Heirless and unclaimed. Unclaimed?

A review of § 2 para 1 sentence 3 of the Property Act [1]

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(Translated by Michael Hooper, Text International GmbH Berlin; English version authorised by F.E.)

The following is stated in the § 2 para 1, sentence 3 of the Property Act (law regulating unresolved property issues):
*If **claims** by entitled Jewish heirs, as defined in § 1 paragraph 6, or their successors, **are not filed,** the Property Act stipulates that the successor organization shall be awarded restitution rights. If this organization does not file a claim, the legal successor is deemed to be the Conference on Jewish Material Claims Against Germany, Inc. (emphasis: FE)*
The 60th anniversary of the signing of the Luxembourg Agreement has been commemorated many times this year, most recently on the occasion of the signing of a new compensation agreement on November 15, 2012 in Berlin. On this day, German Finance Minister Schäuble pointed out, „Beyond the Luxembourg Agreement, the Claims Conference has consistently supported the restitution legislation and closely monitored its implementation.“[2]
This offers a good opportunity to look back on JCC negotiations with the German government in 1952, examine their stated task and purpose, and take a closer look at the motives and objectives on the German side.

The Luxembourg Agreement

At the time, negotiations were held with the State of Israel as well as with the JCC – although the interests of these two parties were not always the same. While the State of Israel could only speak for itself and its citizens, the JCC represented Jews from Germany and the occupied territories all over the world.

[1] Fritz Enderlein, § 2, para. 1, sentence 3 of the Property Act: Is it unconstitutional?, Zeitschrift für offene Vermögensfragen (ZOV), issue 6/2008, p. 277
[2] http://www.bundesfinanzministerium.de/Content/DE/Reden/2012

The views of the JCC are documented in the Central Archives for the History of the Jewish People in Jerusalem.[3] This is where, in the 1970s, the JCC sent all documents related to the conference held from March to August 1952 in Wassenaar/The Hague in the Netherlands. In addition to background materials related to Jewish claims, the files contain the official documents of the German delegation, along with records and reports from the working groups and conferences in Wassenaar and related correspondence.[4]

In autumn 1945, a few months after the end of World War II, Chaim Weizmann, who later became the first President of Israel, appealed on behalf of the Jewish Agency for Palestine to the Four Powers, France, Great Britain, Soviet Union and the United States, to include Jewish claims in the reparation negotiations with Germany.[5]

Working in close cooperation with the Government of Israel, the Conference on Jewish Material Claims Against Germany was founded in New York in October 1951. This was to be the organization that would represent the interests of Jewish claimants all over the world. Dr. Nahum Goldmann was the organization's first president.

The government of the Federal Republic of Germany expressed a commitment to German Parliament in September 1951 to compensate for the immense material damage caused by the Nazi regime to the extent possible within the scope of German capabilities. In a letter to the government of Israel in December 1951, Dr. Konrad Adenauer declared the willingness of the German government to enter into negotiations with Israel on the basis of claims submitted in March 1951.

In Israel, „The majority of the Jewish public … vehemently rejected all negotiations with Germany because they did not want any political or human contact with the representatives of a state that caused the destruction of millions of Jews and supported the idea of destroying the Jewish element.“[6] After three days of fierce debate in the Knesset, Israel's parliament, a narrow majority (one vote!) finally agreed to participate in the negotiations.

These negotiations started on March 2, 1952 in the town of Wassenaar, near The Hague in the Netherlands. Along with the two government delegations, a delegation from the Jewish Claims Conference attended. These delegates were responsible for the negotiation of **individual** compensation claims.

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[3] In November 2011, the author visited the Central Archives for the History of the Jewish People (CAHJP) on the Giv'at Ram campus of the Hebrew University of Jerusalem and researched the materials.

[4] An analysis was conducted by Nana Sagi in „German Reparations - A History of the Negotiations“, Jerusalem 1980

[5] Document CC 8004

[6] Stefan Minden, „Special legal succession and practice of the Claims Conference as a successor organization of the Property Act,“ German-Israeli Lawyers Association, October 1998 in Weimar.

The following types of claims were differentiated: claims against private persons or companies, and claims against Germany. The latter included individually and collectively verifiable claims or estimated claims.[7] For provable losses by individuals, the person who suffered persecution or his/her successor was regarded eligible to file a claim. In cases in which there was no persecuted claimant or successor still alive (heirless), a recognized successor organization was eligible to file a claim.

