



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

FIFTH SECTION

DECISION

Application no. 26367/10
Albert FÜRST VON THURN UND TAXIS
against Germany

The European Court of Human Rights (Fifth Section), sitting on 14 May 2013 as a Chamber composed of:

Mark Villiger, *President*,

Angelika Nußberger,

Boštjan M. Zupančič,

Ann Power-Forde,

Ganna Yudkivska,

Helena Jäderblom,

Aleš Pejchal, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having regard to the above application lodged on 7 May 2010,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Albert Fürst von Thurn und Taxis, is a German national, who was born in 1983 and lives in Regensburg. He was represented before the Court by Mr A. Geiger, a lawyer practising in Munich.

A. The circumstances of the case

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

3. The applicant is the owner of a court library and archives dating back to the fifteenth century. In 1943 the library contained approximately 150,000 volumes; today, it contains about 204,000 volumes. The library is accessible to the public and the archives are accessible for scientific purposes.

4. The property was originally incorporated in a family trust fund (*Fideikommis*). Under section 1 of the Law on the Dissolution of Family Trust Funds (*Gesetz über das Erlöschen der Familienfideikommissse und sonstiger Vermögen, FideiErlG*, see relevant domestic law, below), which entered into force on 30 June 1938, all family trust funds were dissolved by 1 January 1939. The property contained in these funds was, as a rule, transferred into normal private property. However, section 6 of the above-mentioned law allowed the authorities to impose certain protective and security measures in respect of objects of particular artistic, scientific, historical or patrimonial value.

5. By decisions of 12 July, 22 October and 30 October 1943 the Nuremberg Court of Appeal, in its capacity as a trust fund court, relying on section 6 of the above-mentioned law, placed the administration of the different parts of the court library and archives under the supervision of the director of the Bavarian State Library, and of the directors of the State Archives in Stuttgart and Amberg. The current owner and his legal successors were ordered to obtain authorisation from the supervising authority before changing, displacing, or disposing of the library or the archives or of parts thereof. Furthermore, it was ordered that the library and archives had to be maintained in an “orderly condition”.

6. On 31 January 2002 the applicant lodged a request with the Nuremberg Court of Appeal to lift the above-mentioned measures. Relying on section 6 § 8 of the Law on the Dissolution of Family Trust Funds, he argued that the measures deprived him of making use of his property in a reasonable way. Under the orders issued in 1943, he had to bear considerable expenses while being denied any possibility of profiting from his property. The applicant submitted that the factual and legal circumstances had changed since 1943. The costs of maintenance for the court library and the central archives had increased dramatically. For the year 2002, the total expenses were estimated at 295,000 euros. The applicant further argued that the limitations imposed were unconstitutional, as he did not receive any compensation for the factual expropriation.

7. On 8 December 2003 the Nuremberg Court of Appeal rejected the applicant’s request on the grounds that the applicant had not established that the factual and legal circumstances had changed since the imposition of the impugned measures in 1943. The Court of Appeal conceded that the expenses submitted by the applicant for the maintenance of the library and the archives were considerable. However, there was no indication that these expenses had not merely increased because of general inflation, but had

been generated after 1943. The Court of Appeal further considered that section 6 of the Law on the dissolution of Family Trust Funds was constitutional. The court noted in this context that the court library and archives were cultural goods of exceptional importance meriting special protection. The measures imposed were justified by the public interest in the conservation of valuable goods giving testimony of German culture and history. If the measures imposed in 1943 were lifted, the conservation and accessibility of the court library and central archives could no longer be assured.

8. On 27 October 2004 the Bavarian High Court (*Oberstes Landesgericht*) rejected the applicant's complaint on the grounds that the orders issued in 1943 were legally binding and that the factual and legal circumstances had not changed in a way which would justify the measures to be lifted. The court observed that the court library and central archives remained an important part of the cultural heritage which necessitated protection. Conversely, economic interests did not play a decisive role in the decision taken in 1943. Accordingly, the general change in the economic context did not justify the measures to be lifted. The Court of Appeal further considered that there was no violation of the right to equal treatment. The situation had to be seen in the context of the historical and social circumstances under which the property was acquired. These circumstances, taken in their entirety, could not be compared to the circumstances under which "civil" property was acquired.

