

Discussion Unwanted?

Jewish Claims Conference – A Taboo Subject

Prof. Fritz Enderlein, Attorney-at-Law, Potsdam

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My anthology, "Expropriated Heirs – How Property Once Owned By Jewish Victims of Nazi Persecution Is Being Withheld From Rightful Heirs," was published in time for the 23rd Conference of the German-Israeli Lawyers' Association (DIJV) on October 19-25, 2015. The scheduled topic for Block 3 of this conference was "The Role of the Jewish Claims Conference in the Property Act." Participants invited for the discussion included representatives from the Jewish Claims Conference and from the German Ministry of Finance, as well as myself, as the author of numerous articles focusing on this topic. The discussion was averted as follows.

According to the JCC website, the German Ministry of Finance, in its role as a funding authority, regularly reviews the work of the Claims Conference. Although Finance Minister Schäuble has repeatedly praised the cooperative efforts of the JCC, the German Finance Ministry pre-emptively claimed that it did not have the authority (to attend the conference). Although an invitation to participate in the discussion was sent to the JCC in early March, 2015 and several reminders were sent by the DIJV Board of Directors, the organization didn't notify the DIJV until the end of August that it would be unable to attend the conference due to "conflicting schedules."

At the end of September, the agenda for Block 3 of the conference was substituted by a very current topic: "Dealing with Refugees – Legal Aspects in a Comparison Between Israel and Germany."

I was planning to present the following issues at the conference:

I. Inclusion of the JCC

1. The JCC was not mentioned in the first draft of the Property Act presented in summer 1990 and § 1 para 6 of the Property Act did not exist. The Property Act was solely aimed at rectifying the so-called division-related injustice. In a joint declaration from June 15, 1990, the two German governments set benchmarks for the future Property Act in which the focus was on expropriations in the GDR. This declaration initially stated that, "In solving any pending property issues, both governments presume that a *socially acceptable balance of*

different interests needs to be established. Legal certainty, *legal clarity* and the right to own property are principles that should guide the governments of the German Democratic Republic and the Federal Republic of Germany in resolving property issues. This is the only way to permanently ensure peace under the law in a future Germany" (highlighting by F.E.).

2. The treaty establishing German unity was signed by both governments somewhat later, on August 31, 1990. This specified that the Property Act, which in the meantime had been supplemented by § 1 para 6, would be included in the continued validity of law (after German unification). The inclusion of § 1 para 6 in the Property Act was widely criticized because Nazi injustice and division-related injustice are completely different issues and therefore required a differentiated approach.

3. On September 18, 1990, Article 2 of an agreement between the two German states regarding the interpretation and implementation of the Unification Treaty referred to a decision by the GDR parliament from April 14, 1990 that focused on ensuring fair compensation for material losses suffered by victims of the Nazi regime. In this context, the Federal Republic agreed to make arrangements with the Claims Conference to establish a supplementary fund.

4. The JCC wasn't included in the Property Act until the second Property Rights Amendment was enacted on July 14 1992. The following sentences 3 and 4 were added to § 2 para 1: "If the claims of entitled Jewish parties or their legal successors are not asserted within the scope of § 1 para 6, the successor organizations, in accordance with the Property Act, shall be granted the right of restitution; if they fail to file a claim, the Conference on Jewish Material Claims Against Germany, Inc. will be named as the legal successor. The same applies if the state is named as the inheritor or subsequent inheritor of a Jewish victim of Nazi persecution within the scope of § 1 para 6 or if a Jewish legal entity or unincorporated community of Jewish persons is dissolved or forced to dissolve based on reasons specified in § 1 para 6."

5. The inclusion of the JCC (in the Property Act) was intended to prevent the German state or the aryanizers from gaining possession of looted Jewish property. However, this objective was not fully achieved. If the JCC (also) failed to file a claim, the situation remained unchanged. It also remained unchanged to the extent that the initially generous handling of the global applications from the JCC was subsequently revised.

6. The Property Act does not distinguish between a) heirless assets, and b) assets for which heirs are present, but have failed to file a claim. In the first case, a), the JCC is appointed as a trustee for all Jewish people. In the second case, b), the JCC is appointed as a trustee for individuals. Due to the lack of clarification in the Property Act regarding the role of the JCC,

§ 2 para 1, sentence 3 in conjunction with § 30a results in a redistribution of Jewish property – an expropriation of Jewish heirs.

II. Failure of entitled heirs to meet the deadline

7. In many cases, claims were not filed (or re-filed) because restitution proceedings had already been initiated in the 1950s and 1960s. Old claims that were rejected at the time because the assets were outside the jurisdiction of the restitution laws, should have been reactivated through official channels without requiring a new claim to be filed.

