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Authority WNO 968071
By AT NARA Date 7-7-99

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A P P E N D I X ADIRECTIVE TO THE COMMANDER IN CHIEF, U. S. ZONE OF OCCUPATION, GERMANY, ON RESTITUTION OF CULTURAL PROPERTY.

1. This Directive is issued to you as Commander in Chief, U.S. Zone of Occupation, Germany, and U.S. member of the Allied Control Authority, Germany.

2. Subject Directive applies to the disposition of certain categories of cultural property in Germany. It amends relevant provisions of Directives SWNCC 204/2 and SWNCC 204/5 as amended.

3. You will seek to obtain agreement in the Control Council of the application in the other zones of occupation of the policies laid down in this Directive. If, in your judgment, it appears impossible to obtain quadripartite agreement, you will seek to obtain bipartite or tripartite agreement.

4. You will proceed with the application of this Directive in your own zone even prior to agreement.

5. Cultural property removed to Germany during the Nazi regime from other countries, whether United Nations, ex-enemies, or otherwise, as a result of acts of force or duress, or of other circumstances constituting dispossession, shall be subject to restitution without qualification.

6. Cultural property removed to Germany during the Nazi regime from other countries as a result of normal commercial transactions against adequate compensation shall be subject to restitution only to the extent that there is a showing, by the competent agencies of the respective countries, that the exportation of the property to Germany constitutes a loss ~~to~~ ^{of} ~~the~~ national cultural treasures which would normally not have been permitted.

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7. Cultural property removed to Germany during the Nazi regime from other countries in the form of gifts to Nazi officials and institutions from officials of States collaborating with Germany or from quisling officials of occupied nations, shall be subject to restitution.

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By <u>AT</u> NARA Date <u>7-7-99</u>

C O P Y

APPENDIX B.

THE FOREIGN SERVICE
OF THE
UNITED STATES OF AMERICA

AMERICAN EMBASSY

Rome, Italy, February 23, 1947

No. 147

CONFIDENTIAL

SUBJECT: Restitution of Italian Works of Art Now in Germany

THE HONORABLE

THE SECRETARY OF STATE,

WASHINGTON

SIR:

With reference to the Department's Confidential telegram #159, February 3, 1947 and the Department's Secret Circular Airgram of February 7, 1947, I have to honor to transmit herewith, in translation, a report submitted to the Office of the Cultural Attache of this Embassy by G. CASTELFRANCO, Assistant Chief of the Italian Mission for the restitution of Italian works of art now in Germany:

"This is a brief exposition of the problems I dealt with during my mission at Hoechst and Munich regarding the restitution of works of art now in Germany.

"I. When the possibility of an offensive by the Fifth Army on Montecassino became apparent, the German Military Command, which by that time had acquired complete control of the region, decided to evacuate the works of art from Naples which had been placed in the Convent for custody. The evacuation was effected at the beginning of November 1943; but it is not known exactly where the material was kept during the two succeeding months. However, on January 4, 1944 it was delivered to the Italian Art Custodian (Amministrazione

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Italiane delle Arti) in Rome, from where it was later turned over to the Vatican for safekeeping. The delivery was accompanied by a solemn military ceremony but the material was in closed crates without itemized lists or inventories. Owing to several incidents one of my colleagues began to entertain a suspicion that single pieces have been removed, but no verification was possible since there was no information as to the place from which the objects came and the German officers did not permit an investigation.

"As soon as Rome was liberated, Colonel DENWALD, Chief of Monuments, Fine Arts and Archives Subcommission of Allied Commission, came from Naples with the lists of the works sheltered at Montecassino, which had been given to him by the authorities in Naples. He found that several pieces and crates were missing. Officers of the Goering Division had, in fact, loaded one or two trucks with the objects which had seemed most important to them, and which were most accessible and had arrived in Berlin with this considerable gift for Marshall Goering.

"The German version is that Goering did not accept the gifts, but placed the works of art at the disposal of Hitler, who did not have the time to make decisions regarding their destination. I have heard other rumors to the effect that the high German officials were not able to agree as to the division of the invaluable booty. Whatever the case may be, the works of art were removed from the crates and kept in Berlin without any notification being given even to the Fascist Government. The increased severity of the air raids later lead to the transfer of the works of art to the grottos of Alt-Aussee, one of the most famous salt mines of the Salzburg region.

"The sculptures and goldsmiths' objects were roughly packed and transported during the second half of March 1945. Soon after victory the American officer of the Monuments, Fine Arts and Archives Sub-Commission, who had been notified of the disappearance of the objects from Naples, identified them and had them shipped to the Central Collecting Point in Munich.

"In

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"In the case of these works of art from Montecassion we are confronted with a typical and simple case of robbery perpetrated by fanatic conquerers who wished to enrich their superiors with whatever they could take away from the occupied country.

"The importance of this collection of works is enormous. It comprises about four-fifths of the collection of antique goldsmith's masterpieces, the Danae is included; the Blindmen of Breughel; a Parmigianino, a Luini, a Sebastiano dal Piombo, a Palma il Vecchio of very high quality; a beautiful Tiepolo; the armor of Charles the Fifth, sent to Naples a few years before for an exhibit, etc.

"After I had checked at the Central Collecting Point in Munich, the missing pieces proved to be few and not of great importance - a gift silver chased plate (second half of the XVth century) from the Museo degli Argenti of Florence, a watercolor by Ligozzi, and, perhaps a few pieces of antique goldsmiths' art. (The remainder of the goldsmiths' collection is now being checked in Naples). It may be said that what is still missing does not amount to one per cent of what has been recovered. - - - - -

"II. - ALTAR OF VIPIITENO -- Vipiteno (Sterzing), a small town about 20 Km. south of Brenner Pass, was in possession of a very interesting large altar, sculptured and painted in 1458, which documents of the time connect with the name of Andrea MULTSCHER. The painted part is composed of four large panels representing scenes of the Life of Mary on both sides. It is of great importance for the history of German painting of the XVth century and is really a very fine work. In January 1941 Mussolini, acting in violation of Italian law and in spite of the protests of the inhabitants and the opposition of the Amministrazione delle Arti of that time, removed the four panels from Vipiteno and sent them to Goering as a gift.

"As soon as the Monuments, Fine Arts and Archives Sub-Commission investigated the problem, it stated categorically that the paintings must

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be returned to Vipiteno, their home town, to which they obviously belong for historical reasons. At the Central Collecting Point in Munich the four panels were prepared for shipment together with the works from Montecassion. The Ministry of Public Instruction has already ordered that as soon as they come back to Italy they are to be returned to Vipiteno. There is no plausible reason why because of the unfortunate Nazi-Fascist alliance, South Tyrol should be deprived of one of its most beautiful works of art to the enrichment of German museums. Furthermore, I may add that the Bavarian Government, itself, acknowledged this when it asked me in Munich, for the right to show the paintings at an exhibition of German painting of the XVth and XVIth centuries. I willingly gave permission as the panels represent, in fact, one of the most important documents of the artistic activity of the German people in the fifteenth century.

"III. - GOERING-VENTURA EXCHANGE -- Another problem I submitted to the officials of the Central Collecting Point in Munich was that of the restitution to Italy of the twelve works of art given by the art dealer VENTURA of Florence to Goering in exchange for nine paintings in Goering's possession as a result of the spoliation of French Jews. In view of the fact that the Italian Government has sequestered the works in Ventura's possession and returned them to the French Government according to the provisions of Legislative Decree No. 601, dated May 24, 1946, Italy is entitled to get back the works that were given in exchange for them. Of course the twelve pieces will not be returned to the art dealer Ventura, but will be confiscated by the Italian Government, if for no other reason, than because they were illegally smuggled out of Italy.

"IV. - WORKS OF ART ILLEGALLY EXPORTED -- According to Italian laws, which have been in force since 1909, the exportation of works of art is regulated by certain provisions; i.e. a person who desires to export a work
of

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of art must submit it to the Office for the Exportation of Works of Art (Uffici per l'Esportazione delle Opere d'Arte), declare its value, pay duty, and then, the Italian Government may, if it considers it advisable, purchase the object at the stated value and even in cases of objects of particular importance - altogether refuse permission for exportation. The violation of this law incurs sanctions similar to those applied for contraband. Nazi officials, however, and above all Goering, did not pay much attention to it. It appears that Goering took to Germany in this special train the twelve works obtained from Ventura as an exchange for the paintings looted in France. Investigation is being carried on concerning other pieces some of which are of great importance and were purchased by Goering in Italy. I did not raise this question during my stay at the Collecting Point in Munich as I did not yet possess all the necessary data. I merely informed Captain RAE, Director of the Collection Point verbally. However, I believe that the Italian Government will take the necessary steps against the repeated violations of Italian laws on the protection of our artistic patrimony, as soon as the present investigation is completed.

"As you see, I have limited myself to handling only the cases in which the Italian right to restitution was more obvious. I have informed Captain Rae of everything in written reports and through repeated personal exchanges."

This report, dated Rome, December 30, 1946 concludes with an expression of thanks for our interest and is signed by Mr. Castelfranco.

Respectfully yours,

For the Ambassador

DAVID McK. KEY
David MdK. Key
Counselor of Embassy

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By AI NARA Date 7-7-99

APPENDIX C

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OMGUS Berlin Germany

20 June 1947

INFORMATION

HQ EUCOM Frankfurt Germany

Number: WARX 80586

From WDSCA. Reourad Nov 45 WX 99226

Report from G. Castelfranco, Asst Chf Ital Mission restitution Italian works of art to AMEMBASSY Rome mentions presence in Munich collection point of Vipiteno Altarpiece and 12 paintings Goering-Ventura exchange acquired by Goering in 42 and 43. Ital Govt desires return these items on ground that transactions were equivalent to looting. Ital Govt said to be investigating other transactions of similar nature by which Goering collection acquired Italian art works between 41 and 43, often in violation of Italian Law (export from Italy without permit from Italian Govt etc). Case of Vipiteno Altarpiece and Ventura exchange documented by OSS, art looting investigation unit, consolidated interrogation report (CIR) number 2, PP 98, 99 and PP 106, 136 to 139, attachments 56-8, 62 respectively. See also cir number 2 PP 96 to 109 for description of Goerings other acquisitions in Italy and methods used.

State Dept favors extension of restitution policy to articles described notwithstanding dates of looting prior to those set forth in directive WX 99226 and Peace Treaty Italy. Although done with connivance then recognized Govt of Italy, considered to be injury to Italys cultural heritage in violation Italian Law. Your comments requested with particular reference amount of cultural property which might be subject to return under such policy if so extended.

End

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Authority AND 968071By AT NARA Date 7-7-99

APPENDIX D.

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FROM: OMGUS Berlin, Germany sgd Keating

TO: AGWAR for WDSGA GO

Info: EUCOM

NR: CC 9693

27 June 1947

Reurad WX-80586 and ourad CC-9674. It is recognized that Vipiteno Altarpiece (Sterzing Altarpiece), Goering Ventura exchange and a few other similar examples have no valid claimant in Germany and probably should be returned to Italy. They do not however fall under existing directives with the possible exception of a very broad interpretation of your WX-94503 which stated that peace treaties spell out certain minimum restitution rights but that United States Government is free to carry out more generous restitution program and we believe they should be treated as special case with specific instructions from you. Believe safeguards should be included that unique objects such as these should be returned to actual point of origin and not to some other Italian agency or place. Note that if used as a precedent such arbitrary exceptions to dates might become the basis for claims against other cultural objects removed from any claimant country outside of stipulated dates. ~~Total amount of possible claims under contemplated dates.~~ Total amount of possible claims under contemplated extension of policy is probably not great but may include important material. We have no way of estimating it at present. No action being taken on above mentioned items pending receipt specific instructions.

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Authority WNO 968071
By AT NARA Date 7-7-90

APPENDIX E

SECRET

FROM: CSCAD ECON
TO: OMCUS Berlin Germany
No: WANK 86784

20 September 1947

* * * * *

3. Reurad CC 9693, restitution of items mentioned will be submitted to SWNCC for ad hoc decision. Please supply full facts known to you including "other similar examples", nothing further.

* * * * *

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Authority WNO 968071By AT NARA Date 7-7-99

APPENDIX F

SECRET

From: OMGUS Berlin Germany sgd Hays

To: AGWAR for CSCAD ECON

Info: USEA; EUCOM

Nr: CC 1838

3 October 1947

Reur WX 86784 par 3 and our CC 9693 cases similar to Sterzing altar include 1 with gifts to Hitler. Goering or other Nazis in Germany from "Grateful citizenry" or officials in Austria and Italy contrary to the law of the land; and another 11 pictures believed to have been exported from Italy without permit by Ministry of Education under National Treasures Law then and still valid. Not all the above have been found and placed under control, but typical examples include antique marble Venus of Leptis Magna presented by Balbo to Goering in 1939 and 1940; Lancellotti Discobolus sold to Reich for Munich at order of Mussolini in June 1938; Memling Portrait purchased by Phillip of Hesse for Hitler in 1941 ^{from} and Corsini; Markart Genre Piece sequestered from Florence in 1940 presented to Hitler by Mussolini; painting by Listz taken from Abbey in Salzburg and presented to Goering 1938; 2 15th century wood carvings removed from Vienna Academy of Fine Arts in 1943 by Baldur Von Schirach for birthday present to Goering; 10 gold ornaments from Zsolnay collection Vienna acquired by posse in 1940 and presented to Hitler.

Urad 80586 dated 20th June 47 covers details of transaction re Vipiteno (Sterzing) altar and references to documentation. This headquarters desirous of disposing of these items but wishes specific instructions in view of fact that they are not included in quadripartite definition of restitution are not included in terms of peace treaties, and are not specifically included in other instructions.

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Authority NND 775651

By WMM NARA Date 7/27/88

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SECRETDoc. 360
Copy DEUROPEAN ADVISORY COMMISSIONRestitution of Articles of Cultural Value

dated 3 Mar 45, covering letter, E.A.C. (45)22.

Prominent among the various articles which the Germans have removed from the occupied countries, whether by looting or by transactions bearing a semblance of legality, (Inter-Allied declaration of 5th January, 1943), are works of art, books, archives and, in general, the whole cultural inheritance of these countries.

The extent of this spoliation and the supreme importance of cultural values necessitate the adoption of particularly severe measures to ensure the return of such property to the looted countries, or, failing this, its replacement by other property of the same kind (cf. E.A.C. (45)3 of 9th January, 1945). The Germans have already taken precautions to conceal articles stolen in the occupied countries, both in Germany and in foreign countries. To confine, therefore, the measures suggested to a mere general obligation to restore looted property would be to put a premium on its concealment and on fraudulent practice by the Germans.

The French Delegation consider that the following action should be taken:-

(1) As for the date of surrender, the alienation, cession, transfer or export of any work of art or of any article of artistic, historical, scientific, religious or cultural value (called in this Memorandum "articles of cultural value") shall be forbidden, except where specifically authorized by the Allied Representatives.

(2) All articles of cultural value which have been taken away by Germany during the occupation of the whole or any part of the territory of an allied state shall be restored or replaced.

Such property must be restored if it is identified and found to be in a good state of preservation. Otherwise, it must be replaced by other articles of cultural value. Replacement may always be demanded if the looted property has not been identified within six months after surrender.

(3) In order to ensure that replacement is carried out, articles will be selected from museums and public and private collections in enemy territory by Allied authorities appointed for this purpose.

(4) The articles will be handed over free of any encumbrance or obligation whatsoever. All measures necessary to ensure restitution will be taken by the Allied Representatives, who will determine the procedure to be followed.

(5) Germany will immediately supply the Allied Representatives with all information, records, catalogues, inventories and documents likely to be of assistance in retrieving property which has been removed or in replacing the same.

(6) A special section of the organisation proposed for dealing with the problem of Restitution (E.A.C. (45)3) should be set up to carry out the measures proposed above. It would be advisable that this section should be established immediately in order to study the applications of the various States concerned.

The French Delegation consider it advisable that these measures should be notified to the military authorities before surrender in order that they can be given immediate effect in those parts of German territory which have already been occupied.

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DECLASSIFIED
Authority <i>NND 775451</i>
By <i>WPH</i> NARA Date <i>7/27/82</i>

POLICY -

Reparations + Restitution

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E.A.C. (45)3.
9th January, 1945.

with corrections as of 12th January, 1945.

EUROPEAN ADVISORY COMMISSION.RESTITUTION.Memorandum by the French Delegation.

MFA & A (US)

Doc No. 361
Copy of Copy No. 63

Copy No. A

Date 25 Mar

Source RD + R

Equity demands that Germany, after her defeat, should be called upon to make good, as far as possible, the damage done on the territory of all Allied countries by military operations, and the spoliation which she has carried out while in temporary occupation of certain allied countries.

The occupied territories have been exploited according to a plan so systematic and so extensive that is presents, by virtue of its duration and the combination of force and trickery employed, a new departure in history which calls for special study.

The United Nations, in their declaration of 5th January, 1943, have, moreover, proclaimed their determination to put a stop to the methods of dispossession which Germany has employed in the countries she occupied, and have also declared invalid any transfers or dealings of any description whatsoever by which such looting has been effected. This declaration applies "not only to transfers or dealings which have taken the form of open looting or plunder" but also "to transactions apparently legal in form, even when they purport to be voluntarily effected".

As soon as she has surrendered, therefore, Germany must be forced to make good the losses caused by her deliberate policy of looting. Such must be the first economic sanction for her war of aggression.

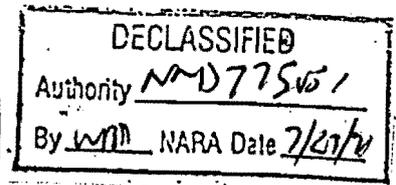
Of course, while making Germany contribute towards the economic restoration of the countries which have been despoiled, the United Nations will to a certain degree maintain the productive capacity of Germany, and this may clash with certain measures of economic disarmament found to be necessary. But the same criticism may be applied to other proposals which reveal an anxiety to keep up a certain standard of living in Germany. It will be necessary to formulate a general economic policy for Germany which will hold the scales even, for the benefit of the Allies, between economic activities maintained for reparation purposes and those which must for security reasons be eliminated, without prejudging the economic status of certain parts of German territory which may be made subject to a special regime.

Thus, Germany's obligations in regard to compensation for what she has looted in occupied territory must be fitted into the general framework of the economic policy to be imposed on Germany.

- I. The simplest remedy would obviously be the restitution by Germany to the looted countries of the actual property of which she has deprived them, or failing these, of identical property. Whenever this method can be applied, it will constitute the best possible form of compensation. Thus, in the special case of works of art or cultural objects, gold or precious metals, Germany would be bound to provide either identical or equivalent items.

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This first method will not be sufficient, however, to compensate for the bulk of the looting done by Germany, because, on the one hand, very many items will not be retrieved or will be unidentifiable in Germany, and on the other hand identical or equivalent items will not be available in sufficient quantity.

To be restricted to this method would be tantamount to asking the looted countries to forego a large proportion of their legitimate claims.

- II. The French delegation, therefore invites the European Advisory Commission to consider a system under which Germany's resources would be earmarked on a priority basis for making restitution and deliveries to the States which have suffered from her systematic policy of looting.

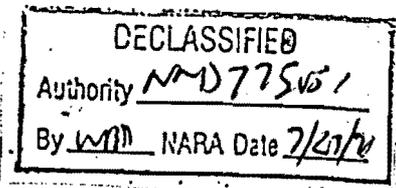
Many of the articles found in Germany will prove to consist of components stolen in occupied countries and there incorporated into the article at some stage or other of its manufacture; in other cases the Allied property will be unrecognisable. The looting which she carried out during long years of occupation has enabled Germany to incorporate in her own economy property seized in the occupied countries; if the German economic structure is to be regarded as a single unit and its products divided proportionally among the Allies without taking account, as the French delegation suggests, of the looting done in the occupied countries, the result would be that, as it could not be identified, Allied property extorted by Germany would be shared out amongst the other Allies. Taking German property as a whole, before any question of general compensation can arise, a preliminary operation - the restitution of looted property - will be required. This right of priority must of course, be limited, but the same reasons which make it justifiable automatically limit it to the assets existing in Germany at the time of her surrender. To this extent the French delegation consider that the priority demanded for the invaded countries, which have been deliberately exposed to hardship by Germany, should be accepted. In certain cases the Allied authorities in Germany may possibly consider it necessary to relax the general principles which will be laid down by the European Advisory Commission in order to satisfy certain indispensable needs of the German people (transport, food, for example); but such generosity is only conceivable if the peoples of the occupied countries are granted higher priority; as between two cases of hardships, that of the victim must take priority over that of the thief.

- III. If the property found in Germany is not sufficient to permit of the looted countries receiving "restitution in integrum", it will be necessary to transfer part of Germany's assets. This might be effected on the following lines, always subject, of course, to the immediate requirements of the forces of occupation:

1. Transfer would apply to every kind of property in Germany, e.g. factories, equipment, means of transport, materials, patents, manufacturing processes, and would be supplemented by any supplies of labour, specialist or other, which are thought necessary.
2. Transfer would be prompt. The only limiting consideration would be the necessity of meeting the requirements of the Allied occupation forces.
3. The Germans owning the property transferred would be compensated in Reichsmarks put at the disposal of the Governments benefiting by the deliveries.

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4. The claim on Germany, retained by the countries which have suffered from looting, in respect of the portion of their demands not met by transfers is to be settled simultaneously with the problem of reparation for war damages as a whole.

IV. The application of the above principles assumes a rational limitation of the notion of "loot". Thus, countries which have suffered from German exactions are claiming preferential treatment only in strict proportion to the special damage which they have suffered from German aggression and to the disastrous character of the economic straits to which they have been reduced.

Looting in this sense should be regarded as comprising:

a) the seizure, confiscation or requisition by the Germans of property, rights and interests of any kind whatsoever which are not retrieved in the liberated territories;

b) the "purchase" by the Germans of property, rights and interests of any kind whatsoever, irrespective of the fictitious method of payment adopted by them (handing over of national currency extorted from the occupied State, entry in an unbalanced clearing account, etc.)

This definition includes property, rights and interests owned abroad by the United Nations or their nationals, which have been seized by the Germans in any form whatsoever. This property must be restored in the manner defined above.

V. An Inter-Allied Office should be set up to ensure compliance with the rules laid down above. It might be made responsible for safeguarding looted property, receiving applications from Allied countries, deciding what action to take on them and putting into effect all the measures necessary to that end. The question of the relation between this Inter-Allied Office and the section "Reparation, Deliveries and Restitution", referred to in Article 6(a) of the Draft Agreement of 14th November, 1944, (E.A.C.(44) 11th Meeting) is one that remains to be settled.

Pending the receipt from each of the Governments of the countries which have been systematically exposed to German exactions, of an exhaustive statement of their losses, the French Government consider that an agreement should be arrived at as soon as possible on the actual principle underlying restitution.

M.

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LANCASTER HOUSE,
LONDON, S.W.1.

8th January, 1945.

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AMENDED DEFINITION OF "DISPOSSESSION"

IN IGG REPORT

OF THE RESTITUTION COMMITTEE

The following amended definition of "dispossession" is considered:

"IGG/P(51)58, 9th March 1951,
"Revised Report of the Restitution [Committee] to the Steering
Committee," Explanatory note, page 3.

"Sub-paragraph 1 (a)(1.) Cultural Property

This class of property defined in sub-paragraph (a)
of Annex A is specially privileged in the following ways:-

- "(a) The German holder may not plead that it was bought in good faith, and therefore the phrase "other forms of dispossession" in the definition of "removed by force" (sub-paragraph (e) of Annex A) when applied to cultural property covers ordinary purchase. . . ."

It is recommended that the elucidation of "other forms of dispossession" to include ordinary purchase when art was originally bought by Germans in occupied countries be omitted as but one consideration among many in determining the validity of claims.

The recovery of looted art, which a German holder might plead was originally bought in good faith, can be denied under Annex A (d), when

"identified by the claimant government as having been removed by force at any time during the occupation"

It should be understood that the future recovery program in all countries is based largely upon the voluntary cooperation with their governments, museums, universities, etc., and scholars of good will and should be limited to clearly identifiable loot if international cooperation is expected. Lists of looted art still missing to be recovered in Germany or elsewhere are being circulated and publicized on an international basis.

OKK:LLJ;AFH:ll:ms

March 26, 1951

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Entry 62D-4
Box 28

DECLASSIFIED
Authority WND 968071
By AT NARA Date 7-8-99

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OFFICE OF MILITARY GOVERNMENT FOR GERMANY (US)
(Rear Echelon)
Restitution Control Branch, Höchst, Germany
APO 757 US Army

28 May 1947

MEMORANDUM NO. 6

SUBJECT: Restitution to Ex-Enemy (Non-United) Nations

TO : Restitution Control Branch
Economics Division
OFFICE OF MILITARY GOVERNMENT FOR GERMANY (US) (Rear)
APO 757, U.S. Army

Pending the official revision of Title 19 MGR, you will apply the following rules and regulations to restitution of property to ex-enemy (also called non-united) nations.

1. Restitution will be made to the following non-united nations: Albania, Austria, Bulgaria, Finland, Hungary, Italy, and Roumania.

2. Property will be subject to restitution only of

- a) it is identifiable,
- b) it has been removed by force or without compensation
- c) it has been removed between the following dates:

Albania	25 July 1935 and 15 May 1945
Austria	12 March 1938 and 15 May 1945
Bulgaria	9 September 1944 and 15 May 1945
Finland	2 September 1944 and 15 May 1945
Hungary	15 October 1944 and 15 May 1945
Italy	25 July 1943 and 15 May 1945
Roumania	23 August 1944 and 15 May 1945

3. Household goods, valuable art objects, and other personal property owned and removed by refugees who left their country for religious or racial reasons and who choose not to return to their country will not be subject to restitution.

4. Proof of removal by force or without compensation between the dates indicated above must be submitted upon the filing of the claims. However, in order to prove force, it will be sufficient for the claimant non-united nation to show that the removal was made by general direction of the Nazi puppet government, if any, of the country concerned.

5. Any property restitutable to a non-united nation pursuant to paragraph 2 above, irrespective of whether or not

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was removal by force, may be released to the German economy upon a clear showing that such property is essential to the minimum approved German economy. Requests for such releases will be handled in accordance with the general procedure outlined in our Memorandum No. 3 of 15 February 1947.

6. In cases where restitutable property located in a reparations plant is shown to have been removed by force, as that term is defined for the purpose of restitution to United Nations, the provisions of our Memorandum No. 1 of 7 January 1947 shall apply. Where restitutability is predicated upon the removal by general direction of a Nazi puppet government or without compensation, restitution of property from reparations plants will be governed by our Memorandum 2 of 15 February 1947.

7. In all other respects, the provisions of Title 19 MGR presently in force with regard to United Nations will find analogous application. This applies in particular to form and substance of claims (paragraph 19-203), protection and release of property subject to restitution (paragraph 19-252), and physical removal of property (Part 4 of Title 19).

8. Restitution of motor vehicles will remain subject to the special rules laid down in our Memorandum No. 4 of 1 May 1947.

9. Restitution of rolling stock will be governed by the one-for-one rule applicable to all countries.

10. Works of art and cultural works of either religious, artistic, documentary, scholastic, or historic value including, as well as recognized works of art, such objects are rare musical instruments, books and manuscripts, scientific documents of a historic or cultural nature, and all objects usually found in museum, collections, libraries, and historic archives shall be restored to the government of the country from which such property was taken or acquired in any way, whether through commercial transactions or otherwise, provided the requirement of paragraph 2a and c above are met.

JOHN A. ALLEN
Colonel, GSC
Chief, Restitution Branch

Tel: Berlin 42009

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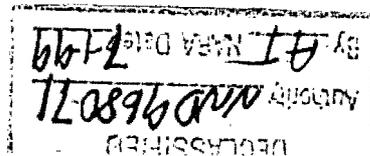
/s/ WILLIAM W. FURIE
/t/ WILLIAM W. FURIE
Major AC
Executive

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JAMES B GOODWIN
Major FA
Chief, Restitution Branch

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Lot 620-4



Allied High Commission for Germany
Petersberg

Press Release No. 347

5 September 1951

Status of Reparations, Restitution and External Assets
Clarified by High Commission Law

The Allied High Commission announced today the enactment of a law clarifying the status of German assets abroad which have been or are being subject to measures of liquidation in the countries where they are located, and of reparations taken out of Germany and of property restituted abroad since the end of the war. The title to the foreign assets covered by the new law had been taken from the German owners by Control Council Law No. 5 in 1945. That law prohibited the former German owner from asserting any right or making any claim to any such property.

A study of the new law will show that it does not impose any new or additional burdens upon Germany, nor does it take any new measures directed against German property or jeopardizing Germany's emerging sovereignty. It merely brings the legal status of the property up to date in line with the actual situation, and, indeed, removes inconsistencies, some of which up to now operated to Germany's disadvantage. Thus, in the countries which it covers, the new law will not apply, as Control Council Law 5 did, to German property that is not vested or liquidated by these countries, nor to Reichsmark securities issued in Germany. It leaves open the question of future treatment of these foreign assets. The Allied High Commission has advised the Federal Government that, as soon as the new law is enacted, Allied and German experts may meet together to examine this problem and to make an expert report thereon.

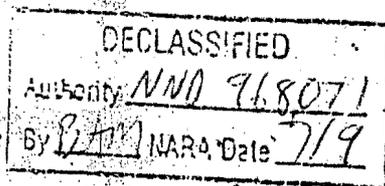
International agreements entered into by the governments of 19 countries at war with Germany and Allied agreements with certain neutral countries ("safehaven" accords) were an effort to avoid the unworkable schemes established for the payment of reparations after the First World War by substituting, for reparations out of current production, the application to reparation accounts of excess industrial equipment and of German external assets. Reparations rendered by Germany under the present agreement compensate the Allies for only a very small part of the damage actually suffered by them.

This new law reflects the fact that in accordance with international agreements arising out of the war, German property located in foreign countries was, under the laws of these countries, taken away from the German owner for the purpose of applying the proceeds of liquidation to the payment of German reparations. The law thus gives binding effect in Germany and on German citizens to transfers effected by other countries under their own laws with respect to German property within their jurisdiction. As regards reparations and restitution removals from Germany, the law extinguishes title of the former owner to such property. In consequence, it precludes any action in German courts challenging the validity of such transfers, deliveries, or liquidations.

The law in no sense provides for new expropriation, vesting or seizure. It does not affect the question as to whether and to what extent the individual owner, whose property was taken and applies to fulfil German obligations, may have a claim for compensation against the Federal Government.

Furthermore, the Allied High Commission law is applicable only to property located in a foreign country prior to the effective date of the law. In the principal countries which have made provision for the transfer and liquidation of German property, earlier dates have in fact been adopted. In any event, the law specifically excludes any property brought into or acquired in a foreign country since the end of the war in the course of authorized foreign trade, and will free title to such other assets which any foreign country, for one reason or another, does not vest and liquidation.

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It is noteworthy that the new legislation specifically exempts German-issued securities, expressed in Reichsmark, which may be located abroad. Thus, there will be no legal barrier in the Federal Republic to prevent the German owner from asserting his title to such securities under the "Wertpapierbereinigungsgesetz" or otherwise, nor to prevent the Federal Government from taking any legislative action which it considers appropriate with regard to these securities.

The law will not be applicable to those countries in which, under the respective peace treaties, German property has been assigned to the USSR (i.e. property in Bulgaria, Finland, Hungary, Poland, and Rumania), nor to certain other countries in or with which measures for disposing of German assets in accordance with treaty obligations have not been finally determined (i.e. Austria, Portugal, Switzerland, Trieste and Turkey). Control Council Law No. 5 will continue for the present to apply to assets located in these countries.

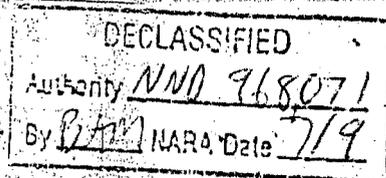
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Gesetz der Alliierten Hohen Kommission stellt Rechtslage in Bezug auf deutsches Auslandsvermogen und andere in Wege der Reparation oder Rueckerstattung erfasste Vermoegensgegenstaende klar.

Die Alliierte Hohe Kommission gab heute die Vorabschiedung eines Gesetzes zur Klarstellung der Rechtslage deutscher Auslandsvermogen, die Liquidierungsmaßnahmen in den Laendern, in denen sie sich befinden, unterworfen sind oder unterworfen werden, bekannt. Das Gesetz betrifft ferner aus Deutschland in Wege von Reparationen entnommene Vermoegenswerte sowie solche, die im Ausland seit Beendigung des Krieges zurueckerstattet wurden. Der Rechtsanspruch auf das von dem neuen Gesetz erfassten Auslandsvermogen wurde durch Kontrollratsgesetz Nr. 5 im Jahre 1945 den deutschen Eigentuemern genommen. Das Gesetz untersagte den ehemaligen deutschen Besitzer, irgendwelche Rechte auf solches Vermoegen geltend zu machen oder irgend-einen Anspruch darauf zu stellen.

Eine Pruefung des neuen Gesetzes zeigt, dass es Deutschland keine neuen oder zusaetzlichen Lasten auferlegt, noch dass es neue gegen das deutsche Vermoegen gerichtete Massnahmen vorsieht, beziehungsweise die sich entwickelnde Souveraenitaet Deutschlands gefaehrdet. Das Gesetz bringt lediglich die Rechtslage des Vermoegens in Einklang mit der gegenwaertigen Sachlage und beseitigt Widersprueche, von denen sich bis heute einige zum Nachteil Deutschlands auswirkten. Demnach erstreckt sich das neue Gesetz nicht in den Laendern seines Gueltigkeitsbereiches - wie dies im Kontrollratsgesetz Nr. 5 vorgesehen ist - auf das deutsche Vermoegen, das von diesen Laender nicht uebernommen beziehungsweise liquidiert ist. Es ist auch nicht auf in Deutschland ausgegebene Reichsmarkwertpapiere anwendbar. Es laesst die Frage der zukuenftigen Behandlung dieser deutschen Auslandsvermogenswerte offen. Die Alliierte Hohe Kommission hat der Bundesregierung mitgeteilt, dass sobald das neue Gesetz erlassen ist, alliierte und deutsche Fachleute zusammentreffen sollten, um diese Frage einer Pruefung zu unterziehen und darueber einen gutachtlichen Bericht zu verfassen.

Internationale Abkommen, die von den Regierungen von 19 Laendern, die mit Deutschland Krieg fuehrten, geschlossen wurden und alliierte Abkommen, die mit gewissen neutralen Laendern getroffen wurden ("safehaven" uebereinkommen) zielten darauf ab, die nicht-ausfuhrbaren Verfahren, die nach dem ersten Weltkrieg fuer die Zahlung von Reparationen vorgesehen worden waren, zu vermeiden. In dem sie anstelle der Entnahme von Reparationen aus der laufenden Produktion, die Anrechnung ueberschuessiger industrieller Anlagen sowie die deutschen auslaendischen Vermoegenswerte auf Reparationsansprueche festsetzten. Die nach diesen Verfahren von Deutschland geleisteten Reparationen entschaedigen die Alliierten nur zu einem sehr kleinen Teil fuer die von ihnen tatsaechlich erlittenen Schaeden.



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Hinsichtlich der Vermoegenswerte im Ausland gibt das Gesetz der Tatsache Ausdruck, dass gemess internationalen Abmachungen, die sich aus dem Krieg ergeben, die deutschen im Ausland befindlichen Vermoegenswerte nach den Gesetzen der entsprechenden Laender den deutschen Eigentuemern zu dem Zwecke weggenommen wurden, den Liquidationserloes zur Zahlung der deutschen Reparationen zu verwenden. Somit verleiht das Gesetz mit Wirkung fuer Deutschland und fuer deutsche Staatsangehoerige solchen Uebertragungen Rechtswirksamkeit, die von anderen Laendern nach ihrer eigenen Gesetzgebung mit Bezug auf die ihrer Zustaendigkeit unterliegenden deutschen Vermoegenswerte durchgefuehrt wurden. Was die aus Deutschland zu Reparations- und Wiedergutmachungszwecken entfernten Vermoegensgegenstaende anbelangt, so hebt das Gesetz den Rechtstitel des fruheren Eigentuemers auf. Infolgedessen schliesst es jede Klage und sonstigen Antrag vor deutschen Gerichten aus, in welchem gegen die Gueltigkeit derartiger Uebertragungen, Ablieferungen oder Liquidationen Einwendungen erhoben werden.

Das Gesetz sieht keineswegs irgendeine neue Enteignung, Uebernahme oder Beschlagnahme vor. Es beruehrt nicht die Frage ob und in welchem Ausmasse der einzelne Eigentuerer dessen Vermoegenswerte uebernommen und zur Erfuellung deutscher Verpflichtungen verwandt wurde, einen Entschaeidigungsanspruch gegen die Bundesregierung haben kann.

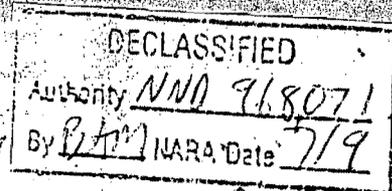
Ferner ist das Gesetz der Alliierten Hohen Kommission lediglich auf Vermoegenswerte anwendbar, die sich vor dem Zeitpunkt des Inkrafttretens des Gesetzes im Ausland befanden. In den Hauptlaendern, die Bestimmungen fuer die Uebertragung und Liquidation deutscher Vermoegenswerte getroffen haben, sind tatsaechlich fruhere Termine festgesetzt worden. Jedenfalls schliesst das Gesetz von seiner Anwendbarkeit ausdrucklich jeden Vermoegenswert aus, der seit Beendigung des Krieges in Rahmen des zugelassenen Aussenhandels in das fremde Land eingebracht oder dort erworben wurde. Das Gesetz gibt das Recht auf solche anderen Vermoegenswerte frei, die ein auslaendischer Staat aus diesem oder jenem Grund nicht uebernimmt und liquidiert.

Es ist bemerkenswert, dass die neue Gesetzgebung ausdrucklich die von Deutschland ausgegebenen auf Reichsmark lautenden Wertpapiere ausnimmt, die sich im Ausland befinden moegen. Es wird somit in der Bundesrepublik kein gesetzliches Hindernis den deutschen Eigentuemern daran hindern, seine Rechte auf solche Wertpapiere nach dem Wertpapierbereinigungsgesetz oder anderweitig geltend zu machen. Auch wird die Bundesregierung nicht angetwaigen, ihr geeignet erscheinenden gesetzgeberischen Massnahmen mit Bezug auf diese Wertpapiere gehindert.

Das Gesetz findet nicht auf solche Laender Anwendung, in denen nach den massgebenden Friedensvertraegen deutsches Eigentum auf die Sowjetunion uebertragen wurde (z.B. Eigentum in Bulgarien, Finnland, Ungarn, Polen, und Rumaeonien), noch auf gewisse andere Laender, in denen oder mit denen Massnahmen hinsichtlich der Verfuegung ueber deutsche Vermoegenswerte nach Massgabe vertraglicher Verbindlichkeiten noch nicht endgueltig bestimmt worden sind (z.B. Oesterreich, Portugal, die Schweiz, Triest und die Tuerkei).

Das Kontrollratsgesetz Nr. 5 wird einstweilen weiterhin fuer Vermoegenswerte die sich in diesen Laendern befinden, anwendbar bleiben.

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Allied High Commission Press Liaison Offices
Petersberg

Background Information for Correspondents No. 157

5 September 1951

Following should be read in conjunction with AHC press release No. 347 - "Status of Reparations, Restitution and External Assets Clarified by High Commission Law" also issued today.

There seems to be considerable misunderstanding on the part of sections of the German public as to the present status of German external assets and the effect on these assets of the new Allied High Commission Law.

German property abroad which has been vested has been and is being utilized in satisfaction of reparation claims against the Germans pursuant to international agreements, including the Paris reparations agreement entered into by the governments of 19 countries at war with Germany, and Allied agreements with certain neutral countries ("safehaven" accords). In point of fact, the German owner was deprived of his property a long time ago as a result of the action of the foreign countries.

Control Council Law No. 5 provided for the vesting in a German external property commission of all rights, title and interest in respect of German property abroad. The continued application of Control Council Law No. 5 to all countries is now unrealistic.

It is pointed out that these assets have been taken for reparation purposes and it has been made clear at all times to the Federal Government that the Allies could not and would not accept any proposition involving the application of these former assets to the settlement of the German external indebtedness. The German representatives at the preliminary conference on German debts in London in July were informed, however, that the loss of German external assets is recognized as one of the many factors relevant to the assessment of Germany's capacity to pay and to make transfers in foreign currency.

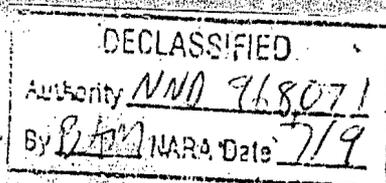
The new law will do no more than secure recognition in Germany and by German citizens of transfers of title effected in foreign countries and will prevent needless disputes in German courts. It in no way affects the question of possible claims for compensation by the former owners of property against the Federal Government.