At the start of negotiations with Germany, the Claims Conference issued a statement: „Following the mass extermination by the Third Reich, there is a huge number of claims for individuals who no longer exist. They are dead – but their property should not be surrendered. Germany must not be named as the beneficiary of assets that resulted from the thoroughness of the Nazi extermination policy. Jewish property that is heirless and not been claimed should be returned to the Jewish organizations that support the surviving Nazi victims."[8]

The stated aim of the Claims Conference was to secure assets for which there are no heirs. This property went unclaimed because there were no surviving beneficiaries. Heirless and unclaimed were thus originally regarded as identical conditions. But there were also cases in which claimants decided against filing a claim under the applicable laws of the occupying Western powers. Many Nazi victims wanted nothing more to do with Germany. They were „… afraid that the restitution process would reawaken memories of the painful suffering experienced in the concentration camps. Others did not want to appear as beggars in the eyes of German authorities or to be involved in any way with the former oppressors."[9]

In his opening speech, the German delegation chairman quoted a statement made by German Chancellor Konrad Adenauer to the Bundestag (parliament) on September 27, 1951: „Unspeakable crimes have been committed in the name of the German people, calling for moral and material indemnity *for damage suffered by individuals, as well as for Jewish assets for which there are no surviving beneficiaries..."*[10]

The focus was always on compensation for individuals. This was also in line with JCC interests. In paragraph 2 of the organization's bylaws filed on November 21, 1952, the purpose and goals of the JCC are explained as follows: The corporation is established exclusively for religious, charitable, literary and educational purposes. Its purpose is solely to voluntarily assist, support, help and act for and on behalf of the Jewish people, cultural and charitable organizations, funds, foundations and communities who are victims of Nazi

[7] Document CC 8006
[8] Document CC 8079 or 8081
[9] http://de.wikipedia.org/wiki/ Bundesentschädigungsgesetz
[10] Document CC 8080, italics F.E.

discrimination and persecution, (i) in matters relating to compensation and restitution for losses resulting from persecution, including the distribution of funds provided by the Federal Republic of Germany, (ii) in matters relating to the restitution of property and property rights of any kind, (iii) to act on other matters of relief, rehabilitation, support, assistance, resettlement and emigration, and (iv) as a successor organization for heirless and unclaimed Jewish property... "[11]

Once again, the focus was on restitution for individuals. Unclaimed assets were presumed to be without heirs.[12]

The relationship between individual restitution and global compensation played an important role in the negotiations. In a meeting on June 25, 1952, the German side expressed concerns that disproportionate global compensation to Israel or to the JCC could reduce the options for individual compensation as prescribed by law.[13]

In a hearing on 26 June 1952, the JCC presented a memorandum on the status and purpose of the organization. Emphasis was placed on the premise that the JCC was founded in response to Adenauer's wish to meet with Jewish representatives all over the world. With its 23 member organizations, the JCC represented a majority of Jews outside Israel. The JCC made it clear that the organization did not rule out individual claims and pledged to ensure that funds received for heirless assets would be used solely to support needy survivors.[14]

The JCC demanded that the different laws in the three Western occupation zones be standardized and influenced the formulation of the different restitution and compensation laws from the very beginning.

After months of sometimes difficult, repeatedly interrupted negotiations,[15] an agreement between the Federal Republic of Germany and the State of Israel was reached on September 10, 1952.[16] At the same time, Protocols 1 and 2 were signed by Konrad Adenauer on behalf of the Federal Republic of Germany and Nahum Goldmann for the Jewish Claims Conference.[17]

The negotiations focused on „expanding reparation legislation valid in the Federal Republic of Germany." The main emphasis was on standardizing current legislation in the three Western zones and extending it across Germany by passing a federal amendment and framework law based on the most-favored principle.

