

The ongoing expropriation of the next generation

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Zeitschrift für offene Vermögensfragen 2/2014, p. 84

Restitution legislation in Germany is far-reaching, starting with the Allied postwar laws and continuing with the German reparation and compensation laws and the Property Act, which was approved by the GDR parliament and integrated into the German unification agreement. Nevertheless, a large number of Nazi victims and their heirs have been denied compensation for their losses. This is a direct result of the rigorous time limits set for filing claims.

According to the legislation mentioned above, anyone who misses the filing deadline loses the right to submit a claim.¹ To keep Jewish assets from falling into the hands of the German government or the aryanizers, the Allies appointed successor organizations. Their duties were later assumed by the Conference on Jewish Material Claims Against Germany, Inc. (aka Jewish Claims Conference or JCC).²

The role of these organizations was to take possession of uninherited or unapplied for assets and use the proceeds to benefit all Jewish people. The fact that some surviving owners or heirs were denied their rights was regarded as acceptable in order to alleviate the widespread hardship and suffering in the early post-war years.

Today, many decades after the Second World War, we have a very different situation.³

Initially, the German options for financial restitution were limited by the Reparations Agreement between Israel and West Germany signed in Luxembourg in 1952. In the meantime, the growing economic strength in the Federal Republic of Germany enabled the country to make increasingly higher sums of money available for aid programs. In 2013, €72 million was earmarked for the years up until 2017.⁴

Therefore, expropriation and redistribution of Jewish assets is no longer justifiable today. But this is the case in what I believe is an improper application of the Property Act.⁵

Theoretically, the focus should be on the restitution of individual claimants. However, in practice, these people are most often placed at a disadvantage vis-à-vis the JCC. For example,

¹ Expropriation pursuant to § 30a of the Property Act, ZOV 5/2009, p. 219

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

³ Speech by Dr. Wolfgang Schäuble on 15 November 2012, www.bundesfinanzministerium.de/Content/DE/Reden/2012/2012-11-15-60-Jahre-Lux.html

⁴ www.sueddeutsche.de/politik/opfer-des-nationalsozialismus-deutschland-stockt-entschaedigung-an-holocaust-ueberlebende-auf-1.1683735

⁵ § 2, para 1, sentence 3 of the 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 the JCC's use of compensation funds it receives? Berliner Anwaltsblatt 10/2009, p. 354

the Nazi Victim Compensation Act (2. EntschRErgG) from September 1, 2005 allowed the JCC to continue filing claims until June 30, 2007. But the deadline set for claims filed by entitled individuals remained unchanged (1992).

The discrimination against individual claimants becomes especially clear when we take a closer look at § 31 para 2 of the Property Act.

According to § 31 para 2 sentence 1 of the Property Act, "The responsible authority is **required to duly inform and involve in further proceedings** the affected legal entity or government administrators, along with any **third parties whose legal interests may be affected by the outcome of the case**. This applies to all claims filed. If requested a copy of the claim application and all attachments must be sent."

According to a commentary by the German Parliament (Bundestag):

"Third parties also include the successor organization as defined by restitution legislation if there are any indications that the specific case is regulated by § 1 para 6 (of the Property Act). This must always be examined by the responsible authority." In this respect, "...the authority has no discretionary power ... and is required, not only upon request, to officially involve the persons referred to in § 2 (Property Act) in the proceedings." ⁶

In other words, the Bundestag wanted to officially include the JCC, but says nothing about the former owners or their heirs – who were the victims, i.e. the ones who actually suffered losses. The fact that restitution is intended to compensate for injustices suffered by individuals is something the Bundestag has simply "forgotten".⁷

It is unclear how this 'inclusion' should work in practice. Should the JCC be invited to submit an application for restitution? Will they be compensated for a property without submitting their own application, or will compensation be awarded without filing a claim?

As interested third parties, shouldn't the former owners or their heirs also be notified when the JCC has filed a claim?

