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# Military Government Property Laws in Occupied Germany

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## MILITARY GOVERNMENT PROPERTY LAWS IN OCCUPIED GERMANY

BY JO M. FERGUSON\*

Members of the legal profession in the United States have been largely unaware of the promulgation and application of certain Military Government laws in Occupied Germany<sup>1</sup> which have a controlling effect on the interests of important sections of our population.

For the first time in history, at least insofar as the Western Powers are concerned, conquering armies have assumed the government of a conquered nation with previously formulated plans in some detail for a revolution in property ownership affecting every city, town and village in the land. The instrument for this revolution was Military Government Law Number 52, which was issued by the Military Governments of the United States, the United Kingdom, and France while those organizations were still under the control of Supreme Headquarters, Allied Expeditionary Force (SHAEF). The subsequent dissolution of SHAEF, and the relative independence of each zone under the Allied Control Commission, has resulted in considerable divergence of treatment in the British, French, and American Zones, but the basic law is the same.<sup>2</sup>

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<sup>1</sup> Developments in Austria have been somewhat similar, but are outside the scope of this paper.

<sup>2</sup> The Russian troops, of course, were not under the control of SHAEF, and therefore Law 52 was never promulgated in the Soviet Zone or the Soviet Sector of Berlin (it became effective in the American, British, and French sectors of Berlin after those sections of the city were taken over from Russian control in July 1945). The history of Russian "Property Control" is obscure. The Russians have representatives at Quadripartite meetings of the Property Control Section of the Finance Directorate. They accept inquiries on properties in their zone, and sometimes answer them, though not always correctly. They have been known to report a building as completely destroyed when it was standing unharmed in a downtown part of the Russian Sector of Berlin. These peculiarities doubtless result in part from their indifference to the concept of private ownership, and in part from the fact that they have apparently never had a Property Control organization at all levels, and have consequently

Law 52 provides for the custody and management of two basically different groups of properties.

- a. Those controlled for protective purposes, such as Allied or Neutral-Owned properties, properties seized under duress, and properties subject to delivery to other countries;
- b. Those controlled preparatory to possible confiscation in whole or in part, such as the property of the NSDAP<sup>3</sup> and its members.

#### PROPERTIES TAKEN INTO CONTROL

The part of the law which was of immediate interest to thousands of American Nationals was that which sought to preserve the property which they owned or claimed in Germany Law 52, which is entitled "Blocking and Control of Property" states in Article I that

1. All property within the occupied territory owned or controlled, directly or indirectly, in whole or in part, by any of the following is hereby declared to be subject to seizure of possession or title, direction, management, supervision or otherwise being taken into control by Military Government.—

- (f) Absentee owners of non-German Nationality, including United Nations and Neutral Governments, and Germans outside of Germany.

2. Property which has been the subject of transfer under duress, wrongful acts of confiscation, dispossession or spoliation, whether pursuant to legislation or by procedure purporting to follow forms of law or otherwise, is hereby declared to be equally subject to seizure of possession or title, direction, management, supervision, or otherwise being taken into control by Military Government.

This law was prepared before Allied troops entered upon German soil, and became effective by proclamation in each segment of Germany as it was occupied.<sup>4</sup> At least one officer

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relied for their reports on German Burgermeisters and other officials. The great seizures of property in the Russian Zone have occurred through "Soviet Corporations" (Sowjet A.G.) which have been motivated by reasons of the importance of the property seized more than by a desire to protect Allied property or remove incriminated Nazis.

<sup>3</sup> *Die Nationalsozialistische Deutsche Arbeiterpartei*, i.e., the National Socialist German Workers Party, or Nazi Party.