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[11] Quoted from a document submitted by the JCC (defendants) in a U.S. court case.
[12] Document CC 8141
[13] Document CC 8091
[14] Document CC 8142. The fact that the JCC distanced itself from this commitment and later allocated funds for other purposes has been repeatedly criticized in recent years.
[15] The CAHJP contains 171 documents related to the negotiations.
[16] Bundesgesetzblatt (Federal Law Gazette) Section II 1953 p. 35
[17] Ibid p. 85 and 94

Agreement was reached on the principles of **compensation** for confinement, for physical and psychological harm, for damages to personal livelihood and economic advancement, as well for **restitution** of identifiable property assets (Protocol 1) and for the creation of a fund of DM 450 million (Protocol 2), payable to Israel on behalf of the Claims Conference (Article 2 Fund).[18]

Military government legislation

Even before the Federal Republic of Germany was founded, compensation and restitution laws were passed in the Western occupation zones. These included the American Military Government Law No. 59 (REG) on the restitution of identifiable property in 1947, and the nearly identical British Military Government Law No. 59 (BREG) from 1949. In the French zone, Regulation No. 120 specifying the return of looted assets was adopted in 1947. In West Berlin, regulation BK/O (49) was adopted on July 26, 1949 (REAO).[19] These laws already specified that heirless assets would be assigned to the successor organizations JRSO, ITC, ATO and to the French department of the ITC to keep them from falling into the hands of the German Treasury.

These legal provisions included a number of differences that still need to be addressed. Above all, the focus was on securing heirless Jewish property. According to § 1936 of the German Civil Code, the German Treasury would become the legal successor to heirless assets. For this reason, Article 10 of the American REG specified „In the case of § 1936 BGB, instead of the German government, the heir to the estate of a persecuted victim will be a successor organization determined by the military government."

Whether an estate is, in fact, heirless, was subject to careful examination. „In any case, prior to the application of the provision, it must be determined whether heirs, relatives, spouses or testamentary heirs of entitled persons are still alive. If necessary, unidentified heirs must be located by public notice."[20] „Only when an in-depth investigation determines that no entitled private person is available, will the successor organization be considered on the basis of

[18] See information on this and other funds in the article „The Jewish Claims Conference in Court?" by Fritz Enderlein, ZOV 5/2011, p. 202

[19] Verordnungsblatt für Groß-Berlin (Official Gazette for Greater Berlin) Section I, 1949, p. 221

[20] Kohlhammer Kommentare, Peter Goetze, Die Rückerstattung in Westdeutschland und Berlin, Stuttgart und Köln, 1950, p. 180 (Kohlhammer comments, Peter Goetze, Restitution in West Germany and Berlin, Stuttgart and Cologne)

Article 10 REG."[21] In the context of the Property Act, state property offices no longer make such an effort.

There are also regulations specifying that restitution claims not filed before specific deadlines should be transferred to the successor organizations. According to Article 11 REG, entitled persons were allowed to file claims from the time the law went into effect (November 10, 1947) until December 31, 1948. The successor organization was also entitled to submit claims until December 31, 1948, but these had to be submitted after May 10, 1948. In other words, the entitled claimant was given a head start and the successor organization did not achieve legal status as beneficiary before December 31, 1948. (The Property Act contains no such provision. There have been cases in which title was transferred to the JCC before the registration deadline expired!). The British regulations and the REAO conformed with the American regulations, albeit with different deadlines.

In any case, preference was given to the individual claimants, even if they filed a claim later than the successor organization.

Claims filed by ineligible parties (unlike the Property Act) were nonetheless handled in favor of the true heirs (Article 50 paragraph 4 REAO). However, this did not apply if the successor organization also filed a claim.[22]

The successor organizations were not assigned claimant rights when the entitled party expressly waived, in writing and within a specified timeframe, the right to restitution (Article 11, paragraph 3 REG, Article 9, paragraph 3 BREG, Article 10 paragraph 3 REAO). No waiver was possible after the registration period expired.[23] The fact that, despite a waiver by the true claimant, restitution was awarded to the successor organization in 1953 was criticized by Walter Schwarz as a „terrible mistake."[24]

There is nothing in the cited laws about the relationship between the successor organizations and the entitled persons in the event that the latter filed a late claim. These cases already played a significant role at that time. In the comments, the successor organizations were, for the most part, assigned the position of a trustee[25] and the true heir was entitled to demand return of the property from the successor organization.

