

Haller's Ignorance

Response to „Enderleins Ente“ (Enderlein's Hoax) published in the Jüdische Zeitung September 2013

The editor-in-chief of the Jüdische Zeitung refused to print my response to the published article.

I had always hoped that someone from the JCC would say something about my publications. I have repeatedly invited Mr. Haller – who I know is angry and upset about my articles – to respond to the issues I have addressed. The fact that he did so in this way, in a departure from all tenets of objectivity, surprised me. Instead of making sound arguments, he resorts to assertions and criticizes my background in the GDR. He even goes so far as character defamation and outright insults. This implicitly disqualifies him. I'm not going to stoop to his level and say anything derogatory about his professional career before joining the JCC.

In his article, „Enderlein's Hoax“ is Mr. Haller trying to say that everything I have written is simply a figment of my imagination? The „powerful desire“ of a greedy lawyer with a shady background who is trying to supplant reality with weak assertions?

Instead of responding to the specific issues addressed in my article that appeared in the August 2013 issue of the Jüdische Zeitung, he accuses me of „wishful thinking“ and being „out of touch with reality.“ It's not about an „interpretation to Enderlein's benefit.“ What I wrote was anything but an interpretation. I simply quoted the facts from a decision handed down by Germany's highest administrative court. Here are the relevant passage:

„The court decision included the following rulings:

1. „The JCC is **not entitled to freely dispose of the assets** it receives based on its entitlement under the Property Act.

2. „The JCC serves **solely as a trustee on behalf of Jews persecuted by the Nazi regime or their heirs.**

3. „By establishing a fictitious legal succession, the legislature **only intended to create temporary authorization for the JCC.**

4. „**The legal status of the legitimate heirs is therefore not affected.**“

Mr. Haller does not deny that these sentences are included in the Federal Administrative Court decision. But since he doesn't agree, he chooses to ignore them. The findings cited by me are not simply my „interpretation“ of the facts. The information is quoted directly from the court decision. I did not add anything, nor did I omit any essential details. Readers are invited to check this information for themselves. I have attached section 2 of the court decision as an appendix.

Anyone reading this section can see exactly what was clarified by the German Federal Administrative Court. This isn't something that was simply suggested by me. Anyone who claims that the passages I highlighted are nothing new should cite the judgments of the Federal Administrative Court in which these passages are precisely and bluntly stated.

The extract from the decision also contains the sentence that, according to Mr. Haller, „Enderlein suppressed or intentionally concealed,“ namely: „When the Jewish heirs or their successors do not file a claim before the specified deadline, their right to claim is voided and the JCC becomes the rightful claimant, providing the organization has filed the claim on time.“

Haller has completely overlooked the fact that my article published in August starts out with this statement. I did not hold back or intentionally conceal anything. In fact, I made sure the decision was published in its entirety in the 2/2013 issue of the Zeitschrift für offene Vermögensfragen (ZOV). This edition also includes my questions and comments on the decision in the article „Justice at last for the heirs of Holocaust victims?“

Haller quotes further: „According to the Property Act, the excluded 'rightful heir' has no right to assert a legal claim against the '**solely entitled**' JCC. This is a legal consequence that is clearly in line with the Allied restitution laws (cf. Art. 11, U.S. Reg.).“ Here Haller uses a form of deception (or should we call it a falsification?) by adding the words „**solely entitled**“ in reference to the JCC. Indeed, that's the way he would like things to be.

It is simply not true that the JCC is the only rightful successor. Haller writes: „The Property Act – like the Allied restitution laws – provides basically two pillars of compensation.“ This is true. But at the same time, the Property Act specifies an order of precedence that places a higher priority on compensation for individuals. Stegemann covers this extensively in his article „The Conference on Jewish Material Claims Against Germany as the legal trustee for heirs expropriated by the Nazis“ in the ZOV, issue 6/2012. In the same publication, I clearly pointed out that this order of precedence was already specified in the Allied restitution laws.