It should also be pointed out that the new law does not apply to German-owned, German-issued Reichsmark securities located abroad. Nor does the new Allied High Commission Law apply to property acquired by a German in a foreign country after the effective date of the law nor to any property that was acquired in the course of authorized trade since the end of the war.

After an exchange of views, limited to technical questions, between Allied and German experts, a number of amendments were introduced into the text in an endeavour to meet German objections. The High Commission has stated its willingness to arrange further joint meetings of experts to consider any problems of implementation which the law may raise.

It has been necessary to keep Control Council Law No. 5 in effect with respect to a certain number of countries. These include countries in which German assets are assigned to the Soviet Union under peace treaties, and countries in which the disposition of German assets has not yet been finally determined.

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Mitteilung Nr. 157 an die Vertreter der Presse

5 September 1951

Das Folgende dient zur Unterrichtung der Vertreter der Presse in Zusammenhang mit der heute ebenfalls veröffentlichten Presseverlautbarung Nr. 347 der Alliierten Hohen Kommission ueber "Gesetz der Alliierten Hohen Kommission stellt Rechtslage in Bezug auf deutsches Auslandsvermoegen und andere in Wege der Reparation Rueckerstattung erfasste Vermoegensgegenstaende klar."

Es hat den Anschein, dass bei einem Teil der deutschen Oeffentlichkeit erhebliche Missverstaendnisse ueber die gegenwaertige Rechtslage der deutschen Auslandsvermoegenswerte sowie ueber die Auswirkungen des neuen Gesetzes der Alliierten Hohen Kommission auf diese Vermoegenswerte bestehen.

Das uebernommene deutsche Auslandsvermoegen wurde und wird zur Befriedigung von Reparationsanspruechen gegenueber Deutschland verwandt, und zwar genaess internationaler Abkommen, einschliesslich des von den Regierungen von 19 Laendern, die mit Deutschland Krieg fuehrten, geschlossenen Pariser Reparationsabkommens, ferner genaess der alliierten Abkommen, die mit gewissen neutralen Laendern getroffen wurden ("Safehaven" Uebereinkommen). Tatsaechlich waren als Ergebnis der seitens der auslaendischen Staeten ergriffenen Massnahmen Vermoegenswerte ihren deutschen Eigentuemern seit langer Zeit vorenthalten worden.

Gesetz Nr. 5 des Kontrollrates sah vor, dass alle Rechte und Ansprueche auf irgendwelches ausserhalb Deutschlands befindliches Vermoegen durch die Kommission fuer das deutsche Auslandsvermoegen uebernommen werden sollten. Die weitere Anwendung des Kontrollratsgesetzes Nr. 5 in allen Laendern ist nicht mehr realistisch.

Es wird darauf aufmerksam gemacht, dass diese Vermoegenswerte fuer Reparationszwecke verwandt wurden. Die Bundesregierung ist stets eindeutig darauf hingewiesen worden, dass die Alliierten keinerlei Vorschlaege annehmen wuerden und koemnten, die eine Anrechnung dieser fruheren Vermoegenswerte bei der Regelung der deutschen Auslandsschulden zum Gegenstand haetten. Die deutschen Vertreter wurden jedoch im Juli anlaesslich der in London abgehaltenen vorlaeufigen Konferenz ueber die deutschen Auslandsschulden davon in Kenntnis gesetzt, dass der Verlust der deutschen Auslandsvermoegenswerte als einer von vielen Faktoren angesehen wuerde, der fuer die Festsetzung der deutschen Zahlungsfahigkeit und seiner Fahigkeit, Ueberweisungen in Devisen vorzunehmen, bestimmend sein wuerde.

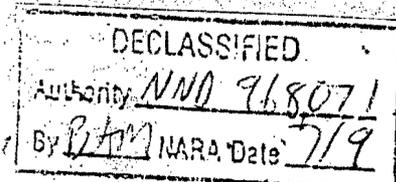
Das neue Gesetz bezweckt nichts anderes, als die Anerkennung der in Ausla vollzogenen Rechtsuebertragungen in Deutschland und durch deutsche Staatsangehoerige sicherzustellen und nutzlose Streitigkeiten vor deutschen Gerichten zu vermeiden. Das Gesetz beruehrt in keiner Weise die Frage moeglicher Ersatzansprueche seitens ehemaliger Vermoegensbesitzer gegenueber der Bundesrepublik.

Es wird ferner darauf hingewiesen, dass das neue Gesetz keine Anwendung auf im Ausland befindliche, in deutschem Eigentum stehende und auf Reichsmark lautende Wertpapiere findet. Das neue Gesetz der Alliierten Hohen Kommission findet ebenfalls keine Anwendung auf das nach den Zeitpunkt seines Inkrafttretens von einem deutschen im Ausland erworbene Vermoegen, desgleichen nicht auf Vermoegen, welches seit Ende des Krieges im Rahmen des erlaubten Wirtschaftsverkehrs erworben wurde.

Nach einem auf technische Fragen beschraenkten Gedankenaustausch zwischen alliierten und deutschen Fachleuten wurden, in dem Bestreben deutschen Einwaenden zu entsprechen, eine Reihe von Aendaerungen in den Gesetzestext eingefuegt. Die Hohe Kommission hat Bereitwilligkeit erklart, weitere gemeinsame Sitzungen von Fachleuten zu vereinbaren, um Durchfuehrungsfragen zu behandeln, die aus dem Gesetz entstehen koennen.

Es war erforderlich, Kontrollratsgesetz Nr. 5 bezueglich eine gewisse Anzahl von Laendern in Kraft zu belassen. Dazu gehoeren die Laender, in denen deutsche Vermoegenswerte auf Grund von Friedensvertraegen der Sowjetunion zugesprochen wurden, sowie Laender, in denen die Verfuegung ueber deutsche Vermoegenswerte noch nicht endgueltig entschieden worden ist.

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Most Policy

R E S T R I C T E D

17 April 1946

CORC/P(46)143
(DRDR/P(46)33)

ALLIED CONTROL AUTHORITY

COORDINATING COMMITTEE

Quadripartite Procedures for Restitution

PART I

General Provisions

1. Scope of Document

The present paper deals with methods and procedures to be observed by the respective Zone Commanders in the four zones in implementing the agreed definition of restitution in their zones in order to permit the governments whose territory has been occupied by German forces to receive as soon as possible the property subject to restitution.

2. Property Subject to Restitution

Restitution will apply to all property covered by the definition of the term "Restitution" adopted by the Control Council on 21 January 1946 (CONL/P(46)3 Revise) and in accordance with the interpretation of this text agreed upon by the Reparations, Deliveries and Restitution Directorate on 8 March 1946 (DRDR/P(46)14 Revise). Both documents are attached hereto as Appendices A and B respectively.

3. Nations Eligible for Restitution

No nation shall be eligible for restitution unless its territory was occupied in whole or in part by the German armed forces or the forces of her allies and unless it is a United Nation, or shall have been specified by the Allied Control Council.

4. Method of Implementing Definition of Restitution

The respective Commanders of the four zones will take the following action within their respective zones necessary to achieve the objective of restitution including but not limited to:

- a. Search and investigation to locate property which is specifically alleged to be subject to restitution in a claim or which from data obtained from German or other sources might become the subject of such a claim.
- b. Custody and preservation of such property if found.
- c. Provision for such missions of claimant nations as may be invited by the Allied Control Council to visit the location of such property for purposes of identification, examination, supervision of packing and shipping and signing of necessary receipts and other documents.
- d. Maintain records and data which will be the basis of reports to the Allied Control Council as to the status and disposition of claims submitted and processed as hereinafter provided.

- 1 -

R E S T R I C T E D

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Authority NND 7519
By SA NARA Date 9/17/99

R E S T R I C T E DPART IISubmission and General Form of Claims1. Who may submit claims

Only such claims as are submitted by or on behalf of governments of claimant countries and signed by an accredited representative of that government will be accepted for processing. All claims submitted by or on behalf of individual, natural, or juridical persons will be rejected and given no consideration.

2. Claimant Nations

The term "claimant nation" is applied to any one of the nations which participated in the Declaration of 5 January 1943 and to such other nations as may hereafter be specified by the Allied Control Council whose territory was occupied in whole or in part by the German armed forces or the forces of her allies and which presents a claim for property subject to restitution as defined in Part I, paragraph 2 above.

3. Form and Substance of Claim

a. Claims may be submitted in a form which sets forth as much as possible of the following data:

- ✓ (1) Description of item claimed for restitution.
- ✓ (2) Maximum available identification data such as factory serial number, specifications and any special marks or characteristics of the item.
- ✓ (3) Last known location of claimed items within claimant country prior to removal to Germany and approximate date of such removal.
- ✓ (4) Last known location of claimed item in Germany.
- ✓ (5) Last known resident of claimant country who was owner or custodian of claimed item prior to its coming into control of the enemy within the territory of claimant country.
- ✓ (6) Whether or not the property was in existence at the time of the occupation of the claimant country.

b. Each claim must include a statement, setting forth so far as possible, the facts and circumstances surrounding the removal of the claimed item from the territory of the claimant country.

4. Where Claims Are to be Submitted

Claims are to be submitted to any or all Zone Commanders.

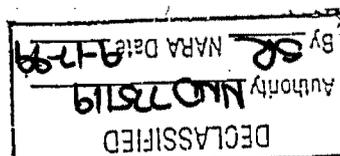
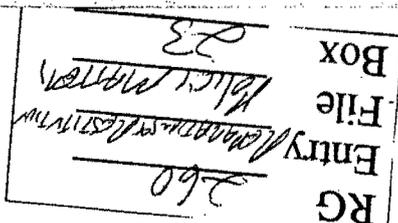
5. Number of Copies of Claims

All claims will be submitted in quadruplicate for each Zone Commander concerned.

6. Languages of Copies of Claims

Copies of claims for the Zones may be submitted in the language of the respective occupying powers and may be submitted in German at the choice of the claimant nation.

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R E S T R I C T E D

R E S T R I C T E DPART IIIProcessing of Claims1. Missions from Claimant Countries.

a. Missions which are already representing the respective allied countries in Germany or which may later be invited by the Allied Control Council should be expected also to engage themselves in restitution matters. For this purpose, they should be empowered to sign officially for their governments.

b. It is recognized that claimant countries have the right to dispose of restitution matters through a mission and that the Allied Control Council may invite the countries to exercise this right under such conditions as it may prescribe. But this does not confer any right upon any country to dispatch any separate mission for the purpose of restitution.

c. Visits of personnel of such missions or experts proposed by them into the respective zones will be in accordance with such regulations and upon such conditions as may be established by the Commander-in-Chief of each of the zones. When admitted to each zone by the Zone Commander, such missions may be permitted access to the data from German or other sources referred to in Part I, paragraph 4, sub-paragraph (a) hereof, when and if convenient to the Zone Commander. Where the missions encounter unforeseen difficulties in accomplishing their work, it is expected that they will seek the aid of the Allied Control Council.

2. Responsibility for Custody and Disposition of Property Subject to Restitution

The respective Commander-in-Chief of each Zone will take such action as to the protection, custody, release, dismantling, packing, and transporting of property in his zone subject to restitution as he deems appropriate.

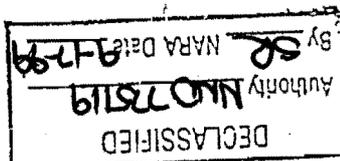
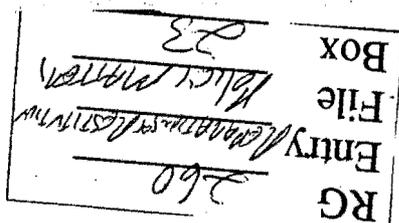
3. Receipt for Property Released

An accredited representative of the claimant nation shall execute a receipt for all property released. The same form of receipt substantially as set forth in annexed Exhibit "C" shall be used in all the four occupied zones in Germany. The receipt will be written in the language of the occupying power concerned.

PART IVReports1. Data to be Submitted by Zone Commander-in-Chief

Every month each Zone Commander will submit to the Allied Control Council a general report giving information about the progress of work on restitution in his zone.

- 3 -

R E S T R I C T E D

R E S T R I C T E D

The data shall cover all claims received to the date of the report including those received by the Commander-in-Chief of the Zone directly from claimant countries prior to the institution of this procedure. The report should take account also of: claims filed, claims under dispute, claims rejected, claims partially delivered, claims entirely delivered, appraised 1938 value in Reichs Marks of objects actually delivered to be shown against the respective countries.

- 4 -

R E S T R I C T E D

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Authority NND 7519
By SA NARA Date 9-17-99

R E S T R I C T E D

17 April 1946

Appendix "A" to
CORC/P(46)143

ALLIED CONTROL AUTHORITY

CONTROL COUNCIL

DEFINITION OF THE TERM "RESTITUTION"

1. The question of restitution of property removed by the Germans from Allied countries must be examined, in all cases, in light of the Declaration of January 5th, 1943.

2. Restitution will be limited, in the first instance, to identifiable goods which existed at the time of occupation of the country concerned and which have been taken by the enemy by force from the territory of the country.

Also falling under measures of restitution are identifiable goods produced during the period of occupation and which have been obtained by force.

All other property removed by the enemy is eligible for restitution to the extent consistent with reparations. However, the United Nations retain the right to receive from Germany compensation for this other property removed as reparations.

3. As to goods of a unique character, restitution of which is impossible, a special instruction will fix the categories of goods which will be subject to replacement, the nature of these replacements, and the conditions under which such goods could be replaced by equivalent objects.

4. Relevant transportation expenses within the present German frontier and any repairs necessary for proper transportation including the necessary manpower, material and organization, are to be borne by Germany and are included in restitutions. Expenses outside Germany are borne by the recipient country.

5. The Control Council will deal on all questions of restitution with the Government of the Country from which such objects were looted.

R E S T R I C T E D

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File Alice Martin
Box 23

DECLASSIFIED
Authority NND 73119
By SA NARA Date 9-17-99

R E S T R I C T E D17 April 1946Appendix "B" to
CORC/P(46)143ALLIED CONTROL AUTHORITYCOORDINATING COMMITTEEINTERPRETATION OF ARTICLE 2, OF THE DEFINITION
OF THE TERM RESTITUTION, CONL/P(46)3 Revise

1. In consideration of paragraph 2 of CONL/P(46)3 Revise, it appears that where an article has been removed by force at any time during the occupation of a country, and is identifiable, the right to its recovery is an absolute one. The word "force" covers duress which may occur with or without violence. In this concept are also included looting, theft, larceny and other forms of dispossession whether they were carried out by an order of the German authorities, or by officials of the German civil or military administration, even when there was no order of the German authorities, or by individuals.

Also included are acquisitions carried out as a result of duress, such as requisitions or other orders or regulations of the military or occupation authorities.

2. In the third sub-paragraph of paragraph 2, it appears that by "all other property removed by the enemy" it was desired to include all property which was removed in any other way. This implies that restitution of property may be claimed whatever may have been the means or the reasons of dispossession.

But the property removed in such manner does not entail an "absolute right" to restitution, which may be granted only within the limits consistent with reparations.

3. These "limits consistent with Reparations" must be understood in the following manner: If property claimed on account of restitution is indispensable for the operation of a whole factory allocated on account of reparations, this property may be retained and not restituted.

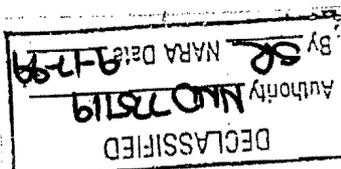
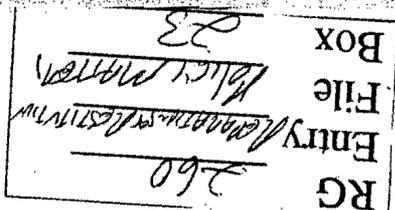
Restitution will be made only if the removal of the equipment does not seriously diminish the production capacity of the plant and does not destroy the completeness of the equipment to such an extent that when this plant is delivered on account of reparations it loses all value owing to the fact that restitution has been made.

If restitution of the object itself is not granted, the right of the claimant nation is satisfied by means of compensation to be taken from German property in objects of equivalent value, as far as possible by equipment, manufactured goods and raw materials.

NOTE: The U. S. and U. K. delegates agree with the above interpretation provided that:-

"Compensation in lieu of restitution must not create additional expenditures by the U. S. and U. K. in support of their respective zones."

- 1 -

R E S T R I C T E D

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106701

R E S T R I C T E D

17 April 1946

Appendix "C" to
CORC/P(46)143

RECEIPT AND AGREEMENT FOR DELIVERY OF IDENTIFIABLE
PROPERTY OTHER THAN CULTURAL OBJECTS

(place) _____

(Date) _____

1. Receipt of items described in schedule "C", attached hereto, from the Zone Commander, (United States, British, U.S.S.R., French) in Germany, is hereby acknowledged on behalf of the Government of _____, by the undersigned _____ who is a duly accredited representative of said Government, authorized to receive said items on its behalf and to execute this receipt and agreement.

2. Said Government hereby accepts the item(s), described in said schedule "C" attached; by the acceptance of said items, said Government hereby waives any further claim as reparation or otherwise based upon the removal of the item(s) concerned by the Germans or the exaction of funds used by the Germans to pay for it and also agrees to save harmless the (United States, United Kingdom, U.S.S.R., France) and all its agents and representatives from any claim for loss, damage or deterioration suffered by any item at any time whatever.

3. Should the Zone Commander, (United States, British, U.S.S.R., French) in Germany, determine that any item or items described in said schedule "C" were mistakenly delivered (which determination must be made within one (1) year from the date hereof such items or items will be disposed of according to the instructions of said Zone Commander. In the event of such determination, said Government will take whatever steps may be necessary to make any such item available to said Zone Commander.

4. Said Government further agrees that the "Appraised Value" of the item(s) described in attached schedule "C" as therein set forth in a fair and proper value of the said item(s).

- 1 -

R E S T R I C T E D

RG 260
Entry *W. M. ...*
File *W. M. ...*
BOX 23

DECLASSIFIED
Authority *ND 7319*
NARA Date *9-17-99*
By *SR*

R E S T R I C T E D

17 April 1946

Appendix "C" to
CORC/P(46)143

Schedule "C"

Claim and Item No.	Description	Quantity	Appraised Total Value in 1938 RM

(Signature)
Representative of Zone Commander

(Signature)
Representative of Recipient Country

R E S T R I C T E D

RG 260
 Entry MAA 271111
 File W/IC 1977
 Box 23

DECLASSIFIED
 Authority NND 7519
 BY SR
 NARA Date 9-17-99

File Copy

R E S T R I C T E D

17 April 1946

CORC/E(46)143

ALLIED CONTROL AUTHORITY

COORDINATING COMMITTEE

Quadripartite Procedures for Restitution

Note by Allied Secretariat

1. By Conclusion (50) (c) of CORC/M(46)5 the Coordinating Committee referred the definition of "Restitution" to the Reparations, Deliveries and Restitutions Directorate for application.
2. The attached paper provides a procedure for restitution in compliance with Conclusion (50) (c) of CORC/M(46)5.
3. The Reparations, Deliveries and Restitutions Directorate has approved the attached paper and has forwarded it to Zone Commanders for application.
4. This paper is circulated for the information of the Coordinating Committee.

H. A. GERHARDT, Colonel

T. N. GRAZEBROOK, Brigadier

L. J. CALVY

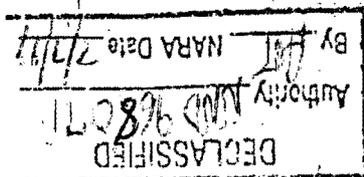
A. A. KUDRIAVTSEV, Major

Allied Secretariat

R E S T R I C T E D

RG
 260
 Entry Memorandum
 File
 Box 23
Wiley Martin

DECLASSIFIED
 Authority NND 73719
 BY *SR*
 NARA Date 9-17-99



RS 59
Lot 623-1
Box 24

- 4 -

stolen in Canada. This is the only treaty of its kind to which the United States is a party.

c. ~~9.~~ U.S. Laws.

The Trading with the Enemy Act, *Sections 3a, 5b, and 16.*
 Stolen Property Act
 Customs Laws
 Customs Regulations
 Treasury Decisions
 Court Opinions ~~cases~~
 The War Powers Act

d. ~~8.~~ U.S. Laws for Germany, Austria, and Japan.

A.M.G. Law No. 52
 A.C.C. Law No. 5.

e. ~~6.~~ Laws and decrees of European Governments seizing looted cultural objects (Freeze)

the laws and decrees included under 4 and 5 above
 ← Can any of these be applied by U.S. Courts and by U.S. customs officials?
rules *rules*

Court decisions have held that international law is a part of the law of the United States and is applied by Federal Courts in relevant cases. The German looting in occupied territory was in violation of the international law rules of land warfare as declared in Article 56 of the Hague Convention of 1907. It is inconceivable that customs officials have no legal authority to seize objects suspected of being such looted or stolen property *or identified as* pending judicial determination of its legal owners.

7. In case no such legal authority exists, it is suggested that a bill be ^{ed} draft for submission to Congress to provide a permanent legal ~~is~~ basis for the seizure and restitution of looted or stolen property.

8. In the interest of a comprehensive and permanent solution of the problem it is suggested that a draft international convention providing for the discovery and restitution of looted or ~~stolen~~ cultural property be ^{prepared} drafted in ADO of OIC and submitted to UNESCO for consideration at an international conference or in the Assembly of the United Nations.

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RG 260 BOX ~~15~~
ENTRY 1

R E S T R I C T E D

18 September 1946

APPENDIX "A" to
CORC/P(46)303

ALLIED CONTROL AUTHORITY

COORDINATING COMMITTEE

Special Instructions Concerning Replacement by Similar or Comparable
Property of Objects of a Unique Character

1. Replacement for unique objects of the following categories only may be submitted to the Allied Control Authority:
 - (a) Works of art of the masters of painting, engraving and sculpture.
 - (b) The most important works of distinguished masters of applied art and outstanding anonymous examples of national art.
 - (c) Historical relics of any kind.
 - (d) Manuscripts, books (such as rare incunabula), books having an intrinsic value or historical character, or constituting rare examples even of modern times.
 - (e) Objects of importance to the history of science.
2. Only claims for objects of great rarity will be considered. Action to be taken on each claim will be based upon the evidence presented and the merits of each case.

R E S T R I C T E D

106706

DECLASSIFIED
Authority NND75057
By 1199

OUTGOING TELEGRAM

Department of State

H 83599

INDICATE: COLLECT
 CHARGE TO

SECRET

RECEIVED DC/T
ACCEPTANCE UNIT

OCT 9 7 10 PM '51

SENT TO: Hicog FRANKFORT

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Info
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RPTD INFO: Amembassy LONDON BY POUCH
Amembassy PARIS BY POUCH

Part II, ART 5, Hicog Draft Convention on Acts, Programs, etc. WLD be SATIS contract on external restitution with FOL amendments:

1) Proposed cut-off date for filing claims for looted cultural property SHLD be deleted. Such provision was considered and rejected during Study Group discussions. Large percentage of items eligible for restitution under definition QTE cultural property UNQTE probably will have been looted from public collections; few, if any, of great public collections have been completely checked and inventoried and we can not assume this will be done by any fixed date. If GERS SHLD raise question, suggest you point out US GOVT has no cut-off date and proposes continue indefinitely acceptance claims for looted cultural property and procedures for search, recovery, and restitution to country of origin, including FEDREP. In this connection you may find ART in State DEPT Bulletin No. 635, AUG 27, 1951 useful.

2) Provision that FEDREP need not accept previously rejected claim for looted property SHLD also be made applicable jewelry, silverware, and antique furniture.

3) Definition of loot and duress in PARA 1 (b) SHLD be modified to conform with PARAS (d), (e), and (f) of Annex A to Appendix I to

IGG/P(51)89 Final.

Drafted by: GER:CEA:GWBaker:am 10/3/51	ACHESON Telegraphic transmission and classification approved by:	William A. Fowler XXXXXXXXXXXXXXXXXX
Clearances: GPA Hillenbrand L/GER Raymond ICD Hall		

SECRET

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By [Signature] NARA Date 7/9

Let 624-4
Box 28

106707

NG
RAM

Department of State

83602

DATE: COLLECT
CHARGE TO

SECRET

RECEIVED DC/T
ACCEPTANCE UNIT

OCT 9 7 10 PM '51

SENT TO: Hicog FRANKFORT 2306

RPTD INFO: Amembassy LONDON BY POUCH
Amembassy PARIS BY POUCH

26
Origin
GER
Info:
L
EUR
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Re Part VI, ART 13, QTE Possible Claims by GERS UNQTE, Hicog draft
Convention on Acts, Programs, etc. and PARA 24(f) FONMINS INSTRS.

DEPT notes certain differences in wording between ART 13 and PARAS 2 and 6
of IGG/P(51)91 Final. Believe latter more precise and SHLD be used. Contract
SHLD also provide specifically that FEDREP will take appropriate action to
insure accomplishment purposes of PARAS 2 and 6.

Separate INSTRS being sent on footnote 1 to ART 13.

ACHESON

Dist.
Desired
(Offices
Only)

Drafted by:
GER:GEA:GWBaker:gw 10/9/51

Telegraphic transmission and
classification approved by:

W.A. Fowler
~~XXXXXXXXXXXXXXXX~~

Clearances:

L/GER Raymond GPA Hillenbrand

SECRET

10-514

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Authority: UNN 91807
By: [Signature] NARA Date: 7/9

2059
Lot 620-4
Box 28

106708

DECLASSIFIED
Authority NWP 968071
By AT NARA Date 7-8-99

R659
Entry 62D-4
Box 27

Miss Hall

Berlin, April 9, 1947

Rec'd DCL
Apr. 22, 1947

UNRESTRICTED

ACTION:
EUR-enc
ESP-enc

No. 9488

SUBJECT: RETURN TO GERMAN AGENCIES OF CULTURAL MATERIALS

INFO:
OCD-enc
FC
DCR
OIC
A-h
A-B

M-O-O-O

The United States Political Adviser for Germany has the honor to transmit herewith copy of a letter dated April 3, 1947, from the Office of the Military Governor for Germany directed to the Directors of the Offices of Military Government for Bavaria, Greater Hesse, Wuerttemberg-Baden, Bremen, and Berlin Sector, directing that the works of art and cultural materials now held under control of Military Government at collecting points and repositories be delivered into the custody of responsible German agencies having facilities for their adequate care and protection.

Enclosure:

Letter dated April 3, 1947, from Military Governor to Military Government Directors of various Laender, Bremen, and Berlin Sector (4 copies)

Original and ozalid to the Department

Copies to CE - Mr. Riddleberger
GA - Mr. Kindleberger

File no. 4000
RRice/rr

106709

OFFICE OF MILITARY GOVERNMENT FOR GERMANY (U.S.)
Economics Division
Restitution Branch
Monuments Fine Arts and Archives Section
APO 742

4 March 1947

SUBJECT: Weekly Report

TO : Art Intelligence Officer

1. A copy of customs regulations pertaining to importation of art objects was obtained from OMGUS APO, mimeographed, and copies distributed for information within the section. A copy is attached. It is believed that these regulations are current, however, informal information indicates that other regulations may be in effect. It is planned to send a letter to the U.S. customs officials for verification.
2. Letters were sent to the British, to Bavaria and to Hesse concerning the Heinz Gallus collection. Bavaria and Hesse were requested to send photographs and descriptions of Gallus paintings in collecting points. The British were informed that these would then be forwarded to them for interrogation of Gallus as to the rightful owners.
3. The Dresdner Bank documents were returned to the 7771 Documents Center as they contain no information of vital importance. Copies are in the files.
4. A letter was received from the Czechoslovak Mission thanking the art intelligence officer for his efforts in investigating the Prague Insignia case. No word has been received from the British on this case.
5. The 7771 Documents Center submitted a negative report on the Party affiliations of Professor Richard Hamann. Investigation of the Civil Censorship Intercept B/47/3414 reveals that the Berlin museums loaned works of art to the universities of Germany, so that the paintings reported to be in Professor Hamann's custody were legally loaned to the

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BY [signature] 12/19/00

Marburg University. There seems to be no necessity for taking these into U.S. custody. Investigation of the paintings might still be advisable. The photographs sent by Professor Hamann to the Berlin Museums are reported not to have been requested by museum personnel, but to have been offered by Professor Hamann, in accordance with an old custom of photographers of always sending one copy of any picture they take of museum property. No money is reported to have been paid for these pictures. It seems strange that it is possible for Professor Hamann to send photographs of pictures still in American custody to whom-ever he wishes. A declaration was received from the Marburg University Library which makes no reference to any Polish acquired books.

6. Upon the request of Mr. Howard an investigation was made of the prolonged stay of Karl Nieren-dorf, a well-known New York art dealer, in the United States Zone of Germany. It was learned that a permit had been issued to Mr. Nieren-dorf in Washington for a two-weeks visit to Munich in order that he might contribute to Neue Zeitung and Heute. This permit was granted in July 1946, and ceased to be effective the 30th of September. Mr. Nieren-dorf was last seen in Munich in the first week of February. There is no record of a request for extension of the original permit. These facts were conveyed to the chief of the Combined Travel Board who is conducting further investigations.

7. Mr. Heinrich of Hesse telephoned a case concerning the illegal removal of nine cases of paintings from the repository at Berg Runkel. These cases were the property of Frau Maria Falkenburg, Berlin Klein-Machnow. It was discovered by questioning the police in Zehlendorf that Klein-Machnow is in the Russian Zone. A letter was therefore sent requesting that Frau Falkenburg come to the OMGUS office. She is reported to have authorized J. Hans Sperber to take the nine cases to Kassel. However, Mr. Sperber had no authorization from Military Government, although he persuaded a substitute custodian that he had.

8. A carrier sheet was sent to Denazification Section, Public Safety Branch, Internal Affairs and Communications Division, requesting that Land WFA&A officers be notified when art personalities come before the Spruchkammern. A telephone call from that section informed us that letters had been sent to the Three Lander in conformity with our

request. Letters must now be sent to the MFA&A officers in the three Länder requesting they forward the notifications to us.

9. Information was received from the American Legation at Berne that Fritz Fankhauser does not have the valise, nor any knowledge of the documents it supposedly contains, as was reported by Hans Wendland.

10. Arrangements were made for the transfer of the Reichskammer for Bildende Kunst files to British Information Control. This will be accomplished next week.

11. A letter by Mr. Leonard to the Smithsonian Institute is of interest. It presents a new phase of illegal acquiring of cultural material, that is the use of CARE packages as money. The keeper of insects of the Smithsonian Institute was advised that this was illegal, and that exportation of collections of insects must be approved by the Import-Export Section of the Finance Division, OMCWS.

12. A number of important instances of looting by United States troops have been reported to this office by Wuerttemberg-Baden, one at Schloss Bentinck, one at Schloss Neuenstein. It is impossible at the present time for property cards to be made on each missing item from these two castles. The MFA&A officer of Wuerttemberg-Baden has requested that the owner of Schloss Bentinck be allowed to enter Germany from Holland in order to give the information necessary to make the property cards. The Schloss archivist of Schloss Neuenstein has been requested to supply the property cards of that castle. Nine property cards were received for other losses in Wuerttemberg-Baden. One concerns a signed Rembrandt, dated 1657, attributed, however, to Johannes Cornelisz Verspronck, the property of the Wuerttembergische Staatsgalerie, believed to have been taken by United States troops before June 1945 from Schloss Taxis by Dischingen. Three other paintings are also missing from the same repository. It is believed that further investigation in this theater might reveal their whereabouts. A valuable tea and coffee set was removed from the Deutsche Bank Erfurt by U.S. troops, and also a geneoclocal collection was taken from the home of Willy Hornschuch in December 1945. These likewise appear to need further investigation in Wuerttemberg-Baden.

RG 260 BOX 60
ENTRY 1

13. A Civil Censorship Intercept was forwarded to Bavaria as the distribution did not include that office. It concerns the sale of a supposedly valuable coin collection by inmates of a UNRRA camp.

Telephone BERLIN 42531

E Incl: a/s

MARY J. REGAN
Capt AC
Art Intelligence
Research Officer

4

106713

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Authority *2nd 77505*
By *[Signature]* 10/19/00

Name: KARL S. NIERNENDORF

Intelligence

Address: NEW YORK CITY

Summary of Information

Nature of Case: OVERSTAY OF PERMIT?

Date: 2/2/47

Source of Lead: MR HOWARD

Evaluation

Summary of Information. ABOVE GRANTED PERMIT NO. 81765 (GOD) FOR TWO WEEKS TO ENTER AMERICAN ZONE FROM SWITZERLAND 7 JULY 46 - 20 SEPT 46, TO CONDUCT TO "THE NEW YORK TIMES" ABOVE TRAVELLED TO BERLIN RETURNED TO (SWITZERLAND) AND MUNCHEN LEFT MUNCHEN ONLY EARLY IN FEBRUARY REQUESTED BY INFO CONTROL BAVARIA MR. COLLIN BETH, CHIEF PUBLISHING OPERATIONS BEING INVESTIGATED BY MR. DREYER, CHIEF COMBINED TRAVEL BOARD WHICH HAS NO RECORD OF EXTENSION OF VISIT

Relevant Information:

Recommendations:

Action taken:

Final disposition:

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Authority: 2025 77565
BY: [Signature]
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31,857
 57,512

 89,369

RESTITUTIONS AND OTHER RELEASES FROM THE MUNICH
 CENTRAL COLLECTING POINT TO 31 October 1949

Austria	2,576	
Belgium	398	
Czechoslovakia	322	+ 180 run. feet
France	15,661	+ 10 run. feet
Greece	1	
Hungary	1,497	
Italy	250	
Yugoslavia	175	
Luxembourg	1	
Netherlands	5,004	
Poland	1,098	
Russia	4,875	
<u>Total:</u>	<u>31,857</u>	<u>+ 190 run. feet</u>

Number of items returned (not restituted) to governments
of Allied countries from August 1945 including October
1949:

Total: 949 (Items from Austria lent for exhibition
at the Haus der Kunst and other objects
deposited in Germany for air-raid
security, no loot in this category).

Number of items returned as Exceptional - Return to
governments of non-United Nations from August 1945
including October 1949:

Total: 38 (37 to Italy, 1 to Austria)

Number of objects returned on receipt for Interzonal-
exchange from August 1945 including October 1949:

Total: 656

Number of objects transferred to other CCP's in US Zone
from August 1945 including October 1949:

Total: 5,121

Number of objects returned on custody receipts to
German owners from August 1945 including October 1949:

Total: 19,518

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AUTHORITY: NND 968071

By: JA NARA Date: 8-16

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Entry 10620-4
Box 28

Number of items sent to the United States (Dept. of Army
Hist. Div.) from August 1945 including October 1949:

Total 81

Number of items turned over to the Minister-President
including October 1949:

Total: 10,824

Restituted items returned from August 1949 including Oct 49

Total: 23

GRAND TOTAL: 69,017 items

106716

RG 59
Entry Lot 62D-4
Box 30 28

DECLASSIFIED
Authority: NND 968071
By: JJA - NARA Date: 8-16
REPRODUCED AT THE NATIONAL ARCHIVES

RESTITUTIONS AND OTHER RELEASES FROM THE WIESBADEN
CENTRAL COLLECTING POINT TO 31 October 1949

Belgium	250
Czechoslovakia	12
France (including unopened cases per MGR 18, 443.1)	2,449
Luxembourg (unopened cases)	8
Netherlands (including unopened cases per MGR 18, 443.1)	13,822
Poland (26 boxes account for minimum of 300,000 individual items Polish National Stamp collection)	1,264
Russia (including complete natural historic museum)	137
Greece	2
Austria	94
a. Jewish Cultural Reconstruction, Inc.	10,710
b. " " " (books)	28,764
Total:	57,512

+ transferred to Munich for restitution:

Hungary	6
Poland	773
Austria	1
Total:	780

Interzonal Transfer

British Zone (including unopened
cases containing: paintings, drawings,
prints, etc. exact totals unknown) 197

French Zone, Idar-Oberstein	1
" " Neuwied	6
" " Mainz	242
" " Rheinbreitbach	16
Total:	462

Law 59	
USA (former German citizen)	35
German private owners	404
" " "	5,714
Total:	6,153

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Authority: NND 962071

By: JA NARA Date: 8-16

REPRODUCED AT THE NATIONAL ARCHIVES

RG 59
Entry Lot 62D-4
Box 28

Return to German institutions:

Kassel, Landesmuseum (this figure includes 31 boxes cont. drawings & prints)	31,638
Darmstadt, Landesmuseum	3
Stuttgart, Landesmuseum	1
Stuttgart, Württ. Staatsministerium (this figure includes 34 boxes cont. porcelain and glasses accounting for minimum of 700 items)	41
Karlsruhe, Kunsthalle	271
Mannheim, Kunsthalle	257
Wiesbaden, Gemälde-Galerie	566
Wiesbaden, City	1
Wiesbaden, Staatsarchiv	62
Frankfurt, Historisches Museum	3
Frankfurt, Städt. Galerie & Staedelsches Kunstinstitut	76,523
Geislingen/Württ., Altertumsverein	1
Hess. Staatsministerium (custodian of the Berlin, Mainz & Worms museum property. This figure includes 2,166 solander cases containing appr. 50,000 drawings & prints and 979 boxes cont. stamps, ethnological and antique material for minimum of about 1,200,000 individual items)	8,410
Munich, Bayrisches National-Museum	4
Bremen, Kunsthalle Bremen	1
Nürnberg, City	1
<u>Total</u>	<u>117,783</u>
Return to German private owners	<u>2,667</u>
<u>RELEASES GRAND TOTAL</u>	<u>185,357</u>

106718

DECLASSIFIED

Authority: UNN 968071

By: JA - NARA Date: 8-16

REPRODUCED AT THE NATIONAL ARCHIVES

RG 59

Entry Lot 620-4

Box 20

7-22-46 for other purposes

ALLIED CONTROL AUTHORITY
REPARATIONS, DELIVERIES AND RESTITUTION DIRECTORATE
RECEIPT FOR CULTURAL OBJECTS

The undersigned, _____, duly accredited by the _____ Government, hereby acknowledges the receipt on behalf of the said Government, from the UNITED STATES OF AMERICA Commander in Chief in Germany, for the items described in schedule "A" attached hereto.

1. The delivery of these items is submitted to following conditions:

a. In the event of the items coming within the ambit of a general restitution procedure that may later be established by the Allied Powers, the receiving Government will agree to the transfer being submitted for confirmation by a restitution Commission or other international body which may be established to deal with this matter and will abide by its decision.

b. In the event of such confirmation, the transfer will be subject to all the conditions laid down for restitution deliveries generally.

c. In the event of items not coming within the ambit of such restitution procedure, the transfer shall be dealt with in accordance with such procedure as may be established for other deliveries.

2. The receiving government hereby certifies that the items described in schedule "A" attached were taken out of that country by the enemy.

3. The receiving government undertakes to restore any object which has been delivered to it by mistake:

a. To the government of the allied state if the property was removed by the enemy from the territory of that state;

b. To the Headquarters of the Zone from which it was shipped, if it had not been removed from the territory of an Allied state.

106719

RG 260
Entry Ardelia Hall (4)
Box 250

Authority NND 775057
BY AT NARA Date 7-22-46
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4. The receiving government agrees that the occupying power and all its agents and representatives shall be saved harmless from any claim for loss, damage or deterioration suffered by any item from the time of its removal from the jurisdiction or custody of the country receiving restitution until its return thereto.

Witness

Signature

Date

Signature typed

Place

Title or Capacity of Signer

DISTRIBUTION:

- Original and one copy - Office of Military Government (U.S. Zone)
1 - Office of Military Government for Germany (U.S.)
1 - Representative of receiving nation
1 - Office of Military Government for Bavaria

RG 260
Entry Ardelia Hall
Box 250

BY AT NARA Date 7-22-99
Authority 77507
DECLASSIFIED

106720

SCHEDULE "A"

Unless otherwise noted below none of the objects listed in this receipt show evidence of recent damage of serious nature caused by transportation or handling during and after the war. In cases where damage is mentioned see Property Cards for details.