<sup>4</sup> e.g., in Munich on April 30, 1945, the day of its capture. Property Control Officers were operating in Aachen as early as December 1944; in no case was the date later than May 8, 1945.

was designated in the Military Government detachment for each city,<sup>5</sup> county,<sup>6</sup> province,<sup>7</sup> and state<sup>8</sup> as a Property Control Officer charged with the enforcement of the law. Inasmuch as it was a Military Government Law, and a stranger to the German legal system, it could be enforced only by the Military Government Courts. As in the case of other Military Government Laws, any German law in conflict with it, was superseded to the extent that the two conflicted, even "any order made under it" prevailed over any German law.<sup>9</sup>

Under authority of this law all property to which Allied or Neutral Nationals held undisputed title was seized and placed in the custody of selected indigenous persons,<sup>10</sup> whose duty it was to preserve it, or in the case of a business or a farm, to operate it.<sup>11</sup> Despite the statement in Law 52 that the classes of property mentioned therein were subject to seizure of title, Property Control did not take title.<sup>12</sup>

An organization to protect this class of property<sup>13</sup> was made necessary by the fact that these Allied and Neutral owners were completely separated from their properties. They were for-

<sup>5</sup> *Stadtkreis*.

<sup>6</sup> *Kreis*, or in Bavaria, *Bezirk*.

*Regierungsbezirk*, or in Bavaria, *Kreis*.

<sup>8</sup> *Land*.

<sup>9</sup> Mil. Govt. Law 52, Art. VI 8.

<sup>10</sup> German Nationals or displaced persons; members of the occupying forces were not appointed.

<sup>11</sup> In the case of Allied or Neutral-owned property, an attempt was made to find some person who had previously been connected with the Allied or Neutral owner to act as custodian, provided his actions during the war had been such as to indicate he was sympathetic to the owner's interest, and provided also, that he had not made himself ineligible by membership in the Nazi Party or one of its organizations. Many, if not most of these properties were in the hands of the *Reichskommissar fuer die Behandlung feindlichen Vermoegens*, the German equivalent of the Alien Property Custodian, when the Allied troops entered.

<sup>12</sup> Military Government Regulations (hereafter called MGR), Title 17, Section 122.

<sup>13</sup> In the U. S. Zone by December 31, 1946, there were 8,649 properties of United Nations nationals under control, worth 1,363 million Reichsmarks (1938 value). Of these 5,712 properties belonged to American nationals. On the same date the figure for Neutrals was 952 properties worth RM 107 million. Monthly Report of the Military Governor, U. S. Zone (Finance and Property Control), No. 18, pp. 19, 20. By May 31, 1947 the number of Allied and Neutral-owned properties under control had grown to 10,316, worth RM 1,862 million.

bidden entrance into Germany, and all communications, by post or otherwise, between Germany and the rest of the world remained broken for some months after the end of hostilities. Even after postal service was resumed, business communications were forbidden.<sup>14</sup> These restrictions continued until the issuance, in 1947,<sup>15</sup> of a general license permitting correspondence about property in Germany

The other numerous class of properties in which American citizens had an important interest were those "which had been the subject of transfer under duress, wrongful acts of confiscation, dispossession or spoliation—" These included properties taken over by the Nazis from religious bodies, labor unions, democratic political parties, and other anti-Nazi organizations and "enemies of the State." More than 15,387 of these "duress" properties had been placed under Property Control by May 31, 1947<sup>16</sup> By far the largest number of these were properties which had formerly been owned by Jews, who were classed as "enemies of the State" by the Nazis. Again, a very large proportion of these "Jewish" properties were claimed by refugees who had escaped from Germany to America and who had become American citizens. Their property, however, could not be classed as Allied because title had changed at the time of the duress transfer and now appeared on the "grundbuch" (land register) in the name of some German citizen. Immediately after the beginning of the occupation Military Government commenced the seizure of these properties pending re-transfer to their rightful owner. Nevertheless, during this period, both claimant and title-holder of record were necessarily treated as strangers to the property, which was held intact by a custodian until a system could be established under which the claims might be adjudicated.

The question of what acts, force, or intimidation constituted "duress" quite understandably created many difficulties. The Property Control Administrators did not constitute themselves a court to determine these matters, but seized and held the prop-

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<sup>14</sup> See Mil. Govt. Law 191, especially Section I (3).