9. On 28 October 2009 the Federal Constitutional Court refused to accept the applicant's constitutional complaint for adjudication (1 BvR 963/05). This decision was served on the applicant's counsel on 12 November 2009.

B. Relevant domestic law

10. The Law on the Dissolution of Family Trust Funds (*Gesetz über das Erlöschen der Familienfideikommisse und sonstiger Vermögen, FideiErlG*) as in force from 30 June 1938 until 30 November 2007 read, in so far as relevant:

Section 1 Date of Dissolution

"(1) All remaining family trust funds are dissolved by 1 January 1939..."

Section 2 The Trust Fund Property

"As from the [date of] dissolution of the trust fund, the trust fund property becomes the free property of the last trust fund owner..."

Section 6 Other Safeguards and Security measures

“(1) If the trust fund contained objects or collections of particular artistic, scientific, historical or local value (e. g. buildings, picture galleries, archives, libraries) or charitable institutions, the Trust Fund Court has to take the necessary measures for their appropriate conservation in case the objects appear to be endangered because of the dissolution of the trust fund and if the conservation lies in the public interest.

(2) The Trust Fund Court may, in particular...issue regulations on the storage and conservations of objects and may subject the change, displacement and the validity of legal dispositions to administrative authorisation. The Trust Fund Court is further obliged to ensure that objects of particular artistic, scientific, historical or patrimonial value are made accessible to the public in an appropriate way. ...

...

(8) In case of a change of circumstances, the Trust Fund Court, on request of one of the parties concerned, may change or lift the measures taken under the above paragraphs...”

11. Under Section 34, measures taken under that law did not give rise to compensation claims.

12. The *FideiErlG* was re-published in the Federal Law Gazette of 10 July 1958 (BGBl. III 7811-2) and repealed by law of 30 November 2007 under the condition that the rights and duties established under that law remained unchanged and that the law remained applicable for rights and duties established when it was still in force.

COMPLAINTS

13. The applicant complained under Article 1 of Protocol 1 of the Convention about the domestic courts’ refusal to lift the restrictions imposed on the use of his property in 1943. He further complained under Article 14 about having been discriminated against because of his wealth and of the circumstances of his birth.

THE LAW

A. Alleged violation of Article 1 of Protocol No. 1

14. The applicant complained that the domestic courts’ refusal to lift the restrictive measures imposed on the use of his property in 1943 violated his right to the peaceful enjoyment of his property under Article 1 of Protocol No. 1 of the Convention, which reads:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest

and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

15. According to the applicant, the restrictions imposed on the use of his property in 1943 were of a temporary nature, as they were subject to change in case of a change of circumstances. Under these circumstances, the applicant had the legitimate expectation that his request for the restrictions to be lifted because of changed circumstances would be granted. In the instant case, the German courts had failed to take into account that the legal situation had completely changed since 1943 and had further failed to take into account the applicant’s property rights under Article 1 of Protocol No. 1.

16. While conceding that the impugned measure served the legitimate aim of protecting cultural heritage, the applicant argued that section 6 paragraph 8 of the Law on the Dissolution of Family Trust Funds applied in the instant case failed sufficiently to specify under which circumstances the restrictive measures were to be lifted. Furthermore, the imposed measures were disproportionate in view of the fact that he was not granted any compensation for the restrictions on the use of his property.

17. The Court reiterates that Article 1 of Protocol No. 1, which guarantees the right to the protection of property, contains three distinct rules: “the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. ... The three rules are not, however, ‘distinct’ in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule” (see, among other authorities, *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 62, ECHR 2007-I and *Potomska and Potomski v. Poland*, no. 33949/05, § 40, 29 March 2011).

