

Is the Federal Republic of Germany responsible for how compensation funds paid to the JCC are used?

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(Berliner Anwaltsblatt 10/2009, page 354)

In the 6/2008 issue of ZOV 6/2008¹, I expressed the opinion that § 2, para. 1, sentence 3 of the Property Act is unconstitutional. According to § 1, para. 6 of the Property Act, persons who lost their property (real estate, business assets, etc.) as a result of persecution during the Nazi period are entitled to get their property back under the condition that they submit a claim before 31 December 1992 (for immovable property) and 30 June 1993 (for movable property).

The Jewish Claims Conference (JCC) was legally permitted to submit claims within the same deadlines for any Jewish properties that were expropriated due to Nazi persecution, and for which no heirs existed. The JCC was also authorized to claim properties that were not claimed for various reasons by the entitled persons themselves (former owners or their heirs).

This is where the problems begin. Why did the entitled person(s) fail to submit a claim? Perhaps the owner was still registered in the land register and did not realize that he was nevertheless required to submit a claim. Or perhaps they had filed a claim in the 1950s or 1960s and were rejected because the property was located in the GDR, i.e. outside the jurisdiction of the Federal Republic of Germany. Perhaps the owner believed that the claim would be automatically re-activated. In many instances, entitled persons did not want to have anything to do with Germany.

In the majority of cases, claims were not submitted simply because the heirs had no knowledge of the situation. In many families, financial circumstances and property ownership were not mentioned or discussed – certainly not with children and, in some cases, not even with spouses. In some cases, the children were transported to safety while their parents and other family members were murdered in concentration camps. Obviously, these entitled persons (as legal heirs) would have very limited knowledge of the assets that belonged to their parents, grandparents or other relatives. In many situations, it wasn't until later in life that they became interested in their family situation and as a result, discovered real estate or business assets that belonged to their families. But by then, the deadlines for submitting claims had long passed.

¹ Fritz Enderlein, Ist § 2 Abs. 1, Satz 3 Vermögensgesetz verfassungswidrig? Gedanken zum Goodwill-Fonds der Jewish Claims Conference (§ 2, para 1, sentence 3 Property Act: Is it unconstitutional? Thoughts on the Goodwill Fund of the Jewish Claims Conference), ZOV 6/2008, p. 277

The heirs basically regard the JCC as a trustee for their property. However, the Property Act favors the JCC. It took several years before the JCC agreed to set up a Goodwill Fund and open it to those entitled persons whose property had been expropriated as a result of the strict adherence to the claim deadlines specified in the Property Act. Participation in the Goodwill Fund was initially permitted until 1998. After this, the JCC latecomer committee in New York only accepted claims in exceptional hardship cases.

After several protests and much international pressure, the JCC reinstated an option in late 2003 that permitted claims to be submitted until March 2004.² After this date, all claims were rejected.

It wasn't until March 2009 that other hardship cases were accepted, for example, situations in which the entitled person was unable to submit a claim before March 2004 due to medical conditions. This exception was of little help to most latecomers.

Eligibility to receive benefits from the Goodwill Fund is restricted by conditions regarded as discriminatory by many people. The entitled person must sign a declaration stating that he or she unconditionally accepts JCC decisions, waives all legal rights, and explicitly relinquishes all rights relating to the property that, under applicable inheritance law, would have been theirs. This starkly contrasts with JCC policies in other situations.

Speaking at the Berlin Symposium for Nazi Looted Art in December 2008, Georg Heuberger, the JCC representative in Germany, said: *"In summary, fair and just solutions demand fair and just proceedings! Without an eye-level dialog with the former owners, no fair and just solutions can be found."*³

The JCC defends its refusal to let more heirs share in the Goodwill Fund program by arguing that funds are required for support programs for needy survivors of the Holocaust. In other words, the JCC practices a policy of redistribution rather than serving the best interests of the originally entitled persons.

What can be done? There is still time to compensate the originally entitled persons for their loss.

The JCC would need to agree to allow entitled persons to participate in the Goodwill Fund program without any time limitations. It's not too late. According to information from the JCC, their income for 2008 and later (after the payment of current Goodwill Fund claims) is estimated at \$250-400 million⁴. This does not take into account the claims still pending with the BADV⁵. As of 14 May, 2008 there were 35,807 pending applications for real estate and business assets. Not included are

² Fritz Enderlein, Was es mit den Richtlinien und Fristen des JCC-Goodwill-Programms auf sich hat (What the guidelines and deadlines of the Goodwill Program are all about), Jüdische Zeitung, August 2008, page 2

³ www.claims-conference.de/fileadmin/dateien/Heuberger_Rede_Berlin_12.2008.pdf

⁴ www.claimscon.org/index.asp?url=successor_org/future income

⁵ BADV = Bundesamt für zentrale Dienste und offene Vermögensfragen (Federal Office for Central Services and Unresolved Property Issues)

applications for bank accounts, mortgages and movable properties⁶. Therefore, there is absolutely no way of knowing how much more money the JCC will receive.

I suggest the following supplement to Property Act. Presently, § 2, para. 1, sentence 3 states: “If claims by entitled Jewish persons in the sense of § 1, para. 6, or their legal successors are not brought forth, then ... the Conference on Jewish Material Claims Against Germany, Inc. is regarded as the legal successor.”

The following amendment to the Property Act is conceivable: “Insofar as Jewish entitled persons or their legal successors apply to the JCC after the deadlines specified in the Property Act have expired, the JCC is deemed a trustee for these entitled persons and must allow them to appropriately share in the proceeds or restitution.”

⁶ www.claimscon.org/index.asp?url=successor_org/current_assets