In "Vermögen in der ehemaligen DDR" (Assets in the former GDR), a loose-leaf compilation published by Rädler/Raupach/Bezenberger, opinions were expressed by Redeker/Hirtschulz (14th supplement) and by Denes (24th supplement). In their view, the obligation to notify third parties is valid only until the end of the period specified in § 30a of the Property Act, because no new applications were accepted after this date.⁸

Practically speaking, the property offices can check old land registry records to determine whether there is a possible case corresponding to § 1 para 6 of the Property Act. But since

⁶ Bundestag publication, 11/7831

⁷ Does Germany deal in stolen property? ZOV 6/2010, p. 301

⁸ Missed application deadlines – Correspondence with MP Siegfried Kauder, ZOV 4/2010, p. 174

January 1, 1993, they are no longer required to notify former Jewish owners – or the JCC – when an application is submitted by heirs of the aryanizers.

Thus, the requirement to involve third parties is practically useless. This is because the processing of claims dragged on for many years and only in very few cases was it possible to send a notification before the end of 1992.

The case law regarding § 31 para 2 of the Property Act is therefore very limited. As far as I could determine, there were no cases in which the JCC or a Jewish claimant was properly informed. Instead, in most cases, the person with power of disposition was notified.

According to information from the JCC, the organization filed several thousand claims for property and businesses. In all cases, the property offices checked records provided by the compensation and reparation authorities in former West Germany and found that the previous owners or their heirs had already submitted restitution claims in the 1950s or later. In these cases, it is obvious that the property offices had the names and addresses of the entitled parties. However, there is probably not one single case in which these beneficiaries were involved in the process, because applications were no longer accepted after the deadline (1992).

Two options would have been possible: either the old applications could have been officially reactivated, or the entitled parties could be asked to submit a new application. Both would have been feasible, because the requirements of the application time limits were already fulfilled by the JCC.

In the 1950s, the courts were still very eager to involve the entitled parties. According to a ruling by the Higher Regional Court in Frankfurt on October 6, 1953,⁹ the successor organizations only come into play if, after **an exhaustive investigation** and public notification if necessary, it was determined that no entitled private person could be found. The Supreme Restitution Court of the British Zone also pointed to "...the importance of finding missing heirs, because it would be extremely unfortunate if a missing heir appeared after the confiscated property was already awarded to a trustee."¹⁰

Many entitled parties who are now fighting with the JCC in an effort to obtain compensation from the Goodwill Fund or the Late Applicants Fund cannot understand why their previous applications were not reactivated by the authorities, or why the property offices failed to notify them – although their addresses were known.

The following blatant cases are outlined here for the purpose of illustration:

⁹ RzW (a legal journal focusing restitution) 1954, no. 5, p. 5

¹⁰ Unpublished, quoted from Ernest H. Weismann, *Die Nachfolge-Organisationen*, in: *Wiedergutmachung II*, Munich 1981 p. 754

The case of Siegfried J.

Siegfried J., a Jewish businessman, set up a textile company in Berlin in 1908. Trading under the name M.K., the business gradually became one of the leading production sites in the industry. In 1939 the company was aryanized under force and sold. The resulting stress, coupled with the fact that he was denied the right to leave Germany, led to a serious heart condition for Siegfried J., who suffered a fatal stroke in August 1940. His son Harry J. emigrated to England shortly before the war to join the British forces and fight against the fascists. Siegfried's wife Elise remained in Germany until she moved to England in August 1946 to be with her son. Elise died on December 11, 1957 in London.

Shortly after the war, Elise J. filed a claim with the municipal authorities in Berlin on May 29, 1946. She requested compensation for the financial loss incurred as a result of the actions taken by the Nazi regime. The value of the family business was estimated at RM 500,000. Her case was assigned the file number V 13855.

Harry J. also filed a claim for compensation with the Berlin Restitution Office (file number 162 601) on October 30, 1952.

On December 23, 1992, the JCC filed a claim to recover the business assets of the company formerly known as M.K. In a decision dated July 7, 2009, the BADV (Federal Office for Central Services and Unresolved Property Issues) approved the request and granted €35,310.53 in compensation to the JCC. Interest in the amount of €10,652.47 was later approved to bring the total amount awarded to €45,963.00.