List of Austrian Property from Central Collecting Point, Munich

Date: 21st July 1948

(18th shipment)

Run.No. of 18th shp.	Austrian Run.No.	Munich Arr.No.	Author	Subject	Presumed Owner	History
1.	2429	5137/Berchtesgaden 99/4	C. List	2 hunters with their spoil	Abbey of St. Peter, Salzburg	Removed from Abbey of St. Peter, Salzburg in April 1938 for presen- tation to Göring
2.	2430	8806/Aussee 4026	F. Waldmüller	Portrait of the family Geymüller in a park	Helen Schanz	Sold without knowledge of Mr. Schanz via Gal- lery Neumann, Vienna to Karl Haberstock, Berlin (for RM 30,000.- in 18.1.39) and further to Linz Museum
3.	2431	21418/Hohenaschau 547	Brussels, last half of 16th c.	Tristan fighting with the drake	Netty Königstein	Confiscated from Netty Königstein, Vienna for Baldur v. Schirach, given to Munich.
4.	2432	21434/ " 563	Brussels, about 1570	Tapestry: mythological scene?	"	"
5.	2433	21435/ " 564	Brussels, end of 16th cent.	Tapestry: story of Isoldo	"	"
6.	2434	28030/Ettal 187	Ferd. Waldmüller	"Mutterglück"	Bloch-Baur	Confiscated from Bloch-Baur, sold to Pinako, Munich

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By AT NARA Date 7/22/94

RG 260
Entry Archie Hall III
Box 250

Run No. of 18th shipm.	Austrian Munich Run No. Arr.No.	Author	Subject	Presumed Owner	History
7.	2435	28031/Ettal 188	Ford Waldmüller "Die Versöhnung"	Bloch-Baur	Confiscated from Bloch-Baur, sold to Pinakothek Munich
8.	2436	45412/Munich, Univ. Bibliothek 108/1	Knaben Wunderhorn 1 book	Katholischer Universitäts-Verein Salzburg	Ahnenorbe library deposited in Niederstotzingen near Ulm, erroneously brought to University library Munich from there to CCP
9.	2437	45412/ " 108/2	Auroli Augustini 1 book Tractatus	Philos. Seminar Salzburg	"
10.	2438	45693/Ansbach 1192	Prachhistorical objects	Prachist. Museum Vienna	"
11.	2439	45700/ " 1199	"	"	"
12.	2440	45705/ " 1208	Various Books	Kathol. Universitätsverein Salzburg	"
13.	2441	45706/ " 1205	Various	"	"
14.	2442	45709/ " 1208	Prachhistorical objects	Prachist. Museum Vienna	"
15.	2443	45711/ " 1210	Various Books /A	Kath. Universitätsverein Salzburg	"
16.	2444	45716/ " 1215	Various	"	"
17.	2445	47706/Schloss Ringberg 146	Brüssel about 1570 Tapestry: story from Tristan + Isoldo	Netty Königstein	Confiscated from Netty Königstein, Vienna for Baldur v. Schirach, given to Munich
18.	2446	47707/ " 147	Brüssel ab. 1570 Tapestry: story from Tristan + Isoldo	"	"
19.	2447	47708/ " 148	Brüssel ab. 1570 Tapestry: story from Tristan + Isoldo	"	"

NOTHING FOLLOWS

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By AT HARA Date 7-22-99

RG 260
Entry Box 250
Adelia Hill

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LKB/gr

OFFICE OF MILITARY GOVERNMENT FOR GERMANY (U.S.)
Economics Division
Restitution Branch
APO 742

18 April 1947

Miss Ellen Starr Brinton
Curator, Swarthmore College Peace Collection
Swarthmore, Penna

Dear Miss Brinton:

Your inquiry of 26 March 1947, addressed to Major Born, concerning the correspondence of the late Dr. Quidde, President of the German Peace Society for many years, has been received.

Much of the earlier correspondence addressed to persons not associated with this office, which has among its chief responsibilities the location and safeguarding of restitutable cultural materials, has found its way to our files. A search for the subject documents was instituted at the request of Swarthmore College in the fall of 1945, and a report of negative results was sent to the War Department on 24 January 1946. No additional information has come to light since the date of that report, even though the search has been actively continued.

At this time the Office of Military Government (U.S.) is formulating a program for the processing and ultimate disposition of claims for loss sustained by reason of discriminatory acts of Nazi Germany. Wide publicity will be given to the policies and procedures as soon as they have been adopted in order that claimants (e.g., Swarthmore College) may submit formal claims on the approved form and to the designated claims agency. All pertinent information available in this office will be forwarded to this claims agency at that time. For the present, continuing endeavor will be made to locate the missing papers. If found, they will be taken into United States custody for safekeeping pending final decision regarding their disposition.

UNCLASIFIED - MAJOR BORN - RESEARCHER'S NAME

68

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Authority AND 765036
By TJ NARA Date 9/8/99

RG 260
Economics
Division
Box 115

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106723

With respect to your request "that records of German peace leaders finally come here for permanent deposit", we can readily understand the reasons which prompt such a request, but we must point out that the Office of Military Government for Germany cannot dispose of private property (e.g., the papers of individuals or institutions) which is not either restitutable under existing directives or confiscable under the provisions of the several pertinent laws.

Sincerely yours,

RICHARD F. HOWARD
Chief, MFA&A Section

68

DECLASSIFIED
Authority AND 765036
By TJ NARA Date 9/8/99

RG 260
Economics
Division
Box 115

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OUTGOING AIRGRAM

DEPARTMENT OF STATE DIVISION OF COMMUNICATIONS AND RECORDS TELEGRAPH BRANCH

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NICOG,

A-4030 May 17, 1951

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Reference is made to your airmail No. 6136, April 24, 1951, subject: Weimer State Numismatic Collection, and enclosed letters of inquiry from Dr. W. H. Woodruff of Chicago. The Department was informed that the collection was a gift of \$2 million in value coming from the Weimer collection. The Department requested an investigation by the appropriate law-enforcement agencies of the United States Government to determine if the collection was the property of the United States. The report dated April 16, 1950, and descriptive list of missing items are enclosed with your airmail. It would appear that over 2.0 coins offered by the New York dealer are among those missing from the Weimer collection. The report also states that the collection was being transferred to the Department by the Treasury Department from the customs agents in Chicago, Illinois; El Paso, Texas; New Orleans, Louisiana; and New York, New York. The case is still under investigation.

The recovery program of works of art and cultural objects is administered by the Department of State in accordance with the State Department Policy on the Return of Cultural Objects (Circular 1) and the State, War, Navy Coordinating Committee policy on the Return of Looting Objects of Art to Countries of Origin (Circular 1).

Dr. Erich Fischack in 1928 was a curator of the Zoologische Staatssammlung in Munich, Germany.

ACHESON

Enclosure

CIA

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Entry	5383
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7/6/92
BY NARA Date 7/6/92

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FRANKFURT - 4039

enclosures:

1. Statement of Policy concluded July 8, 1946, among the United States, United Kingdom, and France.
2. State, War, Navy Coordinating Committee policy on the "Return of Looted Objects of Art to Countries of Origin."

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RG	59	Authority	7/6/99
Entry	5383	DECLASSIFIED	99096
Box	1		

106726

Missing Plugs

OFFICE OF THE US HIGH COMMISSIONER FOR GERMANY
Office of Economic Affairs
Property Division
Wiesbaden Central Collecting Point
APO 633

Wiesbaden, Germany
27 June, 1950

Prof. Dr. Holzinger
Staedelsches Kunstinstitut
Dürerstrasse
Frankfurt/Main

Dear Dr. Holzinger,

Could you or Dr. Schwarzweiler tell me anything about the painting reproduced in the attached photograph?

It is now in America and has attracted the attention of our authorities who question its provenance. It is in the possession of a former soldier who states he acquired it in Bad Wildungen. In view of known losses there, anything of this quality which apparently passed through black market channels is obviously open to suspicion, but I cannot identify it from any lists available to me. We should like either to give it a clean bill of health or procure its return to Germany if it is a stolen object, so I should appreciate any assistance you can give.

Valentiner has attributed it, rather boldly I think, to Rubens.

Yours very truly,

THEODORE A. HEINRICH
Cultural Affairs Adviser

Tel.:
Wiesbaden 21279

106727

DECLASSIFIED
Authority *72027505*
By *[Signature]*

LIMITED OFFICIAL USE

October 27, 1958

MEMORANDUM

TO: EE - Mr. Valdemar N. L. Johnson
FROM: L/P - John T. Stewart, Jr.
SUBJECT: Disposition of Polish Paintings in the Possession of Professor S. Harrison Thomson of the University of Colorado

Reference is made to memorandum under date of October 20, 1958 concerning the above-cited subject as well as a proposed reply to Professor Thomson attached thereto.

It is suggested that a proposed reply to Professor Thomson should reflect the previous position taken by the Department that its primary concern in this matter was to establish whether or not the art objects in question were "Nazi-looted property" (See Department's letter of May 2, 1958 to Professor Thomson; Department's letter of April 29, 1958 to Senator Butler).

It is also suggested that you may wish to consider returning to Professor Thomson the photographs which he forwarded to the Department since the Department apparently has no further interest in this matter.

Attachment:

File on Above-cited Subject.

L: L/P-JT Stewart Jr. :mmr

LIMITED OFFICIAL USE

File: art - Looting

106728

RG	59
Entry	5383
Box	1

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Authority: 1009996
By: 11 NARA Date: 7/6/99

Waelder und einen anderen, Entscheidung Nr. 29). Das Reich unterliegt daher der durch Art. 30 REG begründeten strengen Haftung. In seiner Entscheidung führte das Oberlandesgericht zutreffend folgendes aus:

„Da die Zwangsvollstreckung wegen der Hypothekenzinsen betrieben wurde, hat das Reich die erhaltenen Beträge als Nutzungen herauszugeben. . . . daß der Anspruch gegen das Reich nicht der Anspruch aus der Hypothek auf Zahlung der Hypothekenzinsen gemäß den §§ 1113 und 1118 BGB ist, sondern der Anspruch auf Herausgabe der Nutzungen des entzogenen Gegenstandes und auf Schadenersatz nach Art. 30 REG. Danach sind dem Berechtigten die wirklich gezogenen Nutzungen herauszugeben und ist Schadenersatz zu leisten, soweit er Nutzungen gezogen hätte, wenn die Entziehung ihn nicht daran gehindert hätte.“

VI. Auf welche Weise haftet ein Land, wenn es nicht der wirkliche Rückerstattungspflichtige ist?

Es bedarf keiner Ausführung, daß das Land Hessen, da es im vorliegenden Fall nicht der wirkliche Rückerstattungspflichtige im Sinne des REG ist, nicht selbst verurteilt werden kann. Es wurde vom Gesetz (Art. 61) lediglich zum fiskalischen Vertreter des Reiches gemacht, um im Rückerstattungsverfahren eine Handhabe zu schaffen, Rechte, die auf Grund des REG entstehen, gegen das Deutsche Reich geltend zu machen.

VII. Ist es bei Zuerkennung der Rückerstattung notwendig, anzuordnen, daß der Berechtigte wieder als Inhaber der Hypothek im Grundbuch eingetragen wird, wenn eine Hypothek vom Reich beschlagnahmt und hierfür das Reich selbst nicht als Hypothekengläubiger im Grundbuch eingetragen worden war?

Entgegen der Behauptungen der Antragsteller ist dieses Gericht ebenso der Auffassung, daß sich eine Berichtigung des Grundbuchs erübrigt, da das Reich sich für beschlagnahmte Gegenstände nicht als Berechtigter eintragen ließ und hierfür auch keine gesetzliche Verpflichtung bestand. Die Berechtigten blieben immer die eingetragenen Rechtsinhaber. Die erneute Eintragung der Antragsteller wäre ein überflüssiger Formalismus. Die Entscheidungen dreier Gerichte werden ihnen die Richtigkeit ihres wiederhergestellten Rechtstitels am Eigentum bestätigen.

Der Fall wird an die Wiedergutmachungskammer zur nochmaligen Verhandlung und Entscheidung, gemäß der in dieser Entscheidung enthaltenen Beurteilung verwiesen.

Den Parteien werden für diese Instanz keine Kosten auferlegt.

Es war zu erkennen, wie geschehen.

Advisory Opinion No. 1

IN THE MATTER OF THE REQUEST OF THE
HON. JOHN J. McCLOY
UNITED STATES HIGH COMMISSIONER FOR GERMANY FOR AN
ADVISORY OPINION

on the following question:

“Does a person entitled to claim restitution of property under Military Government Law No. 59 remain entitled to such restitution, after a successor organization has, by virtue of Article 11 (2) of said law, acquired his legal position?”

Filed 4 August 1950

Before COHN, President, HARDING, Justice, sitting as an Associate Judge, and FLANAGAN, Judge.

PER CURIAM

This opinion is rendered in pursuance to Regulation No. 7 under Military Government Law No. 59, Restitution of Identifiable Property, issued by the United States High Commissioner for Germany on 28 December 1949 and the amendments thereto in Regulation No. 8¹ of the Office of the United States High Commissioner for Germany, dated 26 May 1950.

Regulation No. 7 supra, as amended, reads in part:

Article 2: JURISDICTION AND POWERS

Paragraph 7: The United States High Commissioner for Germany may, in his discretion, request the Court of Restitution Appeals to issue an advisory opinion on any question submitted by him.

Article 3: DECISIONS

Paragraph 1: Opinions, orders, mandates, decisions and advisory opinions of the Court of Restitution Appeals shall be by a majority vote of the members sitting, and shall be incorporated in written opinions, except in cases where such Court refuses to review a matter.

Paragraph 3: All opinions, orders, mandates, decisions and advisory opinions of the Court of Restitution Appeals published pursuant to paragraph 2 of this Article shall, insofar as they involve the interpretation of Military Government Law No. 59, be binding upon all German courts and authorities.

Since this is the first advisory opinion rendered by this Court we feel that a brief outline of the purpose, basic principles, and pertinent procedural regulations of the Law should be set forth.

Law 59 for the restitution of identifiable property was promulgated by the Office of Military Government for Germany (US) on 10 November 1947. The purpose and basic principles² of the Law were stated to be the speedy

¹ Official Gazette No. 27 of the Allied High Commission for Germany, dated 20 July 1950.

² Article 1 Law 59.

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and complete³ restitution of identifiable property (tangible and intangible) to the largest extent possible to persons who were wrongfully deprived of such property within the period from 30 January 1933 to 8 May 1945 for reasons of race, religion, nationality, ideology or political opposition to National Socialism. The dates 30 January 1933 to 8 May 1945 coincide with the rise and fall of National Socialism in Germany. The Law among other things provided for the establishment of a Central Filing Agency⁴ to take care of the filing of claims for restitution. All claims had to be submitted to the Central Filing Agency on or before 31 December 1948⁵. This time limitation was extended to 30 June 1949⁶ for the filing of extraordinary and meritorious cases approved by Military Government⁷. Where no claims had been filed, the public prosecutor was authorized to file claims during the extended period on behalf of a successor organization. This extension did not apply to individual claimants.

The designation of successor organizations was authorized⁸ and provision made for regulations to be issued by Military Government, to provide for the manner of their appointment, their obligations and rights under Military Government or German law.

The regulation⁹ promulgated by Military Government on 23 June 1948 designating successor organizations and providing for the appointment of a successor organization to claim Jewish property, provided that, before such designation was given, an application had to be made in writing to the Office of Military Government for Germany (US) by a non-profitable and charitable organization, and that such application should include such information as required by the regulation. The organization had to be representative⁹ of the entire group or class which it was authorized to represent. Upon appointment a successor organization is required to use its assets for the general benefit of the members of the group or class which it represents or for such other non-profitable or charitable purposes as would be approved by Military Government.

The Jewish Restitution Successor Organization, a charitable organization, incorporated under the Laws of the State of New York, United States of America, applied for appointment as a successor organization and having qualified under the regulation was approved as the Successor Organization authorized to claim Jewish property⁹ pursuant to the terms of Articles 8, 9, 10 and 11 of Military Government Law No. 59.

Jewish property was defined¹⁰ as the property, rights and interest of Jewish individuals and of Jewish organizations.

The regulation and appointment became effective¹¹ in the Laender Bavaria, Hesse, Wuerttemberg-Baden, and Bremen on 23 June 1948.

3 Article 49 Law 59.

4 Article 55 Law 59.

5 Article 56 Law 59.

6 Article 70 Law 59.

7 Order of the Military Governor, Subject: Petition by Public Prosecutor, dated 28 February 1949.

8 Article 13, Law 59.

9 Regulation 3 under Law 59.

10 Article II of Regulation 3 under Law 59.

11 Article IV of Regulation 3 under Law 59.

An authorization and license¹² to engage in certain types of transactions was issued to the Jewish Restitution Successor Organization by the Office of the United States High Commissioner for Germany on 18 January 1950.

Up to the present time the Jewish Restitution Successor Organization is the only successor organization designated and appointed under Law 59 in the United States Area of Control in Germany.

The question of the High Commissioner

"Does a person entitled to claim restitution of property under Military Government Law 59 remain entitled to such restitution after a successor organization has by virtue of Article 11 (2) of said law, acquired his legal position?"

requires an examination of Articles 11 and 56 of Law 59 and the several articles¹³ dealing with the appointment of successor organizations.

Article 11 is as follows:

1. If within six months after the effective date of this Law no petition for restitution has been filed with respect to confiscated property, a successor organization appointed pursuant to Article 10 may file such a petition on or before 31 December 1948 and apply for all measures necessary to safeguard the property.
2. If the claimant himself has not filed a petition on or before 31 December 1948, the successor organization by virtue of filing the petition shall acquire the legal position of the claimant. Only after that date, and not prior thereto, shall it be entitled to prosecute the claim.
3. The provisions of paragraphs 1 and 2 hereof shall not apply if, and to the extent to which, the claimant, in the period from 8 May 1945 to 31 December 1948, has delivered a waiver of his claim for restitution, in writing and in express terms, to the restitutor, the appropriate Restitution Authority, or the Central Filing Agency."

The Law became effective on 10 November 1947. The claimant entitled to restitution could file his claim at any time between the period of 10 November 1947 and 31 December 1948. If, however, such claimant had not filed his claim by 10 May 1948 (six months after the effective date of the Law), a successor organization could file a claim on his behalf so long as such claim was filed prior to 31 December 1948. If the claimant filed between the period 10 May and 31 December 1948 and the successor organization also filed during the same period the claim filed by the successor organization became without effect and would have to be withdrawn and/or dismissed. If neither a claimant nor a successor organization filed a claim on or before 31 December 1948, their rights to restitution under Law 59 were forfeited. However, the situation posed by the question of the High Commissioner presupposes a non-filing by the claimant at any time prior to 31 December 1948 and a proper filing by a successor organization within the authorized period. A careful examination of the provisions of Article 11 (2) leads to the conclusion that the provisions therein set forth exclusively concern a default in filing by a living claimant and a proper filing by a successor organization.

12 Letter to JRSO from US High Commissioner, dated 18 January 1950.

13 Articles 8, 9, 10 and 11, Law 59.

The intention of the legislator is further borne out by an examination of the language used in Article 11 (3) which provided for the non-application of the provisions of Article 11 (1) and (2), if between the period of 8 May 1945 to 31 December 1948 the claimant as the person entitled to restitution had expressly waived his claim for restitution. Conversely, such a person could neither waive his claim for restitution after 31 December 1948 nor settle his claim after that date. From this provision it is apparent that the intention of the legislator was to cut off the rights of the defaulting claimant absolutely. Similarly, to enable the purpose of the Law to be carried out by a speedy and complete restitution of property, it was imperative to fix a date with finality on which the legal rights of all parties, whether they be individual claimants or successor organizations could be ascertained. The legislator fixed the date as 31 December 1948.

The words "legal position" in the German¹⁴ text of the law, which is the official text, is "Rechtsstellung"; German legal dictionaries¹⁵ define the word "Rechtsstellung" as "legal status" and "juridical position". The English word "legal" has been defined¹⁶ "according to the method acquired by statute"¹⁷ it does not mean permitted by law but means created by law¹⁸.

We hold that the language used in Article 11 (2) "shall acquire the legal position of the claimant" means that all the right, title and interest to the claim and to the restitutable property became vested by operation of law in the successor organization. Provided, however, that the "acquisition of the legal position of the claimant" by the successor organization is predicated upon such claimant being a member of the group for which the successor organization was appointed¹⁹. The claimant by reason of his default lost his right to restitution under the said Article 11 (2) on 1 January 1949 when the vesting of the claim in the successor organization took place. He is forever barred from making any claim for the restitution of such property.

Our attention has been called to Article 56 (4) of Law 59, which is as follows:

"Any petition, filed by a person who is not entitled to restitution of the property, shall be deemed to have been effectively filed in favor of the true claimant, or where Articles 8, 10 and 11 are applicable, in favor of the successor organizations mentioned therein. The same shall apply to the filing of petition by any such successor organization."

We hold the provisions of this article are not applicable to claims filed by a person or successor organization under the terms of Article 11 supra. The above paragraph places the emphasis on claims filed by a person or successor organization not entitled to restitution of the property, whereas Article 11 (2) specifically provides for cases where a living

claimant entitled to restitution has not filed before the statutory period has expired. We see no conflict between the provisions of Articles 11 and 56 (4). The latter was enacted to take care of claims filed within the statutory period by persons other than the true claimant. Upon the appearance of the true claimant whether before or after the statutory filing period the filing of the claim was deemed to have taken place for the benefit of the true claimant. The same is also true of claims filed by a successor organization for a person not within its authorized group or class.

The provisions of Article 10 concern the rights of succession of a successor organization to the property of deceased persons who have no living heirs. From a reading of Military Government Law 59 it is evident that at the time of its promulgation it was anticipated that several successor organizations would be appointed. Under Article 10 it was intended that the several successor organizations would take over heirless property of persons who had been members of the various groups and classes which had been subjected to persecution and the confiscation of their property during the years 1933 to 1945. A claim filed by a successor organization on behalf of a deceased person not a member of the group or class for which the successor organization had been appointed, would in accordance with the provisions of Article 56 (4) be considered filed in favor of the successor organization which had jurisdiction.

Article 56 (4) would also be applicable in the case of a claim filed by a successor organization under Article 11 on behalf of a person not a member of the group or class for which it had the right of succession.

Likewise, the provisions of Article 56 (4) would be applicable to a claim filed by a successor organization appointed under Article 8 and having the rights of succession to property of a dissolved association.

We therefore answer the question of the High Commissioner in the negative.

IT IS SO ORDERED:

¹⁴ Article 11 (2) Law 59.

¹⁵ Dora v. Beseler, Dr. Hildegard Wasche and Dr. Basedow.

¹⁶ Corpus Juris Secundum 52, p. 1039.

¹⁷ In re Folwell's Estate 68, N.J. Eq. 728.

¹⁸ Vauhn V. National Council etc. 136 M.O. APP 426.

¹⁹ Paragraph 2, Regulation 3, Law 59.



J. H. [unclear]
JH [unclear] WARA

106732

UNITED STATES COURTS
OF THE ALLIED HIGH COMMISSION FOR GERMANY

*Germany (Occupied) under the Occupation
1945-1949 Reports, Court Restitutions
Appeals*

**COURT OF
RESTITUTION APPEALS REPORTS**

Opinions Nos. 1-60

Advisory Opinion No. 1

Military Government Law No. 59, Amendments and Regulations.

Other Pertinent Laws

Rules of the Court

Entscheidungen 1-60

Rechtsgutachten Nr. 1

Gesetz Nr. 59 der Militärregierung, Änderungen, usw.

Verfahrensordnung



VOLUME I

1951

2. daß der Antragsteller keine Person ist, welche trotz begründeter Anwartschaft im Sinne des Art. 2 des MRG Nr. 59 Vermögensgegenstände nicht erlangt hat.

Die Entscheidungen des Oberlandesgerichts Frankfurt/Main werden bestätigt.

Es war zu erkennen wie geschehen.

ELSA RIEDE,
HANS RIEDE,
LUTZ RIEDE,
JOST RIEDE, Restitutor-Appellants

vs

Dr. GEORG LEDERER, Claimant-Appellee

Opinion No. 6

Filed 23 March 1950

Case No. 43

Appeal from the decision of the Oberlandesgericht at Frankfurt/Main.

Attorney-at-Law Dr. Bödicker, Kassel, for the Appellants.

Attorneys-at-Law Drs. Pechmann and Schroeder, Kassel, for the Appellee.

Before COHN, President, HARDING, Justice, sitting as an Associate Judge, and FLANAGAN, Judge.

The Opinion of the Court was delivered by COHN, President.

The restitutor-appellants are the heirs of one Heinrich Riede, who died in 1938. He, together with his brother and the appellee, owned a road building company in Kassel, known as "Mistra". The company passed through several stages of re-organization. From 1927 the claimant was a technical director of the firm and later, in 1930, received a power of attorney for representation of the corporation. In one of the re-organizations, transferring the company to private ownership, the appellee was permitted to acquire shares. He obtained for that purpose and the benefit of the firm RM 99,864. The money was made available to him by his father-in-law, who, under Nazi law, was of mixed blood — a half Jew. Heinrich Riede and the appellee became the managers of the company; either was authorized to sign separately for the company, which prospered.

The appellee is Aryan under the infamous "Nuernberg Laws". In 1935 he applied for membership in the NSKK, the automobile corps affiliate of the Nazi Party. His application was rejected because his wife was of quarter Jewish blood. Riede was a Party member from 1931 and his wife, the appellant Mrs. Elsa Riede, since 1932. He was the local Ortsgruppenleiter and his wife the head of the Frauenschaft of the Kassel district.

They were very close to the Gauleiter Weinrich and to other Party dignitaries. Weinrich was also a member of the "Aufsichtsrat" of the firm Mistra, which was organized along the strictest Nazi lines and held the honorary Party diploma as being in that respect a model plant in the district.

On 28 December 1936, the appellee conveyed his interests in the firm to Riede at a price of RM 100,000, which is alleged to have been a grossly inadequate price and far below the worth of the shares.

The appellee alleged that he was forced from and to sell his interest in the firm Mistra as the result of Nazi racial and ideological reasons held by the ranking Party officials Riede and his wife; that they knew that he was married into a Jewish family; that his position was progressively perilous due to the increasing severity of the laws enacted against the race; that it was impossible for him to offer any resistance to the forced sale due to the close relationship between Riede and Gauleiter Weinrich; that, because of the pressure exerted upon him due to his wife's Jewish blood, he could not resist his expulsion from Mistra; that this was proven by the fact that he sold his interest at far less than its actual value; and that the dissolution of the firm was not done in the usual manner. His prayer for relief was as follows:

"1. the sales and cession contract concluded on 28 December 1936 before a Notary Public between himself and Heinrich Riede be declared null and void; 2. it be ordered under Art. 23, Law 59, that the claimant again is a partner in the Limited Corporation, which is the legal successor to the Mistra with the status of a manager entitled to sign separately in the name of the firm, and that the restitutors be ordered to surrender to the claimant the profits drawn since 1 January 1937 as far as such profits would have been due to him as partner and manager up to 1 July 1949, in consideration of which he, the claimant, would simultaneously refund DM 10,000."

The appellant's based their defense on an allegation that Heinrich Riede desired only to be in complete control of the firm and because he and the appellee were continuously at cross purposes and that the non-Aryan marriage was only incidental to the desire of the original owner.

The Restitution Chamber dismissed the claim upon the ground that there was not a confiscation under Arts. 2 to 4, Law 59, and that the prerequisites of a measure of persecution under Art. 2 were not fulfilled.

The Oberlandesgericht concurred in the opinion of the Restitution Chamber only insofar as it denied the applicability of Art. 4, Law 59.

It is common knowledge that persons of mixed blood in the second degree under the Nuernberg Laws and their relatives by blood were exposed to innumerable discriminations and they were subjected to restrictions concerning their economic and cultural activities. The Restitution Chamber held that this made no difference. The Oberlandesgericht did not share that view. It held that agencies of the Nazi State or Party frequently went beyond the law with the tacit approval of higher authorities.

Moreover, Arts. 1 and 2 of Law 59 do not prescribe that a restitutee must belong to a group of persons which were persecuted in general.

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Art. 1 merely applies to a person who is wrongfully deprived of his property for reasons of the categories mentioned therein; it does not mean that a person himself must be a member of the race, religion, or nationality. If he was deprived of his property because he was married to a Jewess such would fall within the purview of the statute.

The Oberlandesgericht reversed the Restitution Chamber when the latter held that

"a measure of persecution is synonymous with the concept of threat under Art. 123 of the German Civil Code."

The Oberlandesgericht correctly held that it was not necessary to have an application of force in effecting an act of confiscation and that persecution and confiscation may have taken place from innumerable sets of circumstances.

No matter if Riede's motive was to be the sole master of the firm, it is not exclusively his desire and that controls this restitution matter, but the manner in which the end was brought about. If the method employed to make a person relinquish his property falls within the meaning of Law 59, (and this constitutes the decisive issue in this case), it must be determined whether or not the method used was contra bonos mores.

We quote from the final ruling of the Oberlandesgericht's decision:

"The Landgericht did not institute the investigations which were actually necessary in this case and committed an error in ruling that the presentations of the claimant, although they were taken for granted, were not sufficient to establish his claim. Therefore, the Landgericht will have to ascertain through supplementary investigations which were the actual reasons of Heinrich Riede's step, and apart from basing its decision on the proofs admissible under Art. 49, Par. 2, Law 59, the Landgericht will also have to take into consideration such clues as are provided by the attitude of the Riede couple prior to and after the conclusion of the contract. If a definite and actual result is reached through these investigations, the Landgericht, taking into consideration the above stated reasons, will have to decide whether the contract constituted a transaction contra bonos mores in the nature of a measure of persecution under Art. 1, Law 59."

The judgment of the Oberlandesgericht was as follows:

"Under the appeal of the claimant the appealed decision is vacated and the matter referred back to the Kassel Restitution Chamber for a new trial and decision."

The decision of the Oberlandesgericht at Frankfurt is affirmed and the Restitution Chamber at the Kassel Landgericht is ordered to follow the mandate contained in that decision.

IT IS SO ORDERED:

ELSA RIEDE,
HANS RIEDE,
LUTZ RIEDE,
JOST RIEDE,

Rückerstattungspflichtige und Antragsteller
gegen

Dr. GEORG LEDERER, Rückerstattungsberechtigter und Antragsgegner

Entscheidung Nr. 6

Eingereicht am 23. März 1950

Fall Nr. 43

Nachprüfung der Entscheidung des Oberlandesgerichts Frankfurt/Main.
Rechtsanwalt Dr. Bödicker, Kassel, für die Antragsteller.

Rechtsanwälte Dr. Pechmann und Dr. Schroeder, Kassel, für den Antragsgegner.

Verhandelt vor Präsident COHN, Justice HARDING als Beisitzer und Judge FLANAGAN, Beisitzer.

Die Entscheidung des Gerichts wurde von Präsident COHN geschrieben.

Die Rückerstattungspflichtigen und Antragsteller sind die Erben des 1938 verstorbenen Heinrich Riede. Er war mit seinem Bruder und dem Antragsgegner Inhaber einer Straßenbau-Gesellschaft, die unter dem Namen „Mistra“ bekannt war. Die Firma durchlief eine Reihe von Veränderungen. Von 1927 an war der Rückerstattungsberechtigte technische Direktor der Firma und 1930 erhielt er Prokura. Im Laufe einer der Umstellungen, während der die Gesellschaft in private Hände überging, erhielt der Antragsgegner das Recht, Anteile zu erwerben.

Zu diesem Zweck und zu Gunsten der Firma stellte ihm sein Schwiegervater RM 99 864.— zur Verfügung, der letztere war im Sinne der Nazi-Gesetze „Mischling“, ein Halb-Jude. Heinrich Riede und der Antragsgegner wurden die Geschäftsführer der Gesellschaft; jedem stand das Recht zu, für die Firma allein zu zeichnen, welche sich günstig entwickelte.

Im Sinne der berüchtigten „Nürnberger Gesetze“ ist der Antragsgegner „Arier“. Im Jahre 1935 suchte er um Aufnahme in das NSKK, das der NSDAP angeschlossene Kraftfahr-Korps, nach. Da seine Ehefrau Viertel-Jüdin war, wurde er abgelehnt. Riede war Mitglied der NSDAP seit 1931; die Antragstellerin, Frau Elsa Riede, seine Ehefrau, seit 1932. Er war Ortsgruppenleiter und seine Ehefrau Kreisfrauenschaftsführerin im Kreis Kassel. Sie standen dem Gauleiter Weinrich und anderen Würdenträgern der Partei sehr nahe. Weinrich gehörte auch dem Aufsichtsrat der „Mistra“ an, welche streng nach Nazi-Gesichtspunkten organisiert war und welche als nationalsozialistischer Musterbetrieb des Gaus ausgezeichnet worden war.

Am 28. Dezember 1936 übertrug der Antragsgegner an Riede seine Beteiligung an der Firma und zwar für RM 100 000, eine Summe, die als

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APPROVED/NARA
JK/15/15

des Antragstellers und seiner Vernachlässigung des Geschäfts gelöst worden. Um seine eigenen Interessen zu schützen, mußte der Antragsgegner die persönlichen Schulden des Antragstellers bezahlen. Der Antragsgegner habe zu keinem Zeitpunkt vor Auflösung des Gesellschaftsverhältnisses der Gestapo Meldungen über die Tätigkeit des Antragstellers gemacht.

Wir haben das Verfahren in der Vorinstanz nach Aktenlage und die vom Anwalt des Antragstellers in seinem Schriftsatz aufgeführten Rechtsirrtümer sorgfältig geprüft.

Durch Beschluß vom 16. August 1938 stellte das Amtsgericht Nürnberg⁵ die Zwangsvollstreckung aus dem Vergleich vom 30. 5. 1938 ein. In jenem Verfahren versuchte der Gläubiger die Maschinen und das Werkzeug in der Werkstatt des Antragstellers an sich zu nehmen, das Gericht war aber der Ansicht, daß solche Vermögensgegenstände nicht mit Beschlag belegt werden könnten, solange der Antragsteller nicht in der Lage sei, das für den Bau von Fahrradständern erforderliche Metall zu bekommen. Der Antragsteller hatte dem Gericht in glaubhafter Weise dargelegt, daß es ihm unmöglich war, seine Aufträge wegen Mangel an Metall auszuführen. In einer weiteren Verhandlung vor dem Landgericht Nürnberg-Fürth⁶ vom 26. Juli 1939 genehmigte jenes Gericht einen Vergleich zwischen dem Antragsteller und Stroebel, auf Grund dessen sich der Antragsteller verpflichtete, ab 1. Juli 1939 RM 50 monatlich an Stroebel zu bezahlen. Der Antragsgegner, der dem Rechtsstreit beigetreten war, verpflichtete sich persönlich für die Raten und Kosten des Verfahrens, falls der Antragsteller seinen Verpflichtungen nicht nachkommen sollte.

Die oben angeführten Tatsachen zeigen, daß der Antragsteller nicht auf Grund gegen ihn gerichteter Verfolgungsmaßnahmen in finanzielle Schwierigkeiten geriet, sondern vielmehr wegen seiner mangelnden Geschäftstüchtigkeit oder wegen der während der kritischen Vorkriegsjahre 1937/1938 bestehenden Metallknappheit für den Zivilverbrauch. Eine Prüfung der Verfahren bei dem Amts- und Landgericht ergibt, daß dem Antragsteller jede Gelegenheit zur Ueberwindung seiner finanziellen Schwierigkeiten gegeben war. Die Niederschriften der mündlichen Verhandlungen der beiden Gerichte zeigen ganz deutlich, daß die Kammer nicht befangen war oder gegen den Antragsteller voreingenommen war; im Gegenteil, dem Antragsteller wurde Gehör geschenkt und der Ausgang war für ihn günstig.

Wir können den Behauptungen des Antragstellers nicht beitreten, daß ihn die Mitgliedschaft in der SPD automatisch unter die Bestimmungen des Art. 3 REG brachte: Vermögensgegenstände der Sozialdemokratischen Partei Deutschlands sind beschlagnahmt worden, aber es liegen keine Beweise dafür vor, daß dieses Verfahren auf den Antragsteller ausgedehnt worden ist. Wir stimmen auch nicht der Behauptung des Antragstellers zu, daß die Kammer das ihr zustehende Recht des freien Ermessens mißbraucht hat, weil sie es unterlassen habe, die Persönlichkeit der Parteien zu untersuchen, obgleich ein solches Verfahren nach dem FGG⁷ zulässig

⁵ Blatt 17 der Akten.
⁶ Blatt 5 der Akten.
⁷ § 12 FGG

ist. Ein solches Verfahren ist dem freien Ermessen des Prozeßgerichts überlassen. Wir finden auch keinen Ermessensmißbrauch in den anderen Handlungen des Gerichts. Obgleich ein gewisser Beweis für die Tatsache vorliegt, daß der Antragsteller von der Gestapo vorgeladen und über seine Beziehungen zu Juden befragt wurde, so liegt jedoch kein direkter Beweis dafür vor, daß sein Geschäft deswegen in einem Ausmaß boykottiert wurde, so daß eine Entziehung stattgefunden habe.

Das Beweisvorbringen ist unbestritten, daß der Antragsteller den Antragsgegner die Teilhaberschaft freiwillig anbot, als ersterer in großen finanziellen Schwierigkeiten war und daß die Uneinigkeit zwischen den Teilhabern von der Geschäftsführung und den wirtschaftlichen Schwierigkeiten herrührte. Die Streitfragen in diesem Verfahren hätten einem ordentlichen deutschen Zivilgericht zur Entscheidung vorgelegt werden sollen.

Wir sind der Ansicht, daß die Tatbestandsfeststellungen, worauf sich die Entscheidung der Kammer stützt, durch wesentliches Beweismaterial erhärtet sind. Es lag kein Ermessensmißbrauch der Wiedergutmachungskammer vor. Der Antragsteller ist keine auf Rückerstattung anspruchsberechtigte Person im Sinne des REG.

Die Entscheidung der Wiedergutmachungskammer vom 20. Oktober 1949 wird hiermit bestätigt. Die Kosten für diese Instanz werden gegeneinander aufgehoben.

Es war zu erkennen wie geschehen.

Dr. LEOPOLD KUENSTLER,
DOROTHEA SACKI, Claimant-Appellants

vs

LORENZ and MARIA EISENREICH, Restitutor-Appellees

Opinion No. 31

Filed 22 August 1950

Case No. 69

Appeal from a decision of the Second Civil Division of the Oberlandesgericht at Munich.

Attorneys-at-Law Dr. Hoechtl, Straubing, and Dr. Kurt May, Frankfurt am Main, for the Appellants.

Attorneys-at-Law von Gaehler and Dr. Wiesmeier, Straubing, for the Appellees.

Mr. Benjamin B. Ferencz, Director General, JRSO, appeared amicus curiae.

Before COHN, President, HARDING, Justice, sitting as an Associate Judge, and FLANAGAN, Judge.

COHN, President, delivered the Opinion of the Court.

Dr. Leopold Kuenstler and his father, the late Stefan Kuenstler, were the owners of a three-story-apartment building with its appurtenances known as Frauenhoferstrasse 19 at Straubing. The Land Title Register

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there shows the property as No. 306, Vol. 105, Page 3858. The title at present is registered in the name of the appellees Lorenz and Maria Eisenreich. Dr. Kuenstler besides his personally owned share is with Dorothea Sacki joint heir of the interest owned by the late Stefan Kuenstler.

The claimants, as was their father, are Jews. The son emigrated to Palestine. The father remained at Straubing.

On 5 May 1941, the father in his own right and acting under a power of attorney from his son sold the aforesaid real estate to the couple Eisenreich. The sale was approved by the Mayor of Straubing on 15 August 1941 on the basis of the Decrees Concerning the Placement of Jewish Property dated 3 December 1938 and 18 January 1940. The purchase price was RM 68,000. The instrument transferring the property clearly shows that the sale was in pursuance to the Nazi program for the utilization, meaning confiscation, of Jewish owned property. The instrument provided that "the purchase price will be paid into a blocked account with the Bayerische Vereinsbank Straubing"; that from the purchase money, RM 34,042 was to be transferred to the Berlin Finance Treasury to satisfy a mortgage made to the Deutsche Reich for the security of a possible Capital Flight Tax which might be levied against Stefan Kuenstler and RM 34,152 was to be paid to the Bayerische Staatsbank, Straubing, for the satisfaction of a mortgage calling for the payment of 10,800 grams of fine gold (roughly 30,000 Goldmark). These provisions of the contract were actually carried out.

The claimants demanded return of the property in kind against surrender of the claims to which they are entitled because none of the purchase price could be freely disposed of. They demanded surrender of the profits on the basis of a simple confiscation. They stated explicitly that to expedite the proceedings they would not raise any claim on the basis of a possible deterioration of the property.

The restitutors denied any guilt in having exploited illegally claimants' position. They contended that the sale was an ordinary business transaction and that Stefan Kuenstler repeatedly offered to sell them the property and that by concluding the bill of sale, they protected the claimants' interests in an unusual manner; that the property should not be considered as confiscated and that the deceased Kuenstler begged and urged them to buy the property. Before the Oberlandesgericht and in their oral argument here, counsel in their behalf contended that Kuenstler had compelled Eisenreich to purchase the property.

The Restitution Chamber granted the restitution claim and ordered the restitutors to return the herein described property to the claimants. The Court found that Kuenstler could not freely dispose of the purchase price and that the claimants had surrendered to the restitutors their rights to any moneys which they might claim out of the transaction. The Restitution Chamber without objection by the appellants here came to an adjudication of the monetary adjustments between the parties in a manner most favorable to the restitutors.

Several witnesses were offered to the Restitution Chamber by the restitutors looking toward proving that Kuenstler had urged and begged

the purchasers to buy the property. The Restitution Chamber did not hear the witnesses.

The Eisenreichs appealed to the Oberlandesgericht.

The Oberlandesgericht vacated the judgment of the Restitution Chamber and referred the matter back to it for retrial and a new decision.