What Haller completely ignores in his incorrectly quoted sentence is that, **according to the Property Act**, the entitled successor is not eligible to file a claim against the JCC. However, this does not preclude claims filed in accordance with other laws. When the inheritance rights of the entitled claimant are not affected by the legal fiction, this person is entitled to apply the principles of civil law to claim property obtained by the JCC in its role as a trustee. This is precisely what I wrote in the cited ZOV article.

Germany's Federal Court of Justice (BGH) also places priority on individual compensation. In a decision from February 28, 1955, the court came to the conclusion that the JRSO (Jewish Restitution Successor Organization Inc.) is only to be regarded as a trustee. „The displacement of the entitled heirs by the JRSO would, in fact, only mean that the wrongful actions of the Nazis would be fully borne by those persecuted. The concept of justice, which is the underlying principle of the compensation and restitution legislation, is basically only fulfilled when the damages suffered by the person actually affected are compensated.“

This idea did not sit well with the successor organizations at that time.

Haller accused me of not understanding the tasks of the JCC. This is clearly not the case. He is apparently unfamiliar with the JCC bylaws, which I have repeatedly cited in my published statements. In my article „Heirless and unclaimed. Unclaimed?“ published in the Zeitschrift für offene Vermögensfragen (ZOV), issue 6/2012, p. 324, I wrote: „The focus has always been on compensation for individuals. This is also in line with the stated intent of the JCC. In paragraph 2 of the organization's bylaws filed on November 21, 1952, the purpose and goals of the JCC are explained as follows: The corporation is established exclusively for religious, charitable, literary and educational purposes. Its purpose is solely to voluntarily assist, support, help and act for and on behalf of the Jewish people, cultural and charitable organizations, funds, foundations and communities who are victims of Nazi discrimination and persecution, (i) in matters relating to compensation and restitution for losses resulting from persecution, including the distribution of

funds provided by the Federal Republic of Germany, (ii) in matters relating to the restitution of property and property rights of any kind, (iii) to act on other matters of relief, rehabilitation, support, assistance, resettlement and emigration, and (iv) as a successor organization for heirless and unclaimed Jewish property... ,,

Further on in his article, Mr. Haller viciously attacks my background. „The fact that Enderlein does not understand the concept of collective restitution could be based on his biography. After all, Enderlein spent much of his life serving as a high-ranking representative of a regime that categorically refused to provide compensation to Jews. As a recipient of the GDR „Patriotic Order of Merit,“ he served as an institute director at the GDR Academy of Political and Legal Science in Potsdam-Babelsberg, an institution described by „Der Spiegel“ magazine as a „GDR training ground“ for future ministers, Central Committee members and Stasi generals.“

Yes, I worked as an institute director at the Academy of Political and Legal Science (ASR). This is nothing new. Anyone can read about this in the „Career“ section of my website: www.raf-enderlein.de. My institute, the „Institute for Foreign and Comparative Law,“ dealt with the legal aspects of GDR international economic relations. The focus was also on the rights of partner states. My work concentrated specifically on research in Anglo-American law.

My institute spearheaded the draft law on international business contracts (GIW), which incorporated my knowledge of the U.S. commercial code. Working with my colleagues, I wrote commentaries on this legislation. I would like to point out that this law was recognized worldwide, specifically in the Federal Republic of Germany. Incidentally, many of the publications listed on my website are related to my long-time involvement with the Property Act. During my time in the GDR, I served in many other positions in which I focused on shaping the legal aspects of international economic relations. I worked for several years as a senior legal officer for the United Nations Office of Legal Affairs in New York, and in Vienna as an executive secretary of the Vienna Conference, which was instrumental in developing the Vienna Convention on the International Sale of Goods (CISG) in 1980. I also worked with a colleague on preparing a commentary that was published in the GDR in 1985 and in the U.S. in 1992.

I worked for 15 years as a member of the governing council for the International Institute for the Unification of Private Law (UNIDROIT), an international organization based in Rome. I was the deputy vice president until 1993.