18. Turning to the circumstances of the instant case, the Court notes that the applicant is the owner of a library and archives which formerly belonged to a family trust fund. In 1943, following the dissolution of the trust fund, the Trust Fund Court placed the administration of the library and archives under State supervision and ordered the current owner and his legal successors to obtain authorisation from the supervising authority before

changing, displacing, or disposing of the library or archives or of parts thereof. Furthermore, the respective owner was ordered to maintain the library and archives in an “orderly condition”.

19. The Court observes that the applicant’s complaint does not concern the decisions given in 1943, and thus before the entry into force of the European Convention on Human Rights on 3 September 1953. In the present proceedings, the applicant complains about the domestic courts’ refusal to accede to his request of 31 January 2002 to lift the measures imposed in 1943. The Court’s competence to deal with this application is therefore not excluded *ratione temporis* (see *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII, and *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 81, ECHR 2001-VIII).

20. Turning to the circumstances of the instant case, the Court observes that the decisions issued in 1943 did not change the legal ownership of the concerned property, but subjected the use of these possessions to specific restrictions; hence, they may be regarded as measures to control the use of property (compare, *mutatis mutandis*, *Debelianovi v. Bulgaria*, no. 61951/00, § 51, 29 March 2007; *Longobardi v. Italy* (dec.), no. 7670/03, 26 June 2007; *Yildiz and Others v. Turkey* (dec.), no. 37959/04, 12 January 2010 and *Potomska and Potomski*, cited above, § 63). The Court further observes that these restrictions were not subject to a time-limit and remained in force until the present day. In view of this, the Court considers that the situation complained of constitutes an on-going control of the use of the applicant’s property which is to be examined under paragraph 2 of Article 1 of Protocol No. 1.

21. The Court considers that the relevant provisions of the Law on the Dissolution of Family Trust Funds, even though couched in general terms, form a sufficient legal basis for the impugned restrictive measures. The Court further observes that the applicant did not dispute that the interference pursued a legitimate aim, namely the protection of the country’s cultural heritage.

22. Any interference with the right to the peaceful enjoyment of possessions must achieve a “fair balance” between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights (see, among other authorities, *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 69, Series A no. 52). In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised. In each case involving the alleged violation of this right the Court must, therefore, ascertain whether by reason of the State’s action or inaction the person concerned had to bear a disproportionate and excessive burden (see, amongst other authorities, *The former King of Greece and Others v. Greece* [GC], no. 25701/94, §§ 89-90, ECHR 2000-XII; *Sporrong and Lönnroth*, cited above, § 73; *Broniowski v. Poland* [GC],

no. 31443/96, § 150, ECHR 2004-V; *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 93, ECHR 2005-VI and *Potomska and Potomski*, cited above, § 64).

23. In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are “practical and effective”. With particular reference to the control of the use of property, the State has a wide margin of discretion as to what is “in accordance with the general interest”, particularly where environmental and cultural heritage issues are concerned (see, *mutatis mutandis*, *Beyeler v. Italy* [GC], no. 33202/96, §112, ECHR 2000-; *Kozacıoğlu*, cited above, § 53; and *Yildiz and Others*, cited above). Moreover, it must not be assumed that every control of use of property invariably has to be accompanied by some form of compensation (see, *mutatis mutandis*, *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], no. 44302/02, § 79, ECHR 2007-X and *Depalle v. France* [GC], no. 34044/02, § 91, ECHR 2010). Property, including privately owned property, has also a social function which, given the appropriate circumstances, must be put into the equation to determine whether the “fair balance” has been struck between the demands of the general interest of the community and the individual’s fundamental rights (see *Potomski and Potomska*, cited above, § 67).

24. Turning to the circumstances of the instant case, the Court observes that the applicant acquired legal ownership of the library and archives, which were already subject to the restrictions imposed in 1943, by way of inheritance. It follows that the applicant must have been aware about the impugned restrictions by the time he acquired ownership by way of succession.