The Oberlandesgericht was of the opinion that the facts offered by the restitutors might be sufficient to defeat the restitution claim. The learned Oberlandesgericht further opined as follows:

"The charge made in the appeal — correctly understood — is to the effect that the Restitution Chamber disregarded the allegations made by the restitutors and did not accept the evidence offered by them. This complaint in regard to the violation of procedural rule is supported by facts. The allegations made in the above mentioned brief are much more farreaching than the statement of facts given in the opinion of the decision. Not only is it claimed by the restitutors that Stefan Kuenstler offered urgently the purchase of the real property but it is particularly pointed out that Stefan Kuenstler actually begged and urged the restitutors to make the deal, that for reasons of personal relationship, the intervention of third parties and in order to merely oblige the vendor the restitutors finally accepted the offer by rejecting another object, and at the oral hearing that Eisenreich was actually forced into the purchase. It is not apparent that the restitutors no longer maintained their allegations within the meaning of this description of facts when the basis for the decision was established. These allegations are important within the meaning of Art. 3 and Art. 4, par. 3, as far as they may be able — if true — to refute the presumption of Art. 3 or at least support the defense of fraud within the meaning of Art. 4, par. 3. The Restitution Chamber therefore should have made investigations in regard to the evidence offered and the denials made by the other party in this respect (Art. 12 of the Law concerning Ex-Parte Proceedings). The Chamber should have evaluated the allegations made by the restitutors from the viewpoint of Art. 4, par. 3, as well, even if at the oral hearing the restitutors claimed only the exceptions pursuant to Art. 4, par. 1 a and b. The Chamber must evaluate the actual allegations made from every angle of the legal point of view, even if they are not pointed out by the party. Since the taking of evidence and the evaluation of facts particularly under the provisions of Art. 4 par. 3 could possibly have led to the dismissal of the claim for restitution, the decision is based on a violation of the law and the disputed decision — even in the absence of a formal petition — had to be set aside and the matter referred back for retrial and a new decision."

This Court has noted on many occasions that due to the pressure of a great number of cases which the several Restitution Chambers in the United States Zone of Germany must try the courts of first instance do not always thoroughly investigate the facts nor do they examine all of the witnesses who possibly should be examined. We are inclined in most instances to think that the trial courts could pursue their investigation of facts more thoroughly. We are also thoroughly appreciative of the difficulties encountered by the trial courts, especially the lack of sufficient personnel to expedite and thoroughly handle the thousands of restitution cases pending before them.

However, the case at bar is not one in which there was any need under Article 12 of the Law Concerning Ex-Parte Proceedings to further investigate the facts.

The allegations on that point made by the restitutors are merely that Kuenstler "begged" and "urged" them to buy the property. The oral contention and the contention in the brief before us — that the restitutors

were compelled to buy the property — are based on the averments by the appellees that they wanted to buy another piece of property; that Kuenstler obtained a mutual friend to persuade Eisenreich to buy the property. In view of the documentary evidence in the case those allegations, even if proven, are insufficient to rebut the power of avoidance or the presumption of confiscation under Law 59. They do not suffice to even raise a possibility of proof that there was fraud on the part of the transferor by which the restitutors were induced to enter into the sales agreement nor that duress of which a court could take cognizance was used in forcing the restitutors to buy the property.

We have held in Opinion No. 26 — *Schulz vs. Rosenthal* : Despite the fact that the sellers induced the restitutors to buy the property, even where the right of free disposal of a fair purchase price appeared, the claim could not be defeated, when the transaction would not have taken place in the absence of National Socialism. The facts in this case now before us are much stronger against the restitutors. The contract of sale itself clearly shows that the sellers were Jews and that the transaction was approved and took place under the Nazi decrees for the aryanization of property owned by Jews. The record shows that the transfer of the property in the Land Title Register was not had until 11 July 1942. An unrefuted allegation shows that the elder Kuenstler, 70 years of age, was deported to a concentration camp before that entry; furthermore he died there on 29 May 1942. The record further shows that Eisenreich was a member of NSDAP. We cannot take issue with the finding of the Restitution Chamber which in effect was that a 70 year old Jew, merely a few steps away from Nazi brutal violence could not have compelled a Nazi to buy his property. The Restitution Chamber did not abuse its discretion by not taking further testimony. We thoroughly disagree with the conclusion reached by the Oberlandesgericht.

The contention that the deceased Kuenstler received the free power of disposal of the purchase price by having debts against him discharged is utterly ridiculous.

The record clearly shows by the language in the Grundbuch that the mortgage to the Deutsche Reich was illegal. It only purports to protect the Reich against a possible assessment of a Capital Flight Tax against Stefan Kuenstler. That tax was never legally imposed. The only place to which the elder Kuenstler "fled" was a forced flight to his death in a Nazi concentration camp. This mortgage indebtedness placed against the property was in itself an aggravated confiscation and voidable under Law 59.

Likewise, there was inference of connivance in the payment of the mortgage to the Bayerische Staatsbank. A letter in the case record clearly shows that Stefan Kuenstler did not owe any money under the land charge. The mortgage was given to the Bayerische Staatsbank to establish credit whereby Kuenstler could draw on the Bank up to that amount of 10,800 grams fine gold. There was no indebtedness owing under that land charge at the time of the confiscation. It had not been used since 27 March 1934. Surely, paying an indebtedness which did not exist could not be for the benefit of the claimants.

There is much evidence in the case record from which an inference could be drawn that Eisenreich was cognizant of the nature of the entire transaction in 1941 or 1942. The numerous laws and decrees directed against Jews in blocking and confiscating their property and even the program accelerating the enforced trek of Jews to concentration camps and lethal chambers were in full bloom. Any complaint by Eisenreich to the Gestapo or to any Nazi headquarters that he, a Party member, was under duress by a Jew, would have given him instant relief from the compulsion that he now deems himself to have been under at that time. There is no evidence showing that Eisenreich complained to anyone that he had been compelled to buy old Stefan Kuenstler's property until the just attempt to right some wrongs perpetrated by the Nazis was put into force under Military Government Law 59. Old Kuenstler who perished in a concentration camp may have wanted to sell the property, even knowing that neither he nor his son would obtain one Pfennig in remuneration, in a last spasmodic attempt to divert his course from leading to a concentration camp.

The claimants are bound by the judgment of the Restitution Chamber from which they did not appeal and also by their election to treat the confiscation as being a simple one. So there is no need to discuss what success they might have had, had they asserted the confiscation of the property to have been aggravated.

In *Beier et als. vs Waelder et al.* — Opinion No. 29 — Court of Restitution Appeals, was shown that under Art. 4, pars. 2 and 3 of Law 59 it is of no avail, in attempting to defeat the power of avoidance, to show that the purchase price was fair if it also appears that none of the proceeds of the sale found their way to the pockets of the transferor.

We deem the defenses raised by the restitutors as frivolous.

The judgment of the Restitution Chamber is affirmed.

The judgment of the Oberlandesgericht is set aside.

IT IS SO ORDERED:



APPROVED/NARA
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UNITED STATES COURT OF RESTITUTION APPEALS
OF THE
ALLIED HIGH COMMISSION FOR GERMANY

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REPORTS

Opinions Nos. 61 — 180

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US HICOG Gesetz Nr. 21

Änderungen des MR Gesetzes Nr. 59



VOLUME II

1952

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IGNAZ SCHRAUDOLPH, Restitutor-Appellant

vs

DR. BERTHOLD & PAULA WEISS, Claimant-Appellees

Opinion No. 69 Filed with the Clerk: 16 March 1951 Case No 146

Appeal from the decision of the Oberlandesgericht at Munich

Attorney-at-Law Dr. Joachim Gerlach, Munich, for the Appellant.

Attorney-at-Law Mr. Siegfried Neuland, Munich, for the Appellees.

Before COHN, President, HARDING, Justice, sitting as an Associate Judge, and FLANAGAN, Judge.

The Opinion of the Court was delivered by COHN, President.

On 21 July 1938, the claimants, Dr. Berthold Weiss and his wife Paula, sold unimproved property in Munich-Bogenhausen to Ignaz Schraudolph for RM 30,000. The property later became known as Mauerkircherstrasse 21-23. Since her husband, a doctor of medicine, was in jail at that time under a false charge lodged against him, Mrs. Weiss acting on behalf of herself and under a power of attorney from her said husband executed the sales contract. Of the amount, RM 19,000 were paid to Mrs. Weiss in cash. RM 2,756.30 were expended to pay a mortgage held by the Bavarian Aerzteversorgung, while RM 4,655 were paid to the Munich Municipal Treasury for value increment tax. From the purchase price, RM 3,553.57 were paid into a blocked account on 22 March 1939. The balance of RM 93.98 was deducted for costs. The real estate, a building site, was acquired by the claimants in 1922 for RM 16,419.31. The restitutor obtained a large loan from the Reich for the purpose of erecting and he did build two apartment houses on the property, at a construction cost of RM 332,500.

In their original petition filed with the Central Filing Agency, the claimants sought the return of the property, surrender of profits and other rights under the Restitution Law. They averred that the property was sold while Dr. Weiss was in Gestapo custody at the Dachau Concentration Camp; that the reason for the sale was due to the collective and personal persecution inflicted upon the couple, which also made them decide to emigrate.

The restitutor interposed the objection that the property would have been sold in the absence of National Socialism; that he had been offered the property by the father of Mrs. Weiss in the summer of 1937; that he had sold a piece of property to obtain the purchase money.

When the matter was referred to the Chamber for trial the claimants took note that the property had undergone fundamental changes considerably enhancing its value and requested that the Chamber amend their request for relief to request a substitute in lieu of restitution under the provisions of Article 26, Law 59. They asked instead of a share in the property or a substitute of similar nature and like value, the payment of a sum of money to a minimum of DM 15,000.

The Chamber found without error that the claim fell under the provisions of Article 4, Law 59, power of avoidance; that the claimants are Jewish

within the meaning of the Nuernberg Laws and that the claimants were compelled by the circumstances under which they found themselves as Jews to sell the land and that they, for the same reason, intended to and did emigrate. The Chamber further believed that in 1937 a broker had offered the property to the restitutor for sale. The Chamber further found that the claimants obtained the power to freely dispose of RM 21,756.30; that the balance due the claimants in cash or RM 3,553.57 which had been retained to insure the purchaser that any possible debts falling on the property would be redeemed, was paid into a blocked account after the anti-Jewish pogrom, November 9, 1938; that the owners having retained possession of the property since 1922, even though it was nonincome property, bespoke that in the absence of the discriminatory regulations against the Jewish physician and the boycott and imprisonment to which he was subjected by the action of the Nazi Party and state forcing him and his wife to leave Germany the transaction would not have taken place and that the property had to be sold in order to obtain ready money to finance the exodus.

The Chamber found that the value of the land without the building at the time of the sale and now was RM-DM 20,900. The representative of the Deutsche Reich, Oberregierungsrat Dr. Blessin, testified that the appraisal of the Munich Finance Construction Office, dated 14 May 1949, placed a value on the ground of that just stated sum. The Chamber found as aforesaid on the basis of the Finance Construction Office's statement. The Chamber allowed and deemed compensation of DM 15,000 not to be excessive. (This was the sum finally requested by the claimants.) It also reasoned in the oral hearing that if they took the full value of DM 20,900 minus the converted amount of the entire purchase price or DM 3,000 there would still be a total of DM 17,900. Even if the Chamber had considered this plus interest less profits, and the other allowable adjustments, the figure still would be quite advantageous to the restitutor. He has no cause for complaint.

The case comes clearly within the provisions of Article 26, Law 59. Even though the property had been purchased by the claimants as a building site, the erection of a building at an expenditure of over RM 330,000 certainly greatly enhanced the value of the property with a fundamental change. It is impossible to partition the property. The restitutor did not offer a substitute of similar nature of like value nor did the claimants demand an appropriate share in the property. Under these circumstances, the Chamber, within its sound discretion when the claimants have requested cash, may order that the value of the claim in Deutsche Mark be delivered as an adequate substitute in lieu of restitution. There was no abuse of discretion in the Chamber's action.

Having agreed with the decisions of both the Restitution Chamber and of the Oberlandesgericht in that the transaction would not have taken place in the absence of National Socialism, we consider the restitutor's contention that he protected the property interests of the claimants in an unusual manner and that the power of avoidance can not be exercised under the facts in the case because the couple Weiss are not claimants within the definition of Article 7, Law 59. The restitutor bases the first contention on the protection of property interests mainly on the fact that he claims to have paid about 50 percent more for the property than its standard value.

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Paying more than the value of an object does not come within the purview of Article 4, Paragraph 1 b, Law 59, helping a claimant in protecting his property interests in an unusual manner with substantial success. Paying the agreed purchase price is not such "Protection" when coupled with the fact that before the contract of sale was entered into by the restitutor, he had arranged a loan of a very large sum of money from the Reich to build the houses. The restitutor being an architect and builder had previously constructed several buildings in this neighborhood and he was greatly interested in continuing his building program there. Also, if the purchase price at that time had been deemed unconscionable the Oberbuergermeister of the Capital of the Party Movement would not have approved the same under the provisions of the Price Stop Regulation and the Law on the Development of Residential Areas, since the seller was a Jew. The fact that the restitutor furnished building plans for the claimants to submit to the Oberbuergermeister's office to maintain the sales price did not protect the property interest. Mainly it furthered the restitutor's plan for acquiring the property and building the structures thereon.

The other contention that in the said article the word claimant has in parenthesis "Article 7" as being explanatory of the word and that under that said article the appellees are not claimants, must be considered. Said Article 7 reads: "The claim for restitution shall appertain to any person whose property was confiscated . . ." The appellant asserts that the property was not confiscated — — — It was established that there was not an act of confiscation committed by the restitutor as defined by Article 2, Paragraph 1 a, such would be sufficient as an element to rebut the presumption of confiscation given under Article 3. Under Article 2 property shall be considered confiscated if the person entitled thereto has been deprived of it by duress. However, when considering Article 4, Power of Avoidance, the deprivation need not to have been by individual or specific duress. The duress against a class, as defined in Article 1, if a person belongs to that class, is sufficient to constitute the duress against the individual. Furthermore, an act of confiscation as such is not necessary to exercise the power of avoidance. Article 4 gives that right irrespective of any particular act of confiscation, as such. If the claimant entered into a transaction between the period of 15 September 1935 and 8 May 1945, he may, because of the duress imposed on him as a member of the class defined in Paragraph 1 b, Article 3, avoid the transaction. The article itself presupposes that any relinquishment of property during that period of time by the persecutee constitutes, ipso facto, a confiscation within the meaning of Law 59.

On an appeal to the Oberlandesgericht the decision of the Chamber was affirmed. And that court, as do we, deems that the Chamber took into consideration all of the pertinent aspects of the case.

The restitutor's appeals have deprived the claimants of the use of the compensation since the date of the Chamber's decision. The claimant is therefore due interest thereon at the established rate—(GCC Sections 288 and 246). However such relief was not sought in this Court.

The decisions of both courts are affirmed.

No costs are charged for the proceedings before this Court; each party will bear his own costs, fees and expenses.

IT IS SO ORDERED:

IGNAZ SCHRAUDOLPH, Ruckerstattungspflichtiger und Antragsteller

gegen

DR. BERTHOLD UND PAULA WEISS,
Ruckerstattungsberichtigte und Antragsgegner

Entscheidung Nr. 69 Hinterlegt bei der Geschäftsstelle Fall Nr. 146
am 16. März 1951

Nachprüfung einer Entscheidung des Oberlandesgerichts München
(Wi 10/50 zu I WKV 175/49 LG München I)

Rechtsanwalt Dr. Joachim Gerlach, München, für den Antragsteller.
Rechtsanwalt Siegfried Neuland, München, für den Antragsgegner.
Entschieden durch Präsident COHN, Justice HARDING und Judge
FLANAGAN als Beisitzer.

Die Entscheidung des Gerichts wurde von Präsident COHN geschrieben.

Die Berechtigten Dr. Berthold Weiss und seine Ehefrau Paula verkauften am 21. Juli 1938 ein unbebautes Grundstück in München-Bogenhausen an Ignaz Schraudolph für 30 000 RM, welches später die Bezeichnung Mauerkircherstraße 21-23 führte. Frau Weiss schloß den Kaufvertrag im eigenen Namen und in Vollmacht ihres Ehemannes ab, da sich dieser, ein Arzt, zu jener Zeit infolge einer falschen Anschuldigung im Gefängnis befand. Von dem Kaufpreis wurden 19 000 RM an Frau Weiss bar bezahlt. 2756,30 RM wurden zur Rückzahlung einer Hypothek der Bayerischen Arzteversorgung aufgewendet und 4655 RM an die Stadthauptkasse München als Wertzuwachssteuer abgeführt. Von dem Kaufpreis wurden am 22. März 1939 3553,57 RM auf ein Sperrkonto einbezahlt. Die restlichen 93,98 RM gingen für Kosten ab. Die Berechtigten hatten das Grundstück, einen Bauplatz, im Jahre 1922 für 16 419,31 RM erworben. Der Ruckerstattungspflichtige nahm ein beträchtliches Reichsbaudarlehen auf und erbaute zwei Wohnhäuser auf dem Grundstück. Die Baukosten betragen 332 500 RM.

Der beim Zentralanmeldeamt eingereichte Anspruch der Berechtigten ging auf Ruckerstattung des Grundstücks, Herausgabe der Nutzungen nach dem Ruckerstattungsgesetz und Vorbehalt anderer Rechte. Die Berechtigten machten geltend, daß der Verkauf des Grundstücks in der Zeit erfolgte, in der Dr. Weiss in Gestapo-Haft im Konzentrationslager Dachau war. Ursächlich für den Verkauf seien die kollektiven und individuellen Zwangsmaßnahmen gewesen, denen das Ehepaar ausgesetzt gewesen sei und die sie auch zur Auswanderung veranlaßt hätten.

Der Pflichtige erhob Widerspruch und machte geltend, das Grundstück wäre auch ohne die Herrschaft des Nationalsozialismus verkauft worden. Es sei ihm bereits vom Vater der Frau Weiss im Sommer 1937 angeboten worden. Er habe eigenen Grundbesitz verkauft, um sich das Geld für den Kauf zu beschaffen.

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Als die Sache zur Verhandlung an die Kammer verwiesen wurde, nahmen die Berechtigten davon Kenntnis, daß das Grundstück wesentlich verändert worden war und dadurch eine erhebliche Wertsteigerung erfahren hatte, und änderten vor der Kammer ihren Rückerstattungsantrag dahin ab, daß sie eine Ersatzleistung gemäß Artikel 26 REG an Stelle der Rückerstattung verlangten. Anstatt eines Grundstückanteils bzw. einer Ersatzleistung durch Übertragung ähnlicher gleichwertiger Vermögensgegenstände forderten sie nunmehr die Zahlung eines Geldbetrages von mindestens 15 000 DM.

Die Kammer stellte ohne Rechtsirrtum fest, daß der Anspruch unter Artikel 4 REG (Anfechtung) falle. Die Berechtigten seien Juden im Sinne der Nürnberger Gesetze und durch die Verhältnisse, in denen sie sich als Juden befanden, gezwungen gewesen, den Grundbesitz zu verkaufen. Aus demselben Grunde hätten sie sich auch entschlossen auszuwandern und dies getan. Der Kammer erschien es weiterhin glaubhaft, daß ein Makler dem Pflichtigen das Grundstück im Jahre 1937 zum Kauf angeboten hatte. Sie stellte auch fest, daß die Berechtigten die freie Verfügung über 21 756,30 RM erlangten. Der den Berechtigten zustehende Restbetrag von 3553,57 RM, welcher zurückbehalten worden war, um dem Käufer eine Sicherheit für die Bezahlung etwa anfallender Grundstücksschulden zu geben, sei nach dem antisemitischen Pogrom vom 9. November 1938 auf ein Sperrkonto eingezahlt worden. Allein schon die Tatsache, daß die Eigentümer seit dem Jahre 1922 ununterbrochen im Besitz des Grundstücks waren, ohne Einnahmen daraus zu haben, spreche dafür, daß ohne die diskriminierenden Bestimmungen gegen den jüdischen Arzt, den Boykott und die Inhaftierung, denen er durch die Maßnahmen der NSDAP und des Staates ausgesetzt war und auf Grund deren er und seine Frau gezwungen waren, Deutschland zu verlassen, das Rechtsgeschäft nicht stattgefunden hätte. Das Grundstück sei verkauft worden, um über flüssige Mittel zur Finanzierung der Auswanderung verfügen zu können.

Die Kammer stellte fest, daß der Bodenwert des Grundstücks zur Zeit des Verkaufes — ebenso wie heute — 20 900 RM bzw. DM betragen habe. Der Vertreter des Deutschen Reichs, Oberregierungsrat Dr. Blessin, erklärte, daß das Gutachten des Finanzbauamtes München vom 14. Mai 1949 den Bodenwert mit dem obengenannten Betrag veranschlagt habe. Die Kammer stützte sich, wie bereits gesagt, auf die Feststellung des Finanzbauamtes. Sie sprach eine Ersatzleistung von 15 000 DM zu und hielt diese nicht für zu hoch angesetzt. Das war die Summe, welche schließlich von den Berechtigten verlangt wurde. Die Kammer vertrat in der mündlichen Verhandlung die Ansicht, daß dann, wenn der volle Wert von 20 900 DM zugrunde gelegt würde, nach Abzug des umgestellten Gesamtkaufpreises in Höhe von 3000 DM immer noch ein Restbetrag von 17 900 DM verbliebe. Selbst wenn die Kammer dies unter Zurechnung von Zinsen abzüglich der Nutzungen und anderer zulässiger Ausgleichsbeträge in Erwägung gezogen hätte, so wäre dieses Ergebnis noch sehr vorteilhaft für den Rückerstattungspflichtigen. Er hat keinen Grund, sich beschwert zu fühlen.

Es handelt sich hier offensichtlich um einen Fall nach Artikel 26 REG. Wenn auch das Grundstück von den Berechtigten als Bauplatz gekauft

worden war, so hat die Gebäudeerrichtung mit einem Kostenaufwand von über 330 000 RM durch wesentliche Veränderung des Grundstücks zweifelsohne zu einer erheblichen Wertsteigerung geführt. Es ist unmöglich, das Grundstück aufzuteilen. Der Pflichtige hat sich seinerseits nicht zu einer Ersatzleistung durch Übertragung ähnlicher, gleichwertiger Vermögensgegenstände erboten, und die Berechtigten haben auch kein Mitigentum zu angemessenem Bruchteil verlangt. Unter diesen Umständen kann die Kammer, falls die Berechtigten einen Anspruch auf Zahlung erhoben haben, nach freiem Ermessen einen dem Wert des Anspruchs entsprechenden Betrag in Deutscher Mark als angemessene Ersatzleistung an Stelle der Rückerstattung zuerkennen. In dieser Maßnahme der Kammer ist kein Ermessensmißbrauch zu erblicken.

Nachdem wir den Entscheidungen der Wiedergutmachungskammer und des Oberlandesgerichts insoweit zugestimmt haben, daß das Rechtsgeschäft ohne die Herrschaft des Nationalsozialismus nicht abgeschlossen worden wäre, erwägen wir die Behauptung des Pflichtigen, daß er die Vermögensinteressen der Berechtigten in besonderer Weise wahrgenommen habe und die Anfechtung nach den Umständen des Falles nicht erfolgen könne, weil die Eheleute Weiss nicht Berechtigte im Sinne des Artikels 7 REG seien. Der Pflichtige stützt seine erste Behauptung bezüglich der Wahrnehmung von Vermögensinteressen im wesentlichen darauf, daß er für das Grundstück 50 % mehr als den Einheitswert bezahlt habe. Die Entrichtung eines über dem Wert des Objekts liegenden Betrages fällt nicht unter Artikel 4, Absatz 1b REG (Wahrnehmung der Vermögensinteressen eines Berechtigten in besonderer Weise und mit wesentlichem Erfolg). Die Zahlung des vereinbarten Kaufpreises in Verbindung mit dem Umstand, daß der Pflichtige vor Abschluß des Kaufvertrages um ein sehr erhebliches Reichsdarlehen zum Bau der Häuser nachgesucht hatte, stellt keine solche „Wahrnehmung“ dar. Der Pflichtige, ein Architekt und Baumeister, hatte früher mehrere Wohnhäuser in der Nachbarschaft gebaut und war daher sehr daran interessiert, sein Bauprogramm dort weiterzuführen. Wenn der Kaufpreis damals für übertrieben hoch gehalten worden wäre, so hätte der Oberbürgermeister der „Hauptstadt der Bewegung“ ihn nach den Bestimmungen der Preisstopverordnung und des Siedlungsgesetzes gar nicht genehmigt, da der Verkäufer Jude war. In der Tatsache, daß der Pflichtige den Berechtigten Baupläne zur Vorlage an den Oberbürgermeister erstellte, um damit die Berechtigung des Kaufpreises zu belegen, ist keine Wahrnehmung von Vermögensinteressen zu ersehen. Dadurch wurde in erster Linie das Vorhaben des Pflichtigen, das Grundstück zu erwerben und Häuser zu errichten, gefördert.

Es ist die andere Behauptung zu prüfen, daß in dem genannten Artikel hinter dem Wort „Berechtigter“ zur Erklärung in Klammern „Artikel 7“ stehe und daß die Antragsgegner nicht Berechtigte im Sinne dieses Artikels seien. Der erwähnte Artikel 7 besagt: „Der Rückerstattungsanspruch steht demjenigen zu, dem ein Vermögensgegenstand entzogen wurde...“. Die Antragsteller behaupten, daß das Grundstück nicht entzogen worden sei. Es wurde festgestellt, daß eine vom Pflichtigen begangene Entziehungshandlung im Sinne des Artikels 2, Absatz 1a, nicht vorliege; dies würde ein hinreichender Grund sein, um die Entziehungsvermutung des Artikels 3 zu widerlegen. Nach Artikel 2 sind Vermögensgegenstände entzogen, wenn

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sie der Inhaber infolge einer Drohung eingebüßt hat. Wenn dagegen Artikel 4 (Anfechtung) herangezogen wird, so braucht der Entziehung keine persönliche oder besondere Drohung zugrunde liegen. Die Zwangslage einer Personengruppe im Sinne des Artikels 1 REG genügt zur Feststellung der Zwangslage einer Einzelperson, sofern sie jener Gruppe angehörte. Ferner ist kein Entziehungsfall als solcher zur Ausübung des Anfechtungsrechtes erforderlich. Artikel 4 gibt dieses Recht ohne Rücksicht auf einen Entziehungsfall als solchen. Wenn ein Berechtigter in der Zeit vom 15. September 1935 bis 8. Mai 1945 ein Rechtsgeschäft vorgenommen hat, kann er auf Grund der Zwangslage, in der er sich als Angehöriger der in Artikel 3, Absatz 1b, bezeichneten Gruppe befand, das Rechtsgeschäft anfechten. Der Artikel selbst geht von der Voraussetzung aus, daß jede in diesem Zeitabschnitt erfolgte Vermögensaufgabe seitens des Verfolgten ipso facto eine Entziehung im Sinne des Rückerstattungsgesetzes darstellt.

Auf Beschwerde hin wurde der Beschluß der Kammer vom Oberlandesgericht bestätigt. Das Oberlandesgericht wie auch dieses Gericht sind der Ansicht, daß alle einschlägigen Gesichtspunkte des Falles von der Kammer berücksichtigt worden sind.

Die Beschwerden des Pflichtigen haben die Berechtigten um die Nutzungen aus dem Betrage vom Tage der Kammerentscheidung an gebracht. Den Berechtigten steht ein Zinsanspruch in gesetzlicher Höhe zu (cf. Paragraph 288, 246 BGB). Jedoch wurde um Abhilfe insoweit vor diesem Gericht nicht nachgesucht.

Die Entscheidungen beider Gerichte werden bestätigt.

Gerichtskosten werden für diese Instanz nicht erhoben. Jede Partei trägt ihre außergerichtlichen Kosten selbst.

Es war zu erkennen, wie geschehen.

JOSEF AND HILDA KRANK, Restitutor-Appellants

vs

KLARA AND MORITZ LISSBERGER, Claimant-Appellees

Opinion No. 70. Filed with the Clerk: 18 April 1951 Case No. 193

Appeal from the decision of the Oberlandesgericht Stuttgart

Appellants appeared by their attorney, Rechtsanwalt Dr Otto Hofmann, Bad Mergentheim; not present nor represented on oral argument.

Appellees appeared by their attorney, Rechtsanwalt Dr. Heinrich Zang, Ludwigshafen.

Before COHN, President, ERICSSON, Justice, sitting as an Associate Judge, and FLANAGAN, Judge.

ERICSSON, Justice, delivered the Opinion of the Court.

This appeal is from a decision of the Oberlandesgericht reversing the lower court which had dismissed upon the merits the appellees' claim for the restitution of certain, real property. The Oberlandesgericht, upon the facts before it, held the claimants as a matter of law to be the owners of the disputed property and ordered its restitution to them. It further ordered the claimants to refund to the restitutors, at the conversion rate of RM 10 : DM 1, the purchase price paid by them, ordered the immediate execution of the foregoing and remanded the case to the lower court for an accounting of profits and expenditures.

The appellants petitioned this Court for a stay of execution pending this appeal, which was denied in the absence of good cause shown.

Subsequently, the appellants were granted various delays for filing petitions and briefs. The cause was eventually set for oral argument on 26 February 1951, but postponed because of the inability of the attorney for appellants to attend. Set again for oral argument, it was argued on 9 April 1951, by the attorney for appellees and deemed submitted on brief by the appellants pursuant to their request and Rule XX, 4 of the Rules of this Court.

The Court now, having fully considered the appeal upon the record and the briefs and argument of the parties, is persuaded that the orders of the Oberlandesgericht are without error. The only matter of real substance presented by the appeal is the question concerning the basic principles of Law 59. Is a claimant who comes within the purview of Articles 3 and 4 deemed to have been wrongfully deprived of property for reasons of race, within the meaning of Article 1, Paragraph 1, where his property was sold to satisfy a land charge which it is not proved would have been called except that he was dismissed, pursuant to the Decree of 12 November 1938, Concerning the Elimination of Jews from German Economic Life, from the employment of the bank holding the land charge?

Appellants argue that this case is an exception to the power of avoidance provided a claimant under Article 4. We find it a fatuous argument, however, to say that the sale would have taken place in the absence of National Socialism merely because it was the normal remedy open to a mortgagee to recover its money. After the dismissal of the mortgagee's employee which was caused by the aforementioned decree, it is true that the sale of the property was normal. However, it is not proved that in the absence of National Socialism the employee would have been dismissed or the sale of his property to satisfy the land charge compelled.

We must conclude therefore that such a case does come within the basic principles of restitution as enunciated in the Law.

We need not consider whether a fair price was had for the property, which was sold for less than its assessed value, nor the question of free disposal of the proceeds, which were wholly applied to the satisfaction of the land charge, since we conclude with the Oberlandesgericht that the issue of confiscation of the land charge, may be wholly resolved by the determination of the first question presented.

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nachdem er seine Zukunft in den Vereinigten Staaten sichergestellt hatte. Er habe sich vom Erlös des Verkaufes Wertgegenstände angeschafft, z. B. Wäsche, ärztliche Instrumente und Apparate und habe diese zur Weiterveräußerung nach Amerika mitgenommen. Der Ehemann der Antragstellerin habe das Grundstück selbst zum Verkauf angeboten; und der Kaufpreis sei ein angemessener gewesen.

Die Wiedergutmachungskammer hat einen Teilbeschluß erlassen, durch welchen die Rückübertragung des Eigentums angeordnet, aber die Festsetzung der Nutzungen, Kosten und Rückgewähr des Kaufpreises einer späteren Entscheidung überlassen wurde. Der Antragsteller hat ordnungsgemäß bei diesem Gericht die Nachprüfung der Entscheidung des Oberlandesgerichts, welche die Entscheidung der Kammer bestätigte, beantragt.

Die Kammer hat nicht entschieden, ob ein angemessener Kaufpreis entrichtet worden ist oder nicht, da sie dies nicht für notwendig erachtete. Sie hat festgestellt, daß Dr. Goldsmith keine freie Verfügung über den Erlös hatte, weil ein Teil zur Bezahlung der Reichsfluchtsteuer verwendet und der Rest auf ein Sperrkonto eingezahlt wurde.

Gemäß Artikel 14 REG ist der derzeitige Inhaber der Eigentümerstellung an der entzogenen Sache rückerstattungspflichtig. Zutreffend und durch Beweise erhärtet sind die Feststellungen der Kammer, daß Dr. Goldsmith als Jude zu der im Art. 1 des REG genannten Gruppe von Personen gehörte, daß der Verkauf zwischen dem 15. September 1935 und dem 8. Mai 1945 stattfand, daß die Rechtsnachfolgerin des Dr. Goldsmith zur Anfechtung auf Grund des Art. 4 des REG berechtigt war, daß die vortragenen Tatsachen nicht ausreichen, um eine Ausnahme auf Grund der Bestimmungen des Art. 4 zuzulassen und daß das Rechtsgeschäft ohne die Herrschaft des Nationalsozialismus nicht stattgefunden hätte.

Die Tatsache, daß Dr. Goldsmith einen Teil des Kaufpreises dazu benutzte, Wertgegenstände zu erwerben, genügt nicht, um das Recht auf Anfechtung auszuschließen. Es ist bewiesen worden, daß Dr. Goldsmith wohlhabend war und über mehr Mittel verfügte, als jenen Betrag, den er durch die Veräußerung erhielt. Es wäre jetzt äußerst schwierig für die Kammer, festzustellen, welche Gelder für die Anschaffung der Gegenstände benutzt wurden, die Dr. Goldsmith nach Amerika mitnahm. Das vorliegende Beweismaterial unterstützt die Ansicht der Kammer, daß die antijüdischen Maßnahmen der NSDAP die Veräußerung verursachten. In schlüssiger Weise ist bewiesen worden, daß dem Verkäufer keine freie Verfügung über den gesamten Erlös aus der Besitzübertragung zustand.

Die Entscheidung des Oberlandesgerichts wird bestätigt. Der Fall wird an die Wiedergutmachungskammer verwiesen zur Entscheidung über die zwischen den Parteien noch nicht erledigten Streitfragen, soweit sie sich auf diese Rückerstattungssache beziehen.

Es war zu erkennen wie geschehen.

WILLIAM RASMUSSEN, Restitutor-Appellant

vs

HERTA UTZ,

GERTRUD and KONRAD LOEWENFELD, Claimant-Appellees

Opinion No. 15

Filed 28 April 1950

Case No. 73

Appeal from the decision of the Oberlandesgericht at Munich.

Attorney-at-Law Dr. Martin Horn, Munich, for the Appellant.

Attorney-at-Law Helmut Vogel, Munich, for the Appellees.

Before COHN, President, HARDING, Justice, sitting as an Associate Judge, and FLANAGAN, Judge.

The Opinion of the Court was delivered by COHN, President.

The claimants Gertrud and K. Loewenfeld are the heirs of the late Dr. Franz Loewenfeld, who was a Jew and married to the then-called Aryan claimant Herta Utz. The marriage was dissolved in 1940. The Loewenfeld couple purchased and became equal co-owners of the property known as Number 26 in Ammerland.

On 25 November 1938 Utz and her husband sold the property to the appellant for RM 46,000. Partially due to the insistence by the appellant the sales contract was cancelled on 19 December 1938. The Vermögensverwaltung Muenchen G. m. b. H., an organization formed to take over Jewish property, authorized the sale of the property to Rasmussen. The then SA-Brigadefuehrer Dziewas by a directive from the then Munich provincial governor was appointed trustee of the interest owned by Dr. Loewenfeld in the property, solely because the doctor was a Jew. In pursuance to the Ordinance on the Placement of Jewish Property of 3 December 1938, Reich Law Gazette 1, Page 1709, the property was again sold to the appellant by Utz and Dziewas, as trustee, for the sum of RM 41,000 on 28 November 1939. After proving her so-called Aryan origin half of the purchase price was paid to Utz with the right of free disposal. Dr. Loewenfeld's share, after trustee's fees and other expenses were deducted, was placed into a blocked account.

The Petition for Restitution alleged an aggravated confiscation on the ground that the conveyors had been forced to sell the property by pressure exerted by the Gauleiter's office at the restitutor's instigation. The return of the property and the profits derived therefrom were demanded. In contending that the claim should be dismissed the restitutor averred that the property would have been sold in the absence of National Socialism; that a fair purchase price had been paid; that neither pressure nor duress had been exercised by anyone nor had he caused any pressure to be exerted.

The Restitution Chamber held with the claimants and entered the following judgment:

"I. The restitutor William Rasmussen must return to the claimants Mrs. Herta Utz and Gertrud and Konrad Loewenfeld the real estate registered

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in the Land Title Register of the Wolfratshausen Amtsgericht for Muensing

a) Volume 11, Sheet 684 (formerly Vol. 3, Page 11, Sheet 215)

b) Volume 11, Sheet 684 (formerly Vol. 8, Page 332, Sheet 569)

of the tax district Muensing, catastre No. 3167a, 3167b, 3201 1/7, Mrs. Utz becoming co-owner to one half and Gertrud and Konrad Loewenfeld in equal parts to the other half of the property.

- II. The restitutor must consent to the correction of the Land Title Register on behalf of the claimants as stated under I.
- III. The claimants Gertrud and Konrad Loewenfeld must assign to the restitutor all restitution claims which they may have against the public agencies with regard to the real estate mentioned under I.
- IV. The claimants must pay to the restitutor the amount of DM Two Thousand Nine Hundred Forty-Eight (DM 2,948) for expenditures, profits being deducted on the part of the restitutor which enhanced the value of the real estate. The claimant Herta Utz must pay in addition to it DM Two Thousand and Fifty (DM 2,050) in refund of the consideration received.
- V. The claimants shall be entered into the Land Title Register as owners only if they present at the same time a certified receipt of the payments of DM 2,948 and DM 2,050 to the restitutor.
- VI. No court fees are assessed.
- VII. The value of the claim is fixed at DM 41,000.
- VIII. Immediate execution of this judgment may be had."

Rasmussen filed an appeal from that judgment to the Oberlandesgericht. The restitutor insisted before that court as well as here that the claim should have been dismissed and if not dismissed the Restitution Chamber and later the Oberlandesgericht erred in computing the refund of the purchase price. He avers that it should have been figured on a Mark conversion ratio of 1:1 instead of the ratio of 10:1 and that the amount allowed for expenditures on the property should be repaid to him on the basis of 1:1 instead of the Chamber's allowed ratio of 1 Deutsche Mark for each 10 Reichsmark.

The appellant insisted for the first time before the Oberlandesgericht and now renews his objection here that the Chamber erred in not applying Article 26 of Law 59 to the transaction.

The appellees insist that an aggravated confiscation took place.

We shall consider the assignments of error. The Restitution Chamber found that there was no evidence submitted that the owners would have concluded the sale in the absence of National Socialism. The finding is supported by the record.

Both courts below held that an aggravated confiscation was not established. The Oberlandesgericht assigned the following as the reasons: "The trustee Dziewas had acted on the basis of the then valid statutory provisions so that an unlawful taking did not enter the question" and further it was not proven that any threat had been uttered against Utz but there was evidence to the contrary that due to the pressure exercised against her husband she was anxious to conclude the sale.

The courts below found that the confiscation fell under Article 2, Paragraph 1 b and Article 3, Law 59 and that Utz's share fell within the

purview of the law under Article 4 thereof, in that she, as the wife of a Jew, was forced to sell her interest in the real estate (see Riede vs. Lederer, Court of Restitution Appeals, Opinion No. 6).

We concur in the decision of the courts below that the acts against the property as to Utz were not an aggravated confiscation in that she obtained the free disposal of the proceeds derived from her share.

We do not concur in the findings of the courts below, holding that there was not an aggravated confiscation perpetrated upon Loewenfeld. We believe that there was. Their decision was based on the fact that a trustee was appointed and the property was sold in pursuance to a then valid statutory provision, so there could be no "unlawful" taking. Quoted below are excerpts from Article 2, Part II, Law 59:

"It shall not be permissible to plead that an act was not wrongful or contra bonos mores because it conformed with a prevailing ideology concerning discrimination against individuals on account of their race, religion, nationality, ideology or their political opposition to National Socialism.

Confiscation by a governmental act within the meaning of paragraph 1 (b) shall be deemed to include, among other acts, sequestration, confiscation, forfeiture by order or operation of law, and transfer by order of the State or by a trustee appointed by the State."

We must hold that within the scope of Military Government Law 59, the fact that property was taken under then existing Nazi Law is not a defense in itself to the allegation in a claim that the confiscation was aggravated.

The Nuernberg Laws and the laws and decrees directed towards the "Aryanization" or "utilization" of "Jewish" property and the acts taken in fulfilling their intent constituted the epitome of the prevailing ideology (Article 2 supra). A confiscation under the guise of those unconscionable enactments is prima facie an aggravated one. Once proven that such was the origin of a confiscation, the burden of proof (in so far as the rule may be applied to the investigation under Ex-parte Proceedings) shifts to the restitutor to show that he did not know or should not have known under the circumstances at the time he acquired the property that it had been obtained at any time by way of an aggravated confiscation. This does not preclude the restitutor from the other defenses provided for under Law 59.