In an effort to determine the facts, BFG files from the Cologne Equalization Office (# 786 559 and 785 529) and case files from the Berlin Restitution Office (# 162 601 and 265017) were used. These documents clearly showed the names and addresses of those entitled to claim restitution.

Harry J. was seriously injured in a car accident in 1990. This resulted in a long illness that led to his death in April 2003.

Neither Harry J., nor his wife Renate were aware that they would need to file a new claim after 1990. They assumed that the well-known thoroughness of German authorities would ensure that the claims submitted earlier would be further processed.

In the 1990s, the JCC created a Goodwill Fund for entitled claimants¹¹ who had failed to meet the application deadlines specified in the Property Act. This fund was used to pay up to 50%, and later 80% of the assets received by the JCC. Unfortunately, this information was not

¹¹ What the guidelines and deadlines of the JCC Goodwill Program are all about, *Jüdische Zeitung* August 2008, p. 2

passed on to the J. family. They were also not informed that the JCC had opened another time window from late 2003 until April 2004 in which new claims could be submitted. Harry's wife, Renate J., was unable to file a claim: after her husband's death, she fell into a deep depression and required nursing care.

On June 21, 2010, Renate J. submitted an application for compensation from the JCC Goodwill Fund. This was in line with the supplemental regulations issued by the JCC in April 2009.¹² However, the JCC rejected her claim: the supplemental regulation excluded the spouses of heirs and did not consider them as entitled claimants.

As a blood relative and direct heir to her grandfather, Harry and Renate's daughter, Eva L., could have indeed been regarded as an entitled person. However, she was not permitted to apply for benefits from the JCC in 2004 because she did not officially become an heir until after her mother died on May 7, 2012.

The JCC offered a limited group of people the chance to submit late applications for compensation from the Goodwill Fund. However, these applications were only accepted if the entitled person was, due to medical reasons, unable to personally submit the required paperwork prior to April 2004. Although this was a good opportunity for some, the case of the J. family shows how arbitrary and grotesque the consequences of the regulation could be. Had Harry J. died as a widower one year later, his daughter Eva could have submitted an application as a direct heir.

An amendment to the JCC guidelines¹³ issued in November 2010 repealed the rule that excluded the spouse. The J. family once again kindled hope that they could be included under the new rules. But their application was once again rejected. This time because Harry J. died in April, 2003 and was unable to file a claim before April 2004.

In 2012, Eva L. was offered a chance to submit an application for the Late Applicants Fund, which only pays 25% of the total property value, or a maximum of €50,000 (equivalent to 11% of the asset value instead of the 80% specified in the Goodwill Fund).¹⁴

Since the JCC application was submitted in December 1992, the commentators were of the opinion that it was too late to involve Harry J. in the process. But this case dragged on for 15 years! In other words, for a period of 15 years it would have been possible to honor the claim of Harry J. or his heirs.

¹² <http://www.claimscon.org/about/successor/goodwill-fund/amendment/>

¹³ <http://www.claimscon.org/about/successor/goodwill-fund/goodwill-fund-announcement/>

¹⁴ Only 25% for Late Applicants? Jüdische Zeitung May 2013, p. 2

The case of Gl. and Gr.

Gl. and Gr. jointly established a textile factory in Berlin in 1907. Gr. was later murdered in a concentration camp. Gl. died after the war in England. The heirs of these two business partners had no contact with each other after the war.

In 1955, the daughter of Gr. submitted a restitution claim for damages in accordance with the BK/O from July 26, 1949. The application was rejected because the company was located in East Berlin.

After 1990, the heirs of Gl. submitted a claim – as did the JCC. The heirs of Gr. failed to submit a new application.

The proprietary proceedings dragged on for many years. During this time, the heirs of Gr. could have been included, since they were listed in the Berlin Restitution Office file (#57273).

The JCC received half of the compensation and turned over 80% of this money to the heirs of Gr.

The case of Moritz G.

This case deals with a plot of land that belonged to Moritz G., a Jewish businessman. He was forced to sell the property to a member of the NSDAP in 1936. Soon afterwards he developed a serious heart condition, escaped to Poland, and died in early 1939. His son Fritz G. fled to England, where he joined the British Army to fight against fascist Germany.