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[21] OLG (Higher Regional Court) Frankfurt, October 6, 1953, 2 W 894/52, RzW (Rechtsprechung zur Wiedergutmachung / Jurisdiction for Restitution) 1954, p. 5

[22] ORG Berlin, 19.03.1956, ORG/A/1352, RzW 1956, p. 173; also ORG Berlin, 22.12.1958, ORG/A/1966, RzW 1959, p. 209 (ORG = Higher Restitution Court)

[23] CORA (Court of Restitution Appeals) Nuremberg from 08.05.1953, RzW 1953, p. 316 and 1954, p. 5

[24] Walter Schwarz, Rückerstattung nach den Gesetzen der Alliierten Mächte, C.H.Beck München, 1974, S 115 (Walter Schwarz, „Reimbursement under the laws of the Allied Powers," CH Beck Munich, 1974, p. 115)

[25] Kohlhammer comments, ibid p. 351

It is understandable that the successor organizations saw things differently. The JRSO expressly stated that it was not „the representative of individual interests, nor the mandatary for entitled individuals. On the contrary, the organization represents the entire group or class of Jewish victims of Nazi persecution."[26]

The issue of competition between a properly filed claim by a successor organization and a late claim filed by an entitled party was decided with quasi-legal authority in the CORA legal opinion No. 1 from July 27, 1950.[27] This emphasized „the intention of lawmakers to relinquish the rights of the entitled party who was too late in filing a claim."[28]

The court decisions on this issue differed widely and, in some cases, were diametrically opposed. The German Federal Court of Justice (BGH) also saw things differently. In a decision dated February 28, 1955, the court came to the conclusion that the role of the JRSO is only that of a trustee. „The displacement of the real heirs by the Jewish Restitution Successor Organization would essentially mean that the burden of Nazi wrongdoings would be fully borne by those persecuted. The idea of justice, which is the basis of the reparation and restitution laws would, in principle, only be fulfilled if the person who actually suffered the loss would be compensated."[29]

In the dispute it was criticized that claiming private property for collective purposes would be a form of nationalization. The failure to file a claim on time is not always based on the reasons mentioned above or on negligent default. In many cases, it is a result of unawareness of the (repeatedly extended) statutory limitation periods, or because heirs were not aware of the existence of confiscated property.[30]

Those in favor of protection of private legal interests eventually reached an agreement that required the successor organizations JTC and JRSO to set up so-called „equity boards" and that defaulting applicants would be compensated with at least 90% of their accrued assets.[31]

The courts were well aware that the exclusion of the claimant in favor of the successor organizations would present a hardship that would however, have to be taken into account. The entitled claimants could only be directed to „use the assignment procedure (BK/O 53/14)

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[26] Betrachtungen zum Rückerstattungsrecht, Humanitas-Verlag (Reflections on the restitution law, Humanitas Publishing)

[27] According to Article 3 Paragraph 3 of the Regulations of the United States High Commissioner for REG, judgments and advisory opinions of the CORA were binding for all German courts. RzW 1949/50 p. 364

[28] CORA Nürnberg Rechtsgutachten v. 27.07.1950, RzW a.a.O. Dazu Friedrich Biella u.a., Das Bundesrückerstattungsgesetz, C.H. Beck, München 1981, S. 751 f. (CORA Nuremberg legal opinion from 27.07.1950, RzW ibid. Frederick Biella et al, the Federal Restitution Law, CH Beck, Munich 1981, pp. 751)

[29] Cited from Stegemann, the „Conference on Jewish Material Claims Against Germany" as legal trustee of the heirs of property owners expropriated by the Nazis http://www.opinioiuris.de. Reprinted in this issue)

[30] Biella ibid p. 765

[31] Jürgen Lillteicher, Raub, Recht und Restitution, Wallstein Verlag, p. 377 (Jürgen Lillteicher, robbery, law and restitution, Wallstein Verlag, p. 377)

provided by lawmakers for such cases."[32] Within the context of BK/O (53) 14, the successor organizations were expressly „authorized to honor restitution claims, or return or assign assets based on such claims to those persecuted or to their successors for whom they assumed legal status or representation."[33]

German Federal Restitution Act

A unified regulation was not adopted until 1957 with the **Federal Restitution Act,**[34] which specified new deadlines (§ 27 para 2). This even permitted legally rejected or withdrawn applications to be resubmitted (§ 29 para 1). In such cases, the transfer of rights to a successor organization was treated as if it never took place (§ 29 para 3). Here once again we see **priority placed on individual** instead of collective restitution. The law did not address the issue of whether the successor organization would be required to return any collected funds to the entitled claimant.