The legislative intent in the words "unlawful taking" in Article 30 was to have them applicable to the laws of Germany prior to the assumption of power by the Nazis. The legislator deemed all confiscation under the Nuernberg Laws as contra bonos mores. One of the first acts of the United States Military Governor was to abrogate Nazi Laws. The intent and purpose of Law 59 excludes the thought that any actions under the Nuernberg Laws could now be cloaked with lawfulness.

The record conclusively shows that Rasmussen knew of all of the circumstances surrounding the confiscation and he actively participated in the forced transfer and in the reduction of the sales price.

We must come to the conclusion that the confiscation of Loewenfeld's share was aggravated as to the restitutor.

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Upon substantial evidence, the courts held that Utz must return her share of the purchase price in pursuance to Article 34, Law 59, that she must return one half of the ordinary expenses for maintenance and other expenditures made by the restitutor. The Chamber arrived at its figures by taking into consideration profits drawn less an adequate remuneration for management and other necessary expenses such as taxes.

Before disposing of the question of currency conversion which is before this Court for the first time, we must look into the averment by the appellant that he was wrongfully deprived of benefits which should have been afforded him under Article 26 of Law 59. He stated that he had extensively renovated the building which was not in good condition and spent thereon RM 47,981, some RM 7,727 thereof being expended for pleasure and ornamental grounds.

The Oberlandesgericht was quite correct in finding that an appellant cannot insist upon invoking said Article 26 when it is raised for the first time in the appellate court. Contrary to the allegations made by the appellant the court of original jurisdiction took all of the facts into full consideration and elected to apply Article 34. The provisions of Article 26 are not mandatory upon the Restitution Chamber. The relief provided for therein is within the discretion of the Restitution Chamber. Scrutinizing all of the facts in the case we see no abuse of that discretion. Furthermore to avail himself of the provisions of Article 26 a restitutor must positively seek relief thereunder and produce the facts sustaining his plea. He failed to do that. To the contrary, in the proceedings before the court of first instance the restitutor elected his remedy with the following demand: "The restitutor declares that he demands refund of these expenditures amounting to RM 47,981.84 under Article 34 Law 59."

Without discussing Military Government Law 63 (Currency Conversion) the Chamber held that all Reichsmark sums must be converted at the ratio of one Deutsche Mark for ten Reichsmark.

The Munich Oberlandesgericht upheld the ruling as it has applied the same principle in previous cases (Waldmann vs. Busl (Wi 18/49)) as it pertains to the refund by the restitutor of the consideration paid. This view is shared by the Oberlandesgericht Frankfurt (2 W 87/49 Betriebsberater 1949, No. 17, p. 345) and the Oberlandesgericht Stuttgart (Rest S 178 (21) Sen. 20/49 Ru S-R/1133/434; NJW RzW 1949, No. 1, p. 19).

Military Government Law 61 (Currency Law) became effective on 20 June 1948. The Third Law for Monetary Reform, Military Government Law 63, which came into effect on 27 June 1948, has the following provision:

"Part II, DEBTS, Article 13, DEFINITIONS

1. For the purposes of this Law, debts are all claims for the payment of a sum of money (including judgment debts and fines) other than credit balances with financial institutions.
2. For the purposes of this law, general debts are all debts with the exception of claims arising out of mortgage bonds and similar certificates of indebtedness, as well as insurance claims including claims arising out of savings contracts with building and loan associations.

3. Reichsmark debts and claims, for the purposes of this Law are all debts and claims arising out of debts incurred before 21st June 1948, which are expressed in Reichsmarks, Rentenmarks, or Goldmarks, or which would have had to be discharged in Reichsmarks under the provisions in force prior to the effective date of the Currency Law. The present Law does not apply to Reichsmark debts which were already extinguished on or before the 21st June 1948."

"CHAPTER II. GENERAL DEBTS, Article 16, CONVERSION OF REICHSMARK OBLIGATIONS INTO DEUTSCHE MARK OBLIGATIONS

1. In principle, Reichsmark claims shall be so converted into Deutsche Mark claims that the debtor shall be obliged to pay to the creditor one Deutsche Mark for every ten Reichsmarks due.
2. The creditor of Reichsmark claims converted into Deutsche Mark claims under paragraph 1 above may be allowed by Military Government, after ascertaining the view of the competent German legislative bodies, a further claim of a maximum of one Deutsche Mark for every ten Reichsmarks of the total debt; if any such allowance is made, it shall be open to creditors who have already been paid under paragraph 1.
3. German legislation on equalization of burdens shall provide for cases where the debtor has derived a profit from the application of the foregoing provisions."

Military Government Law 59 (Restitution of Identifiable Property) became effective on 10 November 1947.

Under Article 15, Law 59, except in a few instances which do not apply to the case at bar, an adjudication of a restitution claim has the effect that the loss of the property must be deemed not to have occurred. The confiscation is deemed void ab initio. This means that any money payments due the restitutor by the claimant became due at the latest when the rights were given to claimants and restitutors on the effective date of Law 59, which was, of course, before 20 June 1948. (It could be construed that the refund of consideration was due as of the date of confiscation). General debts were then expressed only in Reichsmark, Rentenmark and Goldmark. So, the return of the purchase price must be figured at the ratio 10:1. This ruling does not decide refunds due under Article 44 where the purchase price was other than Marks, nor moneys due under Article 30.

To decide what ratio is to be employed for compensation for expenditures under Article 34, it must first be determined whether the compensation is a claim in rem or if it is a monetary claim. For this purpose we preclude consideration of Paragraph 5, Article 34 where the provisions of Article 26, Paragraph 1 are found to be applicable. We hold that claims arising under Article 34, Paragraphs 2 and 3, constitute money claims in accordance with Article 13 of Military Government Law 63 if profits were used. The expenditures were made out of profits by the restitutor in Reichsmark prior to 20 June 1948. The return must be figured in Reichsmark and converted at the rate of 10:1 (Article 16, Military Government Law 63).

By the same token the profits received by the restitutor (Article 32, Law 59) were in Reichsmark, making mandatory that the credits due the restitutee therefore be figured at the same percentage.

Under Art. 34, Paragraph 4 of Law 59 the claimants Loewenfeld are not liable for other than necessary expenses. However since the Loewenfelds

expressly agreed in the Chamber hearing (pages 47 to 49 of the files) to pay DM 1,087 as their share of expenditures, they are therefore assessed with this amount. The expenses of RM 7,730 incurred for improving the gardens were specifically excepted from the agreement. The claimants Loewenfeld and Utz are not liable for such expenses (Art. 34, Pars. 3 and 4). We feel the expenses incurred in improving the gardens must be written off in the course of the proper management of the confiscated property.

The Chamber found without error that the restitutor must pay an adequate compensation for the profits drawn. It considered as adequate compensation — after deducting an adequate amount for management and other expenses, including taxes up to 21 June 1948 — RM 7,500 (DM 750) and for the period after currency reform DM 1,100 making a total of DM 1,850.

The proper accounting between the parties is as follows:

Allowable necessary expenditures:

Cellar	RM 13,838
Miscellaneous Repairs	RM 26,416
	<hr/>
	RM 40,254
Devalued to DM	DM 4,025
Deduction for profits drawn (above)	DM 1,850
	<hr/>
Net due Restitutor:	DM 2,175

The claimant Utz however must return in addition to the consideration of DM 2,050 which she received on the sale of the property, the sum of DM 1,087.

The claimants Loewenfeld are obligated to pay DM 1,087 to the restitutor.

The judgments of the Restitution Chamber and of the Oberlandesgericht that the confiscation was not an aggravated one as to the appellees Loewenfeld and finding that they must pay to the restitutor one half of the sum of DM 2,948 are reversed. Paragraphs IV and V of the judgments are modified to read as follows:

- IV. a) The claimants Loewenfeld must pay to the restitutor the amount of DM 1,087 for expenditures made by the restitutor.
- b) The claimant Utz must pay to the restitutor the amount of DM 1,087 for expenditures made by the restitutor. In addition to DM 1,087 she must pay the sum of DM 2,050 as her share of the consideration received on the sale.
- V. a) The claimants Gertrud and Konrad Loewenfeld shall be entered into the Land Title Register as the owners of an one-half interest of the hereindescribed property if they present at the same time a certified receipt of the payment of DM 1,087.
- b) The claimant Herta Utz shall be entered into the Land Title Register as the owner of an one-half interest in the said property if she presents at the same time certified receipts for the payments of DM 1,087 and DM 2,050 to the restitutor.

IT IS SO ORDERED:

WILLIAM RASMUSSEN, Rückerstattungspflichtiger und Antragsteller

gegen

HERTA UTZ,
GERTRUD und KONRAD LOEWENFELD,
Rückerstattungsberechtigte und Antragsgegner

Entscheidung Nr. 15 Eingereicht am 28. April 1950 Fall Nr. 73

Nachprüfung einer Entscheidung des Oberlandesgerichts München.

Rechtsanwalt Dr. Martin Horn, München, für den Antragsteller.

Rechtsanwalt Helmut Vogel, München, für die Antragsgegner.

Verhandelt vor Präsident COHN, Justice HARDING und Judge FLA-NAGAN als Beisitzer.

Die Entscheidung des Gerichts wurde von Präsident COHN geschrieben.

Die Berechtigten Gertrud und Konrad Loewenfeld sind die Erben des verstorbenen Dr. Franz Loewenfeld, der als Jude mit einer "Arierin", der Berechtigten Herta Utz, verheiratet war. Die Ehe wurde im Jahre 1940 geschieden. Die Eheleute Loewenfeld erwarben das Grundstück Haus Nr. 26 in Ammerland und wurden Eigentümer je zur Hälfte.

Utz und ihr Ehemann verkauften das Grundstück am 25. November 1938 an den Antragsteller für RM 46,000. Teilweise auf Drängen des Antragstellers hin wurde der Kaufvertrag am 19. Dezember 1938 aufgehoben. Die Vermögensverwertungsgesellschaft G. m. b. H., München, die für die Uebernahme jüdischen Vermögens gegründet worden war, genehmigte den Verkauf des Grundstücks an Rasmussen. Auf Anordnung des Regierungspräsidenten in München wurde der damalige SA-Brigadeführer Dziejwas als Treuhänder für den Grundstücksanteil des Dr. Loewenfeld bestellt, lediglich weil dieser Jude war. Gemäß der Verordnung über die Erfassung jüdischen Eigentums vom 3. Dezember 1938, Reichsgesetzblatt I, Seite 1709, wurde das Grundstück am 28. November 1939 erneut von Utz und Dziejwas, als Treuhänder, an den Antragsteller für RM 41,000 verkauft. Die Hälfte des Kaufpreises wurde an Utz zur freien Verfügung ausgezahlt, nachdem sie ihre „arische“ Abstammung nachgewiesen hatte. Der Anteil des Dr. Loewenfeld wurde nach Abzug der Treuhändergebühren und anderer Spesen auf ein Sperrkonto eingezahlt.

In der Anmeldung des Wiedergutmachungsanspruches wurde geltend gemacht, daß eine schwere Entziehung vorliegt, weil die Berechtigten durch einen Druck der Gauleitung, den der Pflichtige ausüben ließ, zum Verkauf des Grundstücks gezwungen wurden. Es wurde die Rückgabe des Grundstücks und Herausgabe der gezogenen Nutzungen verlangt. Der Pflichtige verlangte die Abweisung des Anspruchs mit der Behauptung, daß das Grundstück auch ohne die Herrschaft des Nationalsozialismus verkauft worden wäre; es sei ein angemessener Kaufpreis bezahlt

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gerichts in RGZ 170, 205, besagt, daß die Berufung auf die Formnichtigkeit unzulässig ist, wenn der Schuldner verpflichtet ist, die Leistung so zu vollziehen, wie Treu und Glauben mit Rücksicht auf die Verkehrssitte es erfordern. Diese Ansicht geht sogar so weit, zu sagen, daß § 242 BGB das ganze bürgerliche Recht durchdringt. Das ist insbesondere dann richtig, wenn die Beziehungen der Parteien und die ganzen Umstände die Grundsätze von Treu und Glauben verletzen und wenn eine Partei auf Grund von Formfehlern versucht, sich ihren Verpflichtungen aus einem Vortrag zu entziehen. Wir halten an diesen Grundsätzen und an dem Urteil des Obersten Gerichts der Britischen Zone (OGH — BZ, NJW 1947/48, 521) fest, in denen festgestellt wird, daß die Grundsätze des § 242 BGB auch gegenüber den zwingenden Normen des § 313 BGB, Geltung beanspruchen.

Im vorliegenden Falle war in Anbetracht aller Umstände das Verhalten der Gemeinde Wellheim, welches in ihrer Weigerung, die Vereinbarung notariell beurkunden zu lassen und das Eigentum an dem Grundstück zu übertragen zum Ausdruck kam, nicht in Uebereinstimmung mit den Grundsätzen von Treu und Glauben. Dieses Verhalten schließt sie von dem Recht aus, sich auf den Formmangel des § 313 BGB zu berufen.

Die Wiedergutmachungsbehörde für Ober- und Mittelfranken hat den Anspruch als unbegründet zurückgewiesen, worauf Einspruch zur Wiedergutmachungskammer erhoben wurde. Gegen den oben dargelegten Beschluß der letzteren wurde die sofortige Beschwerde beim Oberlandesgericht München eingelegt.

Das Oberlandesgericht gründete seine Entscheidung auf der folgenden, in den Gründen enthaltenen Feststellung:

„Nach der ständigen Rechtsprechung des Senats ist die Entscheidung der Wiedergutmachungskammer, die auf Grund eines von dem Antragsteller gegen eine solche Entscheidung eingelegten Einspruches erhoben worden ist, endgültig und kann daher mit der sofortigen Beschwerde nicht mehr angefochten werden. Die Beschwerde war daher mangels Statthaftigkeit zu verwerfen.“

Dieses Gericht hat bereits früher festgestellt, daß eine solche Verfügung irrig ist. Im Falle Hugendubel gegen Hugendubel, Entscheidung Nr. 2, wurde, insoweit es sich um Einsprüche und Beschwerden nach dem REG handelt, gesagt: „Das Gesetz besagt eindeutig, daß weder die Wiedergutmachungskammer noch das Oberlandesgericht letzte Instanzen sind, wenn Einspruch und Beschwerde sich auf die entsprechenden Voraussetzungen des REG stützen“ und der dazu erlassenen Ausführungsverordnung Nr. 7.

Die Gemeinde Wellheim erklärte sich am erwähnten Tag bereit, das Grundstück um RM 424.— zu überlassen. Entsprechend der Entscheidung des Gerichts im Falle Rasmussen gegen Utz, Entscheidung Nr. 15, muß unter den in diesem Falle vorliegenden Umständen nach den Währungsstellungsgesetzen der zu zahlende Betrag im Verhältnis von 1 DM gleich 10 RM umgestellt werden.

Die Entscheidungen des Oberlandesgerichts und der Wiedergutmachungskammer werden hiermit aufgehoben.

Der Fall wird an die Wiedergutmachungskammer für Ober- und Mittelfranken zurückgewiesen mit der Maßgabe, sofort Vollstreckung gegen die Gemeinde Wellheim durchzuführen und ihr aufzuerlegen, das strittige Grundstück gegen Bezahlung von DM 42.40 (in Worten: Zweiundvierzig Deutsche Mark und vierzig Pfennige) an Albert Sibinger zu übertragen und die Eigentumsübertragung im Grundbuch eintragen zu lassen.

Es war zu erkennen wie geschehen.

AUGUST and ELISABETH SCHULZ, Restitutor-Appellants
vs
EMANUEL and JETTCHEN ROSENTHAL, Claimant-Appellees

Opinion No. 26 Filed 10 May 1950 Case No. 54

Appeal from the decision of the Oberlandesgericht at Frankfurt.

Attorneys-at-Law Dr. Eisenberg and Dr. Ulrich, Hanau/Main, for the Appellants.

Attorney-at-Law Dr. Walther Breiding, Frankfurt/Main, for the Appellees.

Before COHN, President, HARDING, Justice, sitting as an Associate Judge, and FLANAGAN, Judge.

The Opinion of the Court was delivered by COHN, President.

Emanuel Rosenthal and his wife, Jettchen, the claimants, each with one fourth interest and the husband's brother Jakob Rosenthal with one-half interest, jointly owned the real property with its appurtenances known as Marienstrasse No. 1 in Rueckingen. Jakob Rosenthal was deported to a concentration camp in 1944. There is no information as to what became of him. So the court below held that Emanuel is the sole heir of the estate of his presumably deceased brother. Those three people are Jews.

The undisputed facts show that due to the collective duress against Jews becoming increasingly more violent, the married couple Rosenthal, greatly fearing even more stringent eventualities, decided to emigrate. As a direct result of that realization they were forced to flee Germany, and by reason thereof the claimants together with Jakob Rosenthal sold the aforesaid property to the restitutors on 16 June 1938. The purchase price paid was a fair one and the Rosenthal couple had the free right of disposal of their half of the proceeds. It is unknown what happened to the consideration received by Jakob Rosenthal.

The Restitution Chamber held that the merits of the claim were substantiated under Article 4, Law 59. The appellants themselves did not seriously contend that the exemptions provided for in that article existed,

nor did they in any way attempt to proffer allegations of misconduct on the part of the claimants. The restitutors relied for their defense solely on averments that the sellers induced them to buy the property: that they had planned to build another house to use in their old age but the claimants' actions caused them to desist from that plan in order to buy the house in this matter, and that, coupled with the free right of disposal and a fair purchase price, should defeat the claim. Both the Chamber and the Oberlandesgericht correctly held that those facts were not sufficient to block the power of avoidance given in said Article 4. Especially since it is definite by all of the facts that the transaction took place after 15 September 1935 and that the collective duress on Jews caused the claimants to sell their property and the married couple to take flight from Germany, even though they were about sixty years old. The two courts below were correct in the finding that the Rosenthals would not have sold the property to Mr. and Mrs. Schulz in the absence of National Socialism.

The Restitution Chamber properly ordered the real estate in question returned to Mr. and Mrs. Emanuel Rosenthal, the first with three fourths interest and the latter with one fourth interest.

The Restitution Chamber upon erroneous computations under existing laws, including Law 59, ordered the payment of the sum of DM 2,785.40 by the claimants to the restitutors.

Both parties appealed to the Oberlandesgericht. The restitutors complained against the Chamber's order to restore the property and the restitutees disputed the rulings made by the Chamber in regards to refund of the purchase price, profits, and other items.

The Oberlandesgericht affirmed the decision returning the property, but set aside that portion of the judgment embracing the payment of money and referred the case back to the court of first instance for a new hearing on the monetary adjustments between the parties.

Since the appeal to this Court was taken only upon the question whether or not the decision of the court below was proper in restoring the property, we will not discuss the monetary claims of all parties, especially since a new trial is to be had on those issues.

The case is in accordance with the decision of this Court, *Hellmann vs Hlg.-Geist-Spital-Stiftung*, Opinion 23, in that to defeat a restitution claim for a transaction after 15 September 1935, the power of avoidance can not be rebutted when the transaction would not have taken place in the absence of National Socialism, even where the fair purchase price was paid, and the free right of disposal was had.

The decision of the Oberlandesgericht is affirmed.

Upon a motion of the appellants this Court entered an order temporarily staying execution on the judgment of the Chamber returning the property to the Rosenthals. That order of the Court, dated the ninth day of February 1950, is hereby vacated. Execution may be had immediately.

IT IS SO ORDERED:

AUGUST und ELISABETH SCHULZ,
Rückerstattungspflichtige und Antragsteller
gegen
EMANUEL und JETTCHEN ROSENTHAL,
Rückerstattungsberechtigte und Antragsgegner

Entscheidung Nr. 26 Eingereicht am 10. Mai 1950 Fall Nr. 54

Nachprüfung der Entscheidung des Oberlandesgerichts Frankfurt/Main.

Rechtsanwälte Dr. Eisenberg und Dr. Ulrich, Hanau/Main, für die Antragsteller.

Rechtsanwalt Dr. Walther Breiding, Frankfurt/Main, für die Antragsgegner.

Verhandelt vor Präsident COHN, Justice HARDING und Judge FLANAGAN als Beisitzer.

Die Entscheidung des Gerichts wurde von Präsident COHN geschrieben.

Die Rückerstattungsberechtigten Emanuel Rosenthal und seine Frau Jettchen, waren zu je 25 % und der Bruder des Ehemannes, Jakob Rosenthal, zu 50 % Miteigentümer des Hausgrundstücks Marienstraße 1 in Rüdkingen. Jakob Rosenthal wurde im Jahre 1944 in ein Konzentrationslager gebracht und ist seitdem verschollen. Deshalb betrachtete die untere Instanz Emanuel als alleinigen Erben des vermutlich verstorbenen Bruders. Die drei Rosenthals sind Juden.

Es ist unbestritten, daß infolge der stetig zunehmenden Bedrohung der Juden in ihrer Gesamtheit, sich das Ehepaar Rosenthal zur Auswanderung entschloß, da es noch schärfere Maßnahmen befürchten mußte. Diese Befürchtung zwang sie, aus Deutschland zu fliehen. Aus diesem Grunde verkauften sie am 16. Juni 1938 gemeinsam mit Jakob Rosenthal das oben erwähnte Grundstück an die Rückerstattungspflichtigen. Es wurde ein angemessener Kaufpreis bezahlt und die Eheleute Rosenthal konnten über ihre Hälfte des Erlöses frei verfügen. Was mit der anderen von Jakob Rosenthal erhaltenen Hälfte des Kaufpreises geschah, ist unbekannt.

Die Wiedergutmachungskammer entschied, daß der Rückerstattungsanspruch sich auf Art. 4 REG stützt. Die Rückerstattungspflichtigen haben selbst das Vorliegen der in diesem Artikel genannten Ausnahmen nicht ernsthaft behauptet und auch nicht die nach Art. 4, Abs. 3, REG, grundsätzlich zulässige Einrede der Arglist erhoben. Die Rückerstattungspflichtigen stellten zu ihrer Verteidigung lediglich die Behauptungen auf, daß die Verkäufer sie zum Erwerb des Grundstücks veranlaßten, daß sie geplant hatten, sich ein Haus für ihre alten Tage zu bauen, von den Rückerstattungsberechtigten aber überredet wurden, von diesem Plan abzusehen und das in Frage stehende Haus zu erstehen und diese Tatsachen, wie auch die, daß der angemessene Kaufpreis zur freien Verfügung stand, den Anspruch zunichte machen müßten. Die Kammer und das Oberlandesgericht erkannten zu Recht, daß diese Tatsachen nicht ausreichten, um

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das Anfechtungsrecht des Art. 4 REG auszuschließen. Dies trifft umso mehr zu, als es auf Grund aller Tatsachen feststeht, daß das Rechtsgeschäft nach dem 15. September 1935 abgeschlossen wurde und daß der auf die Juden in ihrer Gesamtheit ausgeübte Zwang die Berechtigten veranlaßte, ihr Anwesen zu verkaufen und aus Deutschland zu fliehen, obgleich sie etwa 60 Jahre alt waren. Die unteren Instanzen stellten zu treffend fest, daß die Rosenthals ohne die Herrschaft des Nationalsozialismus das Anwesen nicht an Herrn und Frau Schulz verkauft hätten.

Die Entscheidung der Wiedergutmachungskammer, wonach das Grundstück an die Eheleute Rosenthal zurückzuerstatten ist, und zwar an den Ehemann zu $\frac{3}{4}$ und an die Ehefrau zu $\frac{1}{4}$, war richtig.

Auf Grund einer Berechnung, die nach den bestehenden Gesetzen, einschließlich des REG, falsch ist, verordnete die Wiedergutmachungskammer die Zahlung von DM 2 785,40 durch die Berechtigten an die Rückerstattungspflichtigen.

Beide Parteien legten Beschwerde beim Oberlandesgericht ein. Die Rückerstattungspflichtigen rügten, daß die Kammer die Rückgabe des Grundstücks anordnete und die Berechtigten bestritten die Entscheidungen der Kammer in Bezug auf den zu erstattenden Kaufpreis, die Nutzungen und andere Posten.

Das Oberlandesgericht bestätigte die Entscheidung bezüglich der Rückgabe des Grundstücks, hob aber das Urteil in Bezug auf die Geldzahlung auf und verwies insoweit die Sache zur erneuten Verhandlung an die Wiedergutmachungskammer.

Nachdem sich der Antrag auf Nachprüfung nur darauf bezog, ob die Entscheidungen der unteren Instanzen in Bezug auf die Rückgabe des Grundstücks zu Recht erfolgte, werden die Geldansprüche beider Parteien hier nicht erörtert, insbesondere da über diese Angelegenheiten erneut verhandelt werden wird.

Dieser Fall ist im Einklang mit der Entscheidung dieses Gerichts in Sachen Hellmann gegen Hlg.-Geist-Spital-Stiftung (Entscheidung Nr. 23) derzufolge, um einen Rückerstattungsanspruch auf ein nach dem 15. September 1935 abgeschlossenes Rechtsgeschäft erfolgreich verweigern zu können, das Anfechtungsrecht nicht versagt werden kann, falls das Rechtsgeschäft ohne die Herrschaft des Nationalsozialismus nicht abgeschlossen worden wäre, trotzdem ein angemessener Preis bezahlt und die freie Verfügung hierüber erlangt worden ist.

Die Entscheidung des Oberlandesgerichts wird hiermit bestätigt.

Auf Ersuchen der Rückerstattungspflichtigen ordnete dieses Gericht die zeitweilige Aussetzung der Vollstreckung des Beschlusses der Kammer in Bezug auf die Rückgabe des Grundstücks an die Eheleute Rosenthal an. Der von diesem Gericht am 9. Februar 1950 ergangene Beschluß wird hiermit aufgehoben. Dieser Beschluß ist sofort vollstreckbar.

Es war zu erkennen wie geschehen.

Dr. PAUL P. HOMBURGER,
Dr. VICTOR V. HOMBURGER,
Fa. VEIT L. HOMBURGER, Claimant-Appellants

vs

BADISCHE KOMMUNALE LANDESBANK, Karlsruhe, Restitutor-Appellee

Opinion No. 27

Filed 8 June 1950

Case No. 79

Appeal from a decision of the Civil Division of the Oberlandesgericht Stuttgart.

Franz Fraenkel Esq., Attorney-at-Law of New York City, for the Appellants.

Dr. Gerhard Caemmerer, Attorney-at-Law of Karlsruhe/Baden, for the Appellee.

Before COHN, President, ERICSSON, Justice of the Court of Appeals, sitting as an Associate Judge, and FLANAGAN, Judge.

FLANAGAN, Judge, delivered the Opinion of the Court.

The claimant-appellants appeal from a decision of the Civil Division of the Oberlandesgericht Stuttgart, which dismissed an appeal taken by them from an interlocutory decision of the Restitution Chamber at the Landgericht Karlsruhe, under which decision restitution was directed to be made to the claimant-appellants.

The claimants, now residing in the city of New York, formerly operated a business under the firm name of Veit L. Homburger in the city of Karlsruhe. A contract of sale was entered into between the claimants and the restitutor on March 21, 1939, under which the claimants sold to the restitutor the business premises and an apartment house for a price of RM 260,000. After the consummation of the sale the purchase price was paid into a blocked account¹ in the names of the claimants.

The claimants belong to that class of persons within the meaning of Art. 1 of Law 59 and the sale of the property represents a confiscation within the requirements of Art. 2 of Law 59. The claim was duly filed in conformity with existing regulations and the appeal is properly before this Court.

On June 8, 1949, the Restitution Chamber at Karlsruhe in an interlocutory judgment declared the contract of sale null and void and directed restitution in kind to be made by the restitutor to the claimants. In its opinion the Chamber discussed at considerable length the question of whether an aggravated or simple confiscation had taken place. Without evaluating any evidence other than the original claim and the papers before it, the Chamber found that a simple confiscation had taken place and that the claims and counterclaims in respect to profits and expenditures would be regulated by the provisions of Art. 31 of Law 59. Under

¹ Section 59 Foreign Exchange Law.

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dazu verurteilt war, sein Eigentum und, wie die späteren Ereignisse zeigen, schließlich auch sein Leben zu verlieren. Aber der von der Kammer ermittelte Sachverhalt zeigt auch eindeutig, daß das Rechtsgeschäft eine unmittelbare Folge der verzweifelten Lage war, in der sich der Verkäufer wegen Verfolgungen aus rassistischen Gründen befand. Er hatte die Wahl, das Grundstück entweder von der Vermögensverwertungsgesellschaft zu einem lächerlich niedrigen Preis verkaufen zu lassen, oder den Pflichten zu drängen, das Anwesen zu einem etwas über dem Einheitswert liegenden Betrag zu kaufen.

Die von Bühler abgegebene Erklärung ist ohne Zweifel Teil des Rechtsgeschäfts, auf Grund dessen er sein Eigentum eingebüßt hat. Für den Fall, daß die Parteien genügend Weitblick hatten, um den künftigen Zusammenbruch des nationalsozialistischen Regimes vorauszusehen, und der Verkäufer sich verpflichtete, aus einer zukünftigen Gesetzgebung, die ihm möglicherweise das Recht zur Anfechtung des Rechtsgeschäfts geben würde, Nutzen zu ziehen, um so den Käufer zum Erwerb des Anwesens zu veranlassen, ist dieses Versprechen nach unserer Meinung ebenso anfechtbar nach Art. 4 wie das Rechtsgeschäft der Auflassung des Grundstücks; es kann daher nicht als Grundlage dienen, um die Berechtigte von der Ausübung des Anfechtungsrechts auszuschließen.

Dieses Gericht hat in einem Fall, in dem verfolgte Verkäufer den Rückerstattungspflichtigen zum Abschluß des Rechtsgeschäfts mit der Erklärung gedrängt hatten, sie gingen einen freien Verkauf ein und würden das Rechtsgeschäft auch dann als gültig ansehen, „wenn das Dritte Reich nicht mehr bestehe“, entschieden:

„Einem von einem solchen Opfer dem Käufer seines Hauses gegenüber abgegebene Versprechen, daß es für den Fall des Endes der nationalsozialistischen Ära nichts zur Wiedererlangung des Anwesens unternehmen würde, kann sehr wenig Bedeutung zukommen, wenn es zu einer Zeit äußersten Zwanges abgegeben wurde. Es ist verständlich, daß jemand, der sich vor tatsächliche Beweise des tödlichen Ernstes des Pogroms von 1938 gestellt sah, der sah, wie Freunde, Verwandte und Nachbarn ihres Besitzes beraubt und nach unterdrückenden Gesetzen gedemütigt wurden, verzweifelte Anstrengungen unternimmt, um zur Flucht so viel Geld wie möglich aus seinem Vermögen sicherzustellen. Versprechen, die aus Angst und in dem Bestreben des Zustandbringens eines schnellen Verkaufs abgegeben wurden, sind entschuldbar (siehe Grüner gegen Lang u. a., Entscheidung Nr. 95, Bd. II, S. 267). Wollte man sagen, daß ein derartiges Versprechen einen Verkäufer davon ausschließt, sich auf das REG zu berufen, so würde das bedeuten, daß der Zweck des Rückerstattungsgesetzes vereitelt werden kann, wenn die Verfolgungsmaßnahmen hart genug waren, um das Opfer vereiteln zu lassen. Eine derartige Auslegung würde den Zweck des Gesetzes vereiteln, für dessen Erfüllung wir einzutreten haben, und sie stünde im Gegensatz zum klaren Sinn des Wortlauts dieses Gesetzes.“¹

Die Entscheidungen des Oberlandesgerichts und der Kammer werden aufgehoben und die Sache an die Kammer zur erneuten Verhandlung und Entscheidung zurückverwiesen.

Gerichtskosten werden für diese Instanz nicht erhoben. Die Parteien haben ihre außergerichtlichen Kosten selbst zu tragen.

Justice Munroe, der an der mündlichen Verhandlung teilgenommen hat, ist aus dem Gericht vor Erlaß dieser Entscheidung ausgeschieden.

¹ JRSO gegen Dr. Bexen, Entscheidung Nr. 377.

GUSTAV EINSTEIN, Claimant-Appellant

vs

ADOLF KEBBEL, FREISTAAT BAYERN, Restitutor-Appellees

Opinion No. 447 Filed with the Clerk: 30 November 1954 Case No. 728

1. APPEAL — DIRECT TO CORA

The Chamber's ruling that the presumption of confiscation under Law 59, Article 3 can be rebutted by showing that persecution was not the cause of the transaction at issue is a ruling of law that cannot be appealed directly to the Court of Restitution Appeals. However, a finding of fact pursuant to that ruling, that the transaction would have taken place in the absence of National Socialism may be appealed directly, on the ground that it is not based upon substantial evidence.

2. EVIDENCE — FINDINGS OF FACT

The Chamber is entitled to exercise its free discretion in its consideration of the evidence before it. It is entitled to make such findings of fact based upon the exercise of discretion as may be warranted. But the Chamber is not permitted, under the guise of discretion, to refuse to recognize essential evidence, to ignore it, without justification, and treat it as nonexistent. That is not an exercise of discretion but a refusal to do so and consequently an abuse of discretionary power.

3. WITNESSES — INFERENCE FROM NONPRODUCTION

Under appropriate circumstances, a party to an action who fails to call to the attention of the court the testimony of witnesses who normally would be expected to corroborate the party's contentions should be subjected to an unfavorable inference because of that failure. However, before the inference can be drawn, it must be demonstrated that the party was able to produce the witness.

4. WITNESSES — REFUSAL TO HEAR

The Chamber's refusal to hear the claimant as a witness on the ground of unreliability because he had disputed the amount of one of his creditor's claims, although the court believed that he had earlier acknowledged it, held an abuse of discretion. In such a case, though the Chamber is not obliged to believe the claimant if he does testify, it is obliged to hear him and give his testimony judicial consideration.

5. EVIDENCE — FINDINGS OF FACT

On the record before the court, it was held that the Chamber's finding of fact that the transaction in question would have occurred in the absence of National Socialism was not based upon substantial evidence.

6. PURCHASE PRICE — FAIRNESS OF

In ascertaining the fairness of a purchase price it is normally incumbent upon the Chamber to make a comparison between the sale in dispute and that of similar items of property. Expert opinions rendered by experienced witnesses are usually asked for, and they in turn are influenced by the weight to be given earlier offers. The court's refusal to give credence to a claimant's assertion that an offer in a specified amount had been made for the property is not sufficient to justify an affirmative finding that the price actually paid was fair.

7. PURCHASE PRICE — FAIRNESS OF

A fair purchase price is not influenced by the use to which the seller may put the proceeds of the sale.

The claimant appeals from a decision of the Restitution Chamber at the Regensburg Landgericht.

Decision disapproved and set aside.

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Attorney-at-Law Dr. Hans Raff, Munich, and Attorney-at-Law Professor Dr. E. J. Cohn, London, for the Appellant.

Attorney-at-Law Siegfried Neuland, Munich, for Appellee Adolf Kebbel.

Mr. Herbert Adam from the Oberfinanzdirektion Nuernberg, Branch Office Regensburg, for Appellee Freistaat Bayern.

Before ROBINSON, President, HARRIS, and MUNROE, Justices.

The Opinion of the Court was delivered by ROBINSON, President.

This case involves a petition for the restitution of extensive holdings which, for convenience, may be described as (a) the Wildenstein Brewery and its appurtenances and (b) a castle at Strassberg, in Schwaben.

On May 4, 1933 one Else Buxbaum, holder of a general power of attorney, dated July 12, 1924, authorizing her to represent the claimant in all matters "where under the law representation is admissible", conveyed the property in question to the firm *Schloßbrauerei und Gut Wildenstein GmbH.*, which had been organized for the purpose of making the purchase.

The total purchase price for the numerous items of property included in the sale of the Wildenstein brewery was RM 770,094.86. The particular properties and the prices paid for each are as follows:

1. The castle, estate, and brewery at Wildenstein, including the inn and power plant, manor house, distillery, farm building, store houses, stables, workers dwellings, as well as farmland and forest totaling 200,600 hectares, made up of 90,300 hectares of farmland and 110,300 hectares of forest,	RM 440,000.—
2. A malt factory and restaurant located in Hemau,	RM 40,000.—
3. Restaurant at Dietfurt, including real estate and equipment	RM 7,500.—
4. Restaurant at Nuremberg including real estate and inventory	RM 30,000.—
5. All supplies at the brewery and malt factory including 1,308 hl of lager beer, 5.5 hl of <i>Weizenbier</i> (beer made of wheat, about 120 cwt of barley, 795 cwt of malt, 4.2 cwt hops, 50 cwt coal, etc.	RM 34,000.—
6. All accounts receivable and payable of the various enterprises, having a book value of RM 287,234.85	RM 218,594.86
Total	RM 770,094.86

The purchaser assumed liabilities encumbering the above properties in the amount of RM 533,142.41. In addition, it discharged a claim against the seller, originally held by the banking firm Heinrich and Hugo Marx of Munich and assigned to the purchaser, in the amount of RM 284,707.96. These two payments, amounting to RM 817,850.37 exceeded the purchase price by RM 47,755.51. This credit, in favor of the purchaser, was settled by the conveyance to it of the castle at Strassberg. The latter property was encumbered in an amount of RM 20,000, an obligation that was assumed by the purchaser, making the total price paid for the castle RM 67,755.51.

The castle at Strassberg was conveyed on November 23, 1933 to an Anny Burkhart who, subsequently, on February 5, 1935 conveyed it to the National Socialist Welfare Organization (NSV). The restitutor Land Bavaria is the present holder of the property by virtue of the provisions of Control Council Directive No. 50.¹

¹ See also US Military Government Law No. 58, US Mil. Gov. Gazette, Germany, Issue E, page 16.

In October 1937 the remaining property was acquired by the present holder, the restitutor Kebbel.

The claimant duly filed a petition for restitution, asserting that the deprivation amounted to a confiscation under Law No. 59.

In support of his petition, the claimant asserts that in March, 1933, accompanied by his family, he visited Switzerland, intending to remain for about two weeks; that on the day before he was to return he received a telephone call at Arosa from his agent Buxbaum, who advised caution in respect to his return to Germany, because there was danger of his being taken into "protective custody"; that "visitors" had already appeared at his apartment early one morning; that they had searched the premises after announcing they were police. At the same time, the claimant learned of the murder of a Jewish broker named Seltz near Straubing; that, intimidated by these reports, he feared returning to Germany without protection; that the decision not to return was difficult to make because he realized that his absence from his business might lead to serious results; that, accordingly, on March 27, 1933 he wrote to the police at Augsburg asking for protection in the event of his return. The letter contained the following paragraph:

"In consequence of the general depression and the huge losses suffered thereby, my financial situation, as can be proven by the Finance Office, has become difficult and requires all of my energy and attention in order to maintain my affairs. It cannot be doubted that my longer absence will result in the collapse of my enterprises and many people will lose their money. Since July 13, 1931, I have been struggling for my economic existence in an unparalleled manner, in order to avoid ruin."

The claimant further asserts that he received no answer to this plea, a failure he attributes to the unfriendly attitude of the German authorities towards Jews which had already developed; that because of that anti-Jewish attitude, the Finance Office of Augsburg, a few days later, recorded a compulsory mortgage on the Wildenstein property in the amount of RM 23,000 "because of a *Reich Flight Tax*" assessed on the basis of an alleged illegal flight from Germany; that no justifiable basis existed for such action, which the claimant attributes entirely to his race; that his failure to return from Switzerland was soon made known throughout Augsburg, whereupon some of his creditors became worried and secured attachments on his property; that during the month of April, the Augsburg newspapers embarked upon a series of attacks against him, charging that he had fled abroad with large sums of money and was guilty of criminal misconduct; that the press also vilified him because of his race; that boycotts were begun against his brewery because it was selling "Jewish beer"; that this combination of events proved too difficult for his inexperienced agent Buxbaum to meet and, furthermore, she was then being guided by the claimant's former legal adviser, *Justizrat Deiler*, who had transferred his sympathies to the Nazi authorities and influenced Buxbaum in a manner unfavorable to the claimant; that Buxbaum in an effort to alleviate the situation considered it proper to ask for composition proceedings and to separate the claim of the Marx Bank, with whom the claimant had been negotiating prior to his departure, from the other creditors; that the latter purpose was accomplished by causing the transfer of the properties now in dispute to a firm organized by the Marx Bank for that purpose; that the claimant himself learned of the transaction

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only after its completion; that his absence had resulted in a decisive disadvantage to him; that though his financial situation had been difficult, he was not insolvent; that his intermediate balance sheet of June 30, 1932, as affirmed by the auditor Schmid, showed a book value of RM 258,107 in his favor and that furthermore he had always met his obligations as they fell due up to the very day that he left for Switzerland; that the purchase price paid for the property did not correspond to its true value; that this is demonstrated by the fact that the senior partner of the Marx Bank, the deceased Hugo Marx, had offered RM 1,250,000, exclusive of outstanding claims and obligations and brewery stocks, as recently as the beginning of 1933; that the unfairness of the price is further demonstrated by the circumstance that during the years 1927/1928 the Tucher Brewery in Nuernberg and the Huerner Brewery at Ansbach had made offers of "similar high amounts"; that he had refused all of these offers, and if his agent Buxbaum had agreed to the terms of the sale of May 4, 1933, then it would demonstrate the extent to which the price had been depressed in the course of a very few months; that nothing was paid for good will of the brewery and the circumstances indicated that the purchaser had acquired the property by taking undue advantage of the claimant's situation; that the contract of May 4, 1933 should be deemed *contra bonos mores* or, in any event, be considered an act of confiscation under Article 3, Law 59.

