

Will there finally be justice for Jewish heirs?

Germany's highest administrative court rules on the obvious: JCC is only entitled to serve as a trustee on behalf of persecuted Jews or their heirs.

By Fritz Enderlein

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The only hope left for people who missed the deadlines for filing restitution claims specified by the Property Act (December 31, 1992 or June 30, 1993) was to obtain a share of the Goodwill Fund set up by the Jewish Claims Conference. Unfortunately, the terms and deadlines established by the JCC were extremely arbitrary (JZ, September 2008 "What the guidelines and deadlines of the Goodwill Program are all about").

In October 2012 this newspaper reported on restitution still pending for victims of the Holocaust. In May 2013 I wrote an article explaining that the Late Applicants Fund recently established by the JCC offers little chance that heirs will receive a fair share of the money.

Over the past few years, many of the victims petitioned the German Bundestag with a request to amend the Property Act with a clause that would require the JCC to pay latecomers a reasonable share of the Jewish assets received from the German state. Unfortunately, these petitions were dismissed by the German legislature.

One heiress, whose restitution claim submitted to the JCC was rejected, decided to use a different approach to seek redress. She sued the Federal Republic of Germany. Although the lawsuit was rejected in the second instance, it indirectly achieved great success.

Germany's Federal Administrative Court, the country's highest administrative court, reached what could be described as a sensational decision in Leipzig on April 24, 2013 (BVerwG 81.12 8 B). This decision contains rulings that are in stark contrast to the practices of the German courts

and authorities, including the German Federal Ministry of Finance and the German parliament, over the past twenty years.

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 or their heirs persecuted by the Nazi regime.**
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.**

It is still unclear how the court rulings will affect the decisions of German's federal government and civil courts. It is also unclear how the JCC will react. The Late Applicants Fund containing €50 million was established last year (see "Only 25% for late applicants?", JZ May 2013 p. 2). Hopefully, the recent rulings by Germany's highest administrative court will lead to an abolishment of the current €50 million limit so that each applicant, as before, will be entitled to 80% of the proceeds or compensation.

The annual meeting of the JCC Board of Directors was held in New York this year in July. Unfortunately, instead of addressing issues related to the Late Applicants Fund, the board was too busy focusing on the fraud scandal and its consequences for top JCC officials.