8. Some claims were not filed because the original (Jewish) owners were still listed in the land register. In these cases, the failure to file a claim led to the absurd result that the heirs were expropriated and the property in question was assigned to the JCC.

9. Claims were often not filed because the heirs – who were scattered all over the world – had no knowledge of the assets belonging to their ancestors. No attempts were made to find these heirs, and even when their existence was known and their addresses were listed in the files, they were not notified.

III. Property offices preventing individual restitution by assigning assets to the JCC

10. Even before the registration deadline expired, property offices were making decisions in favor of the JCC – although the heirs had already filed a claim.

11. Property offices transferred real estate to the JCC, although the Jewish owners were still listed in the land register.

12. Property offices rigorously rejected claim applications that were filed after the deadline, even though they had been mailed before December 31, 1992 (and it took over 20 years to process them!).

13. Property offices strictly applied § 30a of the Property Act regardless of whether the case involved real estate or compensation payments. For compensation payments, the argument regarding security of legal transactions has no bearing, particularly in cases in which an application from the JCC is still pending a final decision.

14. Property offices failed to apply § 31 para 2 of the Property Act although they were aware that the victims of Nazi persecution still existed and their addresses were known (see also thesis 7).

IV. Relationship between the JCC and entitled heirs

15. Although according to its own statutes, the JCC would be required to work on behalf of the entitled heirs, it made no effort to search for them. Even when the JCC was aware that entitled heirs existed, it failed to advise them that they would be eligible to file a claim. In fact, the JCC went so far as to require entitled parties who had filed a claim to refrain from searching for co-heirs.

16. For years, the JCC refused to share proceeds from the sale of real estate or compensation payments with the entitled heirs. This continued until the organization faced international pressure and was forced to set up a Goodwill Fund in 1994. This fund initially paid up to 50% and later 80% of the net proceeds to entitled parties. However, a deadline for the Goodwill Fund was set (December 31, 1998) and not all of the entitled parties who were able to present a certificate of inheritance were eligible for participation.

17. After the Goodwill Fund expired and there was renewed international pressure, a Late Applicants Fund was established for the years 2013-2014. This fund provided for only a 25% share of the net proceeds and was limited to a maximum of €50,000 per asset, regardless of the number of heirs involved. The share was later increased to 33% of the net proceeds.

18. Entitled heirs who filed a claim with the JCC for a share of the proceeds were required to sign a declaration stating that they agree to unconditionally accept the settlement of the JCC and waive any right of appeal. This requirement is discriminatory and extortionate.

19. The German Federal Government strictly refuses to influence the use of funds paid out as compensation or proceeds from the sale of assets.

V. The Property Act in case law

20. The civil courts refuse to concede to the JCC the role of trustee on behalf of the entitled heirs – at least this is the case with the Frankfurt Regional Court (LG) and Higher Regional Court (OLG). Lawsuits claiming a share of the proceeds have been rejected.

21. However, in a decision from April 24, 2013, the Federal Administrative Court recognized that the JCC is "solely authorized as a trustee for Jews actually persecuted by the Nazi regime or their heirs."

22. In decisions regarding § 30a of the Property Act, the Federal Constitutional Court has expressed the opinion that this is a "determination of the content and limits" of the property and "is justified by particularly substantial reasons of public interest." The court refers to "legal certainty and clarity" and the "elimination of investment barriers." The Constitutional Court does not address the notion that all of these goals could be achieved if the JCC would

only be expressly granted the position of a trustee. At the same time, it invokes the principle of social justice and the need to provide a socially acceptable balance of different interests (see thesis 1). This is in stark contrast to Germany's obligation to provide restitution.

23. The handling of the Property Act represents a breach of Art. 14 Basic Law and Art. 1 of Protocol No. 1 to the European Convention on Human Rights.

All of these issues are outlined and substantiated in the anthology mentioned at the beginning. The following is a selection of articles:

§ 2, para 1, sentence 3 of the Property Act: Is it unconstitutional?

Thoughts on the Goodwill Fund administered by the Jewish Claims Conference

ZOV 6/2008, p. 277

What the guidelines and deadlines of the JCC Goodwill Program are all about

Jüdische Zeitung, August 2008, p. 2

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

Does Germany deal in stolen property?

ZOV 6/2010, p. 301

Heirless and unclaimed. Unclaimed?

ZOV 6/2012, p. 324

Justice at last for the heirs of Holocaust victims?

Questions and comments regarding the Federal Administrative Court decision from April 24, 2013, BVerwG 8 B 81.12

ZOV 2/2013, p. 53

The ongoing expropriation of the next generation

ZOV 2/2014, p. 84