The restitutors duly filed objections to the claim and, in reply to the claimant's allegations, asserted that the sale of Wildenstein was neither involuntary nor was it made for any of the reasons listed in Article 1 of Law 59; that on the contrary, the claimant had intended to sell the property in January 1933, prior to the assumption of power by the National Socialists; that when the claimant failed to return from Switzerland, his agent stopped making payments to creditors, but this suspension of payments was not due to any measures of persecution but resulted exclusively from the generally bad economic situation then prevailing and the extremely difficult financial status of the claimant; that this status resulted from the claimant's unsuccessful speculations during the years 1931 and 1932; that as early as 1932 his financial situation was so bad that the *Bezirkssparkasse* Riedenburg had extended credit to him only on condition that the savings account of his employee Karl Uhl be deposited as security; that the claimant's financial situation at that time warranted the conclusion that his assets were of such a nature that he could not realize on them, and that they had no real value; that, on the other hand, a large portion of his liabilities, particularly those concerning bills and loans were of a short term nature and could be called at any time; that although the claimant had met his obligations until the day he stopped payments, this was accomplished only because he had, for years, worked according to the principle that one debt could be discharged by creating another; that his financial failure was inevitable; that his creditors were in agreement that the claimant's situation required a complete reorganization; that the action of the creditors at the end of March and early April 1933 was not attributable to the claimant's race, but was a direct consequence of their concern over the collectability of their claims; that if the police called at the claimant's home, as alleged, they did so because the latter was suspected of attempting a fraudulent

bankruptcy, that the claimant's trip to Switzerland, and his stay in that country, accompanied by the news that several of his creditors had taken action against him on the basis of considerable claims, gave rise to the suspicion of a violation of the bankruptcy regulations as well as a suspicion of the illegal transfer of money abroad; that no transgressions against the Jews had occurred in Augsburg by March 1933; that the *Gestapo* was not then in existence; that the Bavarian Police, moreover, were not then influenced by the spirit of National Socialism, but on the contrary acted impartially and fairly; that the above described circumstances justified a search by the police of the claimant's apartment and the attachment of his property; that, furthermore, the refusal of the police to provide the claimant with immunity cannot now be criticized in view of the suspicion under which the claimant was placed; that the imposition of a *Reich* Flight Tax was not a measure of persecution since said tax had already been introduced in 1931 and was applicable to every one, and was imposed in the instant case only because of the suspicion of an illegal transfer of capital abroad; that in view of all of this it cannot be said that the contract of May 4, 1933 was caused by racial persecution; that it, in fact, was caused by the catastrophic economic situation of the petitioner, which already existed in 1932; that it was this situation that caused the claimant to consider the sale of Wildenstein long before the beginning of the Hitler regime, and that such a sale was the only solution to an extremely difficult situation; that the newspaper attacks directed against the claimant began only when he failed to return to Augsburg and only after the news had been spread that he had stopped making payments to his creditors, and that there is no causal connection between these attacks and the sale; that moreover the price paid for the property was fair; that the petitioner's assertion that Hugo Marx had offered him RM 1,250,000 in January 1933 for the Wildenstein property was incredible and not true; that the fairness of the purchase price is shown by the fact that in 1937 the bank sold the property to the present respondent for almost the same price it had paid, despite the fact that the economic situation in Germany had in the meantime been considerably improved; that furthermore the circumstance that the former Jewish partners of the Marx bank had not filed a petition for restitution against the respondent, even though a good claim could be based under Article 4, Law 59, permitted the conclusion that the price paid at that time was fair; that a comparison of the prices paid for the individual items composing the Wildenstein property with the corresponding book values contained in the balance sheets of June 30, 1932 and September 30, 1931 shows that the payments were greater than the book values; that these excessive payments were for the good will of the brewery; that at the time of the sale by the claimant, the buildings were in poor condition and the farm at Wildenstein was in possession of a tenant who had a 10 year lease beginning in 1931; that the livestock and equipment of the farm belonged to the tenant; that the brewery had no reserves of raw material and was in a difficult economic situation; that the claimant's reference to offers made in 1927 and 1928 should be considered in the light that properties had in the interval been reduced in value by 30%; that, in fact, the Tucher firm had offered but RM 900,000 and the offer of the Huerner Brewery could not be used as a comparison because it was then contemplated that the claimant would

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remain as manager of the brewery and that the purchaser would pay for the same over a long period of time out of expected profits; that it is further demonstrated that the price paid was fair by the fact that other creditors of the petitioner as well as the later appointed receiver in bankruptcy, did not exercise their right to contest the sale; that no claim for restitution can be based on Article 3 of Law 59 because, first, the alleged persecution was not the proximate cause of the transaction and, second, the contract of May 4, 1933 was a transaction between two persons of Jewish faith, since the purchasing firm was almost completely controlled by the Jewish banking firm of Marx, and the only other owner possessed a small portion of the capital in order to give the firm the appearance of an "Aryan" company; that under these circumstances the presumption of confiscation under Article 3 has been met; that the claimant's assertion that *Justizrat Deiler* had acted disloyally was not true; that furthermore, in 1932, the claimant had offered the Wildenstein property to one Elsen of the *Bischofshof* brewery of Regensburg in exchange for taking over the mortgages encumbering the same.

The Chamber dismissed the claim for restitution after concluding that the transaction of May 4, 1933 was not entered into because of pressure of persecution directed against the claimant as a Jew. It stated that, on the contrary, overwhelming reasons indicate that the sale by the agent Buxbaum was independent of the political change that took place in Germany in the early part of 1933, and also independent of the absence of the claimant caused by the political situation; that no other price than that agreed upon in the contract of May 4, 1933 could have been obtained. It based its conclusion upon the following reasoning:

The claimant, because of the way in which his properties were being operated, and because of the nature of his business, suffered particularly from the economic crisis that swept Germany during the years 1932 and 1933; that this is shown by the report of the auditor Schmid who prepared the balance sheet of September 1931 and of June 30, 1932, that the claimant's farm at Wildenstein, as well as another at Unterbaar, (this property, which is not involved in the present litigation, is the subject of CORA Case No. 1265) had suffered severe losses amounting to RM 71,000; that the claimant's overall loss for 1931 was RM 201,177.67, although his breweries still made "considerable" profits; that when the petitioner leased his farms in 1931, that action must be considered as the first "indication of the economic *Ausverkauf*" of the claimant since the value of the claimant's property was seriously impaired by such leases; that even though the act stopped losses on the farm, the slump in the real estate market more than offset the savings made; that though the breweries continued to make substantial profits, the enormous payments on the claimant's obligations continued to reduce his assets; that the book profits as shown in the balance sheet were, to a large extent, represented by increasing outstanding accounts receivable, the collection of which was extremely doubtful; that in cases of innkeepers who owned accounts, efforts to collect might result in losing the customer and consequently reducing the market for the claimant's brewery; that whereas the claimant's assets were generally represented by long term investments, his liabilities consisted of short term obligations; that these obligations continued to rise and included bank loans, salaries, wages and private loans

of employees, as well as obligations arising out of the purchase of supplies; that the financial position of the claimant was precarious; that if but a single creditor had demanded payment, a contingency that had to be expected, a crisis would have immediately resulted since "it appeared impossible" to cover a cancelled credit by another credit; that such an act would have been a signal for all creditors of short term claims to act and that such action would necessarily have resulted in composition or bankruptcy proceedings with the subsequent sales of the claimant's property at "comparatively low prices"; that events demonstrated that the absence of the claimant for only a few days sufficed to set the crisis in motion; that though the expert Dr. Hintner expressed the view that in March 1933 the claimant had sufficient liquid means to meet possible dangerous situations and that his credit had not been exhausted (as shown by the fact that he had borrowed but RM 140,000 at the *Commerz- und Privatbank*, which had extended credit to the extent of RM 150,000, and as furthermore shown by the fact that the claimant could have obtained funds by the assignment of claims and the sale of raw materials and by the sale of timber in his forest), the Chamber adhered to its conclusion with the statement that the expert failed to consider that the sale of timber to a large extent was "out of the question" in view of the then low price of wood, and that the sale of raw material of the breweries was "impossible" since such sales would have shut down the operations, and would have been taken as a public declaration of bankruptcy; that the reason why the claimant did not exhaust his credit at the *Commerz- und Privatbank* was that such action would easily have resulted in the cancellation of all credit; that in any event, if other sources of funds had been available, the claimant would not have permitted his employee Uhl to pledge a personal account as security for a "few thousand marks" credit at the *Kreissparkasse*, Riedenburg; that such action clearly indicated the distressed financial situation of the petitioner; that the petitioner himself gives a clear indication of his bad financial condition in the letter he sent from Switzerland on March 27, 1933 to the Augsburg police, when he stated that "he had been struggling for his economic existence in an unparalleled manner in order to avoid ruin"; that there was only one possible way for the claimant to overcome his crisis and that was to sell part of his estate; that in considering the parcel to sell, Wildenstein was the logical choice rather than the more valuable property at Unterbaar; that the claimant's assertion that the Marx bank had offered RM 1,250,000 for *Gut Wildenstein* was disproved by the testimony of his former confidential clerk Knoll, who testified that he was present when the claimant and the banker Hugo Marx first talked about the sale and that the price they discussed was "somewhat over RM 500,000"; that the testimony of Knoll was not affected or lessened by the fact that at the time he made his statement the claimant had pending against him other claims for restitution; that the sale of Wildenstein was made for the exclusive purpose of improving the petitioner's financial situation and preventing bankruptcy; that this conclusion is warranted by the statements of the former partners of the banking house Marx, who expressed the opinions (a) that bankruptcy would have surely taken place in the absence of a sale of the Wildenstein property and (b) that the financial commitments of the claimant in the years prior to 1933 were beyond his resources; that the statements of these men are not lessened by the fact

that, in the event the claimant were successful, they might be liable to the restitutors as prior-acquirers of the property; that the fact that the agent Buxbaum was able to negotiate the sale of the Wildenstein property so quickly after the departure of the claimant shows that the sales negotiations must have been nearly terminated prior to that departure, since it seems "impossible that Miss Buxbaum could have agreed upon the sale of such a complex estate" in such a short time; that the only question at issue is whether or not the sale was on terms which would have been accepted in the absence of National Socialism.

In reaching the conclusion that it would have, the Chamber considered it "impossible that boycott by restaurant customers played any serious role in the matter"; that any suggestion to that effect is rebutted by the simple circumstance that the purchaser of the property was a "Jewish bank"; that it is significant that the claimant did not offer the testimony of his agent Else Buxbaum nor present any statement signed by her, nor make her address known; that his explanation for this failure, i. e. that Buxbaum had been alienated from the claimant and his wife for personal reasons, was not sufficient; that if, in fact, the banker Marx offered RM 1,250,000 for the property in the first part of 1933, such a sum would have clearly exceeded the means of the banking firm, which had a total capital of approximately RM 1,000,000; that the claimant himself was not competent to testify since he had personally stated in the proceedings before the Chamber that the claim of the Marx bank was excessive by approximately RM 100,000 although, subsequently, he wrote to a former partner of the bank that "it had been fully compensated for its claim of RM 280,000 by the purchase of Wildenstein"; that it is apparent from this conflict of statements, seemingly due to the petitioner's inability to recall, that he was not suited to be called as a witness; that the evidence did not show that the Tucher brewery was willing to pay RM 1,000,000 in 1928, but that the sum discussed was approximately RM 800,000; that the discussion would not permit the conclusion that, in the boom years of prosperity, a solvent buyer was willing to pay a million *Reichsmarks* for the property, which was then making considerable profit; that the offer of the Huerner Brewery in 1927 or 1928 was not significant, even if one was made in an amount of 1 million *Reichsmarks*, since the proposed contract provided that the claimant would be retained to run the brewery, and the purchase price was to be paid over a period of years.

The Chamber concluded that the claimant's assertion of the offer of the Marx bank was rebutted and that it must be assumed that a higher price than that actually paid could not have been obtained "under the economic considerations of that time, regardless of the political situation"; that it was significant that the sale which was effected to fully satisfy a single creditor, to wit, a Jewish firm, was not contested by any other creditor and that the later resale in 1937 by the bank to the restitutor without any substantial increase in price was further indicative of the fairness of the purchase price since the seller, if it thought that that resale price was unfair, could have avoided the contract under the provisions of MG Law 59, Art. 4; that since the Chamber holds the view that the claimant did not receive an unfair low price, it refrained from discussing in detail the expert opinion relative to the Strassberg Castle and the brewery in the year 1933. Since

in the opinion of the Chamber the expert opinions were of "limited value", and since they failed to consider that the decisive circumstances of a sale under an economic emergency must be judged differently from a normal sale; that while, normally, the book values of property are kept low for tax purposes and do not represent the actual value, the Chamber, relying upon the statement of the auditor Schmid, considered the book values in this case as "high"; that though the price paid for the book value of the accounts seems to be low since the principal debtors were restaurant owners and generally "safe", the decisive thing to consider was that collections in time of economic emergencies were more difficult than normally, that in respect of the Strassberg Castle which was "practically thrown into the bargain", it must be considered that the property was unusable, and interested buyers for the same could hardly have been found and that, moreover, the price was higher than that paid by the petitioner when he acquired the Castle in 1931 for RM 60,000; that the fairness of the purchase price is shown by considering the claimant's future profit: i. e. he was relieved of mortgages and other liabilities amounting to more than RM 400,000 and also relieved of interest on that indebtedness which aggravated his financial situation; that in conclusion it must be found that Art. 3 of Law 59 was not applicable and that no claim under Art. 2 arises either since that Article requires that persecution measures be the proximate cause for the loss of the property.

At the outset of its deliberations, the Chamber passed upon two legal problems that influenced its subsequent approach to the case. Taking cognizance of the fact that the owners of the Marx Bank at Munich were Jewish, and that the bank was virtually the owner of the corporation formed to purchase the property in dispute, the Chamber posed, but did not answer, the question whether or not a presumption of confiscation normally arising under the provisions of Article 3, par. 1 (b) in the case of a Jewish seller, would exist when the purchaser was also of that faith.

Though, as noted, the Chamber did not answer this question, it did give consideration to the fact that the purchaser was Jewish in the course of its further analysis of the case. For example, it was influenced by the fact that, though the transaction "practically intended to fully satisfy but a single creditor, a Jewish firm, it was not contested by any other creditor, although included among such other creditors were persons of rather wide experience in real estate businesses". It also gave considerable weight to the fact that the property was later resold, on October 1, 1937, by the Jewish owned acquirer without "an essential price increase". It considered that that was proof that the price paid could not have been "unfairly low". It was further impressed by the circumstance that the first acquirer had brought no petition for restitution under Law 59 although it would have been entitled to exercise the power of avoidance under Article 4.

In order that our own discussion of the issues may be placed in a proper perspective, we desire, at the outset, to note the foregoing observations of the Chamber with the comment that the status of the purchaser is not of significance to any of the issues before the court, since a sale by a persecutee, even to another persecutee does not bar the seller from all of the advantages

conferred upon him by the Restitution Law.² Further, we do not join the Chamber's conclusion that the first acquirer's failure to claim restitution indicated that the price it received was fair and that, consequently, the price it had paid was also fair. On the contrary, there is a very strong presumption that sales of property in Germany by Jewish owners as late as October 1937 did not result in a fair purchase price. The fact that the Marx interests chose not to file claims against the restitutors is not necessarily indicative of the fact that they had no claims. It could also indicate that they realized that whatever recovery they might make would be subject to the priority claim of the claimant.

The failure of the principal creditors to protest the sale is not significant. Most of their claims were secured and, in any event, the person charged with the duty of acting, the receiver, did indicate his disapproval and refrained from taking action only after settling the matter with the acquirer for RM 10,000.

The second legal problem considered by the Chamber, at the outset of its deliberations, concerned the rebuttal of a presumption of confiscation under Article 3. It ruled that such a presumption could be rebutted, not only in the manner provided in Section 2 of said Article (by showing that the transferor was paid a fair purchase price and that he was not denied the free right of disposal of the same) but also by showing that persecution was not the cause of the transaction at issue. The dismissal of the claim was ultimately predicated upon a finding that the transaction at issue was not influenced by persecution.

The foregoing ruling, if it were to constitute a basis for an appeal, involved a question of law which under the provisions of HICOG Law No. 21 would have had to be taken to the *Oberlandesgericht* and not to this Court by direct appeal. This was recognized by counsel for the petitioner, who in his petition stated that such an appeal had not been taken in order to avoid further delay in the case, and that the petitioner relied upon those grounds authorized for a direct appeal to this Court.³

Article 3 creates a presumption of confiscation in favor of certain classes of persons, of which the appellant is a member. This presumption, pursuant to the specific terms of Article 3, par. 2 "may be rebutted by showing that the transferor was paid a fair purchase price", the free disposal of which was not denied him on any of the grounds set forth in Article 1. This defense, however, does not prevail in the case of a transaction entered into by a member of the designated class within the period of September 15, 1935 (the date of the first Nuremberg Laws) to May 8, 1945. However, in respect of transactions during that period a restitutor may successfully defend upon several grounds, one of which is that the transaction "as such and with its essential terms would have taken place even in the absence of National Socialism".

The Chamber's ruling that that defense, if proved, is equally effective in respect of a transaction that occurred prior to September 15, 1935 is not in issue before us, since it involves a legal question. The Chamber's

² Koppel vs Ettlinger et als, Opinion No. 164, II CORA, 700; Dr. Mueller et al vs Uhlmann, Opinion No. 198, III CORA, 121.
³ HICOG Law 21, Article 1, Section 5.

finding of fact, however, that the transaction would have so taken place is properly before us since the appeal challenges the sufficiency of the evidence in support of it.

In passing, we wish to point out that though it is not illogical to assume that any defense to the exercise of a power of avoidance under Article 4 (involving transactions that occurred after the Nuremberg Laws) ought to be equally effective in respect of any transaction that occurred prior to that date, it does not necessarily follow that the defense with which we are here concerned could be successfully raised in a case where a fair purchase price had not been paid. Earlier views of this Court have clearly indicated that a consideration of the fairness of the purchase price is always required in testing the validity of a defense to the presumption of confiscation.⁴ In a recent case we stated:

"The court, in determining whether the presumption of a confiscation raised by Article 3 of Law 59 has been met, cannot escape concerning itself with the fairness of the purchase price. The consideration received for the transfer of property is a barometer which is indicative of whether or not the transaction is voluntary. It does not necessarily follow that low purchase price evidences a confiscation, but a low purchase price must be explained where the person accepting it in exchange for property is a member of a class that is subject to general persecution. A low purchase price under certain circumstances may be fair, but in the face of the presumption arising in favor of the sellers here, should the purchase price be inadequate, the court is duty bound to investigate fully the sellers' willingness to accept such a purchase price with a view toward determining whether or not that willingness was the product of persecution."⁵

If there are cases under the Restitution Law where a particular transaction, normally falling under Article 3, would still have taken place in the absence of National Socialism, notwithstanding the payment of a price that was not fair, they have yet to be called to our attention.

In reaching its ultimate conclusion, the Chamber found that the claimant was "practically illiquid" prior to the time that persecutory measures were commenced against him, and that he was forced to sell Wildenstein. No explanation of the term "practically illiquid" is given by the Chamber but its reasoning and analysis of the case strongly indicates that it was using the expression as synonymous with "insolvent". Since this finding was material and led to the ultimate dismissal of the claim, it is necessary to examine the evidence relied upon by the Chamber in support of it.

The lengthy opinion of the court is difficult to analyse because in some respects it engages in generalities not clearly pertinent to the specific facts under consideration. However, it is clear that the Chamber's finding that the claimant was "practically illiquid" is in turn based upon numerous subsidiary findings of fact which in our opinion, are based upon insubstantial evidence, or, in some instances, reached as a result of an abuse of the Chamber's free discretion in the consideration of evidence. The following are illustrative of the principal subsidiary findings relied upon by the Chamber. They do not include all findings but the errors noted require a disapproval of the decision.

⁴ Schwarz vs Dr. Endres et al, Opinion No. 279, III CORA, 646; Dr. Motzet vs Gemeinde Feldkirchen, CORA Opinion No. 391; Heussinger vs Raubenheimer, CORA Opinion No. 420.
⁵ Freistaat Bayern vs Orgovanyi-Obuch et als, CORA Opinion No. 371.

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(1) The Chamber found that the claimant had suffered great losses in connection with the operation of his two farms, the one at Wildenstein and the other at Unterbaar. The evidence shows that these losses had occurred in substantial amounts prior to 1931 at which time the Wildenstein farm was leased. The Unterbaar farm was leased in 1932. No further losses occurred thereafter but, on the contrary, an income of approximately RM 20,000 per year was gained. The cessation of the personal operations of the farms did not affect the principal business of the claimant, i. e. the operation of his breweries, except in a favorable manner. Therefore, the Chamber's conclusion that the leasing of these farms must be considered as a "first sign of an economic breakdown" is not warranted by the facts. The exchange of an unprofitable operation of the farms for a profitable rental of the same ought not be charged to the discredit of the claimant since it appears to have been no more than a practical business decision made to avoid his losses and strengthen his financial position.

(2) The Chamber found that the claimant had not provided for a reserve for possible losses due to uncollectable claims. This finding is contrary to the evidence which shows, according to the balance sheet of June 30, 1932, that a reserve in the amount of RM 213,271.04 was set up designed to cover losses in the collection of credits amounting to RM 1,031,776.— The witness relied upon by the Chamber for its finding was obviously referring to a period prior to 1930 and his testimony was not pertinent to the issue.

(3) The Chamber found that because of large losses in security transactions the indebtedness of the claimant to the Marx Bank had increased gradually and finally reached an amount of RM 280,000 in 1933. The record on the other hand shows that over a period of years the indebtedness of the claimant to the Marx Bank had not increased but decreased from approximately RM 600,000 to RM 280,000. Further, losses in stock transactions had not occurred after the middle of 1932.

(4) The Chamber found that the claimant was not in a position to enforce the collection of accounts of his restaurant customers because of the danger that if he did so the latter would purchase no more beer. This finding was intended to indicate that the substantial claims against restaurant owners were not collectable. There is no evidence whatsoever to bear out the statement. The record shows that during the years 1931 and 1932 the amount of the restaurant owners' debts gradually decreased. It shows further that though payments had not been made quickly, they were made, and all accounts were eventually paid. The Chamber's finding is based wholly upon its own notion of a creditor/debtor psychology. We will not take judicial notice, as apparently the Chamber does, of the view that a creditor in the position of the claimant dares not ask his debtors to pay their accounts for fear of losing their business. This is specious reasoning, and will not support the main finding of fact made by the Chamber.

(5) The Chamber found that when the claimant purchased the Unterbaar property in 1927 he was forced to use too much short term credit. It is apparent that the purchase of the Unterbaar property was made with the use of credit, much of which was on a short term basis, but it does not appear that any of that credit was cut off, nor does it appear that any of the moneys

loaned were not repaid when due. These short term credits were in fact substantially reduced, and by 1932 the claimant had paid nearly half of it. The fact that the claimant was able to accomplish that much during the worst period of the great depression would support a finding of fact quite different than that made by the Chamber. In any event, even though in 1927 the claimant may have stretched his credit beyond the point of discretion, he survived, and did so without defaulting on any of his obligations.

(6) The Chamber relied largely upon the testimony of the auditor Schmid who, in the summer of 1932, was employed by the *Deutsche Bank*, which at that time had extended credit to the petitioner to prepare an audit of the latter's property. Schmid's sole interest in the affairs of the claimant was limited to his employment in this connection. He did not purport to be an expert in the brewery industry nor in farming. His task was to provide his employer, the *Deutsche Bank*, with information upon which the latter could determine whether or not additional collateral should be demanded of the claimant for the credit extended. The audit was prepared and, after examining it, the *Deutsche Bank* continued to extend credit to the claimant on the same conditions as before without demanding additional collateral notwithstanding the fact that Schmid's report showed that the claimant was in possession of substantial unencumbered property. The witness Schmid testified that he considered the claimant "illiquid" at the time he prepared his audit but nothing he testified to warrants the conclusion that the claimant was insolvent in the technical sense. Further, the record does not show that this witness was qualified to give expert testimony on any subject other than that of the technical task preparing an audit.

(7) The Chamber found that the claimant's bad financial situation was further proven by reason of the fact that employees had invested money in his business. Such a practice in our opinion is not itself indicative of lack of financial stability. The relatively small amounts involved here were consistent with a sound policy of business management that often permits employees to participate in the responsibilities and benefits of ownership.

(8) The Chamber found that the claimant had been extended credit in the amount of RM 150,000 by the *Commerz- und Privatbank* and that he had used only RM 140,000 of this amount. The Chamber reasoned that had the claimant exhausted his credit at that bank the entire credit would have been called off. This finding is not supported by evidence. The failure to utilize the entire credit extended by a bank can hardly be construed as an indication of financial instability. The contrary would be indicated.

(9) The Chamber found that the claimant had not cut and sold the amount of wood on his property authorized by the forest office because of the depression of the price. However, if the claimant in fact had reached the verge of insolvency, as believed by the Chamber, it would have been more logical to assume that he would have sold the products of his property, even at a loss, before permitting the entire property to be conveyed at a greater loss. The logic of the Chamber in respect of the non-sale of the wood strikes us as being in the same category as its reasoning regarding the failure to exhaust the bank credit.

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(10) The Chamber gave great weight to the fact that the claimant's manager, Karl Uhl, personally guaranteed a credit account at the *Kreisspar-kasse* Riedenburg during the period from 1931 until 1933. The evidence shows that this credit in the sum of approximately RM 5,000 had earlier been extended to the claimant and that after the bank difficulties in 1931, the bank requested its customers to provide collateral for their accounts. The manager Uhl who received this notice appears to have complied with the request by pledging his personal account, but it does not appear that he lost anything by it nor does it appear that the claimant was aware of the action taken. The incident, though possibly indicative of strained circumstances, should not in our opinion have been given such controlling weight since, at most, the request for the collateral was a mere formality and there is nothing to indicate that the actual pledging of the account by Uhl was ever authorized by the claimant.

(11) The Chamber found that the letter written by the claimant on March 27, 1933 to the police at Augsburg was a confession of his bad financial position. This letter should have been considered in the light of the circumstances under which it was written. It was a desperate appeal made by a desperate man who wanted to come back to Augsburg with reasonable safety to himself. Such a plea, made by a Jewish businessman under the circumstances described in the record, would necessarily have to contain something urgent in it to induce a favorable response. Nevertheless, nothing in this letter went further than to admit that unless he was unable to get back to his business, creditors would suffer losses. We do not consider it evidence of insolvency or evidence of an inability to overcome the financial problem then facing him.

(12) Though the Chamber never definitely found that the claimant was insolvent, it stated that in the later years of the crisis there existed a "threatening danger of insolvency in case of the withdrawal of credit on the part of one of the larger creditors". There was no withdrawal of credit during the period with which we are concerned, and this hypothesis, projected into the proceedings by the Chamber, cannot take the place of evidence required to support findings of fact.

In arriving at the conclusions it did, the Chamber gave considerable weight to communications written by former members of the Marx Banking firm. These witnesses did not appear. They were never examined and no effort was made to produce them. We are not passing upon the propriety of considering the documents submitted by them, but limit ourselves to an examination of their contents in order to ascertain whether or not they support the findings made by the court. The significance of the communications, in the opinion of the Chamber, was that they constituted proof that the claimant could not have avoided a sale of the property in dispute even in the absence of National Socialism. Though the authors of the communications expressed such an opinion, there is nothing whatever to show their qualifications for doing so. A knowledge of the claimant's financial status and extent of operations would necessarily have to be possessed by one passing upon this question. Here, a bare expression of an opinion unsupported by any expert qualifications, or particular knowledge of the essential facts, can hardly be said to constitute substantial evidence.

Based upon the aggregate of the conclusions it reached respecting the financial circumstances of the claimant, the Chamber then stated that the only issue left to determine was whether or not the property would have been sold on the same terms even in the absence of National Socialism. It answered that question in the affirmative on the premise that due to his distressed financial situation the claimant could not be considered as a willing seller entirely free in his dispositions, cogent economic reasons having forced him into the transaction. In this connection the Chamber dismissed as "impossible" that the Jewish boycott had any influence on the terms of the sale. It justified this conclusion with the statement that the mere circumstance that the purchaser was a "Jewish bank" clearly rebutted any such assertion.

This conclusion of the Chamber seems to us to be at complete variance with the facts. It was not a "Jewish bank" that purchased the property, although the Jewish members of the bank that owned stock in the purchasing firm definitely had an interest in the sale. The purchase was made by a legal entity formed for that purpose at a time when such means were employed in order to conceal Jewish ownership. However, it affirmatively appears that there was a boycott which constituted a part of the official Nazi measures taken against Jewish firms in April 1933, and it further affirmatively appears that this boycott played a part in the negotiations and especially in the purchase price paid for the property. The Jewish banker who had an interest in the purchasing company, according to the undisputed evidence in the case pointed out that the boycott had adversely affected the value of the property. After the sale, the creditors and press were informed that not "Jewish beer" but "Aryan beer" was now being produced.

The claimant had asserted that prior to his departure for Switzerland he had been negotiating with Hugo Marx of the Marx banking firm and that the latter had offered RM 1,250,000 for the property. The Chamber stated that if such an offer had been made, then it would be evident that the price actually paid later was not fair. After considering various circumstances, at length, the Chamber concluded that the claimant's assertion that such an offer had been made was rebutted. We will not discuss, in detail, the evidence leading to this conclusion because, for the purposes of this decision, it is not significant that a particular offer may or may not have been made. We do note, however, that in the course of its consideration of that question the Chamber had before it evidence which clearly indicated that on two separate occasions substantially higher offers had been made for the property by the Tucher and Huerner Breweries in 1928.

We refrain from discussing the significance of this evidence now because, in our view, the evidence does not support a finding that the transaction would have happened even in the absence of National Socialism, and it is necessary to remand for a new trial at which the court must ascertain whether or not a fair price had been paid for the property within the meaning of Law 59, Article 3, Section 3.

The Chamber's consideration of the fairness of the purchase price was restricted to the case of a compulsory sale due to financial instability. Such is not the case here. Though the claimant admittedly negotiated over a long period of time for the sale of the Wildenstein property, the length of those

negotiations and the fact that he refused various offers negate the assumption that he was pressed for time. We perceive of nothing in the record before us to warrant, in a new hearing in the case, any deviation from the usual requirement that the defense under Article 3 must be established in order to meet the presumption of confiscation.

The paucity of the evidence relied upon by the Chamber is accented by the fact that there was positive evidence strongly tending to show that the purchase price paid was not adequate. This evidence in many respects was ignored by the Chamber, or inadequately considered. The Tucher Brewery offer in 1928 in the amount of RM 800,000 (the lowest figure considered by the Chamber) did not include outstanding accounts and supplies. Deducting these items from the 1933 purchase price, we find that the price paid for the property for which the Tucher brewery would have paid RM 800,000 was RM 504,000. (This figure includes RM 52,000 representing the agricultural inventory that had been sold in the meantime.) The witness Knoll testified for a provisional understanding between the claimant and the banker Marx for the sale of Wildenstein alone, not including the outstanding accounts, supplies or the restaurants for a price of RM 540,000. The price actually paid was RM 457,000. This considerable difference occurring within a period of two or three months has not been satisfactorily explained.

The fact that the purchaser paid not only an additional RM 10,000 to the receiver in bankruptcy when the latter threatened to contest the sale but waived a claim against the bankrupt estate in the amount of more than RM 11,000 is also affirmative evidence that the purchase price was inadequate.

As for the Strassberg castle, there is nothing whatsoever to show that the claimant, at any time, intended to convey it or was under any necessity of doing so. It was in fact treated by the Chamber as having been "thrown into the bargain".

There are several other assumptions indulged in by the Chamber which we feel constrained to mention because of the possibility that the errors inherent in them might be extended in the subsequent proceedings of the case.

(1) The Chamber pointed out that on October 19, 1933 *Justizrat* Deiler stated in a letter addressed to the *Finanzamt* that Miss Buxbaum, the claimant's agent, had informed him on April 6, 1933 that the negotiations relative to the sale of Wildenstein "were as much as completed". Accepting that statement at face value, the court drew the inference that the sale of the property in dispute had reached an advance stage prior to the claimant's departure for Switzerland. The Chamber said that "it seems impossible that Miss Buxbaum could have agreed upon the sale of such a complex estate as Wildenstein completely independent of the petitioner within the few days that elapsed since the date of the expected return of the petitioner".

The foregoing conclusion, if it is intended to mean that the sale as actually completed, corresponded to terms that had earlier been agreed upon by the claimant, is in no wise supported by anything more than the Chamber's analysis as above stated. In reality, it is clear that the agent Buxbaum played only a formal part in the ultimate sale, and that her role

must be considered in the light of the pressure that had suddenly been exerted from various directions. She, herself, had been placed under arrest for a short time, an event directly attributable to the claimant's failure to return. Even though she made the statement, as reported, there is nothing to indicate that the terms of the sale were comparable to those earlier discussed by the claimant.

Relying upon the foregoing the Chamber then added that the conclusion should be drawn that the newspaper attacks against the petitioner in April 1933 could not have influenced the sale. We can discern no reasonable basis for such a conclusion.

(2) The Chamber observed that it was striking that the claimant had not called his agent Buxbaum as a witness, nor presented written statements signed by her nor made her address known. It therefore drew the inference that if she had been produced, she could not corroborate the petitioner's allegations.

We concur that under appropriate circumstances a party to an action who fails to call to the attention of the court the testimony of witnesses who normally would be expected to corroborate the party's contention should be subjected to an unfavorable inference because of that failure. However, before the inference can be drawn it must be demonstrated that the party was able to produce the witness, a matter not entirely clear on the record before us. The inference drawn by the Chamber in this case, however, is puzzling because the matter is discussed in connection with the alleged offer by Hugo Marx. The Chamber does not say what allegation of the claimant the missing witness Buxbaum could not corroborate, but from the context of its decision it seems to be referring to the aforesaid offer. Yet nothing in the case warranted the conclusion that Miss Buxbaum had any knowledge of the terms of negotiations that were conducted between the claimant and Marx. Consequently, her failure to appear cannot give rise to any unfavorable inference in that respect.

The record now shows the address of Miss Buxbaum and her testimony will be available in the new proceedings.

(3) Considerable importance was given the allegation of the claimant that the banker Marx had offered the claimant RM 1,250,000 for the property. The Chamber found that the assertion that such an offer had been made had been rebutted, basing its conclusions upon indirect evidence. The only direct evidence available on the point was that which could have been given by the claimant. The Chamber refused to hear him, giving as its reason that his statement would not be suitable to be used as evidence because of the uncertainty shown in his "power of remembering". This uncertainty, according to the Chamber was proved by the fact that though the claimant had stated at one stage in the proceedings that the claim of RM 280,000 of the Marx Bank was excessive by approximately RM 100,000, he had, in a letter addressed to a former partner of the bank, on February 15, 1950 written that the bank "had been fully compensated for its claim of RM 280,000 — by the purchase of Wildenstein".

This finding is based on a letter addressed to the court by the former partner of the bank who stated that the claimant had written asking him

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"to certify that the credit balance of about RM 280,000 — — — — — was fully satisfied by the purchase of Wildenstein".

Whether or not the foregoing demonstrates an uncertainty in the power of remembering or something else, it does not necessarily prove that the claimant denied that the bank had claimed RM 280,000, and, in any event, it is altogether too vague to warrant a finding of fact that the claimant would not be able to remember what had been offered him in respect of an entirely different matter, namely the sale of the property in dispute.

We do not state that the Chamber is obliged to believe the claimant, if he does testify, but we consider that there was an abuse of discretion in refusing to hear him and giving his testimony judicial consideration.

There are several overall impressions that one gets from the Chamber's discussion of the case. The first that is created in the mind of the reader is that the court meticulously ignored the political realities of the year 1933. The decision is devoted almost entirely to an analysis of the claimant's financial status at the time of his departure to Switzerland, and purports to show that, notwithstanding years of earlier successful operations, the affairs of the claimant were inevitably approaching a collapse.

Whether or not this conclusion is warranted, in view of the favorable balance sheet of the claimant or in view of his past ability to meet his obligations as they fell due, is not the immediate question before us. The question presented involves the propriety of reaching the conclusion of the Chamber without mentioning, evaluating or considering the many factors bearing upon the likelihood that the transaction was the immediate and natural consequence of racial discrimination and hatred.

The Chamber appears to have acted in the belief that it was dealing with a normal commercial incident that occurred in the sterile, politically pure atmosphere of a Germany free of bigotry and discrimination. Except in the most casual asides, it declined to recognize the possibility that the events which accompanied the first flush of Nazi political power had any bearing whatsoever upon the case.

The Germany which the Chamber appears to have envisioned as the backdrop for this transaction did not exist in the early days of Nazi power and the case cannot be fairly, objectively, or correctly decided without taking into consideration the excesses then generally prevailing, and the particular measures of persecution shown to be applicable to the claimant.

When Hitler came to power, there was an immediate loosening of the barriers which had theretofore protected German citizens of Jewish extraction who were the immediate victims of the pent-up hatred of the Party. The first victims were the conspicuously wealthy and active Jewish businessmen, especially those whose interests involved the ownership of large estates. Though later brought under some measure of control for a while, this first attack on the Jews while it lasted, was thorough, brutal and effective. The informed person in and out of Germany still recalls the picketing of Jewish shops by brown shirted SA adherents. He still recalls the sprawling letters spelling out the word "Jude" on the shop windows, and he is generally familiar with the effectiveness of the measures taken to boycott Jewish businesses. It requires no conjecture or surmise to reconstruct the

fury of the press in its denunciation of the wealthy objects of its attack. Those publications are spread on the record for all to observe. Excerpts from them, insofar as they pertain to the claimant, are contained in the files of this case.

With the cloak of legality flung about the Party, their previous excesses, theretofore kept under a measure of control, were brought into the open and the predictions that those who had incurred the displeasure or dislike of the Party would be dealt with severely, were fully realized. The beatings and killings that often accompanied a visit by Party adherents made lasting impressions upon those next in line.

Though the Chamber recognized that the claimant's failure to return to Germany was due to political persecution, it stated that his absence had nothing to do with the transaction with which we are concerned. Yet the record is replete with evidence tending to establish a contrary conclusion. It was the fact of the claimant's absence that seems to have precipitated the unseemly rush to sell his property. It was that absence that gave rise to attacks by the press, to uneasiness on the part of his creditors, and to the attachments of his property, including one for a *Reich* Flight Tax directly attributable to his being out of Germany. These are the events that preceded the sale which occurred in an atmosphere characterized by the most unfriendly attitude towards the claimant.

To reach a conclusion of fact that the transactions entered into would have occurred even in the absence of National Socialism does not seem proper without first posing the problems thus raised and meeting them. In any event, the test before the Chamber was not whether the sale of this property was going to take place in any event, but whether it would have taken place "as such and with its essential terms". The Chamber is, of course, entitled to exercise its free discretion in its consideration of the evidence before it. It is entitled to make such findings of fact based upon that exercise of discretion as may be warranted. But the Chamber is not permitted, under the guise of discretion, to refuse to recognize essential evidence, to ignore it without justification, and treat it as nonexistent. That is not an exercise of discretion, but a refusal to do so, and consequently an abuse of discretionary power.

In the final analysis, we are constrained to conclude that the finding actually made must be set aside because it is contrary to the weight of the evidence before the court.

The Chamber's finding of fact that the sale would have taken place in the absence of National Socialism is, in our opinion, not supported by substantial evidence. It was therefore incumbent upon the Chamber to ascertain whether or not a fair purchase price had been received. Normally, a comparison must be made between sales of similar items of property and the question. Expert opinions rendered by experienced witnesses are usually asked for and they in turn are influenced by the weight to be given earlier offers. That was not done in the instant case. The Chamber made no affirmative finding that a fair purchase price had been paid within the meaning of those words as defined by Law 59.⁶ Though it concurred that if

⁶ Law 59, Art. 3, par. 3.

a price of RM 1,250,000 had been offered, as alleged by the claimant, then the price actually paid would not have been acceptable, the Chamber found that the assertion that such an offer had been made had been "rebutted". That conclusion was its principal reason for holding that the price paid was not "unfairly low".

The other factors given weight by the Chamber to support its conclusion are equally unsubstantial since they are also of a negative quality. In no respect whatsoever did the Chamber make an effort to adduce positive evidence establishing a fair purchase price.