In the American occupation zone, the Süddeutsche Länderrat (State Council) enacted a law in April 1949 that required compensation for Nazi injustice. After the founding of the Federal Republic of Germany, this legislation was integrated into the federal law and redrafted in 1953 as the **German Restitution Law**.[35]

According to the Restitution Law, compensation for property-related damage is authorized not only for those persecuted, but also for the successor organization. However, the compensation to individuals takes precedence. „If those persecuted or their heirs file a compensation claim for the same property prior to a determination in accordance with § 51 or before a legally binding court decision has been made, the successor organization's right to compensation must be awarded to the persecuted party or their heirs at the time the claim was submitted" (§ 53 BEG). This is also the case when the deadline for filing a claim has already expired and no claim has been submitted. The entitled party is even granted reinstatement rights when he or she was prevented, through no fault of their own, from complying with the deadline.

It took decades to process the claims. Many cases were still ongoing in 1990.

[32] ORG Berlin from 22.12.1958 – ORG/A/1966, RzW 1958 p. 209

[33] BK/O (53) 14, Gesetz- und Verordnungsblatt für Berlin 1953 S. 323 (BK/O (53) 14, Law and Ordinance Gazette for Berlin 1953 p. 323)

[34] Bundesgesetz zur Regelung der rückerstattungsrechtlichen Geldverbindlichkeiten des Deutschen Reiches und gleichgestellter Rechtsträger - BrüG (German Federal Restitution Law) from 19.07.1957, BGBl (Federal Law Gazette) I p. 734)

[35] Bundesergänzungsgesetz zur Entschädigung für Opfer der nationalsozialistischen Verfolgung (Federal Supplementary Law for Restitution to Victims of Nazi Persecution) from September 18, 1953 (BGBl I S. 1387)

Legal position after 1990

After the accession of the GDR, there was deliberation on whether the restitution laws should be extended to the new federal states. This idea was rejected and instead, the Property Act was passed in the final weeks of the GDR and integrated into the unification agreement as an ongoing law.

The agreement from September 12, 1990 about the final ruling with respect to Germany[36] does not contain any provisions for compensation. The Joint Declaration of the Governments of the German Democratic Republic and the Federal Republic of Germany for Outstanding Property Issues from June 15, 1990[37] also does not say anything about the victims of the Nazi era but refers in its introductory sentences to the fact that „the division of Germany, the resulting migration from East to West and the different legal systems in both German states ... led to numerous pecuniary problems that have an impact on many citizens of the German Democratic Republic and the Federal Republic of Germany." „In resolving the pending property issues, both governments believe that a reconciliation of the various social interests can be achieved." A reconciliation of social interests is also highlighted in the agreed benchmarks (3.b).

The focus here is on the relations between the citizens of the two German states. A reconciliation of social interests does not relate to the victims of Nazi persecution. However, a reconciliation of social interests is brought into play in the rulings of the Federal Administrative Court and the Federal Constitutional Court related to the justification of the application deadlines in § 30 of the Property Act. This also applied to Jewish claims.[38] The courts apparently lack sensitivity and historical understanding.[39]

Property that was looted in the period from January 30, 1933 to May 8, 1945 was not listed in the Application Regulation[40] from July 11, 1990. These assets were only included in the revised edition of the regulation from October 5, 1990 with (§ 1, para 2).[41] Corresponding claims can also be registered by the successor organizations in line with the intent of the restitution laws or by the JCC (§ 2 para 1).

[36] The so-called 2+4 Treaty, (BGBl II 1990, p. 1317)
[37] GBl DDR (Law Gazette of the GDR) I, No. 64, p. 1977
[38] This is the basis of criticism in my article „The Federal Constitutional Court and § 30a of the Property Act," ZOV 5/2010, p. 212
[39] An absolute necessity according to Brozik in a letter to the President of BAROV. BAROV series, issue 6, p. 96
[40] GBl DDR I, 1990 p. 718, revised version from August 3, 1992, BGBl I 1992, p. 1481
[41] Third regulation on the filing of property rights claims, BGB I 1990, p. 2150

The JCC is not mentioned in the Property Act of 1990, which includes claims on the basis of persecution between 1933 and 1945 in § 1, para 6. It wasn't until the 2nd Property Rights Amendment from July 14, 1992, that the JCC was assigned new duties as the successor organization. According to § 2 para 1 of the Property Act, the JCC is deemed the legal successor for claims not submitted by entitled Jewish claimants or their successors (or cannot be submitted because there are no entitled survivors). Here once again we have unclaimed property for which there is no heir.

The main objective of the 2nd Property Rights Amendment was to speed up the investment process and assign priority to investment, as well as to introduce a claim deadline. This is the point at which the JCC was named in the Property Act.

