

Missed application deadlines – Correspondence with MP Siegfried Kauder

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Our politicians never tire of talking about human rights. But what is the situation in Germany? Does the country adhere to the European Convention on Human Rights? Article 1 of the First Protocol refers to the protection of property: “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.”

In theory, property and the right to inherit property are subject to protection by Article 14 of Germany's Basic Constitutional Law. Is no one bothered by the fact that § 30a of the Property Act expropriates Jewish heirs who missed the application deadline and assigns their property to the Jewish Claims Conference?

Our author, Prof. Fritz Enderlein, an attorney at law in Potsdam, has been fighting this injustice for many years and has clearly warned that corrective steps must be taken (*ZOV* 5/2002, 3/2003, 6/2008, 5/2009, this issue). His attempts to encourage the federal government to take action have not been successful. Pleas to Ministers Steinbrück and Zypries, and in the most recent legislative period, to Ministers Schäuble and Leutheusser-Schnarrenberger, have been rejected by parliament officials.

Professor Enderlein has now addressed the German Federal Parliament and written to all members of the Legal Committee and the Committee on Human Rights and Humanitarian Aid. The Petition Committee of the Federal Parliament has also become involved. Hopefully, the members of the Federal Parliament will no longer turn a blind eye to this injustice.

The following documents the correspondence with the Chairman of the Legal Committee.

*Letter dated 10 December 2009 to Siegfried Kauder,
Chairman of the Legal Committee, German Federal Parliament*

Restitution bypasses the victims

Dear Mr. Kauder,

§ 1 para. 6 of the Property Act is intended to provide as much compensation as possible to victims of Nazi persecution. However, the provisions of this law are inadequate. § 30a in particular excludes those who discovered too late that they were eligible to submit an application for restitution, or those who believed for various reasons that they were not required to submit (resubmit) applications. Many of these people and their families were scattered all over the world after escaping Nazi terror. Most seriously affected by the Property Act are those who submitted applications in the 1950s and 1960s, or those who were still listed as owners in the land register. By rigorously enforcing the deadlines specified in the Property Act, these people were, in effect, legally expropriated without receiving any form of restitution. (See my article: Expropriation pursuant to § 30a of the Property Act in the *Zeitschrift für offene Vermögensfragen*, 5/2009, p. 219)

Many Jewish victims and their entire families were murdered by the Nazis. As a result, there were no surviving heirs. In these cases, § 2 para. 1 of the Property Act permits the Conference on Jewish Material Claims Against Germany to submit applications for return of title or for compensation. The law also allows the JCC to submit applications for eligible persons who missed the application deadlines. This is where the problems start.

German legislators failed to include a provision in the Property Act that regulates what should happen if an eligible person comes forward after the application deadline (31 December 1992 or 30 June 1993).

Latecomers who are excluded because they missed the application deadline regard the JCC – with a certain degree of justification – as merely a trustee who, on their behalf, has been granted temporary possession of the property or received compensation for it.

The JCC see things differently. As a gesture of benevolence, and following much protest, the JCC set up a goodwill fund and used this to give eligible persons a share of up to 80% of the property value. Unfortunately, this program was not without limitations and was only valid for a certain period of time. (See my article titled “Was es mit den Richtlinien und Fristen des JCC-Goodwill Programms auf sich hat” – What the guidelines and deadlines of the JCC Goodwill Program are all about – in the *Jüdische Zeitung*, August 2008, p. 2)

It is not too late to correct Germany's legislative oversight. In § 2 para. 1 sentence 3 of the Property Act, it says “If claims submitted by eligible Jewish persons as defined in § 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.” This could be amended to include the following: “However, if eligible Jewish claimants or their successors contact the JCC after the time limit specified in the Property Act has expired, the JCC will be regarded merely as a trustee for the beneficiaries and required to give them an appropriate share of the proceeds or restitution funds.”

Unlike many other legislative proposals, such a provision would not cost Germany anything, but it would certainly help make up for an historical injustice.