The property that was sold and which is now the subject of the present claim for restitution, was admittedly of great value. It was possible to ascertain its real value through the means normally available to any judicial authority. Its value could have been objectively ascertained. The fair purchase price was not influenced by the use to which the proceeds might be put by a particular seller, as suggested by the Chamber. The test is what a willing seller would take when bargaining with a willing buyer. We reject as untenable the reasoning of the Chamber that the value of the property was necessarily lessened by reason of the fact that its sale relieved the claimant of liability for the debts represented by the encumbrances on it or for the interest on those encumbrances. The same would have followed had the claimant given the property away without any consideration. Likewise, we consider it specious reasoning to assert, as does the Chamber, that its value was lessened by reason of the fact that the purchase price was used to defray the debt held by the Marx bank.

The Chamber's decision is disapproved and set aside. The case is remanded for a new trial.

No costs are assessed for the proceedings before this Court. The parties will bear their own expenses.

Justice Munroe who was present at the oral arguments resigned from the Court prior to the promulgation of this decision.

GUSTAV EINSTEIN, Rückerstattungsberechtigter — Antragsteller

gegen

ADOLF KEBBEL, FREISTAAT BAYERN — Rückerstattungspflichtige —
Antragsgegner

Entscheidung Nr. 447 Hinterlegt bei der Geschäftsstelle Fall Nr. 728
am 30. November 1954

1. RECHTSMITTEL — UNMITTELBAR ZUM COURT OF RESTITUTION APPEALS
Der Befund der Kammer, daß die Entziehungsvermutung nach Art. 3 REG durch den Nachweis widerlegt werden könne, daß Verfolgungen nicht die Ursache für das strittige Rechtsgeschäft gewesen seien, ist ein rechtllicher Befund, der nicht unmittelbar bei diesem Gericht durch Rechtsmittel angefochten werden kann. Eine Tatbestandsfeststellung auf Grund dieses Befundes, die dahingehet, daß das Rechts-

geschäft ohne die Herrschaft des Nationalsozialismus stattgefunden hätte, kann jedoch durch unmittelbaren Nachprüfungsantrag mit der Begründung, daß sie nicht auf ausreichendem Beweismaterial beruhe, angefochten werden.

2. BEWEISMATERIAL — TATBESTANDSFESTSTELLUNGEN

Der Kammer steht bei der Beurteilung des ihr vorliegenden Beweismaterials der Gebrauch ihres freien Ermessens zu. Sie ist berechtigt, solche auf Ermessensausübung gestützte Tatbestandsfeststellungen zu treffen, die ihr angebracht erscheinen. Aber die Kammer darf nicht unter dem Vorwand des Ermessens die Anerkennung wesentlicher Beweise ablehnen, sie ohne Rechtfertigung unbeachtet lassen und als nicht bestehend behandeln. Dies ist keine Ermessensausübung, sondern eine Nichtausübung des Ermessens und demnach ein Mißbrauch des Rechtes des freien Ermessens.

3. ZEUGEN — FOLGERUNG AUS DER NICHTBEIBRINGUNG

Unter gewissen Umständen ist eine Partei, die es unterläßt, das Gericht auf die Aussagen von Zeugen hinzuweisen, von denen normalerweise erwartet werden könnte, daß sie die Parteibehauptungen bestätigen, einer ungünstigen Folgerung aus dieser Unterlassung ausgesetzt. Bevor jedoch diese Folgerung gezogen werden kann, ist darzutun, daß die Partei in der Lage war, den Zeugen beizubringen.

4. ZEUGEN — ABLEHNUNG DER VERNEHMUNG

Die Weigerung der Kammer, den Berechtigten selbst zu vernehmen, mit der Begründung, seine Aussage sei nicht zuverlässig, weil er die Höhe einer Forderung eines seiner Gläubiger bestritten habe, obwohl das Gericht glaubte, er habe sie früher anerkannt, ist als Ermessensmißbrauch anzusehen. Wenn auch die Kammer nicht verpflichtet ist, dem Berechtigten zu glauben, wenn er eine Aussage erstattet, hat sie ihn zu vernehmen und seine Aussage objektiv zu würdigen.

5. BEWEISMATERIAL — TATBESTANDSFESTSTELLUNGEN

Auf Grund der dem Gericht vorliegenden Akten wurde erkannt, daß die Tatbestandsfeststellung der Kammer, daß das fragliche Rechtsgeschäft ohne die Herrschaft des Nationalsozialismus stattgefunden hätte, nicht auf ausreichendem Beweismaterial beruht.

6. KAUFPREIS — ANGEMESSENHEIT

Bei der Ermittlung der Angemessenheit des Kaufpreises hat normalerweise die Kammer Vergleiche zwischen dem strittigen Verkauf und dem Verkauf ähnlicher Vermögensobjekte anzustellen. Gewöhnlich werden Sachverständigengutachten erfahrener Zeugen eingeholt, und diese wiederum werden durch die früheren Angebote beizumessende Bedeutung beeinflusst. Die Ablehnung des Gerichts, einer Behauptung des Berechtigten, daß ein Angebot in einer bestimmten Höhe vorgelegen habe, Glauben zu schenken, reicht nicht aus, um die Feststellung der Angemessenheit des tatsächlich gezahlten Kaufpreises zu rechtfertigen.

7. KAUFPREIS — ANGEMESSENHEIT

Ein angemessener Kaufpreis wird nicht berührt von dem Gebrauch, welchen der Verkäufer von dem Verkaufserlös machen mag.

Der Berechtigte beantragt die Nachprüfung einer Entscheidung der Wiedergutmachungskammer beim Landgericht Regensburg (II WK-V- 86,87/50).

Entscheidung mißbilligt und aufgehoben.

Rechtsanwalt Dr. Hans Raff, München, und Rechtsanwalt Professor E. J. Cohn, London, für den Antragsteller.

Rechtsanwalt Siegfried Neuland, München, für den Antragsgegner Adolf Kebbel.

Herbert Adam von der Oberfinanzdirektion Nürnberg, Zweigstelle Regensburg, für den Antragsgegner Freistaat Bayern.

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UNITED STATES COURT OF RESTITUTION APPEALS
OF THE
ALLIED HIGH COMMISSION FOR GERMANY

Oberstes *Rechtsmittelinstanz*
des *Westzonen*
Verwaltungsrates

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REPORTS

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Opinions Nos. 427—483

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Entscheidungen Nr. 427—483



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...gericht eingelegt hätte, daß das Beschwerdegericht die Sache zur erneuten Verhandlung an die Kammer zurückverwiesen hätte, welcher Termin der Bank ordnungsgemäß mitzuteilen war. Nachdem der Bank die Entscheidung zugestellt worden war, hatte sie durchaus Gelegenheit, sich beim Oberlandesgericht über das Verfahren zu beschweren. Sie hätte nach Art. 68, Abs. 2, REG, die sofortige Beschwerde einlegen können. Normalerweise ist das Oberlandesgericht nicht verpflichtet, das Urteil gegen die Bank aufzuheben und den Fall zur erneuten Verhandlung zurückzuverweisen; auch für dieses Gericht besteht hierzu keine Verpflichtung (Baumbach, Kommentar z. ZPO, 1947, § 300, Anmerkungen 3 A bis E; Stein-Jonas, Kommentar z. ZPO, 1950, § 578, Anmerkung I, 1 bis 3; V, 1) und nach materiellen Recht hätte das Beschwerdegericht und dieses Gericht zu anderen Schlußfolgerungen bezüglich Herabsetzung der Hypothek kommen und dementsprechend erkennen können. Ebenso ist im normalen Verfahren eine positive Handlung seitens der Bank auch notwendig, da die Urteile ordnungsmäßig besetzter Gerichte nicht ungültig, aber unter gewissen Umständen anfechtbar sind.

Es ist möglich, daß die Bank keine weiteren Einwände vorzubringen hatte und daher die Streitsache aufgegeben hat. Trotz der prozessualen und sachlichen Betrachtungen war die Bank nach Art. 15, Abs. 2, REG, zur Teilnahme am Verfahren berechtigt. Dies geschah auch im Falle der Wiedergutmachungsbehörde. Wir unterscheiden die verschiedenen Stufen des ganzen Verfahrens (Wiedergutmachungsbehörde, Kammer, Oberlandesgericht, Court of Restitution Appeals). Die Tatsache, daß eine prozessführende Partei im Verfahren vor der Wiedergutmachungsbehörde teilnimmt, besagt noch nicht, daß sie im Verfahren vor dem Prozeßgericht teilgenommen hat, es sei denn, daß sie tatsächlich daran teilgenommen hat oder hierzu vorschriftsmäßig „aufgefordert wurde“. Wir machen dieselbe Unterscheidung bei Sachen, die dem Oberlandesgericht und diesem Gericht vorliegen. Obengenannter Art. 15, REG, schreibt eindeutig ein vorschriftsmäßiges Verfahren durch Zustellung vor.

Nachdem die Aufforderung Voraussetzung dafür ist, daß das Verfahren vor der Kammer für die Bank bindend ist, und nachdem die Eheleute Schneider in ihrer Beschwerde nicht einmal versuchten, für die Interessen der Bank einzutreten, kann die Vorschrift des Par. 62, Abs. 1 und 2, ZPO, wonach die Bank als von den übrigen Beschwerdeführern vertreten gilt, hier nicht angewendet werden.

Da dies eine Voraussetzung ist, kann dieses Gericht einen Rückerstattungspflichtigen nicht mit den Folgen einer Beschwerde in einem Verfahren belasten, an dem er berechtigt war teilzunehmen, wovon er jedoch nicht benachrichtigt wurde und daher auch nicht erschienen ist. Art. 15 Abs. 2, REG, schreibt außerdem noch vor, daß eine Entscheidung für eine Partei nur dann bindend ist, wenn sie an dem Verfahren teilgenommen hat und hierzu vorschriftsmäßig aufgefordert wurde.

Das Gericht bestätigt die Entscheidungen der Wiedergutmachungskammer und des Oberlandesgerichts bis auf Ziffer III des Kammerbeschlusses. Der Beschluß gegen die Bayer. Hypotheken- und Wechselbank wird hiermit aufgehoben und die Sache insoweit zur erneuten Verhandlung über

diesen Punkt an das Gericht erster Instanz zurückverwiesen. Entsprechend dem Schutz des öffentlichen Glaubens, den das Grundbuch genießt, müssen dingliche Rechte so unantastbar sein, wie es das Gesetz vorschreibt. Falls die Rechte der Bank hier nicht im einzelnen festgestellt würden, wäre das Grundstück weiterhin mit einem Schatten behaftet. Ein solcher Zustand muß, wenn möglich, vermieden werden.

Diese Entscheidung ergeht gerichtskostenfrei.
Es war zu erkennen wie geschehen.

MATTHIAS WOHLMUTH,
ANNA WOHLMUTH, Restitutor-Appellants
vs
Dr. HERMANN HAMBURGER, Claimant-Appellee

Opinion No. 42 Filed 18 September 1950 Case No. 101

Appeal from the decision of the Oberlandesgericht at Munich.

Attorney-at-Law Dr. Ludger Wewer, Geisenfeld, Upper Bavaria, for the Appellants.

Attorney-at-Law Dr. Hans Raff, Munich, for the Appellee.

Before COHN, President, CLARK, Chief Justice, sitting as an Associate Judge, and FLANAGAN, Judge.

The Opinion of the Court was delivered by COHN, President.

Dr. Hermann Hamburger, a Jew, was invested with the property known and designated as house number 75 in Wolnzach which he had bought for RM 70,000 in 1921. He was arrested by the Gestapo in 1938 and while he was held in the infamous concentration camp at Dachau, he was forced by the Gestapo to sign a statement that he would sell all of his property and leave Germany immediately. He was released from custody shortly prior to the transaction herein sought to be avoided which took place on 2 February 1939. This was the purchase by Matthias and Anna Wohlmuth for RM 30,000, to be paid by assuming an existing mortgage for RM 7,800, with the balance paid in cash. The executed agreement together with the negotiations clearly showed that the matter required the approval of the Nazi Regierungspraesident and that it was performed by all parties and officials concerned on the basis of the Ordinance on the Placement of Jewish Property, dated 3 December 1938, Reich Law Gazette I, Page 1709; and that the cash proceeds of the sale would have to be paid into a blocked account to pay taxes assessed against Doctor of Medicine Hamburger to the extent of RM 16,490 for the Atonement Fine of one Billion Reichsmark on Jewish Subjects, (Reich Law Gazette 1938, Part I, Page 1638; Reich Law Gazette 1938, Part I, Page 1579; Reich Law Gazette 1939, Part I, Page 2059) and the Reich Flight Tax (Decree 1931, Safeguarding

of Economy and Finance and for the Safety of Internal Peace, and amendments thereto).

The appellants have contended in each step of the litigation that the presumption of confiscation and the power of avoidance cannot inure to the benefit of the appellee because:

1. He had received the consideration for the property because the money was used to pay the Capital Flight Tax and the Property Tax on Jews which permitted the transferor to emigrate to England. — In accordance with our previous decisions, we have held that when a person was forced to emigrate because of duress perpetrated upon him by reason of his race or religion, the levying of a Capital Flight Tax was illegal and voidable, *Beier vs Waelder*, Opinion No. 29. Also we hold in accordance with our opinion, *Rasmussen vs Utz*, No. 15, that when property had been seized in pursuance to Nazi law, confiscating property of Jews and other persecutees, such seizures were illegal and voidable in so far as the remedies of Law 59 are concerned. As a matter of fact, those confiscatory laws have been abrogated by Control Council Law No. 1. In a long line of cases the Landgerichte and the Oberlandesgerichte, as has this Court, have held that when the purchase price was paid into a blocked account, which was not released to the claimant, he has not had the free use thereof. (*Theis et al vs Goldsmith*, Opinion No. 14).
2. That the claimant is now barred by his previous conduct from seeking to set aside the sale in that he had feared that the Nazi Party intended to obtain the property for itself and that he had offered it to Matthias Wohlmuth to circumvent such action and that the purchase by Wohlmuth protected the property interest of the claimant in an unusual manner and with substantial success in that it permitted the claimant to obtain the money to pay the tax for emigration, whereas he would not have had the use of the money had the Nazi Party seized the property. The trial court properly held that Wohlmuth purchased the property because it was offered to him at a very advantageous price. Such a defense is not tenable for the reason that the claimant did not receive a single Pfennig from the proceeds and it is difficult to see how Wohlmuth's actions prevented the seizure by the Nazi Party. All of the records surrounding the original transaction showed that each step of the sale and disposal of the money arising therefrom needed and obtained the approval of high ranking NSDAP officials. Dr. Hamburger was fixed with knowledge that under the then existing laws against Jews and their property he would not receive any of the money from his house, no matter who purchased the same.
3. That by their purchase of the house, they had enabled the restitutee to protect a valuable piece of property in Murnau. The evidence did not bear out this claim. To the contrary, the Murnau house was later subjected to forced sale and afterwards the Third Reich confiscated all of the assets belonging to the appellee.

The judgment of the Restitution Chamber is as follows:

- I. The couple Matthias and Anna Wohlmuth are ordered to return to the claimant, Dr. med. Hermann A. Hamburger, the real estate entered in the Land Title Register for Wolnzach with the Geisenfeld Amtsgericht in Volume IX, Page 10, Sheet 2, Plan No. 65 a and b of the Community Wolnzach (house No. 75 at Wolnzach).
- II. The restitutors are ordered to consent to a correction in the Land Title Register to the effect that the claimant is entered as sole owner of the property in their place.
- III. The claimant is obligated to pay to the restitutors in their capacity as joint creditors the sum of DM 4,150 to be handed to the husband Matthias Wohlmuth.
- IV. With regard to the claimant's liability under III a respite for payment is granted to the effect that beginning with 1 April 1950 one fifth of the amount will be due every following 1 April.
- V. The claimant is bound to grant at his own cost and under the terms mentioned in part IV the entry of a mortgage on the restitutor's behalf against the property as security for his liability under III.
- VI. The restitutors are obligated to consent to the surrender of the profits of the property accrued with the trustee Carl Hammerschmid, Starzhausen, to the claimant.
- VII. The claimant must assign any claim for indemnification appertaining to him to the restitutors.
- VIII. The value in dispute is fixed at DM 20,000.
- IX. No court fees are assessed. Each party must bear its own costs and expenses.
- X. Immediate execution may be had on this order, a subsequent appeal notwithstanding. The restitutors may stay provisional execution by depositing DM 10,000."

From that judgment the restitutors appealed to the Oberlandesgericht which dismissed the appeal and from that decision the appellants have brought the matter within due time to this Court.

The courts below held, and so do we, that the facts that Dr. Hamburger by reason of his race and religion and because of collective and direct persecution imposed upon him on account of his status entitle him to invoke the presumption of confiscation and the power of avoidance given under Articles 3 and 4 of Law 59, respectively; that the defenses proffered had failed to defeat the claim.

The claimant requested a respite to pay the amount of money found by the trial court to be due the restitutors. The Restitution Chamber under the authority contained in Article 46, Paragraphs 1 and 2, Law 59, deemed the period of time granted in item IV of its judgment as an adequate period and proper terms for the payment of the refund. It ordered a mortgage entered in behalf of the restitutors against the property as security for the liability. The action of the trial court in doing this was fair and without judicial error.

The claimant averred the confiscation to have been aggravated in that he did not receive the purchase money; that the price paid was about RM 10—20,000 below the property's actual value.

Under the circumstances in the case, the Chamber was without error in refusing to make its computations as provided for in an aggravated confiscation.

First, without error, the court of first instance found after taking the gross income for the property and deducting the expenses for maintenance, essential repairs, and ordinary expenses, there remained a balance as net profits of RM 2,800 due to the restitutee. It properly converted that at a ratio of 10:1 to DM 280. It then, in view of the great difficulties experienced by the restitutors in maintaining the building during the war, allowed 50 percent for management, leaving a balance due the claimant of DM 140. We can find no abuse of discretion in that section of the accounting.

However, we find reversible error in other allowances made by the Chamber as did the learned Oberlandesgericht in its opinion but not in its decision. The restitutors reduced the mortgage principal on the property in the amount of RM 1,271 and they paid the home rent tax in the sum of RM 1,600. The Chamber found that the payment of these amounts brought about a real enhancement of the property's value and must be converted into Deutsche Mark at the ratio of 1:1. This is contrary to the opinion of the Oberlandesgericht in the case at bar. We also have taken the opposite view. (*Rasmussen vs Utz, supra; Neveling vs Dr. Arthur-Pfungst-Stiftung, Opinion No. 36, and Schibenes vs Auerbacher, Opinion No. 37*). These two items must be converted at the ratio 10:1. So, the allowance of DM 2,871 should have been reduced to DM 287. The trial court further found that since currency reform the restitutors had expended DM 1,415 for the maintenance and improvement of the house whereas the property had been blocked and was under trusteeship and they had not received any of the rents derived from it. Since this was the state of affairs, the finding of the trial court was correct on that score.

From the above, the trial court erred in finding in favor of the restitutors in the sum of DM 4,150. This amount should be DM 1,562. We agree with the decision of the Oberlandesgericht and the judgment of the Restitution Chamber except as they pertain to items III and IV of the said judgment.

However, since the claimant did not seek relief from those errors, in accordance with our previous ruling (*Opinions Nos. 36 and 37, cited supra*) we will not disturb the decisions. They are affirmed.

IT IS SO ORDERED:

**MATTHIAS WOHLMUTH und
ANNA WOHLMUTH,**
Rückerstattungspflichtige und Antragsteller
gegen
Dr. HERMANN HAMBURGER,
Rückerstattungsberechtigter und Antragsgegner

Entscheidung Nr. 42 Eingereicht am 18. September 1950 Fall Nr. 101

Nachprüfung einer Entscheidung des Oberlandesgerichts München.

Rechtsanwalt Dr. Ludger Wewer, Geisenfeld, Obb., für die Antragsteller.
Rechtsanwalt Dr. Hans Raff, München, für den Antragsgegner.

Verhandelt vor Präsident COHN, Justice CLARK und Judge FLANAGAN als Beisitzer.

Die Entscheidung des Gerichts wurde von Präsident COHN geschrieben.

Der Jude Dr. Hermann Hamburger war Eigentümer des Hauses Nr. 75 in Wolnzach, das er im Jahre 1921 für RM 70 000 erworben hatte. Im Jahre 1938 wurde er von der Gestapo verhaftet und während seiner Internierung im berüchtigten Konzentrationslager Dachau gezwungen, sich schriftlich zu verpflichten, seine sämtlichen Vermögensgegenstände zu veräußern und danach Deutschland sofort zu verlassen. Kurz vor dem am 20. Februar 1939 durchgeführten und hier angefochtenen Verkauf wurde er aus der Haft entlassen. Es handelt sich um den Kauf durch Matthias und Anna Wohlmuth in Höhe von RM 30 000, wobei eine bestehende Hypothek von RM 7800 übernommen und der restliche Betrag in bar ausbezahlt wurde. Der vollzogene Vertrag im Zusammenhang mit den Verhandlungen zeigt deutlich, daß die Angelegenheit der Zustimmung des Nazi-Regierungspräsidenten bedurfte, und daß alle Beteiligten auf Grund der Verordnung über den Einsatz des jüdischen Vermögens vom 3. Dezember 1938, RGBl. I, Seite 1709 gehandelt haben; ferner war der Barbetrag aus dem Verkauf auf ein Sperrkonto einzuzahlen, zur Begleichung von Abgaben in Höhe von RM 16 490, die Dr. med. Hamburger als Teil der den Juden auferlegten Sühneleistung von RM 1 000 000 000 (RGBl. 1938, Teil I, Seite 1638; RGBl. 1938, Teil I, Seite 1570; RGBl. 1939, Teil I, Seite 2059) zu zahlen hatte sowie der Reichsfluchtsteuer (Verordnung 1931, Schutz von Wirtschaft und Finanzen und zur Sicherung des inneren Friedens und dazu erlassene Bestimmungen).

Die Antragsteller haben in jeder Instanz des Verfahrens behauptet, daß die Entziehungsvermutung und das Anfechtungsrecht sich nicht zum Vorteil des Antragsgegners auswirken könne, weil nämlich:

1. er das Entgelt für sein Eigentum erhalten habe und das Geld dazu verwendete, die Reichsfluchtsteuer und Judenabgabe zu bezahlen, was dem Veräußerer ermöglichte nach England auszuwandern. — In Übereinstimmung mit seinen früheren Entscheidungen hat das Gericht erkannt, daß die Erhebung der Reichsfluchtsteuer ungesetzlich war und anfechtbar ist, soweit eine Person aus Gründen der Rasse oder Religion zur Auswanderung gezwungen wurde. (Vergl. Beier

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Gauleitung, das Vermögen der Antragstellerin nicht als jüdisches Vermögen zu erfassen, zum Abschluß gekommen. Aus dem Beweismaterial geht hervor, daß der von Pfeiffer gezahlte Kaufpreis angemessen war und die Antragstellerin frei darüber verfügen konnte.

Nachdem er das Eigentumsrecht an dem Grundstück erworben hatte, ließ Pfeiffer wesentliche Reparaturen an dem Gebäude vornehmen und tat sein möglichstes, die Vermögensinteressen der Antragstellerin in besonderer Weise und mit wesentlichem Erfolg zu wahren. Seine Witwe war vollkommen im Recht, als sie verlangte, daß die Antragstellerin beim Rückkauf RM 6 500 bezahle. Der Wert des Grundstücks wurde durch die von Pfeiffer gemachten Reparaturen wesentlich gesteigert.

Wir stimmen der Erkenntnis der Kammer zu, nach der die Antragsgegnerin die Entziehungsvermutung mit Erfolg widerlegt hat und der Antragstellerin das Anfechtungsrecht des Art. 4 REG versagt werden muß. Aus dem Beweismaterial ist zu ersehen, daß die Antragstellerin ihr erstes Verkaufsangebot zurücknahm, als die Nürnberger Parteileitung beschlossen hatte, das Anwesen nicht als jüdisches Eigentum zu erfassen. Der Verkauf an ihren Schwager war eine freiwillige Handlung und kann nicht als unter Druck oder Zwang vollzogen betrachtet werden. Dies wird ferner durch die Tatsache gestützt, daß zur Zeit des Verkaufs des Anwesens durch ihre Schwester an Babette Dauth, das Grundstück erst der Antragstellerin angeboten wurde. Der Umstand, daß die Antragstellerin mit dem verlangten Kaufpreis nicht einverstanden war, kann nicht einer Verfolgungsmaßnahme im Sinne des REG zugeschrieben werden. Wie dieses Gericht bereits im Fall Sperling gegen Schommer, Entscheidung Nr. 20, darlegte, ist der Berechtigte unter gewissen Umständen an der Ausübung des Anfechtungsrechts des Art. 4 gehindert. Da der Tatbestand in jedem Fall verschieden ist, kann kein fester Grundsatz aufgestellt werden, wann ein Berechtigter, der zu der in Art. 1 genannten Gruppe von Personen gehört, an der Inanspruchnahme der Vermutung des Art. 3 REG gehindert ist.

Dieses Gericht ist der Ansicht, daß das Rechtsgeschäft auch ohne die Herrschaft des Nationalsozialismus abgeschlossen worden wäre.

In dem Nachprüfungsantrag ist eine letzte Frage aufgeworfen worden. Die Antragstellerin macht als Rechtsirrtum seitens des Oberlandesgerichts geltend, daß es die Bestimmungen der Art. 7 und 56 (4) REG nicht zur Anwendung brachte. Ihre Behauptung geht dahin, daß der Verkauf des Grundstücks durch die Witwe Pfeiffer an die Antragsgegnerin Babette Dauth als Teil des ursprünglichen Anspruchs hätte angesehen werden müssen.

Art. 7 REG lautet:

„Der Rückerstattungsanspruch steht demjenigen zu, dem ein Vermögensgegenstand entzogen wurde (Verfolgter) oder seinem Rechtsnachfolger.“

Die Witwe Pfeiffer hat keinen Rückerstattungsanspruch angemeldet. Das Rechtsgeschäft zwischen der Antragstellerin und Pfeiffer wurde im Jahre 1939 abgeschlossen. Das Rechtsgeschäft zwischen Pfeiffer und den Antragsgegnern fand vier Jahre später statt und stellte ein vollkommen unabhängiges und getrenntes Rechtsgeschäft dar. Die Bestimmungen des

Art. 7 sind in diesem Fall nicht anwendbar, da dieser Artikel nur für solche Personen gedacht ist, welche versäumten, einen Antrag zu stellen und deren entzogenes Eigentum zum Gegenstand des Anspruchs einer anderen Person gemacht wurde. Es ist festzustellen, daß die Witwe Pfeiffer sich dem Verfahren nicht anschloß, obwohl sie genaue Kenntnis von dem ursprünglichen Rückerstattungsanspruch und den darauffolgenden Gerichtsverhandlungen hatte. Dieses Gericht glaubt auch nicht, daß die Bestimmungen des Art. 56 (4) anwendbar sind, da es darin ausdrücklich heißt, daß die Anmeldung seitens eines vermeintlichen Berechtigten zu Gunsten des wahren Berechtigten wirkt. Der Verkauf durch die Witwe Pfeiffer an die Antragsgegnerin war freiwillig; es wurde ein angemessener Kaufpreis gezahlt, über den sie frei verfügen konnte, und der Verkauf wäre auch ohne die Herrschaft des Nationalsozialismus abgeschlossen worden.

Die Entscheidung des Oberlandesgerichts wird bestätigt.

Kosten werden für diese Instanz nicht erhoben.

Es war zu erkennen wie geschehen.

Dr. HUGO and EDITH KAEMMERER, Restitutor-Appellants

vs

Dr. SIEGFRIED and HEDWIG KURZMANN, Claimant-Appellees

Opinion No. 44

Filed 22 September 1950

Case No. 76

Appeal from the decision of the Oberlandesgericht Munich.

Ludwig Hofmann and Fritz Gugenheim, Attorneys-at-Law, Munich, for the Appellees.

Dr. Hugo Kaemmerer, Appellant, appeared in person.

Before COHN, President, HARDING, Justice, sitting as an Associate Judge, and FLANAGAN, Judge.

The Opinion of the Court was delivered by FLANAGAN, Judge.

On 13 February 1939 the claimants, former residents of the City of Munich, sold to the restitutors, certain real property known as No. 7 Mauerkircherstrasse, Munich. The purchase price was RM 55,000 subject to a mortgage in the sum of RM 21,100.

The claimants as Jews did not receive the cash balance of the purchase price. This sum, amounting to RM 33,708 was paid into a special account in conformity with then existing measures taken by the Third Reich against the property of German Jews.

The Restitution Chamber of the Munich Landgericht after an oral hearing on 15 June 1949 ordered the property restituted to the claimants. In its judgment the court directed the claimants to assign to the restitutors

their claims for indemnification and, to pay the restitutors the sums of RM 13,400 and RM 1,410 respectively, representing the Home Rent Tax and instalments of principal paid by the restitutors.

The trial court ordered the ratio of payment be fixed at the rate of 10:1, i. e. DM 1,340 and DM 141.

The Second Civil Division of the Munich Oberlandesgericht dismissed the appeal of the restitutors and the cross appeal of the claimants. In affirming the judgment of the lower court it directed the property be restituted to the claimants simultaneously with the payment to the restitutors of the sums of DM 1,340 and DM 141.

The restitutors in their appeal certify as error the lower court's interpretation of the provisions of Art. 4 of Law 59. They contend the court erred in granting the power of avoidance to the claimants and cite the fact that the property was sold free of duress, threats or pressure of any kind. Further an adequate purchase price was paid for the property and the negotiations leading up to the sale had been conducted in a fair manner. The restitutors concede the claimants did not have the free right of disposal of the purchase price but argue that since the claimants' curator absentis was permitted to withdraw the sum of RM 25,000 from the blocked account and invest that sum in securities, the blocking of the account could be disregarded as the claimants through the curator absentis actually had the free right of disposal of the proceeds of the sale.

The claimants on their behalf assert their flight from Germany was made necessary as a result of the increased persecution of Jewry in Germany after the ill-famed Crystal Night of 9/10 November 1938. They do not allege an aggravated confiscation took place. Neither do they maintain the restitutors obtained the property through a transaction contra bonos mores or as a result of threats or by an unlawful taking or any other tort, nor do they contend the restitutors exerted any personal or individual pressure in order to obtain the property in dispute. The claimants in their original claim prayed for the return of the property on the basis of the provisions of Art. 4 of Law 59. As members of the class of persons referred to in Arts. 1 and 3 of Law 59 they were entitled to pray for an avoidance of the sales contract entered into on 13 February 1939 because of the duress imposed on Jews as a class between the dates 15 September 1935 and 8 May 1945.¹

We can find no error of law in the decision of the Oberlandesgericht. That court in upholding the judgment of the Restitution Chamber affirmed the claimants' right to the power of avoidance under Art. 4 of Law 59.

Although the restitutors do not assert their appeal is based on the provisions of Art. 4, 1 a) and b) it is those provisions alone under which the power of avoidance may be refuted.

Those paragraphs read as follows:

"1. Any transaction entered into by a person belonging to a class referred to in Paragraph 1 (b) of Article 3 within the period from 15 September 1935 (the date of the first Nuremberg laws) to 8 May 1945 may, because of the

duress imposed on such class, be avoided by a claimant where such transaction involved the transfer or relinquishment of any property unless:

- a) The transaction as such and with its essential terms would have taken place even in the absence of National Socialism, or
- b) The transferee protected the property interests of the claimant (Article 7) or his predecessor in interest in an unusual manner and with substantial success, for example, by helping him in transferring his assets abroad or through similar assistance."

There is no evidence that the sale would have taken place even in the absence of National Socialism nor is there any evidence that the restitutors protected the property interests of the claimants in an unusual manner and with substantial success.

On the contrary, the uncontrovertible facts show the claimants entered into the sale only because of the pressure and threats against Jews in 1938 and the early months of 1939. The claimants did not leave Germany voluntarily nor had they any intention of doing so until the Nazi persecution of Jews reached such a point that they were forced to emigrate. The real property at issue was assessed in 1939 at RM 100,000 and insured by the claimants against fire loss for the sum of RM 94,000. The market value of the property at the time of the sale was far in excess of the purchase price of RM 55,000.

The curator absentis was appointed after the emigration of the claimants to America. At times curators were appointed to take over the control of the properties of Jews who had emigrated. The curator administered the properties only until the final confiscation by the Reich took place.

Whatever actions were taken by the curator were not binding upon the claimants. The purchase of securities by the curator out of the blocked funds of the claimants did not in any way alter the fact that the claimants were denied the free right of disposal of the purchase price.

This Court has held in the case of Busl vs Waldmann, Court of Restitution Appeals Opinion No. 40, that money indebtedness had to be converted at the ratio of 10:1. The direction of the lower courts in respect of the repayment of the Home Rent Tax² and principal instalments paid by the restitutors is free of error and will not be disturbed.

The decision of the Oberlandesgericht is affirmed.

No costs will be allowed to either party in the proceedings before this Court.

IT IS SO ORDERED:

¹ Art. 4, Para 1, Law No. 59, Schulz vs Rosenthal, Court of Restitution Appeals, Opinion No. 26.

² Wimmer vs Hirsch, Court of Restitution Appeals, Opinion No. 31.

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Beschwerde vom Oberlandesgericht verworfen. Die Antragstellerin hat einen Antrag auf Nachprüfung der Entscheidung des Oberlandesgerichts gestellt.

Die Firma wurde Verwahrerin der Gegenstände gegen Vergütung, und nach § 688 und 695 BGB wäre sie verpflichtet gewesen, diese auf Verlangen der Hinterlegerin zurückzugeben. Sie wäre dafür haftbar, wenn sie nach § 689, 276, BGB vorsätzlich oder fahrlässig gehandelt hat. Die Verwahrerin müßte ferner der geschädigten Partei auf Grund des § 280, BGB Schadensersatz leisten, falls es unmöglich war, die Pelze zurückzugeben.

Es ist erwiesen, daß die Antragsgegnerin nicht verpflichtet war, die Pelze abzuliefern. Es ist kein Beweis erbracht worden, noch bestehen irgendwelche Anzeichen dafür, daß die Antragsgegnerin vorsätzlich oder ungesetzlich bemüht war, die Antragstellerin ihres Eigentums zu berauben. Der Firma kann der Vorwurf gemacht werden, daß sie fahrlässig gehandelt hat, indem sie die Rechtslage bezüglich der Pelzsachen vor der Ablieferung nicht festgestellt hat. Die Kammer hätte nämlich leicht feststellen können, daß der Befehl der Gestapo für die Firma Unfromm die Ablieferung aller „von Juden in Aufbewahrung gegebenen“ Pelzsachen ohne Rücksicht auf die wahren Eigentumsverhältnisse bedeutete und daß die Firma sich unter unmittelbarem Zwang befand, dem Befehl der gefürchteten Gestapo nachzukommen.

Der Anspruch kann nicht auf Artikel 29 in Verbindung mit Artikel 14 REG gestützt werden. Die Firma ist nicht die Inhaberin der Eigentümerstellung im Sinne dieses Artikels geworden. Die Verwahrerin hat für die abgelieferten Gegenstände keine Vergütung erhalten. Irgendwelcher Anspruch gegen das Reich oder eines seiner Organe würde dem Eigentümer der entzogenen Vermögensgegenstände zustehen. Deshalb besteht für die Antragsgegnerin keine Ursache, diesen Anspruch abzutreten.

Der Anspruch kann auch nicht auf Art. 30 REG gestützt werden. Die Antragsgegnerin erhielt die Gegenstände durch ein völlig übliches Rechtsgeschäft. Sie hat sie nicht erlangt mittels eines gegen die guten Sitten verstößenden Rechtsgeschäfts oder durch eine von ihr oder zu ihren Gunsten ausgeübte Drohung oder durch widerrechtliche Wegnahme oder sonstige unerlaubte Handlung. Die Fahrlässigkeit bei der Gestattung zur Aneignung durch die Nazi kam nicht einer Eigentümerstellung gleich. Unter den gleichen Umständen findet Art. 16 REG ebenfalls keine Anwendung.

Es besteht kein Zweifel, daß die Firma, als sie die Pelzwaren ablieferte, fahrlässig gehandelt hat. Sie hat den Verwahrungsvertrag gebrochen. Aber die hier erbetene Abhilfe muß außerhalb des Rahmens des REG gesucht werden.

Die Entscheidungen der beiden Vorinstanzen werden bestätigt.

Es war zu erkennen wie geschehen.

MAX GANTIKOW,
GRETE THOMA, Restitutor-Appellants

vs

ARTHUR LOEWENSTEIN, Claimant-Appellee

Opinion No. 49

Filed 16 October 1950

Case No. 75

Appeal from the decision of the Oberlandesgericht at Munich.

Attorney-at-Law Dr. Anton Arnold, Nuernberg, for the Appellant Gantikow.

Attorney-at-Law Dr. Ferdinand Zilcher, Nuernberg, for the Appellee.

Hans Thoma appeared for Grete Thoma.

Before COHN, President, HARDING, Justice, sitting as an Associate Judge, and FLANAGAN, Judge.

The Opinion of the Court was delivered by COHN, President.

The only question involved in the appeal is whether or not the Restitution Chamber erred when it found that the facts in the case constituted an aggravated confiscation, and likewise whether the Oberlandesgericht committed error in sustaining the decision of the Chamber. We agree with both courts below in their decisions.

By inheritance and purchase the claimant became the owner of Seidenhaus Lehmann, Nuernberg, during the years 1936—1938. He still is. The establishment, formerly owned by his deceased aunt, had been a very famous maker and retailer of ladies' clothing and furs for several decades. The owner being a Jew, the shop was visited and wrecked by SA hordes of the NSDAP on the ill-famed pogrom night of November 9, 1938. The gentlemen of the SA did a very workmanlike job, inflicting about RM 13,000 damage on the place. Soon thereafter, the restitutors, being favored adherents to Naziism, knew of the event and brought about NSDAP permission for acquiring for themselves the excellent business. They appeared at Seidenhaus Lehmann and demanded that Arthur Loewenstein sign the following contract:

"Contract

between the firm of Waeschehaus Max Gantikow, Nuernberg, Kaiserstrasse 15/19 and Modosalon Grete Thoma, Nuernberg, Hefnersplatz 7
and the

firm of Seidenhaus Lehmann, Nuernberg, Josephsplatz 3

the following contract is herewith concluded:

1. After the approval has been given by the Gau Economic Advisor, the firm Waeschehaus Max Gantikow and the Modosalon Grete Thoma will take over immediately the firm Seidenhaus Lehmann without the assets and liabilities and will have the right to continue operation under the firm's old name, for which no compensation shall be paid.
2. For the existing stock the firm Waeschehaus Max Gantikow and the Modosalon Grete Thoma shall pay an amount to be fixed by a commis-

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sion. This amount shall include also the business equipment. The seller explicitly agrees to this term of the contract.

3. The firm Waeschehaus Max Gantikow and the Modesalon Grete Thoma will take over the present Aryan employees with their present rights and duties.

4. The purchasers and the seller assure that no further agreements have been entered into either in writing or orally.

Signed: Seidenhaus Lehmann, Loewenstein
Signed: Max Gantikow, Kaiserstrasse 15/19
Signed: Grete Thoma."

This was during the intensification of the Aryanization drive to confiscate businesses owned by Jews. The pogrom was vicious enough elsewhere in Germany, but the vehemence with which it was executed in Nuernberg put several stars in Streicher's Nazi crown. It will be noted that the alleged contract is undated, that no compensation for good-will was to be paid, (even though the business had an annual turn-over of about RM 700,000) and that the value of the stock in trade was to be fixed by a commission. Despite the Nazi boycott of and damage to the place, the appellants thought the business strong enough for them to each draw RM 1,000 monthly from their ill-gotten establishment.

The claimant asserted an aggravated confiscation on the basis of Articles 2, 3, 4, and 30 of Law 59 and requested besides the return of the business, compensation for damage and he requested that a provisional decision be entered as to the basis of the claim being aggravated or not.

The objection raised by the restitutors admitted the acquisition to have been by way of confiscation. They denied that it was aggravated and, besides disputing the extent of the claim, objected to an interlocutory decision.

