

Government misconduct

Fritz Enderlein

Jüdische Zeitung, September 2012, p. 4

Restitution claims filed in accordance with the Property Act (§ 30a) are subject to a strictly defined time limit that is basically without exceptions. This provision was added to the Property Act two years after it was passed into law following requests by the Jewish Claims Conference (JCC) and others. The JCC thus wanted to ensure that assets awarded to them could no longer be claimed by third parties.

The claim deadline was the subject of a case recently heard by the Berlin Administrative Court. The plaintiffs were of the opinion that § 30a of the Property Act is contrary to Basic Law in the Federal Republic of Germany, and is therefore unconstitutional.

Provision § 30a of the Property Act is applied very stringently. Even when the applicant fails to file a claim through no fault of his/her own, a reinstatement of (property) rights is ruled out. According to a ruling by Germany's Federal Administrative Court, leniency can be granted for exceptional cases in which a failure to meet the deadline can be attributed to government misconduct and when acceptance of the late claim is in keeping with the intended purpose of § 30a of the Property Act.

Government misconduct is very narrowly defined in court decisions and professional literature. Cited examples include a restitution claim that was submitted on time to the wrong government agency and was not promptly forwarded to the right office. Another example is a case in which a probate court provided inaccurate information about a claimant's right to inheritance.

Those who have been directly affected by the time limits regard “government misconduct” in a much broader sense.

Government misconduct No. 1: After millions of Jews were persecuted, murdered and robbed of their assets, many of the survivors were scattered around the world and had no record of the financial status of their families or relatives. The persecution and murder of millions of Jews was the most despicable form of government misconduct in German history – and it was the reason why restitution claims were not submitted on time after 1990.

Government misconduct No. 2: In many cases, victims managed to submit claims in the postwar years. This resulted in thousands of cases presented to the different equalization, restitution and reparation offices in Germany. In cases where assets were located in East German territory, the applications were rejected on the grounds that the property is outside the jurisdiction of the restitution laws.

The plaintiffs in this case were of the opinion that after 1990, the Federal Republic of Germany should have been required to reopen previously rejected requests and process them without requiring applicants to submit a new claim. The files were still available and the addresses of the persons concerned were known. But these cases were never reopened.

Government misconduct No. 3: § 31 Sect. 2 of the Property Act requires government property offices to include all third parties whose legal interests may be affected by the outcome of proceedings. This specifically includes those persons who are legitimately entitled to the assets in cases where the JCC has submitted a claim for the property in question. These parties were never included. In some cases, claims filed by the legitimate owners were ignored, for example, because a certificate of inheritance was not submitted on time. The property assets were then transferred to the JCC.

Government misconduct No. 4: The justification for the time limit, i.e. to keep Jewish property assets from falling into the hands of the German government with legal security following immediately thereafter, is deceiving and illogical. The specified objective could have been fulfilled even if the JCC had only been appointed as a trustee in charge of the transferred assets. Incidentally, this well-intended objective was not fully achieved. The JCC could only assume the legal status of the injured party upon timely submission of a claim – although in many cases, it would have been possible to retransfer the rights without requiring applicants to submit a new claim.