After the war, Hertha G., the widow of Moritz G., and their son Fritz filed applications for compensation. These documents were processed by the authorities in Cologne under Reg. No. II-2a-648 700.

Both of these heirs died before the Property Act was passed. Nicola A., the daughter of Fritz G., failed to submit a claim for restitution. Her family's financial situation in pre-war Germany was rarely discussed. Consequently, Nicola A. was unaware that her grandfather had owned a large piece of property in East Berlin. She also assumed that – even after reunification – the German authorities would continue to process all previous claims so that a new application would not be required.

On July 23, 1992, the heir to the aryanizers (who received the property from the Nazis) submitted a claim for return of title. The JCC filed a general application in December 1992, which was revised and more precisely formulated in 1994. The JCC subsequently became involved in the process. Once again, it is only logical to ask why the heirs of the former owner

were not notified in accordance with § 31 para 2 of the Property Act. It took another 17 years before the restitution process was decided – in favor of the JCC!

The JCC received proceeds from the property totaling €3,355,867.87.

Nicola A. was not informed about the JCC Goodwill Fund, which paid 80% of the proceeds to the heirs. Her only remaining choice was to apply for the Late Applicants Fund. In accordance with JCC guidelines, she received €50,000 – a **mere 1.86%** of the total proceeds.

The case of M.

It is especially outrageous when the entitled heirs are excluded, even though they submitted a claim after 1990. In this case, M., a Jewish businessman, owned a factory and several parcels of land in Potsdam. His heirs in the U.S. filed a claim in December 1992. The JCC submitted an application in Frankfurt around the same time. The only difference was that the JCC application reached the AROV in Berlin (Office for the Settlement of Unresolved Property Issues) shortly before the end of the year. The claim submitted by the heirs didn't arrive until the beginning of January 1993 – and was rejected because it exceeded the deadline! The process dragged on for twenty-two years and wasn't finalized until 2014.

The heirs could consider themselves lucky: the JCC paid out 80% of the proceeds for the liquidated assets from the Goodwill Fund.

I could fill several more pages with similar examples.

The assumption that the obligation to involve entitled Jewish heirs ends when the application deadline is reached is incomprehensible. The purpose of the time limit is fulfilled when the first claim is filed. As soon as the JCC submits a claim, the suspension effect of § 3 of the Property Act comes into play. Incidentally, for compensation requested for business enterprises, the argument of legal certainty in land transactions is no longer valid.

In the case of Siegfried J., the heiress filed a suit in the Berlin Administrative Court against the Federal Republic of Germany after her request for compensation of July 22, 2011 was rejected because it was received after the deadline. The BADV regarded the application for compensation as inadmissible because it was not submitted in the time period specified by § 30a of the Property Act. The ostensible purpose of § 30a of the Property Act is to achieve legal clarity and legal certainty as quickly as possible. This purportedly serves the interests of economic development in the new federal states (Länder), and is therefore also in the national interest.

I have taken a critical look at this reasoning several times in the past: § 30a of the Property Act is unconstitutional because it violates the property ownership right described in Article 14, para 1 of Germany's Basic Constitutional Law.¹⁵ The Federal Constitutional Court ruled that restitution claims under the Property Act are protected under Article 14 para 1 of Basic Constitutional Law. If the Federal Constitutional Court nevertheless considers the limitation period as a valid determination of the content and limits of property within the meaning of Article 14 para 1 of Basic Constitutional Law, this is not covered by the above reasoning. In the opinion of the Federal Constitutional Court, the claims asserted within the time limits by the JCC are covered by the property ownership guarantee defined in Article 14 of Basic Constitutional Law, while the persecuted Jews are expropriated in favor of the JCC by the interplay of § 30a and § 2, para 1, sentence 3.

The elimination of investment barriers as justification for the strict time limits may be relevant for real estate (which would not have prevented the JCC from being named as a trustee on behalf of those persons actually entitled). But when it comes to compensation for a ruined Jewish business enterprise, this justification is absolutely irrelevant.