<sup>15</sup> Bavarian Land Central Bank Circular Letter 107 gives the date for commercial correspondence of a transactional nature as June 15, 1947.

<sup>16</sup> Worth 941,173,769 Reichsmarks (1938 value, est.).

erties for later determination when there was any considerable doubt surrounding a property transfer during the Nazi period. The rule in Bavaria in case of former Jewish-owned properties was that duress was presumed in case of any transfer after November 9, 1938 (the date of the great anti-Jewish "day of broken glass") unless the former owner stated that there was no duress involved. Transfers before that date were examined individually for the circumstances surrounding them.<sup>17</sup> If the Organization office or any Nazi Party official handled the transfer, "duress" was assumed for the purpose of seizing the property

The remainder of the Property Control program, with minor exceptions,<sup>18</sup> dealt with property which was German owned and in which there was no foreign interest.<sup>19</sup> All property of the German Reich, its constituent States and smaller political subdivisions, property of the Nazi Party and its multitudinous affiliates,<sup>20</sup> property of Party officials and leading members, and property of all dissolved organizations and persons held in custody or listed<sup>21</sup> by Military Government, was subject to control.<sup>22</sup> Property of the German States and their subdivisions was never controlled in any appreciable number of cases because those governmental units were quickly reconstituted, and assumed control of their own property. The properties in the

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<sup>17</sup> Office of Mil. Govt. for Bavaria, Property Control Instruction Letter 7, Paragraph 1b, dated January 30, 1947.

<sup>18</sup> Mil. Govt. Law 52, Art. I, Par. 1 (b), provided for control of "other enemy" property, e.g., property of Hungarians. This soon came to be treated in the same way as Allied property. State Department policy required the restitution to Hungary of much Hungarian property, which had been moved to Germany during the German retreat. Presumably this was in an attempt to prevent a completely pro-Russian orientation of the Hungarian Government. Austrian property was considered to be Allied property (office of Mil. Govt. for Germany (U.S.), Property Control Accounting and Auditing Procedures, dated 25 February 1947, par. 12.1).

<sup>19</sup> Except the interest of certain Allied countries in German property ear-marked for reparations, which was held by Property Control pending movement to the country to which assigned.

<sup>20</sup> Sixty-two of these are listed in the appendix to Control Council Law No. 2.

<sup>21</sup> Forty-five categories of such persons are listed in General Order No. 1 under M.G. Law 52.

<sup>22</sup> M.G. Law 52, Art. I, par. 1 (a) through (e) and (g).

other categories named were seized and remained under control pending final disposition.<sup>23</sup>

By far the largest group numerically were the properties of leading members and supporters of the Nazi Party. During the first year of the occupation, the determination of the applicability of this broad phrase "leading members and supporters" to individual Germans was left largely to the local Military Government officer, with the result that the control program was most stringently applied in some areas, and very leniently in others, depending upon the philosophy, energy, or vindictiveness of the individual officer in charge. The application of this section of Law 52 was brought into some balance as a result of certain administrative changes in Military Government, which placed the entire administrative responsibility at State level, with officers directly responsible to the State Office in charge of the various districts.

It was not until 1947 that Law 52 was finally coordinated with the Law for Liberation from National Socialism and Militarism.<sup>24</sup> The latter was a German law in name and theory, though it was drawn under the closest supervision of the U. S. Military Government, and undoubtedly reflected the policies of that government at the time.<sup>25</sup> It was, of course, effective only in the U. S. Zone. The Law for Liberation provided for the trial of supporters or profiteers of the Nazi regime, and their punishment, by imprisonment, fine, and partial or complete confiscation

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<sup>23</sup> On May 31, 1947, there was a total of 93,814 properties under control in U.S. Zone worth 11,818,000,000 RM.

<sup>24</sup> MGR Title 17, Change 2, par. 235—236.3, dated 14 March 1947 in Bavaria, supplemented by Office of M.G. for Bavaria, Property Control Instruction Letter 9, dated 12 March 1947, and Mitteilungsblätter 6, 7, 8, and 9 of the *Bayerisches Landesamt fuer Vermoegensverwaltung und Wiedergutmachung*.