I do not know of any „ministers, Central Committee members or Stasi generals“ that emerged from my institute. The ASR was a training center for the GDR diplomatic service. In fact, many senior diplomats in the GDR studied at this academy. The ASR was also a training center for government administration employees at all levels, from ministries to local government offices, and for staff members of state-run enterprises.

Concerning the restitution policies of the GDR, the government undoubtedly failed to adequately deal with Holocaust victims. However, it is not right to say that they did nothing. All Jews living in East Germany were granted special pensions and benefits – not only during the times of hardship in the post-war period. But this is not the place to dwell on these issues. Perhaps there is a historian who is willing to write a detailed report about this for the Jüdische Zeitung.

All this has nothing to do with the interpretation and application of the Property Act, which has always been the focus of my discussion of JCC practices.

According to Mr. Haller: „As a high-ranking official of the GDR regime, Enderlein needed to find a field of activity following German reunification [...] He immediately sought, and found, an extremely lucrative sphere of activity in the Jewish Claims Conference Goodwill program.“

In fact, after German reunification, I entered retirement and was awarded Professor Emeritus status. At that time, there was no JCC Goodwill Fund. This program wasn't initiated until the mid-1990s. The idea of focusing, as a lawyer, on the legal aspects of restitution issues came after a visit from the director of the U.S. Foreign Claims Settlement Commission in Washington and from State Department staff members in the summer of 1990. Several lawyers in New York, who I knew from our work together in the International Law Association, asked me to serve as a joint partner for their American clients who had filed claims vis-à-vis the offices in charge of settling property claims.

Haller also had something to say about the JCC Goodwill program: „Under certain conditions, this program compensates heirs who have failed to file a claim in accordance with the Property Act.“ The crux of this lies in the „certain conditions,“ which to Haller's dismay, I have repeatedly explained. In my reply to his colleague Mr. Heuberger, I criticized the fact that the JCC fails to comply with the German law of succession, although it had originally promised to do so. Further information can be found in my articles „What the guidelines and deadlines of the JCC Goodwill program are all about,“ JZ August 2008, and „The Claims Conference and German inheritance law,“ JZ September 2011.

The conditions specified in the current JCC Late Applicants Fund are absolutely ridiculous (see my comments in JZ May 2013). Many of our clients see them as a form of disdain for the victims.

Towards the end of his article, Haller mentions the „substantial fees“ that I purportedly charge my clients for obtaining inheritance certificates. This has nothing to do with the issues being discussed – and it almost sounds as if Mr. Haller is envious. Incidentally, our law firm does not charge for inheritance certificates. And clients have never complained about our fees. On the other hand, they do complain about the JCC, which is making them fight for their inheritance. Haller apparently can't understand how a lawyer can be so committed to the interests of his clients that he is willing to fight for justice, even though this does not always pay off in a material sense. The fact that I am from the GDR and fully aware of the country's failings in the past, is precisely why I feel obligated to make sure the heirs of Holocaust victims get what rightfully belongs to them – and are not forced through „collective restitution“ to pay for programs that should actually be funded by the FRG.

Haller is mistaken if he thinks that I'm out to generate new business. At my age (84), I certainly don't need any new clients. In fact, I very much regret having to turn down potential clients who are seeking help.

I have never seen or heard of Mathias Druba, Haller's star witness, nor have I read anything he has written. Haller should have Druba show him the court decisions that includes my highlighted sentences.

Haller likens me to Don Quixote and claims that I have „lost in courts across all levels.“

I certainly do not feel like Don Quixote, nor can I compare the JCC with the blades of a windmill. I see myself more as David going up against Goliath in the guise of the JCC. And everyone knows the outcome of this battle. It remains to be seen who is ultimately right. The JCC could very well be facing a wave of lawsuits.

Appendix: Section 2 of the Decision of the Federal Administrative Court.