Nevertheless, the Constitutional Court has affirmed the constitutionality of § 30a of the Property Act¹⁶ stating that the limitation period is justified for compensation claims by substantial reasons of public interest. Apparently the time limit was (literally) "...introduced primarily in the interest of promptly resolving property rights. ... This interest is applied to both restitution and compensation cases. Because of the large number of applications received prior to the inception of the second Property Rights Amendment and the resulting workload for the responsible authorities, it was necessary to introduce a deadline as a means of speeding up the application process. Regarding the applications for compensation, the lawmakers also pursued a fiscal interest to facilitate financial planning and to gain a more accurate overview of pending compensation claims. ... In the face of a tight budgetary situation, this purpose also justifies a time limit for filing compensation claims, one that is both suitable and necessary for achieving the desired result."¹⁷

This argument has nothing to do with reality. In 2010, only 48% of all JCC applications had been completed. As of December 10, 2013, some 4,743 compensation claims for real estate and 12,890 for businesses were still pending.¹⁸ This has nothing to do with a prompt resolution of pending cases. The time limit has obviously not achieved the stated objectives.

¹⁵ The Federal Constitutional Court and § 30a of the Property Act, ZOV 5/2010, p. 212

¹⁶ Ruling from January 10, 2000 – 1 BvR 1398/99

¹⁷ loc. cit.

¹⁸ www.claimscon.org/about/successor/asset/

The idea of facilitating financial planning is especially illusory. It is impossible to arrive at any valid conclusions based on the number of applications submitted. This number also says nothing about how many applications relate to the same property. In the past, up to ten claims have been filed for one single asset. Only when an application is processed (which is still ongoing!) is it possible to determine whether a return of the property is feasible, or if financial compensation is the only option. Only then is it clear whether the first and/or second injured party is entitled to compensation. The number of applications says nothing about the value of a property, a business, or the amount of compensation. Besides, for the purposes of financial planning, is it not irrelevant whether the compensation goes to the JCC or to the victims of Nazi persecution?

The number of applications also says nothing about whether they are justified. From the claims decided by the JCC for real estate (as of December 10, 2013), 51,542 were rejected (nearly 84%!). The rejection rate for business enterprises was as high as 87%.¹⁹

As for the heavy workload, one of the reasons the Federal Constitutional Court used to justify a time limit; it is certainly within reason to ask whether this explains the expropriation of entitled Jewish heirs. If, as Chancellor Merkel once said, it is part of the German *raison d'état* to stand up for the Israeli rights of existence and security, would this not include ensuring that financial compensation goes to those who have suffered a horrible fate and been robbed of their property? And what about those who, through no fault of their own, failed to meet the application deadlines?²⁰

An exception to the stringent time limits should be allowed in cases where submitting an application on time was prevented by government misconduct. Case law specifies strict limitations in this respect. The victims of Nazi persecution regard the failure to comply with § 31 Section 2 of the Property Act as a form of government misconduct. Added to this is the failure of the former government responsible for the persecution and murder of millions of Jewish citizens.²¹

The events that took place in Germany in the 1930s and early 1940s, the Holocaust, and the crimes committed against Jewish people are crimes against humanity that are without a statute of limitations within the framework of international law. The application of § 30a para 1 sentence 1 of the Property Act in respect to entitled Jewish heirs and the resulting expropriation in favor of the JCC is neither legally nor morally justified.

¹⁹ *loc. cit.*

²⁰ Restitution bypasses victims: Why the German government needs to take immediate action!" ZOV 4/2010 s. 170

²¹ Government misconduct, Jüdische Zeitung September 2012

The Petition

After the JCC closed the Goodwill Fund and refused to accept any further applications, many entitled heirs from Israel, the U.S. and other countries turned to the German Parliament Petitions Committee to ask for help. They sought an amendment to § 2, para 1, sentence 3 of the Property Act to the effect that the JCC would only be regarded as a trustee and required to share any recovered assets with those who are actually entitled.