<sup>25</sup> This law was "enacted" by the Laenderrat, the Council of States of the U.S. Zone, meeting at Stuttgart, which was invited to enact such a law by OMGUS. At least one draft of the law was disapproved by OMGUS as inadequate and the final draft certainly conformed to the then-current American ideas on the subject of de-nazification. The German officials looked upon the enforcement of the law as a political "hot potato." In the Bavarian coalition cabinets, the Ministry of Denazification was kicked around from one party to another, from Communist, to Christian Social Union to Economic Reconstruction Party, finally landing in the lap of that remarkable demagogue, Loritz, whose checkered past had included a part in the attempted assassination of Hitler in the "Munich Beer Hall Bomb Plot" of the early days of the war.

of their property. The purpose of Property Control, then, insofar as it pertained to this class of property, was to preserve the property of the accused until his trial, after which the title was diverted from him to the extent that a court ordered confiscation, or the property was returned to him if he was cleared. The period from seizure of property to trial averaged considerably more than a year. Most property was seized in 1945 or early 1946, and the Denazification Tribunals can hardly be said to have been in full operation before early 1947, though the Law for Liberation was supposed to be effective from April, 1946.

Another important class of property seized by Property Control was that marked for reparations. This was German property which had been promised to various of the Allies as reparations for war damages inflicted on them by the Germans. Property was also seized which was subject to restitution to other countries. This was movable property which had its place of origin in some Allied or satellite enemy country and which had been removed therefrom during the course of the war.<sup>26</sup>

#### ADMINISTRATION OF CONTROLLED PROPERTY

Direct Military Government responsibility for the administration of controlled properties was soon terminated in the American Zone. OMGUS ordered the Military Governments of the various states of the American Zone to require their German counterparts to establish departments of Property Control within their governments. Wurttemberg-Baden was the first to comply, in April, 1946, and Bavaria brought up the rear, with a change of responsibility on paper on July 8, 1946, though it was several months before the new *Bayerische Landesamt fuer Vermoegen-*

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<sup>26</sup> In Bavaria considerable difficulty arose over quantities of materials which had been removed from Hungary in the autumn of 1944 when the Hungarian army was retreating before the Russian advance in Hungary. The Hungarian army and many private individuals in Hungary removed materials and possessions to Bavaria to escape the Red Army. During the period when our State Department was attempting to bolster democratic elements in Hungary, much of the material was ordered restituted, frequently over the protests of Hungarian expatriates who owned the property and who could not, for political reasons, return to their country.

*sverwaltung und Wiedergutmachung* was functioning very effectively<sup>27</sup>

Bavaria led in the attempt to regularize the Property Control program in German law, which was necessary to establish a sound and permanent legal basis for leases and other transactions with regard to the controlled properties, and for the transfer of title where such was contemplated in accordance with laws hereafter described. The Bavarian Property Control Agency was established by Bavarian Ordinance 109, dated October 24, 1946, which invested it with the power to control properties in accordance with Military Government Law 52, and Control Council Laws 2, 9, and 10, and the aforementioned Law for Liberation from National Socialism and Militarism. Inasmuch as the appointment and supervision of the custodians of the individual properties now became primarily a responsibility of the German agency,<sup>28</sup> it was necessary to define the duties and liabilities of the custodians under German law, so that persons with possible reversionary or future interests in the property might be protected against fraud, and also, that the custodians might legally enter into permissible contracts with regard to the property. The Bavarian *Landtag* (Legislature) enacted, effective June 1, 1947, a "Law Concerning Appointment of Custodians for Properties Under Property Control" which provided for their appointment and removal, defined their

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<sup>27</sup> "The Bavarian State Office for Property Administration and Restitution." The Bavarian officials, with the active assistance of Military Government, succeeded within a few months time in establishing a central office employing 180 persons, 5 District offices averaging 20 to 30 employees, and 150 local offices, ranging from 3 to 100 employees in size; all this in a bombed-out country with little office space, practically no office supplies, and few trained employees politically eligible for appointment. Conflicting political currents also created difficulties. The first President of the *Landesamt*, a business man, was succeeded by the Socialist leader, Dr. Rudolf Zorn, who resigned two months later to become Minister of Economics in the Ehard Cabinet. For the next six months the political tug-of-war prevented the appointment of a new President. Military Government pressure for a solution to the deadlock finally resulted in the appointment of Dr. Josef Oesterle, who had been acting president.

