.

On 2 June 1942 the painting was transferred to Kamenz. The Polish authorities confiscated it under the March 1946 Decree and took it to the Warsaw National Museum.

5) Josef Anton Koch, The Grindelwald Glacier in the Alps.

The painting was on loan to the Silesian Museum of Fine Arts in Breslau. In 1942 it was transported to Kamenz. After the war the Polish authorities confiscated the painting and took it to Warsaw. In 1973 the painting was transferred to the National Museum in Wrocław.

6) Lorenzo Lippi, Archangel Raphael and Tobias.

The painting was loaned out to the Silesian Museum of Fine Arts in Breslau. The Polish authorities confiscated it and took it to the Warsaw National Museum. At present the painting is stored in the National Museum in Wrocław.

7) Sebastiano del Piombo, The Scourging of Christ at the Pillar.

The painting was on loan to the Silesian Museum of Fine Arts in Breslau. Since 1945 it has been exhibited in the National Museum in Wrocław.

8) Giovanni Santi, Lamentation.

The painting was loaned out to the Silesian Museum of Fine Arts in Breslau. Since 1945 it has been exhibited in the National Museum in Wrocław.

9) Portrait of a Family made by a Lombard painter in the 15th century.

Before the war the painting was being restored in the Silesian Museum of Fine Arts in Breslau. After the war the Polish authorities confiscated it. It was taken to the Warsaw National Museum in 1946.

10) Della Vecchia, Portrait of a Doge.

During the war the painting was stored in Kuhna Palace. After the war it was confiscated by the Polish authorities. In 1946 it was taken to the National Art Museum at the Wawel Royal Castle.

Details concerning the former place of storage of other paintings are unknown. They were, however, recorded at the National Museum in Breslau as belonging to the former Ingenheim collection and are still there.

The applicant submits that he did not apply for restitution since under Polish law there is no possibility of challenging the validity and lawfulness of the confiscation and expropriation.

### C. Relevant international and domestic law

A detailed description of the relevant international and domestic law is set out in the above-mentioned case of *Preussische Treuhand GmbH & CO. Kg A. A. v. Poland* (ibid. §§ 31-41).

## COMPLAINTS

1. The applicant in essence complained that his predecessors in title were forced by the Polish authorities to leave their property, which is at present situated within Poland's borders, in circumstances which amounted to ethnic cleansing – if not genocide – and also to collective extra-judicial punishment, inhuman treatment and, in consequence, a crime against humanity. This made the actions complained of inherently unlawful and produced a continuing violation of Article 1 of Protocol No. 1 to the Convention.

2. The applicant further complained that although the human rights of his family members were seriously violated, the Polish Parliament has so far refused to enact a rehabilitation law in order to rescind the confiscation of their property and a restitution law in order to correct the effects of this confiscation in the sphere of their ownership rights.

In support of both complaints, the applicant relied on the same arguments as those put forward by the applicants in the case of *Preussische Treuhand GmbH & CO. Kg A. A. v. Poland* (ibid. §§ 42-44).

In his letter of 23 October 2008, in which he referred to the Court's decision of 7 October 2008 declaring the above case inadmissible – which he contested – the applicant stressed that his case was different. The object of his Convention claim was not only the expropriation of his family's real property but, first and foremost, the confiscation of their valuable paintings, which, as objects of art, were and are protected by international law, in particular the "Roerich Pact" of 14 April 1935 and the 1899 and 1907 Hague Conventions on Laws and Customs of War on Land.

## THE LAW

1. The applicant first complained of a continuing violation of Article 1 of Protocol No. 1 to the Convention that originated in the unlawful expulsion of his family and which was accompanied by ethnic cleansing measures and the expropriation of their property by the Polish authorities.

The Court observes that the applicant has not supplied any facts or dates that would relate to the alleged expulsion of his family and ethnic cleansing

measures purportedly applied to them. Be that as it may, and whatever the factual background of this part of the complaint, the Court assumes that, as in other similar cases, most notably the *Preussische Treuhand GmbH & CO. Kg A. A.* case, those acts most likely occurred at some time in 1945 (ibid. §§ 8-14, 17-18, 21-24, 26 and 28-29).

The confiscation of the applicant's predecessor's art collection was carried out on unspecified dates presumably following 8 March 1946. It was effected pursuant to the provisions of the March 1946 Decree, whereby all German property situated on the former German territories east of the Oder-Neisse line, which were included in the territory of Poland following the Yalta Conference and the undertakings under the Potsdam Agreement in respect of war reparations and delimitation of borders, was taken over by the Polish State (ibid. §§ 3, 5, 31-33 and 39).

The applicant argued that the situation complained of, although it originated before the entry into force of Protocol No. 1 in respect of Poland, produced continuing effects.

However, the Court has already dealt at length with the same arguments as to the alleged existence of a continuing violation of property rights, put forward by the applicants in the case of *Preussische Treuhand GmbH & CO. Kg A. A. v. Poland*, and rejected them. It held that the purported individual acts of violence, expulsion, dispossession and seizure or confiscation were instantaneous acts which occurred before the ratification of Protocol No. 1 by Poland and which did not produce any continuing effects that could have consequences for its jurisdiction *ratione temporis* (ibid. §§ 55-62). Having regard to the facts before it, the Court sees no reason to hold otherwise in the present case.

It follows that this part of the application is incompatible *ratione temporis* with the provisions of the Convention and the Protocols thereto within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4.

2. The applicant further complained about Poland's failure to enact any rehabilitation or restitution laws that would put right the injustices suffered by his family members and compensate them for loss of their property.

However, as the Court has already held on many occasions, Article 1 of Protocol No. 1 cannot be interpreted as imposing any general obligation on the Contracting States to return property which was transferred to them before they ratified the Convention. Nor does this provision impose any restrictions on the Contracting States' freedom to determine the scope of property restitution or rehabilitation laws. The Convention imposes no specific obligation on them to provide redress for wrongs or damage caused prior to their ratification of the Convention (see *Preussische Treuhand GmbH & CO. Kg A. A.* cited above, §§ 63-64, with further references).

Accordingly, the Polish State has no duty under Article 1 of Protocol No. 1 to enact laws providing for rehabilitation, restitution of

confiscated property or compensation for property lost by the applicant's family.

It follows that the remainder of the application is incompatible *ratione materiae* with the provisions of the Convention and the Protocols thereto within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court unanimously

*Declares* the application inadmissible.

Lawrence Early  
Registrar

Nicolas Bratza  
President