The Petitions Committee requested opinions from the Federal Ministries of Justice and Finance, both of which were negative. The majority of committee members then recommended that the Bundestag reject the petitions. An explanatory memorandum²² repeated the well-known position stating that § 30a of the Property Act is a substantive limitation period and that including the JCC in cases involving heirless or unclaimed assets is intended to keep Jewish property from falling into the hands of the German government. The Petitions Committee saw no reason to influence the JCC through legislative action in order to avoid hindering the organization's freedom of disposition.

The opinions expressed by the ministries were clearly unsatisfactory. Not a word was said indicating that the same objective could also be achieved if the JCC were explicitly placed in the position of a trustee. Years of attempts to initiate a public debate focusing on this issue failed. Letters to the ministers were left unanswered. The Petitions Committee rejected the idea of scheduling a hearing for the petitioners.

In the literature, the opinion is expressed that the trustee status of the JCC is clear based on a consistent interpretation of the Property Act. As far as I can see, this has not been disputed.²³ Wasmuth is also of the opinion²⁴ that the JCC, as a trustee for entitled Jewish heirs who missed the deadline, is required to hand over assets. However, this lacks legal clarification. Wasmuth's commentary on § 2 of the Property Act in the "Rechtshandbuch Vermögen und Investitionen in der ehemaligen DDR" (Legal handbook regarding assets and investments in the former GDR) was quoted in the ruling handed down by the Federal Administrative Court on April 24, 2014.²⁵

I have expressed in detail my position on this decision in a series of commentaries²⁶ and would like to quote the following (text from the decision is in italics):

²² Bundestag publication, 17/12076

²³ Stegemann: "The Conference on Jewish Material Claims Against Germany as legal trustee of the heirs of property owners expropriated by the Nazis" ZOV 6/2012, p. 313

²⁴ Aufarbeitung der unter NS-Herrschaft verübten Entziehung von Kunstwerken (Reappraisal of the works of art confiscated under Nazi rule), NJW 11/2014, p. 752

²⁵ BVerwG 8 B 81.12, ZOV 2/2013 p. 75

²⁶ ZOV 2/2013 p. 53

The fiction of the JCC as legal successor does not infringe on the property rights of the entitled claimant.

This applies to the ownership rights of all entitled persons as defined by the Property Act. However, by restricting access to its Goodwill Fund, the JCC limits the number of entitled persons.²⁷

The role of the JCC is to assert the restitution rights of those Jewish victims who do not file claims for the purpose of collective compensation for the benefit of the Jewish people.

This is what has been declared in all statements thus far. And this is also how it is viewed by the Bundestag Legal Affairs Committee and the ministries. Of course, the Jewish people have a right to restitution. This right is primarily intended for those individuals persecuted and expropriated, as well as to their heirs.

Since § 2 para 1 sentences 3 and 4 of the Property Act also serve the purpose of providing restitution and compensation for injustice committed through the persecution of Jews by the Nazi government, and since the JCC itself was neither persecuted nor does it assume the function or duties of those actually persecuted, it is not entitled to freely dispose of the assets received based on its entitlement under section § 2 para 1 sentences 3 and 4 of the Property Act.

But the federal ministries see things differently!

On April 16, 2009 the Federal Ministry of Justice wrote: "You certainly agree that comprehensive authorization of the JCC is indispensable" ... "How the funds are used is up to the discretion of the JCC." On November 16, 2009 the same Ministry wrote: "In particular, it does not seem necessary or politically feasible for the legislature of the Federal Republic of Germany to influence the Goodwill program administered by the Jewish Claims Conference." Regarding the legal position of the JCC, the Federal Ministry of Finance wrote the following on April 7, 2009: "The use of the funds acquired in this way is up to the discretion of the JCC ... The Federal Ministry of Finance is not authorized to make demands on the JCC in this respect or set guidelines regarding the way the funds are administered."