As with post-war legislation, the JCC exercised its influence and was included in 1992 in the negotiations of the Bundestag Interior Committee and the Legal Affairs Committee.[42] On March 10, 1992, the JCC expressed its opinion on the draft law from January 21 1992. „We can not help but conclude ... that the Property Act is a law that, within the scope of its intention and objectives, exclusively applies to the loss of assets during the period of GDR existence. The wording of § 1 para 6 will not change this and thus, disregards the interests of those persecuted."

The JCC was undoubtedly right in its assessment. The proposed changes to the Property Act focused almost exclusively on issues related to investment priority and contained passages that were unacceptable for a group of people of which 90% live abroad.

In further comments from March 23 and from June 1, 11, 16 and 23, 1992 the JCC proposed a supplement to § 1 para 6 that was integrated into the Property Act. These included a reference to the REAO and the assumption that the property was lost.

The vast number of individual proposals cannot be addressed in the scope of this article. Therefore, the following comments focus exclusively on issues related to heirless and unclaimed assets.

The JCC vehemently opposes proposals to grant exemptions to the limitation period outlined in § 30a. The organization suggested the following: „Unless the Jewish claimant or his successor personally submits a claim prior to December 31, 1992, the successor organizations or the Claims Conference assumes the rights of the Jewish victim in accordance with § 2 of the Property Rights Amendment and thus claims title as the legal successor. The filing of a claim by a person not entitled works in favor of the true claimant or successor organization or

[42] The following observations are based on materials from the National Archives, the Archives of the Bundestag and the Federal Ministry of Justice.

the Claims Conference in accordance with § 2 para 1 of the Property Rights Amendment. The investigations are carried out in accordance with § 31 para 2 Property Act ex officio. Should there be any indication of a seizure of a Jewish victim's property, the Claims Conference must be notified.“ At the same time, the JCC was concerned that the late coming heirs would be included in line with § 31 para 2 of the Property Act.

Those actually entitled to compensation would, of course, have been happy to have benefited from claims submitted by the JCC. They would have also liked to be informed of any property seizures. Unfortunately, § 31 para 2 of the Property Act lags behind the allied laws.[43]

Similar to the military legislation, the JCC demanded that claims submitted by ineligible parties should benefit the JCC. This and other proposals were not included in the second Property Rights Amendment.

At the meeting of the Reparation Subcommittee of the Internal Affairs Committee on June 4, 1992, Dr. Brozik explained the JCC concerns. He urged that there should be no exceptions to § 30a. He said that no applications should be accepted after December 31, 1992. Other parties „should not be given an opportunity to file a follow-up claim after an invalid claim had been submitted. This must also apply to the CC.“ In the interest of completing the application process, the JCC would have to bite the bullet. (The treatment of global claims[44] and, ultimately, the option to submit new applications later changed the way this was handled in practice.)

But at the same time, the JCC demanded the rejection of the substantiation requirement and the recognition of global applications. They claimed that the rejection of applications due to lack of clarification, in accordance with § 31 paragraph 1b, was unacceptable.

According to the JCC, the transfer of heirless property assets that were not claimed in time to their benefit should not be called into question, because the JCC would not be able to use the funds for Holocaust survivors and would have to build up capital reserves. The organization was concerned that it would receive later claims by heirs and was quasi not in a position to serve as bank.

Regarding the relationship between the JCC and entitled claimants, the JCC referred to the many legal decisions of the ORG (Higher Restitution Court).

Payments made to entitled claimants through the JCC Goodwill Fund had not been thought of at the time. On the contrary: in the early postwar years, the Higher Restitution Court

[43] Unfortunately, in practice, the official investigations did not include the files of the earlier restitution proceedings.

[44] See article by Fritz Enderlein, „Restitution bypasses victims: Why the German government needs to take immediate action!“ ZOV 4/2010 p. 170

rigorously rejected late applications and awarded assets to successor organizations even when the original owners were still listed in the land register,[45] or when securities were deposited in a portfolio with their name. Consequently, the JCC was of the opinion that all funds from unclaimed property assets should be used to improve living conditions for Holocaust survivors.

The JCC supported the idea of integrating the REAO regulation into the Property Act, but also suggested that the rulings of the Higher Restitution Court in Berlin be binding. This proposal was, however, rejected.[46]

The JCC complained that the exclusion of state succession was missing in the draft. This was corrected in the finalized regulation. It was claimed that the rights of the JCC were also limited by the provisions relating to the maintenance of heirless property assets.

