

Open letter

to Representatives at the Conference on Jewish Material Claims Against Germany, Mr. Rüdiger Mahlo, Sophienstraße 26, 60487 Frankfurt a.M.

2 April 2014

Dear Mr. Mahlo,

I have followed with great interest the debate about the Gurlitt paintings as well as your comments in the press and on television. You have called for the unconditional return of any paintings from Jewish estates to the original owners or their heirs, with no questions asked and irrespective of any statutes of limitation or other deadlines. I assume that you express this view not as a private citizen, but as a representative of the Jewish Claims Conference.

What I can't understand is that the JCC obviously applies a double standard when it comes to returning assets confiscated by the Nazis to the former owners or their heirs.

Although you have only worked for the JCC for a short time, it must have come to your attention that your organization maintains the position that Nazi victims who missed the deadlines specified by the German Property Act have thereby forfeited any legitimate claims. And because these people failed to meet the deadlines, the JCC has become the rightful holder of the claimed assets and has no obligation to those Nazi victims.

The JCC has shared proceeds or restitution with late applicants from time to time, but this was ostensibly an act of "goodwill." In this respect, the JCC fails to recognize that lawmakers merely intended to create a fiction of legal succession granting temporary rights to the JCC – as was stated last year in a Federal Administrative Court – without affecting the status of the actual heirs.

I have written several articles showing that the lawmakers had no intention of forfeiting the rights of Nazi victims, because this would completely counteract the idea restitution.

Mr. Mahlo, it would make me very happy if you could take a closer look at this problem. Perhaps some of my articles would be helpful in this respect:

§ 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

Is the Federal Republic of Germany responsible for how compensation funds paid to the JCC are used? Berliner Anwaltsblatt 10/2009, p. 354

Restitution bypasses victims: Why the German government needs to take immediate action! ZOV 4/2010, p. 170

Missed application deadlines – correspondence with MP Siegfried Kauder (Member of the German Bundestag). ZOV 4/2010, p. 174

Heirless and unclaimed. Unclaimed? A review of § 2 para 1 sentence 3 of the Property Act. ZOV 6/2012, p. 324

Still Waiting for Restitution. A court ruling provides an opportunity to once again take a close look at the content and interpretation of the Property Act.

Jüdische Zeitung, October 2012, p. 12

Only 25% for late applicants? Jüdische Zeitung, May 2013, p. 2

When it comes to making sure those who have suffered are granted unconditional rights to share in the proceeds and compensation as specified in the Property Act, the Nazi victims and their heirs expect you to argue their case with the same vehemence you have shown in your struggle for the return of the stolen paintings.

Yours faithfully,

Prof. Fritz Enderlein

Attorney-at-Law