25. The Court further observes that the decisions issued in 1943 controlled the use of the applicant’s property in a threefold way: Firstly, the administration of the library and archives was placed under the supervision of the Directors of the Bavarian State Library and State Archives. Secondly, the current owner and his legal successors were ordered to obtain authorisation from the supervising authority before changing, displacing or disposing of the library or the archives or of parts thereof. Thirdly, the respective owner was ordered to maintain the library and archives in an “orderly condition”.

26. With regard to the first measure, the Court considers that the preservation of an important object of cultural heritage may justify supervision by a competent State authority. The Court further notes that the applicant has not submitted that the Directors of the State Library and Archives exercised their powers of supervision in any disproportionate way.

27. With regard to the second measure, the Court observes that the applicant is not completely prevented from making use of his property, but

that the administration of the property and each act of changing, displacing, or disposing of the property or of parts therefor is subject to prior authorisation by the State. The Court notes in this respect that the applicant has not submitted that he had sought and been denied authorisation for any specific transaction relating to the property. Accordingly, it has not been established that the applicant is completely deprived of making use of his property in a reasonable way. The Court finally observes that the domestic courts examined in substance the applicant's request to lift the restriction measures on the basis of an alleged change of circumstances. It follows that he had the legal possibility to challenge the necessity of the restrictions.

28. With regard to the third measure, the Court appreciates that the costs for the maintenance of the library and archives are considerable. However, the Court considers that it has to be taken into account that the costs of maintenance are also necessary to preserve the value of the applicant's property.

29. In the light of the above considerations, and taking into account the State's wide margin of appreciation in the control of the use of property, the Court considers that the decision not to lift the restrictive measures did not impose a disproportionate and excessive burden on the applicant. It follows that there is no appearance of a violation of Article 1 of Protocol No. 1 to the Convention in the instant case.

30. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Alleged violation of Article 14 in conjunction with Article 1 of Protocol No. 1

31. The applicant also claims to be the victim of discrimination in breach of Article 14 taken in conjunction with Article 1 of Protocol No. 1 of the Convention. He complains, in particular, that the Law on the Dissolution of Family Trust Funds exclusively concerned property which had been formerly subject to family trust funds. It did not apply to other property of equal cultural value. The Law on Historic Monuments applicable to other such property pursued a more liberal approach and did not subject the sale of movable objects to State authorisation. This differentiation was arbitrary and could only be explained by the Nazi-legislator's intention to harm and destroy the economic foundations of aristocratic families. This amounted to discrimination on the ground of origin and wealth.

32. The Court observes, at the outset, that it is not competent *ratione temporis* to examine whether the decisions issued by the Trust Fund Court in 1943 discriminated against the applicant's legal predecessors on the basis of their social origin, birth or other status. Within the framework of the instant complaint, it merely falls to be determined whether the decision not to accede to the applicant's request of 2002 to lift the measures of

control of the applicant's property discriminated against the applicant as compared to other owners of property of equal cultural value.

33. The Court reiterates that in order for an issue to arise under Article 14 there must be a difference in treatment of persons in relevantly similar situations (compare, as a recent authority, *X and Others v. Austria* [GC], no. 19010/07, § 98, 19 February 2013). The Court observes that the decisions issued in 1943 on the use of the archives and library are a historical factor which is not subject to the Court's review. The restrictions on the use of the applicant's property derive from this historic decision. With regard to the situation examined by the domestic courts in the proceedings following the applicant's request in 2002, the Court takes note of the domestic courts' finding that the social and historical circumstances of the acquisition of the property which was formerly belonging to family trust funds could not be compared to the circumstances of the acquisition of other, "civil" property. In view of this, the Court accepts that the applicant in his capacity as an owner of property formerly acquired under privileged conditions and formerly belonging to a family trust fund finds himself in a relevantly different situation than an owner of property which had never belonged to a family trust fund.

34. It follows that there is no appearance of a violation of Article 14 in conjunction with Article 1 of Protocol No. 1 to the Convention. It follows that also this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court by a majority

Declares the application inadmissible.

Claudia Westerdiek
Registrar

Mark Villiger
President