The approved regulations and their practical application led to an expropriation of those who were too late in filing their claims.[47] Was this the intention of the Federal Republic of Germany? In a parliamentary meeting on April 29, 1990, Federal Justice Minister Dr. Kinkel said that the focus should be on individual justice in the rule of law. In accordance with the rule of law under Article 20 of Germany's Basic Constitutional Law and the right to own property under Article 14, the heirs of Holocaust victims are demanding acceptance of their claims.

When is a property asset unclaimed? In § 2, the Property Act speaks of claims, „which have not been filed by Jewish claimants ... or their successors." At this point, nothing is said about when the claims would need to be filed. A time limit was then included in the newly integrated § 30a. The idea was to regulate claims by entitled Jewish victims or their successors that were not submitted *within the time limits set out in the Property Act.*

But what about the claims that have been filed in the past? Would they not have to be reactivated? There have been numerous cases in which those persecuted filed claims for restitution or compensation immediately after the war, or in the 1950s, but were rejected because these assets (real estate, businesses) were located outside the Federal Republic of Germany. The failure to reactivate these cases is regarded as governmental wrongdoing.[48] The court rulings in such cases indicate doubt as to whether there was governmental wrongdoing.[49]

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[45] ORG judgment from December 9, 1957, RzW 1958, 97

[46] The Federal Administrative Court has repeatedly made reference to the REAO rulings.

[47] Fritz Enderlein, Expropriation due to § 30a of the Property Act, ZOV 5/2009, p. 219

[48] Fritz Enderlein, „Governmental wrongdoing" Jüdische Zeitung September 2012 p. 4. Reprint in the Berliner Anwaltsblatt November 2012, p. 392

[49] Federal Administrative Court (BVerwG), 01.03.2010, 8 B 87.09

Another category of claims that had no chance of settlement at the time they were filed are the claims for compensation under the U.S. Foreign Claims Settlement Program. These claims were not settled until after the lump-sum compensation agreement between the FRG and the USA on May 13, 1992. The JCC was excluded as a legal successor when entitled claimants opted for compensation under this agreement, even though the claim was not filed in accordance with the Property Act.[50] When, on the basis of this decision, an entitled claimant is not permitted to file any further claims under the Property Act, then this should most certainly apply to the JCC as a mere subordinate claimant.[51]

In a ruling dated March 16, 2012, the Federal Court of Justice agreed with the views expressed in the literature that „the restitution law primarily serves the interests of the injured party.“[52]

In contrast to the preceding legal regulation, the Property Act contains no similar provision for a waiver by the entitled claimant. For whatever reason the claimant waived the right to file a claim,[53] subsequently withdrew a claim, or did not appeal the rejection of a claim,[54] this had no bearing on the admission of the JCC as a claimant. In fact, property assets were even transferred to the JCC against the will of the entitled claimant.[55]
§ 2 para 1 sentence 3 of the Property Act does not directly mention the relationship between the JCC and Jewish claimants, nor does it say that the JCC serves as a trustee for the entitled claimant.[56] Although this clarification has been frequently called for, perhaps it is superfluous. Because it can be concluded from the intent and purpose of the regulation. A reasonable interpretation would regard the JCC as a trustee.[57]
Looking at things from this perspective, there have been entitled claimants rejected by the JCC who filed a lawsuit against the JCC in Israel. These cases are still pending.

[50] Federal Administrative Court (BVerwG), 29.11.2001, 7 C 9/01
[51] Leipzig Administrative Court, 20.04.2001, 1 K 1118/96
[52] Federal Court of Justice (BGH) V ZR 279/10
[53] Federal Administrative Court (BVerwG), 29.04.2004, 7 B 85/03
[54] Federal Administrative Court (BVerwG), 28.04.2004, 8 C 12/03
[55] The case of the Egyptian collection, Berlin Administrative Court 29 K 126.09, judgment of 26.05.2011, received substantial press coverage. See Süddeutsche Zeitung article from June 20, 2011: „ Unverzeihliche Groteske“ (unforgivably grotesque)
[56] Perhaps this is one of the „unclear aspects“ of the Property Act that are attributed to the time constraints in preparing the law. Burkhard Hess, Intertemporales Privatrecht, Mohr Siebeck 1998, p. 264
[57] Stegemann, ibid; Hannes Hartung, Kunstraub in Krieg und Verfolgung (The looting of art during the war and persecution), p. 174 regards the JCC as a trustee.

