

Does Germany deal in stolen property?

Prof. Fritz Enderlein, Attorney at Law, Potsdam

ZOV (Zeitschrift für offene Vermögensfragen) 6/2010, p. 301

§ 259 German Criminal Code, dealing in stolen property

- (1) Anyone who buys, or otherwise acquires or makes available to a third party, sells or aids in the sale to benefit himself or a third party, **an object that was stolen by another person** or otherwise acquired **as a result of an unlawful act** against the assets of another, is **subject to imprisonment** of up to five years or a monetary fine.

When an ordinary thief steals something and the police manage to recover the stolen goods, the property is promptly returned to its rightful owner. This is not the case for property stolen from the Jews.

Between 1933 and 1945, millions of Jewish citizens in Germany were systematically robbed and murdered. After the War, the Allies declared all Nazi laws that were in violation of the principles of international humanitarian law to be null and void. In 1952, Federal Chancellor Adenauer accepted Germany's culpability for the genocide against the Jews and concluded "restitution" agreements with the State of Israel and the Jewish Claims Conference.¹

In September 1990, the final GDR People's Assembly adopted the Property Act (Vermögensgesetz) which, in accordance with the Unification Treaty, was included in the laws of the Federal Republic of Germany. Up until this point, no equivalent legislation had been passed in the GDR except for the Thuringia Restitution Law (Thüringer Wiedergutmachungsgesetz) enacted during Soviet occupation. However, there was a regulation from 6 September 1951² that governed the administration and protection of foreign property (including seized Jewish assets) in the GDR. If the Jewish owners were still listed in the land register, and if the Nazi regime had appropriated the property for the Reich, the property was marked as "List C" in the land register. State administration would remain valid until other arrangements were made as part of a peace treaty.

¹ An overview in recent literature is provided by Norbert Frei, José Brunner, Constantin Goschler (editor), *Die Praxis der Wiedergutmachung*, (The practice of restitution), Göttingen 2009

² GBl der DDR (GDR legal gazette) 1951 p. 839

In the Property Act, § 1 para. 6 states that property lost between 1933 and 1945 as a result of persecution can be reclaimed.³ This requires an application (§ 30 Property Act) to be submitted before a specified deadline (§ 30a Property Act). Anyone who fails to submit an application before the deadline loses the right to file a claim.

As if asking a theft victim to submit an application for return of his stolen property is not absurd enough.⁴ Requiring that the application be submitted within a certain period of time is equivalent to expropriation of property without compensation.⁵

But that's not all. According to § 2 para. 1 sentence 3 of the Property Act, Jewish property for which no claim was submitted, will be assigned to the Jewish Claims Conference if the organization submits an application on time.⁶

In other words, if a third party – in this case the JCC – claims the stolen property after the victim of the theft fails to submit an application, the property will be assigned to them. In my opinion, this meets the criteria of what is commonly known as “fencing,” or dealing in stolen property.

When they passed the Property Act in 1990, the legislature failed to include a passage that corresponds to the statutes of the JCC, a corporation founded in accordance with U.S. law. According to the articles of corporation, “The purpose of the association shall be **solely** to voluntarily assist, advise, support and **act for and on behalf of** Jewish persons that were victims of Nazi persecution and discrimination” (text highlighted by the author).

The Jewish victims believed that the JCC would act in their best interests and take possession of stolen Jewish property, sell it at a fair market price, subtract an appropriate administrative fee, and pass on the proceeds to the victims.⁷

My proposed amendment to the Property Act was rejected by the Ministries of Finance and Justice. I therefore contacted the Legal Committee of the German Federal Parliament.⁸ No support can be

³ The provision states: “This law shall also apply to property claims of citizens and associations that between 30 January 1933 and 8 May 1945 were persecuted for racial, political, religious or ideological reasons and consequently lost their property through forced sales, expropriations or otherwise.”

⁴ Fritz Enderlein, Wiedergutmachung, die an den Opfern vorbeigeht. Warum die Bundesregierung endlich handeln muß (Restitution bypasses victims: Why the German government needs to take immediate action!), ZOV 4/2010, p. 170

⁵ Fritz Enderlein, Enteignung durch § 30 a VermG (Expropriation pursuant to § 30a of the Property Act), ZOV 5/2009, p. 219

⁶ Fritz Enderlein, Ist § 2 Abs.1 Satz 3 VermG verfassungswidrig? Gedanken zum Goodwill-Fonds der Jewish Claims Conference (§ 2 para. 1 sentence 3 of the German Property Act: Is it unconstitutional?), ZOV 6 /2009, p.277

⁷ Besteht eine Verantwortung der Bundesrepublik für die Verwendung als Entschädigung gezahlten Gelder an die JCC? (Is the Federal Republic of Germany responsible for the JCC's use of compensation funds it receives?) Berliner Anwaltsblatt 10/2009, p. 354

⁸ Versäumte Anmeldefristen – Schriftwechsel mit MdB Siegfried Kauder (Missed application deadlines – correspondence with MP Siegfried Kauder), ZOV 4/2010, p. 174

expected from the committee chairman.⁹ My clients contacted the German Federal Parliament Petitions Committee, which has been brooding since early 2010 over ways to help my clients despite the negative attitude of the federal ministries.

⁹ In a letter dated 14 September 2010, Mr. Kauder refused to talk about it with me. Other members of the Legal Committee, on the other hand, have signaled support.