On January 11, 2013, the Head of Division V of the Federal Ministry of Finance, acting on behalf of Federal Minister Dr. Schäuble, wrote: "... Prof. Dr. Enderlein, appealed to both ministries and to the German Bundestag Petitions Committee to establish for Holocaust survivors or their heirs who failed to file restitution claims under the Property Act within the prescribed time limits a legal claim against the JCC forcing the organization to hand over

²⁷ The Claims Conference and German inheritance law, Jüdische Zeitung September 2011, p. 20

formerly owned assets or to relinquish sales proceeds from these property assets. He further supported his idea by publishing articles in professional journals. The Federal Ministry of Justice and the Federal Ministry of Finance repeatedly rejected proposals to amend the Property Act.

“In accordance with § 2 para 1 sentence 3 of the Property Act, the JCC has been designated the legal successor to all claims not asserted by entitled Jewish heirs or their legal successors. The JCC has acquired the full rights to the transferred assets and does not merely serve as a trustee. This legal position has been challenged by Prof. Dr. Enderlein in his efforts to retroactively reclaim the assets in question. How the JCC uses the funds obtained from the restitution of property assets is entirely their own affair ruled by the organization’s bylaws.”²⁸
(Please pardon the long quotation.)

My clients are, of course, very pleased that the Federal Administrative Court sees things in a completely different light!

Moreover, the JCC is only entitled in its capacity as a trustee on behalf of the Jews who were actually persecuted by the Nazis and their heirs, respectively, who in turn are not entitled to any restitution or who have missed the deadline set in response to demands by the JCC pursuant to § 30a para 1 of the Property Act.

The JCC is therefore not only a trustee for the Jewish people who were persecuted or murdered and are without natural heirs, but also a trustee for entitled survivors who failed to comply with the deadlines specified in the Property Act. The JCC sees this differently and, as shown, has the support of the German Government and the German Parliament.

However, according to the Property Act, *people who are ‘genuinely entitled’ are disqualified and unable to assert claims against the JCC.*

At the same time, it must be possible to file a lawsuit against the JCC in a civil court.

Because, as a trustee, the JCC is obligated to return the assets it has received.

By using a fictitious legal succession, the legislature only intended to create temporary authorization for the JCC to prevent the German state from becoming the legal heir.

In the past, an indirect inheritance by the German state is not prevented when the JCC can freely dispose of the assets and use the money that actually belongs to the heirs to finance assistance programs that should actually be funded by the German government. The less the JCC pays out to the entitled heirs, the more the state saves. If, as recently, the German Federal

²⁸ The JCC bylaws specifically state that the organization is required to support individual victims of Nazi persecution. These bylaws are extensively quoted in ZOV 2012/6, 324 pp.

Ministry of Finance increases relief funds,²⁹ the JCC can no longer argue that its assistance programs were threatened by the continuation of the Goodwill Fund.

The legal status of the entitled heirs is therefore not affected by § 2 para 1 sentence 3 of the Property Act. These individuals remain the legal successors. Accordingly, in several decisions, the Federal Administrative Court assumed that this is merely a fiction of a legal succession in favor of the JCC.

This is true. But so far, no practical conclusions have been drawn from these decisions. The civil courts still see this in a completely different light.

A lawsuit based on the decision by the Federal Administrative Court was dismissed in the first hearing before the Regional Court in Frankfurt am Main on January 24, 2014 (2-10 O 332/13).

A ruling by the Frankfurt Higher Regional Court is still pending.

According to a decision by the Regional Court in Frankfurt am Main from March 12, 2014 and announced on April 4, 2014 (2-04 O 457/13):

"The purpose of § 2 para 1 sentence 3 of the Property Act is to assert Jewish claims for the purpose of collective restitution in favor of the Jewish people. The fiction of legal succession for the defendant was only necessary to prevent inheritance by the German state, i.e. the successors of the Nazi regime. The purpose, however, was not to keep the formerly entitled parties from exercising their right to claim compensation. This would have made the legal structure of succession obsolete. Moreover, the proceeds should be used to benefit only the Jewish people as such, but not to benefit formerly entitled individuals." (highlighting added by F.E.)

The Frankfurt Regional Court thus asserts that, from the very beginning, German lawmakers sought to bring about an expropriation of the entitled claimants in favor of the Jewish Claims Conference. This makes a mockery of all assertions in favor of restitution for individual claimants.

An appeal of this court decision is currently pending.

²⁹ See footnote 4