I therefore ask the members of the Federal Parliament Legal Committee and the Committee on Human Rights and Humanitarian Aid to appeal to the federal government to ensure justice for the heirs who have been excluded by the restitution laws. (See my article “Ist § 2 Abs. 1 Satz 3 Vermögensgesetz verfassungswidrig?” – Is § 2 para. 1 sentence 3 of the Property Act unconstitutional? – in the *Zeitschrift für offene Vermögensfragen*, 6/2008 p. 277 ff. This would enable Germany to meet its responsibilities regarding the use of the compensation funds paid to the JCC. (See my article under the same title in the *Berliner Anwaltsblatt*, 19/2009 p. 354)

Respectfully yours

Prof. Fritz Enderlein, Attorney at Law

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Reply from 20 January 2010

Dear Prof. Enderlein,

In your letter from 10 December 2009 you proposed an amendment to § 2 of the Property Act. As the law stands, the Conference on Jewish Material Claims Against Germany Inc. (JCC) is the legal successor to those eligible Jewish persons or their legal successors who did not submit claims prior to the deadline specified in the Property Act. In your proposal you indicate that the Property Act should be amended so that the JCC would only serve as a trustee for Jewish eligible persons or their legal successors who submit a claim after the deadline has expired.

I don't feel I can support this request. The provisions regulating retransfer of property or compensation are directly related to the reunification of Germany. At the time, the legislature was faced with the difficult problem of finding an appropriate solution for assets that were not claimed by the eligible persons or their legal successors within a reasonable period of time. In line with the restitution concept, the legislature appointed the JCC as the legal successor of these assets. The JCC uses the funds to support Holocaust survivors in need. For example, the money is used to build and maintain nursing homes for Holocaust survivors.

To safeguard against special hardships for the originally entitled persons, the JCC has set up a Goodwill Fund, as you mentioned. The originally entitled persons were given the opportunity to submit applications for payment from this fund to the JCC until 31 March 2004 – this is more than 10 years after the legal application deadlines expired. Last year, to avoid special hardships in certain

cases, my predecessor Mr. Andreas Schmidt supported a plan to allow applications for payment from this fund to be submitted after the deadline. The JCC set up an application procedure that went into effect on 1 April 2009.

In my view, there is no need to amend the legislative decision on the restitution regulations approved in the early 1990s. In all due fairness, the JCC has, in my opinion, sufficiently responded to special hardships by reopening the application procedures for the Goodwill Fund on a limited basis. I therefore see no need for the legislature to act and ask for your understanding in this matter.

With kind regards,

Siegfried Kauder

Member of German Parliament

Chairman of the Legal Committee

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Letter from 8 March 2010

Claims Conference

Dear Mr. Kauder,

Thank you for your letter from 20 January 2010 regarding my proposal to amend the Property Act. I find it very unfortunate that you are unwilling to support my request.

On 18 March you are scheduled to give a talk on the constitutional mandate and constitutional obligation at the “20 years Claims Conference Successor Organization” symposium. This would be a good opportunity to take a stand on the legislative oversights that I described in my articles published in ZOV 6/2008 and ZOV 5/2009. It is with good reason that the subtitle of the conference “Späte Gerechtigkeit?” (delayed justice) includes a question mark.

In your letter you point out that the application procedure that has been in effect since 1 April 2009 and is designed to avoid special hardships. I am aware of this procedure and in several cases I have made applications supported by medical reports. Unfortunately the JCC oppressively ignores medical reasons that kept eligible persons from submitting an application on time – not to mention the unreasonable amount of time it takes the JCC to process the applications.

Many of my clients have personally survived the Holocaust. They are old and many of them suffer from chronic illnesses. But this is not enough for the JCC. Only someone who was more or less in a

come up until April 2004 (or his or her heirs) would stand any chance of receiving compensation from the Goodwill Fund.

This is not a question of fairness. It is one of justice. My clients are not asking the JCC for charity. They want a share of the assets that were initially stolen from them by the Nazis and not returned by either the GDR or the FRG.

Mr. Kauder, I would be very pleased if you could review this issue once again.

With kind regards,
Prof. Fritz Enderlein

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Reply from 16 March 2010

Dear Professor Enderlein,

The Chairman of the Legal Committee, Siegfried Kauder, MdB, received your letter of 8 March and asked me to reply. You asked Mr. Kauder to review your request once more. You pointed out that your clients are not asking the Claims Conference for charity, they simply want a share of the assets that were stolen from them by the National Socialists. You consider this to be a question of justice, not fairness.

