

Gunnar Schnabel, Tagesspiegel, 27 February 2009

Poster Collection Sachs

Injustice remains Injustice

The decision regarding the Sachs poster collection is coherent with legal practice. A response to Peter Raue by Gunnar Schnabel

The Sachs poster collection was seized by the Gestapo in 1938 and taken away unlawfully from the Jewish dentist Hans Sachs. Even the Federal Constitutional Court has recognized: These acts of injustice are and remain invalid. Therefore, Sachs' son as sole heir can request the return of his property from the Deutsches Historisches Museum. The legal situation is this simple, and the county court of Berlin has decided on the basis of this simple legal proposition. The return of Nazi looted art can still be requested even today, and the owner can finally, more than 60 years after the illegal loss of possession, get back his property.

In his article in the "Tagesspiegel", Peter Raue has strongly criticized this decision. He argues that the owner can no longer assert his claims to title because the deadlines under the restitution and property laws have expired. He bases this on the authority of long-outdated decisions from the sixties. But the Kammergericht Berlin has ruled over again since 1995: Who never lost his property can claim his title at any time, if necessary before the courts as in the Sachs case. This was confirmed by the Federal Supreme Court. This is a consequence from the guaranty of property and the principle of due process, both fundamental rights. The new decision only confirms this jurisprudence by the higher courts.

The statements Hans Sachs made in correspondence with an East Berlin art historian that he, Sachs, had no material, but only a spiritual interest with regard to the collection do not signify a final relinquishment. They must be understood before the backdrop that the US émigré Sachs did not have any possibility to reclaim his property from the GDR. It was seized by the GDR.

Peter Raue, in contrast, pleads against the return with the argument that the Sachs parents had not reclaimed the poster collection "over decades" and thereby forfeited their property claims. The Federal Supreme Court sees this differently. Before the "restitution of a state of law" in the (still) GDR in the spring of 1990 it was not possible to assert property rights there. Therefore, the Federal Supreme Court has confirmed that deadlines were suspended up until that point. However, a claim that could not be subject to statutes of limitation before the spring of 1990 can clearly not be forfeited at that point.

Raue asks: Why did the court not even claim repayment of the compensation in the amount of 225.000 Mark granted in the 1960es? This is equivalent to asking the court to break the law. After all, the civil court can only decide about claims for the return of property. The Equalization of Burdens authority, competent for compensation payments, can request

repayment of the compensation once the posters have been returned. This is what the law says and, thus, after reunification compensation payments have been recovered in similar cases with interest and compounded interests, in some cases very harshly.

Will this result in a flood of new liquidation as Raue expects? Probably not at this point, because the owners must expect the current holder of the property would claim statutes of limitation. According to this principle, 30 years after the theft, every thief can spite the owner, saying: Everything is barred by statute of limitation; you won't get back your property. In the Sachs case the objection of statutes of limitation was not raised. After all, this would have been an abuse of legal remedies because the federal government, the federal states and the communal authorities have solemnly declared in December of 1999 that they would not raise the statute of limitations defence in cases of Nazi looted art. And the Deutsches Historisches Museum, the defendant in the Sachs case, is a federal institution.

Private owners of looted art can, nevertheless, still assert statutes of limitation. Even before the agreement on the Washington Principles in 1998 and more so in the last few years, looted art has been the subject of litigation in neighbouring countries and in particular in the United States because the signatories do not fully implement the Washington Principles. Current decisions from the United States show that even claims against current possessors of property are possible in that country because German statutes of limitation are considered to be in violation of fundamental principles of justice. Even forced sales in private auctions are considered *de facto* expropriations; a *bona fide* acquisition is not recognized.

On the international level, for some time already Germany cannot hide behind the legal shield of statutes of limitation or forfeiture and refuse the return of Nazi looted art on that basis any more. This is true for the Sachs posters as well as the "Sumpflgende" by Klee in Munich or the "Buchsbaumgarten" in Duisburg.

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