

What the guidelines and deadlines of the JCC Goodwill Program are all about

Response to JZ 07/2008 “We’re not a bunch of greedy scoundrels.” Interview with Georg Heuberger, representative of the Jewish Claims Conference in Germany

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Jüdische Zeitung 8-2008, page 2, (<http://www.j-zeit.de/archiv/artikel.1386.html>)

In a recently published interview in the “*Jüdische Zeitung*,” Georg Heuberger, a representative of the Conference on Jewish Material Claims Against Germany, Inc. (JCC), said that the rightful heirs to property located in the former territory of East Germany are receiving compensation through the JCC Goodwill Fund. Unfortunately this is not always the case.

First of all, not every claimant who presents a German certificate of inheritance (*Erbschein*) is recognized by the Claims Conference as the rightful heir to the property in question. This is because significant restrictions on inheritance rights have been established by the JCC to German inheritance law, and secondly, the JCC does not accept claims submitted after 31 March 2004. The following comments deal with these two problems.

According to § 2, para 1 of the Property Act,¹ the German law that deals with the restitution of properties passed on 9 September 1990, the Conference on Jewish Material Claims Against Germany, Inc. (JCC) is the rightful successor to properties without heirs or properties which have not been claimed before the deadline – 31 December 1992 for immovable property, and 30 June 1993 for movable property. Therefore, the JCC could, like any other beneficiary, submit claims within the prescribed timeframe. Unless a timely claim was submitted, the JCC didn’t get anything – although in the media, it was sometimes insinuated that the JCC was automatically named as the proxy for the rightful Jewish heirs. This was the case in an article appearing in *DER SPIEGEL* magazine, issue 23/2008, page 55: “The properties of those who failed to file a claim were legally assigned to the JCC.” This is not true. The JCC was required to document and provide specifics for each property or business asset with the AROV² or LAROV³, later with BAROV⁴ or BADV⁵. In

¹ *Gesetz zur Regelung offener Vermögensfragen* (law governing the settlement of unresolved property issues)

² *Amt zur Regelung offener Vermögensfragen* (Office for the Settlement of Unresolved Property Issues)

³ *Landesamt zur Regelung offener Vermögensfragen* (State Office for the Settlement of Unresolved Property Issues)

⁴ *Bundesamt zur Regelung offener Vermögensfragen* (Federal Office for the Settlement of Unresolved Property Issues)

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

each case, a loss of assets resulting from Nazi duress had to be proven. Many cases are still pending today, more than 18 years after the Property Act was enacted.

Unlike individual claimants, the JCC also had the option to present global claims within the legally specified time limit. These were dealt with liberally at first, but tighter restrictions applied later (see BVerwG⁶ 7 C 62.02, decision 23 Oct. 2003; 8 C 15.03, decision from 24 Nov. 2004).

In the 1990s, the JCC initially interpreted the legal provisions to mean that, by failing to file an application before the deadline, any claims by heirs of persecuted Jews would be rejected. The JCC based this interpretation on the rigorous application of similar laws in West Germany in the 1950s. Only after substantial pressure from Jewish families and international Jewish organizations did the JCC introduce its goodwill program. Under this plan, the JCC agreed to pay the rightful heirs who lost their property during the Nazi era initially 50% of the proceeds and later 80% of the profit made by the JCC from the sale of the property. The deadlines set for this program were later extended until 31 December 1998.

After further pressure from Jewish heirs, the JCC decided in 2003 to publish a list on the Internet of the names of original owners of assets recovered by the Claims Conference. The deadline set for goodwill claims was 31 March 2004.

To qualify for the goodwill program, claimants were required to provide conclusive evidence of their inheritance rights. At the same time, they had to declare that, by accepting partial compensation, they would relinquish their right to any further claims against the JCC and would waive any right to legally appeal the JCC decision. Anyone not willing to sign this agreement was refused compensation from the JCC Goodwill Fund.

It was at this time that the JCC set new guidelines regarding who qualifies for the goodwill program. In July 1999 it was decided that anyone who submitted a claim on time to the German authorities as specified in the Property Act would be eligible for payment from the Goodwill Fund. The group of people entitled to a goodwill claim was limited further in July 2003. According to the new guidelines, only the following claimants would qualify for the Goodwill Fund:

- a) The original owner
- b) An immediate heir appointed in the owner's testament
- c) The spouse of the original owner
- d) The direct descendants of the owner, i.e. children, grandchildren, great grandchildren and their spouses
- e) The parents of the original owner (a rather theoretical case)
- f) The siblings of the original owner and their spouses
- g) The children of the siblings and their spouses, but not their descendants or other offspring

⁶ Bundesverwaltungsgericht (Federal Administrative Court)

In other words, not all of the persons who would have been entitled according to German inheritance law are included. Since first losses of property resulting from Nazi persecution started occurring on 30 January 1933, and the owners may have died already within that year, it is possible that, in the past few decades, there have been several lines of inheritance. Nevertheless, the new guidelines exclude grand nephews and grand nieces of the original owner. Nephews and nieces are included, but not their children. This leads to an unsatisfactory situation in which the surviving nephews/nieces in a family are entitled, but not the children of a deceased nephew/niece. Of course, the number of cases involving grand nephews/nieces increases over time. Those grand nephews/nieces who lost their parents early are punished a second time. This is not only unsettling for the families, it also results in cases of undue hardship.

According to the new guidelines, testamentary heirs are entitled only if the original owner has declared this in his/her will. If these heirs have also listed heirs in a last testament, these people will only be accepted if they qualify as belonging to the group defined above. Other relatives, friends or legal persons are excluded. There is no reason why, in these cases, the last will of a Jewish decedent is not heeded. And there is certainly no reason to ignore this person's last will by excluding organizations like the American Friends of The Hebrew University or the Jewish Guild for the Blind.

Since § 2 of the Property Act grants the JCC a unique position in German inheritance law, the JCC should adhere to this law as they had done up until to 2003 when it comes to determining who qualifies for the goodwill program. It appears urgent that the JCC should urgently reconsider its current policies and actions.

The other problem is the restrictive adherence to filing deadlines. However, the JCC has in several cases been permitted to file applications after the original deadlines, and even today is still allowed to provide additional details on unclaimed properties. So it only seems fair that the same acquiescence be granted to those heirs who for various reasons did not submit a claim or have only recently become aware of this option. This would include cases in which the claimant applied for only part of the family's property because they were unaware of the full extent of the inheritance or they believed that restitution was only available for real estate but not business assets. These people are also informed by the JCC that the claim deadline has expired.

The JCC argues that information about the Goodwill Fund and its guidelines has been publicized in the press, radio, and television for many years. But it is obvious that this topic was not covered across all forms of media in every country. Even more importantly, many entitled persons have been unable to clarify their family relations for various reasons and were unaware of any inheritable assets.

Even if one doesn't agree with the critics who say that the JCC has a moral obligation to actively search for heirs, it certainly wouldn't be unreasonable to expect the JCC to forego all deadlines. In cases awaiting a decision by the German authorities, the argument that the funds received by the JCC have already been spent on charity projects is not valid since these cases are still pending.