



## Liechtenstein v. Germany

**ARGUED: 19 November 2017**

**DECIDED: 20 November 2017**

1 The Majority Opinion was signed by and agreed to by Justice Eness, Justice Amlani, Justice Santos, Justice  
2 Fuller, Justice Rojas, Justice Hardin, Justice Gray, Justice Pederson, and Justice Stogin.

3 Germany has consistently denied that a dispute exists with Liechtenstein. The Court, however, finds that  
4 in conformity with well-established precedence it can conclude that, "[b]y virtue of this denial, there is a legal  
5 dispute," between Liechtenstein and Germany, *East Timor (Portugal v. Australia)*, judgment, *I. C. J. Reports 1995*,  
6 *p. 100, para. 22*. The Court further notes that Germany's position taken during consultations between itself and  
7 Liechtenstein and in the letter by the Minister for Foreign Affairs from January 20, 2000, has evidentiary value  
8 in support of the proposition that Liechtenstein's claims were positively opposed by Germany and that this was  
9 recognized by the latter. Despite the fact that this dispute exists, the Court finds that it lacks jurisdiction for a  
10 number of reasons.

11 The Court lacks jurisdiction over the case based on temporal jurisprudence, the classification of the painting  
12 and the timing of the causes of the dispute. Since the Court is being asked to analyze the situation arising from  
13 the temporary German possession of the "Roman Lime Quarry" painting belonging to Liechtenstein's Prince Franz  
14 Joseph II, the Court feels that we lack jurisdiction under the above statutes.

15 The petitioner and respondent have demonstrated conclusive evidence that the issues surrounding the rightful  
16 ownership of the Roman Lime Quarry painting and subsequent damages to Liechtenstein by Germany are significantly  
17 complex and cannot be resolved by Court rulings. Specifically this evidence includes the Benes Decrees, Convention  
18 on the Settlement of Matters Arising Out of the War and the Occupation, European Convention for the Peaceful  
19 Settlement of Disputes and European Convention on Human Rights.

20 The opinion and explanation of the Court is as follows:

21 Germany should not be authorized to determine what constitutes a "German external asset" under the  
22 Settlement Convention. Liechtenstein's charge that the German court's ruling that the painting was "seized as  
23 a German external asset" leads to a harm to Liechtenstein. However, to hold Germany culpable in this instance  
24 implies that the German courts should have agency to determine what constitutes just and unjust takings. Moreover,  
25 the German ruling didn't state that the painting was German property, just that it was seized as such. However,  
26 the Convention also specifically bars the German court to domestically differentiate between reparative and unjust  
27 takings as a result. The Court acknowledges that the Benes Decrees in their taking of Liechtenstein's property,  
28 yet the German courts are not situated to issue judgement on the status of property taken as reparations. Rather,  
29 because the Czech Republic states that the property was seized as reparations and was an occupied country, Germany  
30 is obligated to pay deference to the Czech's statement on the status of the property. Therefore, Germany can't be  
31 held liable for following Article 3, but Liechtenstein should work to redefine the internationally accepted legality of  
32 the seizure of Liechtenstein's property.

33 The claim made by Liechtenstein that it has been insulted by the Federal Republic of Germany as a result  
34 of Federal Republic of Germany naming their painting as a "German External Asset" ("das Deutsche Auslandsver-  
35 mögen"), cannot be supported. This term was used within the German courts in order to better explain their  
36 interpretation of the actions carried out by the Czech Republic and the law. As such, it cannot be considered to have  
37 enough substance to constitute an insult deserving a monetary compensation. This is even more strongly supported  
38 by the fact that the wording of the Benes Decrees could possibly be understood as considered this painting a "German  
39 External Asset," because they viewed it as an asset belonging to a person of German descent.

40 Germany's argument that the Court lacks temporal jurisdiction to hear this case is valid because the issue  
41 at hand is fundamentally and principally related to the allegedly illegal seizure of Liechtensteiner assets by the  
42 Czechoslovakian government in 1945. Article 27(a) of the European Convention for the Peaceful Settlement of  
43 Disputes, the principal international treaty for disputes among European countries, states that "the provisions of  
44 this Convention shall not apply to: disputes relating to facts or situations prior to entry into force of this convention  
45 as between the parties to the dispute." We acknowledge that Liechtenstein's case is brought to the Court officially  
46 because of the ruling by German courts in 1998 that rejects Liechtenstein's demand for compensation for the seizure  
47 of their painting based on Chapter 6 Article 3 of the Convention. However, the factual basis of this dispute is in the  
48 initial seizure of Liechtensteiner property after the Second World War. Therefore, Article 27(a) does not allow for  
49 temporal jurisdiction on the ruling of this case.

50 The initial issue of this case began with Czechoslovakia's seizure of a perceived German asset. Liechtenstein  
51 decided to come to the ICJ to issue a ruling on whether its alleged property was wrongfully taken by Germany  
52 even though Germany stated that it was complying with Chapter 6, Article 3 of the Convention on the Settlement  
53 of Matters arising from the War and Occupation that meant that it had to comply with the Czech Republic's  
54 understanding of the possession of the asset. Therefore, the Court finds that because of the Czech Republic's  
55 excessive entanglement with nearly every aspect of the case, it is not possible to rule on this case without invoking  
56 the third party principle set as precedent in past ICJ cases. It is important for the Court to hear the arguments of  
57 the Czech Republic before deciding whether Liechtenstein's petition is valid. Therefore, the Court concludes that  
58 the third party principle is necessary in order to try this case.

59 Therefore, the Court issues no orders.

*Signed By*

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Justice Pederson

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Justice Rojas

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Justice Hardin

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Justice Amlani

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Justice Eness

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Justice Gray

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Justice Fuller

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Justice Stogin

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Justice Santos