2. Furthermore, the complaint believes that a decision in principle is required to determine whether it is consistent with the precept of restitution and compensation for grave injustice

suffered by Nazi persecution measures as well as with Art. 14 GG, that in accordance with section 2 (1), sentence 3 VermG the JCC is considered the legal successor for claims under the VermG, to the extent that claims of Jewish rightful claimants within the meaning of section 1 (6) VermG or their successor are not asserted, without creating legal provisions granting the heirs of the Jewish rightful claimant a legal claim against the JCC in those cases, in which the heirs have missed the preclusive time limits set by the JCC. [The complaint claims that] to that extent it should be set forth by the law that the JCC holds only a trustee position on behalf of the heirs entitling it to file claims or that the JCC is only acting on behalf of the heirs, albeit in its own name. The appeal cannot be admitted on the basis of this question because it can be answered based on existing law and relevant adjudication. According to section 2 (1) sentence 3 VermG, **the JCC**, taking into consideration the claims under the VermG, **is considered** the legal successor to the extent that claims by Jewish rightful claimants within the meaning of section 1 (6) VermG or their legal successors have not been asserted. If the Jewish rightful claimant or his/her legal successor fails to file the claim prior to the expiration of the filing period, the claim lapses and the JCC becomes eligible for the claim, provided it filed the claim in time (decision of October 23, 2003 – BVerwG 7 C 64.02 – Buchholz 428 section 1 (6) VermG no. 22). The fiction of the JCC as legal successor does not infringe on the property right of the rightful claimant. The claim for restitution by the rightful claimant provided for in section 1 (6) VermG governs content and limitation of the rightful claimant to the property, a rule that is not objectionable in terms of constitutional law. (Art. 14 (1) sentence 2 GG). It is the task of the JCC to enforce restitution claims of Jewish injured parties that were not asserted by them, for the purpose of collective restitution and compensation to benefit the Jewish people (decision of October 28, 2004 – BVerwG 7 C 24.03 – Buchholz 428 section 1(6) VermG no. 28; decision of June 22, 2006 – BVerwG 7 B 49.06 – juris). Since section 2 (1) sentences 3 and 4 VermG also serves the purpose of providing restitution and compensation for injustice committed through the persecution of Jews by the Nazi government and since the JCC itself was neither persecuted nor does it assume the function or duties of those actually persecuted, it is not entitled to freely dispose of the assets which accrue to the institution based on its entitlement under section 2 (1) sentences 3 and 4 VermG. Rather the JCC is only entitled in its capacity as a trustee on behalf of the Jews who were actually persecuted by the Nazis and their heirs, respectively, who in turn are not entitled to any reasons for restitution or who in turn have missed the preclusive time limits set at the time by the JCC in accordance with Section 30a (1) VermG. (Wasmuth, in: „Compendium on Property and Investments in the former GDR”

(Vermögen und Investition in der ehemaligen DDR) – RVI –, volume II, August 2012, B100 section 2 VermG margin no. 99). Based on a legal succession fiction, the law intended to endow the JCC only with a temporary eligibility in order to prevent a situation in which the German government would become an heir. Thus, section 2 (1) sentence 3 VermG does not affect the legal position of the actual heirs; from a legal point of view they continue to remain the successors in law. Accordingly, in several decisions the Federal Administrative Court has held that **it is only a fiction** of legal succession in favor of the JCC (decisions of April 29, 2004 – BVerwG 7 B 85.03 – ZOV 2005, 171 and of December 9, 2004 – BVerwG 7 C 9.04 – Buchholz 428 section 1 (6) VermG no. 29). Besides, the fact that the „true entitled party”, who is precluded with his claim, cannot assert any claims against the JCC under the Property Claims Act is a legal consequence that corresponds to the legal situation according to the Allied restitution laws (cf. art. 11 US-Reg., cf. decision of July 27, 1999 – BVerwG 7 B 134.99 – Buchholz 428 sec. 30a VermG no. 11).