Entitled claimants have sued the Federal Republic of Germany because the structure of the Property Act and its practical application encroach upon the right to own property in accordance with Article 14 of Basic Constitutional Law and therefore violates a basic human right.[58] The property looted by the Nazis belongs to the families from which it was stolen.[59] After the Second World War, the Allies were intent on safeguarding any remaining Jewish property assets – not only heirless property, but also property unclaimed before specified deadlines in order to use these assets to alleviate suffering of survivors. But the situation has changed dramatically since the 1940s and 1950s. The times in which claims were not followed up on, because of sentiments toward Germany are over. „In the meantime, the historical distance has grown larger. The sentiments (of the time)... can hardly be understood today.“[60] There are now well-established relations between the Federal Republic of Germany and Israel. Today's beneficiaries are, for the most part, already in the next or subsequent generations.

In the years immediately following the Second World War, Germany was economically not in a position to pay compensation. This changed with the economic boom after the currency reform and was expressed in the Luxembourg Agreement. Over the decades, several agreements have been concluded and a growing number of people have become eligible for support programs.[61] The most recent convincing example was an agreement concluded in July 2012 and ceremoniously signed in November to support 80,000 Jewish Nazi victims living in the former Soviet Union.

A close collaboration has developed between the JCC and the German government. As part of the annual consultations, the JCC presents a report on the use of the funds provided. The more money that is made available for these funds, the less entitled claimants will be forced to fight for their rights to ownership.

The JCC statements supported the Terezín Declaration[62] demanding the return of confiscated property to former owners or their heirs. Nevertheless, it required sustained international

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[58] Fritz Enderlein, Still Waiting for Restitution, ZOV 4/2012, p. 9
[59] Fritz Enderlein, Does Germany deal in stolen property? ZOV 6/2010, S. 301
[60] Dr. Schäuble, ibid
[61] The JCC published the following overview valid as of October 2012 (in millions of euros):
Hardship Fund: 924.375
Article 2 Fund: 2,952.046
Central and Eastern European Fund: 422.620
Holocaust Victim Compensation Fund: 4.328
Program for Former Slave and Forced Laborers: 1,147.861
Fund for victims of medical experiments and other injustices: 17.417
These figures total approx. 5.5 billion euros
[62] Guidelines and Best Practices for the Restitution and Compensation of Immovable (Real) Property Confiscated or Otherwise Wrongfully Seized by the Nazis, Fascists and Their Collaborateurs During the

pressure before the JCC was ready to set up the Goodwill Fund in line with the equity scheme. This fund was used (intermittently) until 2004 to support Nazi victims or their heirs with (ultimately) 80% of their entitlement.[63] According to the Berlin Administrative Court, the possibility of obtaining money from the fund excludes forbearance for those who missed the deadline.[64]

Under international pressure from the British Board of Deputies and other organizations, along with many entitled claimants who filed too late, the JCC decided in July 2012 to launch a new Goodwill Fund containing EUR 50 million. The „Late Applicants Fund" is valid for a period of two years, until December 31, 2014.[65] Unlike the old regulation, this fund would pay only 25% instead of 80% of the claim, and only up to EUR 50,000 per property. An additional payment is possible if there is money left in the fund after the application period has expired. It is already foreseeable that no additional payments will be forthcoming unless the amount of the fund is not at least doubled.

The entitled claimants regard the settlement proposed by the JCC as unsatisfactory. The justification offered by the JCC, i.e., that the organization needs the funds from retransferred property or other compensation to support Holocaust survivors, appears less and less credible. Especially since the Federal Republic of Germany is providing more and more funds to the JCC for special assistance programs.

Conclusion: It is high time for the JCC to rethink its policies. At the same time, the German Federal Government should use its influence on the JCC to ensure that the few remaining heirs who were previously excluded receive their rightful inheritance.

Holocaust (Shoah) Era Between 1933-1945, Including the Period of World War II, http://forms-claimscon.org/restitution/property-document-plenary.pdf

[63] For subsequent exceptions made for so-called medical cases, see www.claimscon.org

[64] Berlin Administrative Court from 29.04.2009, 22 A 141.06

[65] www.claimscon.org/?url=LAF