<sup>28</sup> Military Government retained final authority to direct the appointment or removal of custodians of Allied owned property. This authority had also been retained over "duress" property until March, 1947, when it was ordered to be treated in the same manner as German owned property (Instruction Letter 9, par. 3, Property Control Branch, Office of Mil. Govt. for Bavaria)

rights and duties, and provided penalties for violations of its provisions. This gave custodians effective legal status for the first time.

#### DISPOSITION OF CONTROLLED PROPERTY

Once control of these numerous properties had been seized from those who were no longer eligible or able to control it, the controlling authorities were faced with the problem of what to do with it. The disposition of properties owned by Nazi party supporters has already been mentioned in the discussion of the Law for Liberation from National Socialism and Militarism. The Courts erected under this law determine the guilt or innocence of these people, and the amount of their property, if any, which should be returned to them. The rest is confiscated, the State taking title for the purpose of later transfer. It is proposed that these properties, or the proceeds from their sale, be distributed or used for the benefit of persecutees and others who have suffered through the Nazi regime. No definite program for final disposition had been approved, however, at the time of this writing.<sup>29</sup>

Title to the property of the Nazi Party itself, and some sixty of its subsidiary organizations, was divested from the Party and its organizations by Control Council Directive No. 50, dated April 29, 1947, and vested in the Zone Commanders with certain directions as to ultimate disposition. In the American Zone the transfer is finally accomplished under the authority of Military Government Law 58, implementing Control Council Directive 50. Properties which had belonged, before seizure by the Nazi organizations, to trade unions, cooperatives, political parties and other democratic organizations, are retransferred to them, or if the identical organization no longer exists, "to a new organization or organizations whose aims are found by the Zone Commander to be similar to those of the former organization."<sup>30</sup> Any other property formerly devoted to relief, charitable, religious or humanitarian purposes is to be disposed of so as to preserve its former character. In both these cases the Zone Commanders may require the transferee to pay or assume lia-

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<sup>29</sup> December, 1947.

<sup>30</sup> Control Council Directive 50, Art. II (2).

bility for debts or for any accretion in the value of the property<sup>31</sup> Except for war material, which is destroyed, title to all other properties in this category is transferred to the governments of the several states,<sup>32</sup> subject to existing encumbrances against the property up to its value. The State governments also assume a liability for debts of the organization whose property it receives, not exceeding the value of the property received from that organization.<sup>33</sup>

The release of Allied and Neutral owned properties from control was provided under the terms of a letter from OMGUS, dated June 25, 1947<sup>34</sup> This letter provided that an owner might apply for de-control, presenting with his application proof of citizenship, proof of ownership, and a power of attorney for some politically acceptable agent residing in Germany, to whom the property should be entrusted. The agent is required to sign a waiver absolving the United States, the Military Government, and their employes from any liability arising from their control of the property

The properties transferred under duress during the Nazi regime present by far the most difficult problem in their disposition. Upon the failure of the German officials to reach any agreement satisfactory to Military Government on a law for the restitution of this property to its rightful owners, Military Government itself issued such a law, entitled Military Government Law 59, "Restitution of Identifiable Property"<sup>35</sup> This law, effective November 10, 1947, defines the property which is subject to restitution<sup>36</sup> and provides for the mechanics by which it may be restituted.

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<sup>31</sup> Idem, Art. IV

<sup>32</sup> Idem, Art. V

<sup>33</sup> It is expected that title to Reich property will devolve on the States in the same way.

