

**Federal Supreme Court  
Press Release**

No. 39/2012

**Nazi Looted Art: German Historical Museum must return the Sachs Poster  
Collection to the Heirs**

The Fifth Chamber for Civil matters of the Federal Supreme Court has decided that the owner of a work of art that was lost due to Nazi injustice can request its restitution from the person who is in possession of the work under general rules of civil law (§ 985 BGB), if the work of art was lost after the war and the owner could, therefore, not file for restitution under the provisions of the Allied Restitution Regulations.

The decision relates to the poster collection of the Jewish dentist Dr. Hans Sachs, which is deemed to be of high art historical importance and is today in the possession of the German Historical Museum, a foundation under public law. The Reichspropagandaministerium had had the collection confiscated in 1938 from Dr. Sachs' apartment in Berlin-Schöneberg. Dr. Sachs emigrated to the US at the end of 1938. After the war the collection was lost. In 1961 a settlement was reached according to which Dr. Sachs received a compensation payment in the amount of 225.000 DM in accordance with the Federal Restitution Act. It was only later that he learned that parts of his collection had reappeared in a museum in the GDR. Dr. Sachs died in 1974; his sole heir was his wife. She died in 1998 without having made any claims to the collection after German reunification. Her heir was the Plaintiff, the son of Dr. Sachs.

Initially, the Plaintiff had requested the return of two posters ("Dog" and "Blond Venus") from the German Historical Museum (Defendant). The Defendant had launched a counterclaim that the court declare that the Plaintiff was not the owner of the poster collection, alternatively, that he was not entitled to claim restitution of the posters in the Defendant's possession. The Berlin County Court had ruled that the Defendant had to return the poster "Dog", but denied the claim for the poster "Blond Venus" as well as the counterclaim. Upon the Defendant's appeal the Berlin Supreme Court had affirmed the alternative counterclaim that the Plaintiff was not entitled to claim restitution of the posters from his father's collection in the Defendant's possession and denied all other claims.

The Plaintiff's further appeal was successful: The Federal Supreme Court has re-established the decision of the first instance. The Plaintiff had no longer pursued his claim for the poster "Blond Venus" which could not be attributed to the Sachs Collection with certainty. The Defendant had re-lodged his principal counter-claim (i.e. a declaration by the Court that the Plaintiff is not the owner of the poster collection) in the further appeal. This counter-claim was rejected by the Federal Supreme Court. This means that it has been determined that the Plaintiff is the owner of the poster collection and can demand its return from the Defendant.

The Federal Supreme Court followed the reasoning of the Berlin Supreme Court that Dr. Sachs had never lost ownership of the poster collection. In particular, it could not be ascertained that title to the collection, which was in Sachs' possession until it was

confiscated in 1938, had been transferred to a banker who was willing to purchase it. The Reichspropagandaministerium's grasping of the collection did not change ownership rights because it constituted a seizure without a formal act of dispossession. And the 11<sup>th</sup> Ordinance to the Reich's Citizens Act of 1941, in which the disappropriation of Jewish property was proclaimed, was incapable of having any legal effects due to its illegitimacy, as the Federal Supreme Court decided already in 1955.

The specific provisions concerning compensation of Nazi injustices do not prevail over the Plaintiff's civil law claim to have his property returned to him as the owner (§ 985 BGB). The 1990 Property Act is not applicable in this case because the dispossession did not take place in what later became the GDR, but in West Berlin. The provision of Art. 51, first sentence, of the Restitution Ordinance for the State of Berlin (REAO)\* and the Federal Restitution Act do not preclude the claim either. The Federal Supreme Court has ruled in the 1950s that claims resulting from property having been unlawfully taken by Nazi authorities can, as a matter of principle, only be made in accordance with the restitution and compensation laws enacted in order to make good Nazi injustices. Nevertheless, these provisions do not take precedence over the owner's claim for the return of his property under § 985 BGB if the property item that had been unlawfully taken was lost after the war and only reappeared after the deadline for filing the claim under restitution regulations had expired (in this case on June 30, 1950 according to Art. 50 subpara. 2, first sentence, REAO). This was the case here and distinguishes this case from the cases ruled upon by the Federal Supreme Court until now. If it was impossible to locate the lost property until the expiration of these deadlines, the aggrieved party was unable to claim for restitution in the relevant proceedings, his claim being limited to monetary compensation. If this legal situation were to continue even after the lost item had reappeared, the Allied Restitution Regulations would deprive the aggrieved party of his ability to request the re-establishment of lawful circumstances in spite of his continued ownership of the item. This would perpetuate Nazi injustice and could not be reconciled with the purpose of the Allied Restitution Regulations which was to protect the interests of the aggrieved parties.

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\* Rückerstattungsanordnung für das Land Berlin der Alliierten Kommandantur Berlin – REAO – (BK/O (49) 180 dated July 26, 1949) – *Restitution Ordinance for the State of Berlin*

#### **Art. 1 General Principles**

(1) The purpose of this Ordinance is to restitute identifiable items of property (physical property as well as legal rights) to natural and legal persons from whom such property was unlawfully taken in the period between January 30, 1933 and May 8, 1945 for reasons of race, religion, nationality, political opinion or political opposition against National Socialism and to effectuate such restitution as soon as and to the greatest extent possible.

(2) Under the provisions of this Ordinance, claimants may request the return of identifiable items of property which were unlawfully taken for the reasons mentioned in subpara. (1).

#### **Art. 51 REAO – Relationship to Ordinary Legal Recourse**

Unless otherwise specified in this Ordinance, claims falling under this Ordinance may only be pursued in accordance with the proceedings set forth in this Ordinance and within the timeframes set forth therein. Ordinary recourse to the courts is open with regard to claims that are based on other reasons and that do not fall under this Ordinance.

Contrary to the opinion of the Berlin Supreme Court the claim for the return has not been forfeited. Not having brought the claim within the first 16 years after German reunification does not suffice for forfeiture.

Karlsruhe, March 16, 2012