

IN THE INTERNATIONAL COURT OF JUSTICE

**THE PRINCIPALITY OF LIECHTENSTEIN,
APPLICANT**

V.

**THE FEDERAL REPUBLIC OF GERMANY,
RESPONDENT**

MEMORIAL OF THE FEDERAL REPUBLIC OF GERMANY

COMES NOW the Federal Republic of Germany and for their Memorial to the Courts states the following:

STATEMENT OF LAW:

1. The Benes Decrees issued from July 21, 1940 to October 27, 1945.
2. Following World War II, the Czechoslovakian government passed a series of laws known as the Benes Decrees. The Decrees nationalized the personal property of German and Hungarian nationals used to fund war reparations. These Decrees also applied to Liechtenstein nationals, whom were considered to be of German descent by the Czechoslovakian government. This was expressed in Decree No. 12 of June 21, 1946.
3. The Convention on the Settlement of Matters arising out of the War and the Occupation of May 26, 1952.
4. Paragraph 1 of article 3 of Convention on the Settlement of Matters Arising out of the War and the Occupation states “ No person shall be prosecuted or prejudiced in his civil, rights of economic position by the action of German courts or authorities solely on the ground that he has, prior to the entry into force of the present Convention, sympathized with or aided the cause of the Three Powers, or their policies or interests, or furnished information or services to the forces, authorities, or agencies of any one or more of the Three Powers, or to any person acting under the authority of any of them.”

STATEMENT OF FACT:

In 1945 under the Benes Decrees, the Czechoslovakian government seized personal property belonging to Prince Franz Joseph II of Liechtenstein. The confiscated property included land, a castle and all its contents, and a painting by Pieter van Laer. The painting was taken to Brno, Czechoslovakia and held by the Historic Monuments office.

In 1991, while the painting was on loan to the Wallraf-Richartz Museum in Germany, Prince Hans Adam II filed a suit in German courts to regain custody of the confiscated painting. The Federal Constitutional Court decided that Article 3 of the Convention on the Settlement of Matters Arising out of the War and the Occupation prevented the court from hearing the case. Germany returned the painting to the Czech Republic, formerly Czechoslovakia.

In 1999, Liechtenstein claimed compensation from the German government for the property that was confiscated by Czechoslovakia following the second World War. In 2001, Liechtenstein lodged an application with the Registry of the Court against Germany claiming that Germany failed to respect the sovereignty and neutrality of Liechtenstein and breached

international law and therefore is liable to compensate Liechtenstein. Liechtenstein then filed its Memorial on 28 March 2002.

STATEMENT OF JURISDICTION

1. The Court lacks *ratione temporis* on the basis of Article 27(a) of the European Convention for the Peaceful Settlement of Disputes. This article states “The provisions of this Convention shall not apply to: disputes relating to facts or situations prior to the entry into force of this Convention as between the parties to the dispute.” The European Convention for the Peaceful Settlement of Disputes entered into force between Liechtenstein and Germany in 1980 and does not apply to disputes relating to facts and legal situations prior to 1980. All facts related to the source of the alleged dispute date back prior to 1945.
2. The Czech Republic is an indispensable third party to the case. The claims of Liechtenstein require the Court to consider and give judgement on the rights and obligations of the Czech Republic. This would take place in the absence of the Czech Republic and without their consent to judicial evaluation. Therefore, the Court has no jurisdiction to decide upon the sovereign acts of a third state in a case brought by Liechtenstein against Germany.

ARGUMENTS

1. The court has no jurisdiction to entertain Liechtenstein’s case. No dispute exists between Liechtenstein and Germany required by the Statute of the Court and Article 27 of the European Convention for the Peaceful Settlement of Disputes. The facts relevant to Liechtenstein’s case all occurred before the entry into force of the European Convention. The claims would require the court to decide the rights and obligations of the Czech Republic in their absence and without their consent.
2. Germany has always considered the confiscations by Czechoslovakia under the Benes decrees to be in violation of international law. However, German courts are precluded from deciding upon the lawfulness of the confiscations under Article 3 of the Convention on the Settlement of Matters Arising out of the War and the Occupation of 1955.
3. The confiscation of Liechtenstein assets is a dispute between Liechtenstein and the Czech Republic. Germany has always recognized the sovereignty and neutrality of Liechtenstein and continues to respect the legal rights of Liechtenstein nationals with respect to their personal property. This dispute and any issue of compensations is to be decided between the State confiscating the foreign property and the state considered to be the victim of these confiscations.

SUMMARY AND REQUESTS

1. Germany requests that the Court declare the Application submitted by Liechtenstein to be inadmissible and that the Court lacks jurisdiction over the claims brought forth by Liechtenstein against Germany.