

The legal questions raised by old assets

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Claims relating to dormant assets raised complex legal questions that remain relevant to other historical disputes.

The first concerns limitation. Under Swiss law, the claim for the return of a bank deposit does not in principle begin to be time-barred until the relationship is terminated, which allows heirs to claim old assets, provided that they can establish their entitlement.¹ Banks have sometimes raised other arguments, in particular the extinction of accounts through the effect of account-keeping fees or administrative closures.

The second concerns evidence. The heirs of victims of Nazism often had no document at all establishing the existence of the account, the death of the holder or their own status as heirs. The compensation procedures had to adapt the requirements of proof to these exceptional circumstances by admitting presumptions and indirect evidence.

The third concerns jurisdiction and the applicable law. The class actions filed in the United States raised the question of the jurisdiction of American courts over Swiss banks and over events that had occurred in Europe several decades earlier. The pressure exerted by these proceedings, combined with threats of sanctions, led the banks to seek a global settlement, without the legal questions ever being decided on the merits.

The fourth, finally, concerns the nature of the settlement. The global settlement of 1998 was concluded in full and final settlement, which allowed the banks to bring the proceedings to an end while leaving open disputes over the distribution of the funds and the completeness of the searches. The later complaints show that a settlement of this kind does not always extinguish the controversies.

These questions arise today in other fields: the restitution of colonial cultural property, reparations for historical injustices and claims connected with authoritarian regimes. Geneva practitioners who advise institutions

and families in these contexts can draw on the experience accumulated during the dormant assets affair.

1 Notes

1. Swiss Bankers Association, “Directives relatives au traitement des avoirs sans contact et en déshérence auprès de banques suisses” (Guidelines on the treatment of contactless and dormant assets held at Swiss banks), in force since 1 July 2022 (published on finma.ch): assets become contactless when the client breaks off all contact and the bank remains unable to reach him, and dormant ten years after the last documented contact (Art. 45 Banking Ordinance); the bank must undertake internal and then, where appropriate, external searches and report contactless assets exceeding CHF 500 to the central database operated by the Swiss Banking Ombudsman; the rights of the client or of those entitled through him “remain preserved” despite the absence of contact; after fifty years of dormancy or sixty years without contact, assets exceeding CHF 500 are published annually on an electronic platform and then liquidated, with the net proceeds paid to the Federal Finance Administration and the claims extinguished (Art. 37m Banking Act). ↩

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