Taking these points into consideration Mr. Kauder still does not see a need to change the legal status of the Claims Conference as successor organization. At the time the return and compensation regulations on former Jewish property were drafted in the Property Act, the legislature faced the difficult task of complying with Germany's historical obligation to provide restitution. At the same time, it was necessary to avoid any delay in the urgently needed investments in the five new federal states through the long and drawn out process of clarifying property ownership issues. For this reason, it was necessary to set relatively tight deadlines for the return of property and compensation claims submitted by originally eligible persons or their legal successors and to establish regulations for assets not applied for on time.

With the appointment of the Claims Conference as the legal successor of assets not claimed in time, the legislature reverted to a reimbursement law from the 1940s and 50s. Firstly, this is intended to keep the assets from going to the Federal Republic of Germany as the legal successor to the National Socialist German state. Secondly, the Claims Conference guarantees that the acquired assets will be used to benefit the victims of persecution. As the successor organization, the Claims

Conference is in many cases the primary source of financial support to needy NS victims worldwide.

Along with the constitutional and regulatory/legal considerations and the reasons already mentioned by Mr. Kauder in his letter from 20 January 2010, a revision of the legal status of the Claims Conference would be in conflict with legal certainty and fundamental right of ownership specified in Art. 14 of Germany's Basic Constitutional Law.

Due to the reasons outlined above, Mr. Kauder is unable to support you in this matter. Therefore, your request will not be processed any further.

With kind regards,

By proxy

Matthias Köngeter

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Letter of 28 July 2010

Claims Conference

Dear Mr. Kauder,

Although Mr. Köngeter informed me on 16 March 2010 that my request will not be processed any further, I am compelled to write to you once again after reading the speech you gave at the “20 years Claims Conference successor organization” event on 18 March 2010.

You spoke about **Germany’s basic obligation to make restitution and pay compensation to** those who lost their assets as a result of Nazi persecution. This is also my concern. However, it is not the Claims Conference that was persecuted, but the individuals who suffered and whose descendants are still suffering today.

Our Federal Chancellor stated that it is part of Germany’s reason of state to stand up for Israel’s right to exist and for its safety. Would it not also be part of the reason of state to ensure that restitution benefits those who have suffered a terrible fate and whose possessions were taken?

You explain why the Property Act included tight deadlines. It is still a matter of dispute whether these deadlines were necessary in cases that did not concern the return of property but were claims for compensation. Even in cases requesting a return of property, tight deadlines result in unnecessary hardship for the legitimate heirs when clarification in favor of the JCC takes many

years. In a recent article published in the ZOV, I pointed out that § 30a of the Property Act constitutes an expropriation of the people who are actually eligible in favor of the JCC.

As you point out, the Jewish Claims Conference successor organization is the **trustee for the persecuted Jews**. What prevented the legislature from including this in the Property Act? This is precisely what I am hoping to achieve with my amendment proposal. And this clause would not have prevented the setting of short deadlines.

Regarding the outlook, you say that the focus is on paying compensation. According to my sources, only 48% of the cases have been completed. I strongly agree with this particular sentence of yours and consider it worthy of emphasis: “...*from a constitutional viewpoint, compensation for the victims is not a voluntary act by Germany, but an imperative of material justice that is part of the basic framework of our constitution.*” But I would like to call attention to "**compensation of the victims.**"

Regarding future compensation payments, the objection that a change of the legal status of the Claims Conference would be in conflict with its fundamental ownership right in accordance with Art. 14 of Germany's Basic Constitutional Law does not hold water. After all, no one appears to mind that the current regulation and its exclusion of the actual victims of Nazi persecution violates their fundamental ownership right as defined in Art. 14 of Basic Constitutional Law.

I get the impression that no one in our government is willing to go up against the JCC. As Mr. Köngeter said in his letter, “*The Claims Conference guarantees that the assets it acquires are used to benefit the persecuted persons.*” Many of the people concerned strongly disagree. The JCC has been the subject of repeated criticism in the international press. I take the liberty of enclosing two recent articles from Jerusalem. (Not printed here; the editor)

I would like to conclude by citing your final remarks at the conference on 18 March 2010:

“Democracy includes defending better arguments and the courage to say things that may be regarded as unpleasant. The rule of law is a value worth protecting. Politicians must say no to injustice.”

With this in mind, I appeal to you once again to support my request.

Prof. Fritz Enderlein

Attorney at Law