<sup>34</sup> Subject: De-control of properties of certain citizens and residents of United Nations and Neutral Countries. OMGUS is Office of Military Government for Germany, U.S.

<sup>35</sup> *Gesetz Nr 59, Ruecherstattung Feststellbarer Vermoögensgegenstaende*. The German text is controlling.

<sup>36</sup> This is called "internal" restitution, and is not to be confused with "external" restitution, i.e., the process of restoring goods to foreign countries from which they had been removed during the German occupation of those countries.

Property subject to the law is that which, during the Nazi regime, had been subject to

- (a) A transaction *contra bonos mores*, threats or duress, or an unlawful taking, or any other tort;
- (b) Seizure due to a governmental act or by abuse of such act;
- (c) Seizure as a result of measures taken by the NSDAP, its formations or affiliated organizations.<sup>37</sup>

It is presumed in favor of any claimant that the following transactions entered into between January 30, 1933 and May 8, 1945 constitute acts of confiscation.

- (a) Any transfer or relinquishment of property made during a period of persecution by any person who was directly exposed to persecutory measures;
- (b) Any transfer or relinquishment of property made by a person who belonged to a class of persons which was to be eliminated in its entirety from the cultural and economic life of Germany by measures taken by the State or the NSDAP.<sup>38</sup>

This presumption can be rebutted by showing that the transferor was paid a "fair purchase price," which means "the amount of money which a willing buyer would pay and a willing seller would take."<sup>39</sup> The claim for restitution appertains to any person whose property was confiscated or to any successor in interest.<sup>40</sup>

Bearer instruments are not, as a general rule, subject to restitution, if the present holder proves that, at the time he acquired the instrument, he neither knew nor should have known that the instrument had been confiscated at any time. However, they are subject to restitution in some cases, as where they represent, for example, the dominant participation in any enterprise, or a participation in an enterprise with a small number of members.<sup>41</sup>

As for the machinery for restitution, the law, and Regulation No. 1 thereunder, establishes a Central Filing Agency (*Zentralanmeldeamt*) at Bad Nauheim, Germany, which transmits the claim to the local Restitution Agency. The claim is made by a petition, substantiated by documents or affidavits, which

<sup>37</sup> Mil. Govt. Law 59, Part II, Art. 2 (1).

<sup>38</sup> *Idem*, Part II, Art. 3 (1).

<sup>39</sup> *Idem*, Part II, Art. 3 (2-3).

<sup>40</sup> *Idem*, Part III, Art. 7.

<sup>41</sup> *Idem*, Part IV, Art. 21.

must be filed with this agency before December 31, 1948.<sup>42</sup> The petition is required to contain a description of the property, the time, place, and circumstances of its confiscation, and (if possible) the name and address of the person now holding it, and all persons having or claiming to have an interest in it, and a statement of encumbrances existing at the time of confiscation. If the claimant does not live in Germany, and he has not appointed there an attorney authorized to accept service of legal papers, he may nominate such a person in his petition. If he fails to do so, the Restitution Agency will do so, and notify the claimant.

When the petition is transmitted to the local Restitution Agency, it gives notice to the "restitutor" and other persons having interests *in rem*. If no objection is raised against the petition, the Restitution Agency issues an order granting it, and at the same time makes appropriate findings on the matter of encumbrances.<sup>43</sup> If an objection is made, the Restitution Agency attempts to reach an amicable settlement. If such is impossible in whole or in part, it refers the case to the extent necessary to the Restitution Chamber of the District Court (*Weidertgutmachungskammer* of the *Landgericht*) having jurisdiction over the Restitution Agency. This Restitution Chamber is composed of a presiding judge and two associate judges, one of whom must belong to a class of persons persecuted during the Nazi regime. Appeal to the Court of Appeals (*Oberlandesgericht*) is permitted.

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<sup>42</sup> *Idem*, Part IX, Art. 56.

<sup>43</sup> *Idem*, Part IX, Art. 61-62.

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