

**1.** European Court of Human Rights Rules (ECHR) 12 July 2001  
Dispute Between LIECHTENSTEIN vs. GERMANY. Application no. 42527/98

**2.** The parties to the present dispute are the Principality of Liechtenstein (hereinafter "Liechtenstein") and the Federal Republic of Germany (hereinafter "Germany"). On 1998 Liechtenstein brought an application before the European Court of Human Rights alleging a violation of the European Convention of Human Rights by the decisions of German courts concerning the confiscation of a painting owned by the applicant's father. The painting was confiscated in 1946 by the former Czechoslovakian authorities under (Benez-Decree No. 12) as "measures against German external assets" because the applicant's father had been regarded as German national. In 1991, Cologne obtained the painting as a temporary loan for an exhibition from then Czechoslovakia. The painting was returned to the Czech Republic. Liechtenstein claims that this decision is attributable to Germany as a matter of international law. Based on Germany's rejection of Liechtenstein's protests during subsequent consultations, Liechtenstein maintains that Germany takes the view, contrary to the post-1952 understanding between Germany and Liechtenstein, that Liechtenstein assets as a whole were "seized for the purpose of reparation or restitution, or as a result of the state of war" within the meaning of the 1952 Convention, even though the decision of Germany's Federal Constitutional Court dealt with only one painting.

**3.** The Court of Human Rights unanimously rejected the applicant's allegation that Germany violated Article 6 § 1, Article 1 of Protocol No. 1 and Article 14. The German Federal Court of Justice concluded that the confiscating state's position regarding the nationality of ownership of seized property is decisive, explicitly rejected the applicant's argument that his father had never been a German citizen and that therefore the Settlement Convention did not apply. The German court decisions declaring the applicant's ownership action inadmissible cannot be regarded as disproportionate to the legitimate aim pursued and they did not, therefore, impair the very essence of the applicant's "right of access to a court." As regards the alleged violation, the ECHR observed that expropriation had been carried out by authorities of former Czechoslovakia in 1946 i.e. long before the entry into force of the ECHR on 1953, and 1954 when Protocol No. 1 to the Convention entered into force. The ECHR lacked the competence *ratione temporis*. The ECHR found the possibility of bringing litigation in Germany to challenge the validity and lawfulness of the expropriation measures by former Czechoslovakia at a time prior to the existence of the Federal Republic of Germany under its 1949 Constitution a "remote and unlikely prospect."

**4.** The preclusion of German jurisdiction under Chapter 6, Article 3 of the Settlement Convention was a consequence of Germany's particular status under public international law after WW II. Under these unique circumstances the limitation on access to a German court, as a consequence of the Settlement Convention, had a legitimate objective pursued by the German government while negotiating with the Allied Powers to regain full sovereignty. After WW II the Federal Republic of Germany was not in a position to argue against the aims of the Allied powers, which sought to exclude a review of confiscation measures against German external assets for reparation purposes. This situation prevailed until 1990, when the Treaty on the Final

Settlement with respect to Germany, was negotiated and signed. The case is an on-going dispute between Liechtenstein against Germany that is being played-out before several forums in relation of seized property. There are concurring opinions contain a convincing critique on the flawed reasoning of judgment in respect of Article 6 § 1. According to which the Court has not jurisdiction to entertain the case. ECHR has delivered its judgment the legal community awaits the assessment of this dispute by the International Court of Justice, that still pending<sup>1</sup>. However, the ECHR with its decision from July 12, 2001, has already decided a number of issues that arise in both cases at the European level. The Strasbourg decision may serve as precedent for the decision from the ICJ at the international level.

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<sup>1</sup> Malcolm MacLaren, Liechtenstein Files Lawsuit in the I C J Against Germany In Respect Of Seized Property, 2GERMAN L.J. 10 (June 15, 2001), [www.germanlawjournal.com](http://www.germanlawjournal.com).