

## The Jewish Claims Conference and joint heirs

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In an article under the headline "The Forgotten," *Der Spiegel*<sup>1</sup> magazine reported a "bizarre legal dispute between the Federal Republic of Germany and the Jewish Claims Conference in a case presented to the Berlin Administrative Court." According to *Der Spiegel*, the focus was on the following issue: Was the cousin of Gertrude Monzón Tabares permitted, on her own behalf and on behalf of the rest of her family, to submit an application for compensation 20 years ago?" The issue relates to joint heirs, which is regulated in § 2a of the Property Act.

In many cases, a community of heirs is recognized as the legal successor of a victim of Nazi persecution. It is not necessary for all members of such a community to submit a joint request for restitution. According to § 30 of the Property Act, a claim submitted by one member of the community of heirs is automatically valid for all other members, even if they are not specifically named.<sup>2</sup> In this case, according to § 2a para. 1 sentence 1 of the Property Act, the assets of the joint heirs as such must be retransferred to the designated testator.

An heir who is not party to submission of a claim for compensation is not required to participate in the claim. At the same time, according to § 2a para. 3 of the Property Act, this person can waive his rights associated with the claim within a period of six weeks after he is notified of the pending proceedings (six months if he lives outside of Germany).

However, an heir who is not party to the claim has no legal means of appealing the case if the application is rejected. If the original applicant withdraws his application, the co-heir loses his rights.

According to § 2a para. 1a of the Property Act, if a community of heirs that is the legal successor of a Jewish property owner includes a co-heir who is not known by name, or whose residence is unknown, the JCC automatically becomes party to the claim in this person's place.

The case reported by *Der Spiegel* involved a community of 18 heirs. Although their names were listed, the place of residence for two of the co-heirs was unknown. In a decision from 8 June 2009, the Federal Office for Central Services and Unresolved Property Issues (BADV) confirmed the rights of the heirs and rejected the claim submitted by the JCC.<sup>3</sup> The lawsuit filed by the JCC

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<sup>1</sup> *Der Spiegel* 52/2010, p. 44 ff.

<sup>2</sup> Federal Administrative Court (BverwG) 8 C 8.08, ruling from 29 July 2009, ZOV 2009, 314

<sup>3</sup> Official order from 8 July 2009 in case B 4 – 4 -1583-97/03

alleged a violation of the organization's rights under § 2 para. 1 sentence 3 and § 2a para. 1a of the Property Act. So far, so good.

Sometime later, it was determined that one of the two co-heirs in question had died, and the place of residence for the other co-heir had since been determined. Consequently, all of the joint heirs were accounted for, with no place left for the JCC. But now the JCC raised the issue described above as to whether the application filed by a co-heir on 29 August 1990 was indeed valid for the entire community of heirs, since this potential beneficiary was actually a company owned by several partners. With one exception, these partners consisted of Mr. J.W. and his four sons. In other words, this was a family enterprise and the person filing the claim, a grandson of the company founder, assumed that he was representing the entire family, including all company shareholders and/or their heirs.

This was denied by the JCC, which maintained that, instead of one community of heirs, each of the five shareholders represents a different community of heirs. Therefore, a separate application would have to be submitted by each of these communities.

According to a statement issued on 1 November 2010, the BADV disagreed with the JCC and determined that the submitted application was valid for all parties. A decision on this case by the Berlin Administrative Court is still pending.<sup>4</sup> The idea here is not to address the question of whether the JCC assumption is perhaps formally correct based on § 6 and §30a of the Property Act. I can only reiterate and endorse what *Der Spiegel* magazine wrote: "Even if the decision was legally correct, there are still moral doubts. Would it not be reasonable to expect the Jewish Claims Conference to non-bureaucratically support the survivors of a Jewish factory owner who was killed in Theresienstadt and do everything they could to ensure that compensation is paid as quickly as possible? Why would the Claims Conference assess a situation more meticulously, and more heartlessly than a German authority that has already examined the case in detail?"

It has been demonstrated in several cases that the JCC does not take on the task of searching for unknown heirs. But the fact that the JCC has taken action to exclude a co-heir in an attempt to take his place became apparent in a case before the Frankfurt Regional Court<sup>5</sup> involving a widespread community of heirs. Applications were filed by a co-heir as well as by the JCC. The co-heir knew the names of the other entitled persons, but not their place of residence.

This is where things become almost unbelievable: In an effort to exclude the co-heir, the JCC suggested that the applicant withdraw his claim, which had been submitted before the cutoff date. The man went along with the JCC's suggestion and withdrew the application. According to a

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<sup>4</sup> 29 K 115.10

<sup>5</sup> 2-08 O 161/10

written agreement, "Both parties agree not to take any further action to determine the whereabouts of surviving legal successors."

If the co-heir in question had not followed the JCC's suggestion, the other members of the community of heirs who appeared years later would have been recognized as beneficiaries in accordance with § 2a para. 1 of the Property Act. These co-heirs have since filed a lawsuit against the JCC in the Frankfurt Regional Court claiming a violation of moral principles as defined in § 138 of the BGB (German Civil Code). It will be interesting to see how this litigation plays out.