

Lost property due to statute of limitations: right to compensation or return?



The Supreme Court issued a judgment in 2017, in which it was ruled that in the event of expiry of the statute of limitations, a claim for damages or even restitution is possible.

The case before the Supreme Court concerned a resident of the municipality of Heusden who had fenced off part of the forest plot behind his plot by means of a fence. More than 20 years later, the municipality asked the resident to cease the "illegal use of municipal land". The inhabitant does not intend to do so and states that he has owned the fenced off part for more than 20 years and has become the owner through a liberating statute of limitations.

The resident is right. Fencing off a part of the forest plot is an act of possession and that was known. Whether or not the municipality could only become aware of this after investigation (read: inspection) is irrelevant. In conclusion: the inhabitant has become the owner of the fenced off part of the forest plot. Is this the end of the matter? No, it is not.

The Supreme Court draws attention to the possibility that a person who has lost his property as a result of liberating statutes of limitations may bring an action for wrongful act. After all, a person who takes possession of another person's immovable property is acting unlawfully. In such a case, compensation in kind could even be claimed, i.e. restitution of the immovable property.

In this respect, the Supreme Court notes that the claim for compensation itself is also subject to prescription: this claim lapses 5 years after the person who has lost his property has become aware of the loss (e.g. by a court ruling) and in any case 20 years after the loss of property. In the case of compensation in kind, this means that the owner could recover his property up to 25 years or 40 years after taking possession.

Lower case law (handed down after the Supreme Court's ruling) now shows that a claim for restitution will not be granted just like that. The need for extradition will have to be properly substantiated. For the time being, compensation in money seems to be the starting point.

Incidentally, a person who has purchased immovable property from someone who has acquired the immovable property by way of liberating statute of limitations need not be afraid of a tort claim by the original owner. The original owner can only claim damages from the person who acquired the immovable property by way of liberating statute of limitations. After all, this is the person who acted unlawfully towards the original owner.

Please feel free to contact us.

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