The Restitution Chamber found that the restitutors themselves did not direct personal threats against the persecutee and precluded it as a basis for finding the taking aggravated. It based the finding on the action being one contra bonos mores. The learned judges found that the contract excluded remuneration for the firm's good-will and that the price merely for the goods was to be fixed by a committee which was under the supervision of the Nazi economic group for retailers. The contract was made under dictatorial measures without the owner having any say in the matter that under the circumstances it falls within the meaning of Article 30. The purchasers availed themselves of this situation. The defense that, had he not entered into the tainted transaction, someone else would have, does not excuse them. It was not incumbent upon them to nor were they forced to take their steps. — There is evidence to the effect that there was jockeying for position among several would-be buyers. The restitutors here prevailed and appeared personally and promptly after the SA-violence against Loewenstein with the prepared instrument quoted above. It may or it may not have been embarrassing for Gantikow to refuse the assignment nominating him as purchaser by the Nazis. But there was no duress upon Gantikow as found from the correct digest of the evidence by the Restitution Chamber as follows: "moreover at the oral hearing the restitutor Gantikow emphasized that he considered it his duty to save

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the business. He was going to take over for the Nuernberg inhabitants because it was a leading business of its kind. By this statement he confirmed that it was his own desire and decision which induced him to take part in the confiscation." The trial court further found, "there was even less duress for the restitutor Thoma to become a party to this transaction . . . Yet, it was her free will to participate when the restitutor Gantikow was looking for a suitable partner who would make up his lack of expert knowledge in certain lines." In the articles of partnership between the restitutors there is this preamble: "the purpose of the partnership is the operation of a fashion shop of leading rank in Nuernberg. The management in its internal and external functions being based on national socialistic principles". The purchase was left to their discretion. The restitutors did not by chance take advantage of the pogrom night and the duress and the collective violence visited upon Jews and they did not through accident take advantage of the Nazi Aryanization of retail businesses owned by Jews. Their appearance upon the scene was too soon after the atrocity to think that it was other than by their own design. They intended to weave themselves into the warp and woof of the Nazi violent and confiscatory pattern. The partial demolition of Seidenhaus Lehmann and the demand by the restitutors that Loewenstein sign the unconscionable contract constituted an action of a type to shock the morals of right thinking men. They knew that and they were also cognizant of the fact that the purchase price would not go to the seller but into a Nazi blocked account and the Party treasury. The duress of the pogrom was not collective insofar as Loewenstein was concerned. It was individualized by the damage to his store. He knew that he could not resist the restitutors' request for fear of heaping further damage and reprisals upon his head. That the whole transaction was made under duress and is contra bonos mores is indisputable. The restitutors unscrupulously exploited for their personal benefit the duress under which the claimant was laboring. They are so closely intertwined with the relinquishment of title because of the violence that we find they adopted it as their own — that in so far as Seidenhaus Lehmann is involved the dastardly act resulted as being done on their behalf. The aryanization drive against the appellee was a continuation of the pogrom. The restitutors participated actively in that facet of the duress and implied threats. This also appears in the Chamber's findings "The Gau Leadership (Nazi) had put in another purchaser for whom it had also used all its influence and that in the ensuing struggle for prestige the economic group for retailers (Nazi) succeeded in having the two restitutors make the purchase contract." Surely, the restitutors were positively fixed with knowledge at the time they acquired the property that it was obtained by way of an aggravated confiscation.

The events at the time of the confiscation properly control the interpretation as to the type of confiscation. However, acts immediately preceding or following the confiscation are of importance in considering the question. Immediately after November 9, 1938, Loewenstein was barred from the management. The Gestapo took away the keys to the safe and the customers' card index file. On November 11, 1938, persons strange to

Loewenstein entered, took an inventory of the place. About four days thereafter Gantikow personally appeared there, telling the claimant that the enterprise had been assigned to him and demanded information. Within the week, the above described document was signed. Gantikow refused to give any information as to evaluation of the property, the purchase price therefor and its payment. On December 21, 1938, the firm of Thoma and Gantikow wrote the following letter to the claimant:

"I am informed that you have instructed the Post Office to have all incoming mail for Seidenhaus Lehmann delivered to your private address. I request you to cancel these instructions immediately and order the Post Office to deliver to the firm Modellhaus Thoma & Gantikow all mail addressed to Seidenhaus Lehmann as the latter has been taken over by Thoma & Gantikow. I fail to understand your actions, for you are in the possession of a copy of the sales contract I entered into with you and which states explicitly that the firm has been taken over by me, that means that I have purchased not only the store but also the firm as such.

As I shall go to the Post Office as well as the Postal Checking Office tomorrow morning, I request that you undertake the necessary steps at the Post Office tomorrow morning and inform me immediately upon completion of your errand. If you without saying that any private mail of yours will be rerouted to you by us, I note that the same arrangement was made at the time of my taking over the firm Sigmund Levinger & Co.

Heil Hitler!
Modellhaus Thoma & Gantikow
/s/ Gantikow."

and on December 23, 1938 this letter:

"We have received your letter of the 22 inst., but we cannot share your view. The dissolution of the firm was a prerequisite after the conclusion of the contract. If you without saying that letters received will be delivered to the Modellhaus Thoma & Gantikow. We find it necessary to ask that you immediately inform the Postal authorities to this effect. In case you fail to do so we would consider ourselves forced to ask the competent authority to see to it that the post office will be informed accordingly.....

We further wish to inform you that the Christmas bonus for the employees have been paid in the manner employed by you up to now. Owing to the repetition of these payments the employees have a right to them. We have charged you with eleven twelfths thereof for which approval has been given by the competent authority.

We can give you no information about the payment of the contract money. The only place you can get information in this matter would be the Economic Group of the Gau Economic Consultant.

Heil Hitler!
Modellhaus Thoma & Gantikow
/s/ Gantikow."

And on January 4, 1939, the firm Thoma and Gantikow added injury to injury and piled insult thereon by demanding that Loewenstein pay for the repair of the damage inflicted by the SA. In the event of refusal he threatened "we shall report and submit the matter to the NSDAP".

Moreover, in the chain of proof, it is shown that Gantikow was not a novice at attempting "Jewish" businesses for himself. He also acquired the renowned firm Levinger, Nuernberg, together with its valuable real property. It is evident that he knew how to obtain Nazi leadership approval for him to shake choice aryanization plums into his personal basket.

We must come to the conclusion that the confiscation was aggravated.

There is no procedural error in the Chamber's rendition of a partial decision on the question discussed under Art. 67, Par. 2 c, and Art. 49, Par. 1, Law 59.

There was no abuse in discretion in the Chamber's refusal to immediately restore the property since the claimant is trustee thereof. We will not issue a mandate for such action but we heartily recommend that, due to the nature of the business, the matter be quickly handled by the Chamber.

The decisions of the learned courts below are affirmed.

IT IS SO ORDERED:

MAX GANTIKOW,
GRETE THOMA, Rückerstattungspflichtige und Antragsteller
gegen

ARTHUR LOEWENSTEIN, Rückerstattungsberechtigter und Antragsgegner
Entscheidung Nr. 49 Eingereicht am 16. Oktober 1950 Fall Nr. 75

Nachprüfung einer Entscheidung des Oberlandesgerichts München.

Rechtsanwalt Dr. Anton Arnold, Nürnberg, für den Antragsteller Max Gantikow.

Rechtsanwalt Dr. Ferdinand Zilcher, Nürnberg, für den Antragsgegner.
Hans Thoma erschien für die Rückerstattungspflichtige Grete Thoma.

Verhandelt vor Präsident COHN, Justice HARDING und Judge FLANAGAN, als Beisitzer.

Die Entscheidung des Gerichts wurde von Präsident COHN geschrieben.

Der Nachprüfungsantrag wirft die einzige Frage auf, ob die Wiedergutmachungskammer irrt, als sie feststellte, daß in diesem Fall eine schwere Entziehung gegeben sei, und ebenso, ob das Oberlandesgericht sich im Irrtum befand, als es die Entscheidung der Kammer aufrecht erhielt. Das Gericht pflichtet den beiden Vorinstanzen in ihren Entscheidungen bei.

Der Berechtigte wurde durch Erbschaft und Erwerb in den Jahren 1936 bis 1938 Eigentümer des Seidenhauses Lehmann, Nürnberg, und ist es heute noch. Das ehemals seiner verstorbenen Tante gehörige Geschäft war mehrere Jahrzehnte lang sehr berühmt für die Anfertigung und den Verkauf von Damenbekleidung und Pelzen. Das Geschäft wurde, da der Eigentümer Jude war, in der berüchtigten Pogromnacht vom 9. November 1938 von SA-Horde heimgesucht und verwüstet. Die „Herren“ von der SA gingen dabei sehr fachmännisch zu Werke und verursachten Schäden in Höhe von etwa RM 13 000. Da die Pflichtigen bevorzugte Anhänger des Nationalsozialismus waren, wußten sie bald darauf von dem

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XAVER AND KATHARINE DALLMEIER, Restitutor-Appellants

vs

FLORA HELENA NABHOLZ, Claimant-Appellee

Opinion No. 52

Filed 24 November 1950

Case No. 74

Appeal from a decision of the Oberlandesgericht Munich.

Marianne Thora, Attorney-at-Law, Munich, for the Appellants.

Dr. Hans and Dr. Ludwig Steichele, Attorneys-at-Law, Munich, for the Appellee.

Before COHN, President, HARDING, Justice, sitting as an Associate Judge, and FLANAGAN, Judge.

The Opinion of the Court was delivered by FLANAGAN, Judge.

This is an appeal from a decision of the Second Civil Division of the Munich Oberlandesgericht which affirmed a judgment of the Restitution Chamber at Munich, ordering restitution of the claimant's real property. The property had been sold to the restitutors on 30 April 1942 for a price of RM 7,000. As part of the transaction an uncertified mortgage held by the husband of the claimant in the sum of RM 10,000 was cancelled. The parties were advised that under the Ordinance on the Placement of Jewish Property¹, the sales contract had to be approved by the District Councillor (Landrat). The approval was given on 5 April 1943 on condition that the sales price be paid into a blocked account in the name of the claimant's husband, and that the money be disposed of in accordance with directives issued by the President of the Regional Tax Office. The sales contract was thereafter amended on 7 June 1943 and the purchase price reduced to RM 6,550. Out of the proceeds of the sales price the claimant discharged certain inheritance claims due her brother and sister amounting to RM 2,183. She also paid off a RM 1,000 legacy and after the deduction of an undisclosed amount to pay the tax imposed on Jews², there remained a balance of RM 1,500 in the blocked account in the Bayerische Staatsbank of Munich.

The appellants in their appeal certify as error, the lower court's refusal to apply the provisions of Art. 26 of Law 59 and the court's failure to fully investigate the facts in accordance with the provisions of Art. 12 of the Law on Ex-Parte Proceedings.

The claimant also alleges error on the part of the trial court in not finding that an aggravated confiscation in pursuance of Art. 30 had taken place.

The provisions of Art. 26 supra are not applicable³ in cases where the confiscation is of an aggravated nature.

¹ Reich Law Gazette 1938, I, page 1709, dated 3 December 1938.

² Reich Law Gazette 1938, I, page 1579, dated 12 November 1938.

³ Para 2 of Art. 26 of Law 59.

We will first take up the question of whether or not an aggravated confiscation had in fact taken place. A careful examination of the claim and the evidence adduced before the lower courts fails to show that the restitutors obtained the property through a transaction contra bonos mores or as a result of threats or by an unlawful taking or any other tort. Nor do we find anywhere in the record that the restitutors sought the property for themselves.

The scheme of confiscating the property of German Jewry followed a rather general pattern. A local Nazi Party official would order a Jew to sell his property to an Aryan buyer. The price would be arbitrarily fixed and the contract of sale would contain restrictive measures against the Jewish party. Inter alia the parties were forbidden to make any private deals, the proceeds of sale had to be placed into a blocked account under the supervision of finance officials and the contract of sale had to be approved by another Nazi authority.

In the instant case the claimant was called into the Office of the Notary Public, presented with a prepared contract of sale and told that the price for the sale of the property would be RM 7,000. So far as is known the restitutors were induced to purchase the property by Mayor Seibold and on their part did not commit any overt acts against the claimant, either in the form of threats, duress or by means of any other persecutory measures. We find no substantial evidence that the restitutors committed an act of aggravated confiscation nor do we find any evidence that the actions of the Nazi officials can be imputed to the restitutors.

We now come to the main question of whether or not error was committed in the courts below in not applying the provisions of Art. 26.

It is noted that in the trial court the restitutors urged dismissal of the claim and pleaded generally that the sales contract would have been concluded even in the absence of National Socialism. They argued, the Ordinance on the Placement of Jewish Property did not affect the claimant as her two sons served with the German Armed Forces.

The Chamber very properly refused to dismiss the claim and held that the claimant being a Jewess belonged to that group of persons who in their entirety were to be eliminated from the cultural and economic life of Germany through measures of the State or National Socialist Party for reasons of race. The sales contract having been concluded in 1942 was within the period between 30 January 1933⁴ and 8 May 1945 and no other reasons were needed to establish that the claimant was entitled to a presumption of confiscation under Art. 3 of Law 59 and further since the claimant was denied the right to freely dispose of the sales price, she was entitled to a power of avoidance under the provisions of Art. 4 of Law 59. We fully concur in this holding.

It is the further contention of the appellants that the provisions of Art. 26 should have been applied, as the property had undergone fundamental changes considerably enhancing its value after acquisition by the

⁴ Art. 1 of MG Law 59.

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restitutor. That since the restitutors offered to pay a supplementary amount to the claimant restitution in kind should have been denied.

Para. 1 of Art. 26 supra reads as follows:

"Where subsequent to the confiscation the object otherwise subject to restitution has undergone fundamental changes considerably enhancing its value, the Restitution Chamber may order the delivery of an adequate substitute in lieu of restitution; in determining the adequacy of the substitute the Restitution Chamber shall consider the value of the property at the time of the confiscation and the equitable interests of the parties. The claimant may, however, demand the assignment of an appropriate share in the property unless the restitutor offers a substitute of similar nature and of like value. The claimant may avail himself of the provisions of the first and second sentence above, even if the fundamental change did not result in a considerable enhancement of the value of the object."

It will be noted that the Restitution Chamber is given discretionary power in cases where the confiscated property had undergone fundamental changes which considerably enhanced the property value. In these cases the Chamber may order the restitutors to deliver an adequate substitute in lieu of restitution. Should the court decide to invoke the provisions of Art. 26 it must take into consideration in determining the adequacy of the substitute the value of the property at the time of the confiscation and the equitable interests of the parties. The claimant may then at his own option demand the assignment of an appropriate share in the confiscated property unless the restitutor offers a substitute of a similar nature and of a like value.

The court quite properly decided to order restitution to the claimant in kind, subject to the payment of certain adjustments in favor of the restitutors.

We must reject the appeal of the restitutors as we can find no errors of law in the decision of the Oberlandesgericht. The record clearly shows that the restitutors merely offered to pay to the claimant a supplementary amount over and above the purchase price and when this offer was rejected, the restitutors informed the trial court that their proposition had been turned down. The question of whether the property had undergone fundamental changes by reason of the installation of an irrigation system and the clearing away of timber and brush does not have to be decided here. We find no abuse of discretion on the part of the Chamber.

Under the provisions of Art. 26 the Restitution Chamber had the discretion to order the delivery of an adequate substitute in lieu of restituting the property. It did not see fit to invoke the terms of Art. 26 supra and we can find no error in its refusal to do so. The mere offer to pay an additional amount is not sufficient grounds to find that the court committed error in its refusal to invoke the provisions of Art. 26. Art. 26 gives the claimant a discretionary right to demand an appropriate share in the property unless the restitutor offers a substitute of similar nature and of like value. A supplemental amount of money cannot be considered a substitute of a similar nature and of like value. We interpret this provision of the statute to mean in the instant case, real property of the same nature and of about the same value as the confiscated property.

Similarly, the trial court is given the power of discretion to investigate the facts in pursuance of the terms of Art. 12 of the Law on Ex-Parte Proceedings. We have searched the record and can find no instance of where this power has been misused or abused. The trial court having quite properly considered the evidence submitted by the restitutors found that there was no need to investigate into the offer of an additional amount as it did not intend to apply the provisions of Art. 26 supra. It is the opinion of this Court that the mere offer of the supplemental amount over and above the original purchase price was not sufficient to have the court either invoke the terms of Art. 26 or conduct an investigation under Art. 12 of the Law on Ex-Parte Proceedings.

The judgment of the Chamber and the decision of the Oberlandesgericht are affirmed.

No costs will be allowed to either party in the proceedings before this Court.

IT IS SO ORDERED:

XAVER UND KATHARINA DALLMEIER,
Rückerstattungspflichtige und Antragsteller

gegen

FLORA HELENE NABHOLZ,
Rückerstattungsberechtigte und Antragsgegnerin

Entscheidung Nr. 52 eingereicht am 24. November 1950 Fall Nr. 74

Nachprüfung einer Entscheidung des Oberlandesgerichts München.

Rechtsanwalt Marianne Thora, München, für die Rückerstattungspflichtigen und Antragsteller.

Rechtsanwälte Dr. Hans Steichele und Dr. Ludwig Steichele, München, für die Rückerstattungsrechte und Antragsgegnerin.

Verhandelt vor Präsident COHN, Justice HARDING und Judge FLANAGAN als Beisitzer.

Die Entscheidung des Gerichts wurde von Judge FLANAGAN geschrieben.

Es handelt sich hier um einen Antrag auf Nachprüfung einer Entscheidung des 2. Zivilsenats des Oberlandesgerichts München, welche den Beschluß der Wiedergutmachungskammer München auf Anordnung der Rückerstattung des Grundstückes an die Berechtigten bestätigte. Das Grundstück wurde am 30. April 1942 zum Preise von RM 7 000 an die Pflichtigen verkauft. Als Teil des Rechtsgeschäftes wurde eine für den Ehemann der Berechtigten eingetragene Buchhypothek in Höhe von RM 10 000 gelöscht. Die Beteiligten wurden belehrt, daß der Kaufvertrag

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**ANTONIE PEYSER,
HANS-RUDOLF PEYSER,
GABRIELE ELISABETH PEYSER,** Antragsteller
gegen

**DR. ERICH SCHWARTZKOPF,
ANNA SCHWARTZKOPF,** Antragsgegner

Entscheidung Nr. 57 Eingereicht am 11. Dezember 1950 Fall Nr. 100

Antrag auf Nachprüfung einer Entscheidung des Oberlandesgerichts Frankfurt/Main.

Dr. Karl Haendly, Oberhausen, für die Antragsteller.
Rechtsanwalt Dr. Rueggeberg, Eschwege, für die Antragsgegner.

Verhandelt vor Präsident COHN, Chief Justice CLARK und Judge FLANAGAN als Beisitzer.

Die Entscheidung des Gerichts wurde von Judge FLANAGAN geschrieben.

Es handelt sich hier um einen Antrag auf Nachprüfung einer Entscheidung des 2. Zivilsenats des Oberlandesgerichts Frankfurt/Main, durch welche die sofortige Beschwerde der Antragsteller gegen einen zwischen den Parteien vor der Wiedergutmachungskammer beim Landgericht Kassel geschlossenen Vergleich zurückgewiesen wurde.

In einer mündlichen Verhandlung vor der Kammer am 19. August 1949 schlossen die Parteien einen Vergleich, welcher gerichtlich protokolliert wurde.

Der Vergleich sah unter anderem vor: Die Rückerstattung des strittigen Grundstücks, die Eintragung einer mit 4 vom Hundert verzinslichen, auf die Dauer von 10 Jahren¹ unkündbaren Hypothek in Höhe von DM 6 500 zu Gunsten der Antragsgegner, die Zahlung von DM 500 aus dem Treuhandkonto an den Prozeßvertreter der Antragsgegner und schließlich die gegenseitige Aufhebung aller übrigen außergerichtlichen Kosten. Die Antragsgegner behielten sich das Recht vor, den Vergleich bis einschließlich 30. September 1949 zu widerrufen. Da dieses Recht nicht ausgeübt worden ist, wurde der Vergleich am 1. Oktober 1949 rechtskräftig.

Die Antragsteller beantragten mit ihrer sofortigen Beschwerde Aufhebung des Vergleichs und Zurückverweisung des Falles an die Kammer zur Verhandlung über die Sache selbst. Nach Protokollierung des Vergleichs wurden die Antragsteller gewahrt, daß das Grundstück noch mit einem Hauszinssteuerabgeltungsdarlehen in Höhe von RM 4500 belastet war. Die Antragsteller erstrebten die Aufhebung des Vergleichs mit der Begründung, daß der Vergleich nicht geschlossen worden wäre, wenn sie von der Existenz des Hauszinssteuerabgeltungsdarlehens und der Tatsache Kenntnis gehabt hätten, daß die Umstellung in DM im Verhältnis 1:1 anstatt des üblichen Verhältnisses von 10:1 erfolgen würde.

¹ Art. 46, Abs. 2 REG.

Das Oberlandesgericht wies die sofortige Beschwerde als unzulässig zurück. Das Gericht wies darauf hin, daß ein Beschluß nicht ergangen sei und daß das Prozeßgericht den Vergleich lediglich auf die Erklärungen der Parteien hin protokolliert habe. Da die Antragsteller in ihrer Begründung keinen Rechtsirrtum rügen, war die Beschwerde zu verwerfen.

Wir stimmen mit der Entscheidung des Oberlandesgerichts überein. Der an dieses Gericht gestellte Antrag auf Nachprüfung einer Entscheidung des Oberlandesgerichts kann nur darauf gestützt werden, daß diese das Gesetz verletzt hat². Die Antragsteller haben weder eine Verletzung der betreffenden Paragraphen des BGB noch irgendeiner der Bestimmungen des REG geltend gemacht.

Die sofortige Beschwerde der Antragsteller war unbegründet. Die Antragsteller hätten bei der Kammer Aufhebung bzw. Überprüfung des Vergleichs oder jede andere ihnen richtig erscheinende Abhilfe beantragen können³.

Der Beschluß des Oberlandesgerichts wird bestätigt.

Kosten werden für diese Instanz nicht erhoben.

Es war zu erkennen wie geschehen.

HANS PETER KECK,
represented by his guardian Dr. Kerschbaum, Stuttgart
Restitutor-Appellant.

vs

**BRUNO MEINFELDER,
Dr. BENNO OSTERTAG,**
as executor of the Salomon Meinfelder estate
Claimant-Appellees

Opinion No. 58 Filed 15 December 1950 Case No. 133

Appeal from the decision of the Oberlandesgericht at Stuttgart.

Attorneys-at-Law Drs. E. Aufrecht, U. Kerschbaum, K. E. Klink, Stuttgart, for the Appellant; Dr. Ulrich Kerschbaum, of counsel.

Attorneys-at-Law Drs. Ostertag, Ulmer, Werner, Mr. Mangold, Stuttgart, for the Appellees; Dr. Joachim Werner, of counsel.

Before COHN, President, ERICSSON, Justice, sitting as an Associate Judge, and FLANAGAN, Judge.

The Opinion of the Court was delivered by COHN, President.

In 1939, Bruno Meinfelder was forced to escape Nazi tyranny by emigrating to the United States. His parents, Fanny and Salomon Meinfelder,

² Art. 2 Ausführungsverordnung Nr. 7.

³ Guggenheim gegen Pabst, Court of Restitution Appeals, Entscheidung Nr. 10.

previously held jointly the property in Stuttgart which is listed in the Land Title Register there, Volume No. 10642a, Section 1 L No. 3, under Wieland Strasse 17, consisting of a dwelling house, ell, garage, walled-in court-yard and also lot No. 7949 comprising a walled-in orchard. Upon the mother's death in 1938, he and his father became the owners thereof. Persecutions took further toll of this Jewish family when they caused the father to commit suicide on 6 September 1940. The son became the sole heir and owner of the above-described realty. The other appellee, Dr. Ostertag, as executor of the estate of the late Salomon Meinfelder, properly joined the proceedings as a party complainant as required by Section 2212 of the Civil Code. As executor and under a power of attorney from Bruno Meinfelder, on 10 October 1940, he sold the property to Erich Keck, the deceased father of Hans Peter Keck. The sale was made under the Decree concerning the Utilization of Jewish Property (RGBl. 1938, page 1709). The agreed purchase price was RM 63,000 which under an Ordinance on the Placement of Jewish Property was reduced to RM 57,000. The investiture was made on 29 January 1941. Nazi directives ordered the buyer to deposit that sum into the blocked account of the Salomon Meinfelder estate with the Stuttgart branch of the former Dresdner Bank. It can be noted from the sales contract that the executor was classed as a non-Aryan within the meaning of the Nuernberg Laws. This representative of the living and the dead Meinfelders was forced by Nazi officials and the Gestapo to assist them generally in wringing property from the ownership of his fellow Jews. On the date of the sale the property was free and clear of all encumbrances. The purchaser encumbered the same on 6 February 1941 with a mortgage in the sum of RM 25,000 to the Staedtische Sparkasse Stuttgart and with a land charge of RM 5,000 in behalf of the Staedtische Girokasse Stuttgart with a further mortgage of RM 15,000 to one Friedrich Schoeck. The claimants requested the following order be issued:

1. The return of the properties by the restitutor, Hans Peter Keck.
2. Payment of DM 1,500 for profits drawn during the period from 1941 until 1945, as well as an additional DM 1,100 for expenditures made by the trustee for maintenance and payments of interest paid out of the proceeds of the properties from the date when the properties were placed under control until 1 January 1949.
Further to find that the restitutor, Staedt. Sparkasse Stuttgart, shall be bound to refund to the claimant, Bruno Meinfelder, the amounts paid by the trustee since 3 January 1949 for the livelihood of the restitutor, Hans Peter Keck and for interest on mortgages.
3. The restitutor, Staedt. Sparkasse Stuttgart, must consent to the cancellation of the mortgage of RM 25,000.
4. The restitutor, Staedt. Girokasse Stuttgart, must consent to the cancellation of the land charge of RM 5,000 as well as to the cancellation of the notice entered on its behalf in the Land Title Register.
5. To order the restitutors to bear the costs."

They further insisted that here exists a case of aggravated confiscation under Articles 2 and 3 of Law 59.

Hans Peter Keck requested the dismissal of the claims contained in items 1 and 2 above and as a safeguard requested that in the event that

restitution be granted to predicate the return of the property upon a refund of the consideration received.

The other restitutors, the two banks, Staedtische Sparkasse Stuttgart and Staedtische Girokasse Stuttgart, did not contest the claims.

The facts surrounding the sale are these: The Office for the Placement of Jewish Properties repeatedly called Dr. Ostertag and asked him why the property had not been sold. He declared that he was ready to sell it. The Placement Office then ordered that the properties be sold to the said Erich Keck. Dr. Ostertag considered the direction given to him as a coercive measure which he dared not oppose but as far as the sale to Keck went, it made little difference to him whether or not Keck obtained the property or someone else. It further appears that Dr. Keck did not personally exert any duress upon Dr. Ostertag. It is well proven that a particular buyer was forced on the seller and that a bill of sale was executed under the duress exerted by the Office for the Placement of Jewish Property. It does not appear that Keck had anything to do with the reduction of the purchase price. However, there is uncontroverted proof in the record that in the year 1938 the property had an assessed value of RM 72,000. The standard value or appraisal value of properties owned by Jews which were under forced sale cannot be relied upon in all instances as being the fair value.

The question whether or not the confiscation was aggravated is a very close one. The reasoning of the holder of the title to the property and of the courts below that there was no casual connection between the Placement Office's activities and the executor's resolve to sell is erroneous, as was turning the question on the facts that the executor knew that Jewish properties could not be held and that he did not care whether they were sold to Dr. Keck or any other person. The Chamber reasoned:

"Due to these considerations the Restitution Chamber could not find that the executor was prompted to make the sale of the properties as a result of threats made by Attorney-at-Law Dr. Keck, or, on his behalf by the placement center" (Article 30, Law No. 59). Nor are there any signs showing that the buyer exercised any influence on the office deciding or, at least, having a say in the reduction of the purchase price from RM 63,000 to RM 57,000. Nor did Attorney-at-Law Dr. Keck acquire the properties by a transaction contra bonos mores or an unlawful taking or any other tort.

The participation of the industrial and commercial advisory board and the placement center alone does not suffice to make the transaction contra bonos mores. The placement center at that time had a monopoly for the placement of Jewish real property and its interference could almost never be avoided. The good conduct of the father of the restitutor, Hans Peter Keck, which was particularly acknowledged fails to supply the subjective factor which would be required for making the transaction one of contra bonos mores. In the present case the objective factors alone are not sufficient although the reduction of the purchase price may be very doubtful. But since the latter nevertheless considerably exceeded the standard value the difference was not as enormous as in many other cases."

We fail to see why the Nazi agencies having a monopoly for saying who should buy property belonging to Jews, and its interference could never be avoided, does not suffice to make a transaction contra bonos mores.

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We have held in *Rasmussen vs Utz*, Opinion No. 15, to the contrary. Such proves direct threats and duress. To hold otherwise would be contra the provisions of Article 2, Law 59, which precludes making Nazi Law and ideology a defense. The Chamber's finding that the threats were not made on Keck's behalf is fairly well substantiated. There is insufficient evidence to show that Keck actively had a part in the order of the Placement Office. There is a strong suspicion that such a role was played by him. But the proof is not strong enough to find that he was woven into the act to such a degree as would charge him with an aggravated confiscation. It is not shown that he personally sought the sale from the legal representative, Dr. Ostertag, or that he requested the Nazi authorities to force the conveyance of the property to him or that he was guilty of any of the many acts which would place the burden of an aggravated confiscation upon him or upon his successor in interest.

The accounting between the parties poses several interesting questions. The Restitution Chamber established that from the purchase price of RM 57,000 the amount of RM 45,000 was paid to the Salomon Meinfelder estate's blocked account and that this sum was transferred from that account to that of the son Bruno. These, together with other sums on 24 April 1941 were transferred to the Deutsche Golddiskont Bank. The Chamber does a bit of arithmetical gymnastics in saying that though the remaining RM 12,000 mysteriously missing from the purchase price was not very likely paid into the Salomon Meinfelder account, that the son received the same and that those Reichsmarks were immediately spent. There is no evidence to support that view. Dr. Ostertag testified that he had no knowledge of what became of the RM 12,000. The trial court deemed proven that the real claimant in interest not only received the RM 12,000, but obtained the free right of disposal thereof even though he was in the United States at that time. The first large transfer into the account after the sale was just RM 45,000. This amount was the exact amount obtained from encumbering the property. It was not paid by the vendee until after he had obtained the mortgage and land charge loans.

The second interesting question is summed up by the Chamber's statement with which we concur:

"The blocked emigrant's account was the result of duress which forced the claimant to emigrate. He was subject to duress also with regard to making a decision on the transfer of the RM 45,000. If he had desisted from the transfer and left the money in Germany he would have run the risk to lose the entire amount by the confiscation of Jewish property. A transfer at a normal rate of exchange was impossible, so he was only left the chance to obtain a transfer under then prevailing terms. These terms entitled the Golddiskontbank, as prescribed, to seize 96% of the RM 45,000 on its own behalf and to transfer merely 4% of the sum at the exchange rate of RM 2,50, in other words, at the full rate. Such a transfer amounted in its effects to a confiscation of the 96%. The claimant, Bruno Meinfelder, therefore, obtained of the amount of RM 45,000 merely a sum of RM 1,800 equivalent to 4%, only to this extent the restitutor, Hans Peter Keck, is entitled to the refund of the consideration received."

Up to the "General Confidential Decree No. 64, 14 May 1938" the Foreign Exchange Control Laws appertained to all persons and can not be

construed to have imposed restrictions by reason of race, religion, nationality, ideology or opposition to National Socialism. In fact, some of the earlier laws actually gave more liberal benefits to Jews emigrating to Palestine. This because a facet at that time of the Nazi solution of the Jewish question was the emigration of Jews. Such of course was before "the solution" took the gruesome form of gas chambers, crematories, and mass graves. This confidential decree took notice of the fact that the persecutory legislation against Jews had greatly increased the number of Jews who were endeavoring to leave Germany and that Jews were endeavoring to circumvent Foreign Exchange Control and such was the reason for more stringent safeguarding measures. Though the decrees, a series of them, could not abridge the circular decrees which had been published in the Reich Law Gazette they were followed by the banks and agencies concerned. The General Confidential Decree 1262/38 entered the general persecutory pattern. This latter decree made the reports on the registration of Jewish Property compelled by the Law of 28 April 1938, Reich Law Gazette I, Page 414, available to the Foreign Exchange Control offices for inspection and evaluation. As a result of the decrees disposal by Jews of domestic properties was restricted. The Circular Decree No. 57, dated 4 June 1938 enacted an exceptional law against Jewish emigrants. This specifically pertained to the seizure of credit balances belonging to Jewish emigrants and ruled that the assignment of emigrants' accounts could not be approved within the scope of the general directives if the account belonged to a Jew. Under general law emigrants' accounts could be released by permission and to a great extent for the purchase of property in Germany. Even prior to that time the General Confidential Decree No. 85 of 2 August 1937 greatly restricted the use of proceeds from blocked accounts of Jews. It provided that the release of blocked accounts for the purchase of real estate by Jews was not desired and it requested the Foreign Exchange Control offices to dismiss all such applications without stating any reasons. Further, the Foreign Exchange Control Law of 12 December 1938 made it impossible to use money from blocked accounts to purchase objects of value to take abroad. Under the Foreign Exchange Control Law of 12 December 1938 even domestic properties of Jews were placed under the Foreign Exchange Control regulations. Circular Decrees Nos. 26, 27, 28, of 6 March 1939 put further restrictions on the accounts of Jewish emigrants prohibiting the release for the purchase of other categories of property in Germany. From 1 January 1939 until November 1941 the purchase price for property sold by Jewish emigrants which were paid into blocked accounts were greatly restricted in disposal for the reasons based in Article 1, Law 59. The date of 25 November 1941, the date of enactment of Article 3 of the 11th Ordinance under the Reich Citizenship Law brought the entire matter of disposal by Jews of blocked accounts to a close. For then, plain and simple, out and out confiscation was the order of that law. So, the conclusion of the Chamber is correct on another ground in that the blocked account of the Jewish emigrant here was treated differently than under the general law affecting all emigrants. We further hold with the Chamber that the seizure by the Foreign Exchange Control Office of 96% of the account was a confiscation caused

by the emigration forced upon Bruno Meinfelder by Nazi persecution. We hold further that he did not have the right of free disposal of the mysterious RM 12,000 nor of RM 43,200 of the RM 45,000 derived from the sale of his property. So, under Paragraph 3, Article 44, there is only an obligation on the part of the claimant in interest to refund RM 1,800 of the purchase price.

The Chamber held on proper evidence that the claimant had received this sum of RM 1,800 in US dollars at the then rate of exchange of RM 2.50 to the dollar, after the money had been transferred to the Deutsche Gold-diskontbank. We disagree with the Chamber in its holding that this must be computed at the ratio of 1 Reichmark to 1 Deutsche Mark and should not be controlled by the Currency Conversion Law, Military Government Law No. 63. We reverse this on the basis of the provision in Paragraph 1 of Article 44, as follows:

"In exchange for the restitution of the confiscated property the claimant shall refund to the restitutor the consideration received by him in kind if possible". As far as the restitutor is concerned, the claimant only received RM 1,800 at free disposal. The fact that this was later converted in \$ 720 cannot inure to the benefit of the restitutor. The "in kind" means that which was given by the purchaser for the property. What the persecutee later did with the money does not enter into the picture. For example, in Busl vs Waldmann, Opinion No. 40, Court of Restitution Appeals, we upheld the trial court in its ruling that when the sellers purchased linen and furniture with a part of the purchase money such did not entitle the restitutors to a refund of that sum at the conversion rate of 1:1 but at the prescribed rate in Military Government Law 63 of 10:1.

The next item of interest is the computation of the monetary relations between the parties. Both courts below found, that for the period from the vesting of the property in 1941 to 1 March 1946 the gross receipts per annum were determined at RM 4,000; that the deductions for allowable expenditures including ground tax, ordinary repairs for maintenance and water dues, the chargeable amounts were RM 1,000 per annum, leaving net profits of RM 3,000 per annum. The Chamber further permitted a deduction to the restitutor for income tax of 20% and property tax which they fixed at RM 608 per annum. They further for management and administration of the house allowed a deduction per annum of RM 168.

Not having any other basis on expenses, taxes and income taxes, than the determinations of the courts below, we accept their findings.

In so far as that goes, we find no error. However, the trial court in concluding that there was not a net profit before property control took over the administration of the house, allowed interest on the purchase price of RM 57,000 or RM 2,565 per annum. We explain later herein why the granting of interest on the entire purchase price is not permissible.

We recapitulate the proper monetary adjustments between the parties to the date of the trusteeship:

Rent for the years 1941 to 1945, both inclusive, and 2 months 1946, at RM 4,000 per annum (Art. 15, Par. 1)		RM 20,666.66
Allowable expenditures at RM 1,000 per annum	RM 5,166.66	
Taxes at RM 608 per annum	RM 3,141.33	RM 8,307.99
Net income balance		RM 12,358.67
Less 20% income tax	RM 2,471.73	
Less management at RM 168 per annum	RM 868.00	RM 3,339.73
	Balance	RM 9,018.94

Converting at the ratio of 10:1, we find DM 901.89 due the real claimant in interest. From this must be deducted RM 1,800 plus interest thereon from the date the money was paid by the buyer.

There are three general decisions by the trial court which apply to several years. The first, with which we agree is that credit for the management of the house can not be given the restitutor while it was under the supervision of a trustee appointed under Military Government Law 52. The second ruling to which we take exception is that for each year, including the time when the property was under trusteeship, the Chamber permitted interest at the rate of 4 1/2% per annum on the full amount of the purchase price, RM 57,000. We have found above that the claimant only received RM 1,800 at his free disposal. Article 44, unlike Article 32, covers both simple and aggravated confiscations. A refund of the part of the consideration actually received at free use, carries with it interest at the legal rate. Even if one takes the allowances under Article 32, which we do not in aggravated confiscations, interest can not be awarded on money not received by the claimant or his predecessor in interest. We have taken this position in the cases of Neveling vs Dr. Arthur-Pfungst-Stiftung, Opinion No. 36, and Schibenes vs Auerbacher, Opinion No. 37. In Paragraph 2 of that article we have construed the allowance "and the interest on the purchase price paid by the restitutor shall adequately be taken into consideration" as meaning that part of the purchase price received by the claimant at his free disposal and the words "shall adequately be taken into consideration" to mean that when the purchase price or a part thereof has not been received is adequately taken into consideration under the restitutor's becoming subrogated to any claim for indemnification to which the claimant may be entitled with respect to the purchase price not received by him in accordance with Article 44, Paragraph 3, Law 59. We reaffirm our decisions that under the meaning of said Articles 32 and 44 it would not be tenable to charge a claimant for

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interest on money which he never received and that a restitutor in such a case must seek interest on his investment under the claim to which he has become subrogated in exchange for the restitution of the property. Therefore we disallow the interest deductions permitted with the exceptions of interest on the RM 1,800 received. The third ruling with which we also disagree is the interest rate allowed on the amount of purchase price to be refunded.

Heretofore we have taken the trial court's fixing of rates of interest on the purchase price paid at the free disposal of the seller. They have been at variance in several jurisdictions. So that the rate of interest can be uniform throughout the United States Area of Control in Germany, we find that 4 % per annum to be the proper allowance. We apply Section 246 of the Civil Code which provides: "If by law or juristic act a debt is to bear interest, four per cent per annum shall be paid, unless some other rate is specified."

Figuring interest from the date of the investiture as the time when the money was paid to 29 November 1950, we have RM 708 plus RM 1,800, makes the sum due the restitutor RM 2,508 or DM 250.80. Without taking into consideration the profits in the trustee's account the restitutor owes to the claimant the difference between DM 901.89 and DM 250.80 or DM 651.09.

Bruno Meinfelder is also entitled to all of the net profits from the property since the date of 1 March 1946 when it was put under control. The trustee filed his accounting with the trial court, which is an excellent practice, to 30 September 1949. It revealed net profits to June 20, 1948, the effective date of the Currency Conversion Law, as RM 5,475, at 10:1 DM 547. After currency reform to 30 September 1949, the net profits were DM 3,263.

The trustee improperly delivered from the income for the support of the minor, Hans Peter Keck, the sums of RM 750; RM 900; RM 450 (converted 10:1) and DM 450. The trial court correctly held that such burdens are not chargeable to the claimant. So, the claimant is entitled to an additional credit of DM 660, making a net sum of DM 1,311.09 due him. If any further sums were paid by the trustee for that purpose, they must be credited to Meinfelder. There have been other net receipts of course from the property under the trusteeship; however, the claimant can not seek a return of net profits from the restitutor after the property was placed under control but he must do so in his final accounting with the trustee.

When the properties were conveyed to the predecessor in interest of the restitutor they were free and clear of all encumbrances. Under Articles 15 and 37, Law 59, the Restitution Chamber was correct in ordering that the mortgage in the sum of RM 25,000 to the Staedtische Sparkasse Stuttgart and with a land charge of RM 5,000 on behalf of Staedtische Girokasse Stuttgart be cancelled and that the respective owners must consent to the cancellation of those encumbrances in the Land Title Register. The two banks in the proceedings below did not contest the fact that under the provisions of Law 59 the two encumbrances must be cancelled nor

have they complained about the judgment either in the Oberlandesgericht or here.

The proceedings pertaining to the request for cancellation of the RM 15,000 mortgage to Friedrich Schoeck was found by the Chamber to be pending in the Restitution Agency and the subject was neither presented by the claimant nor the restitutor Schoeck to the Restitution Chamber. So we preclude any decision in respect to that mortgage, even though it is puzzling to this Court why the entire matter was not adjudicated at the same time.

We set aside the decision of the Stuttgart Oberlandesgericht wherein it dismissed the appeal of the claimants and found the restitutor to be entitled to payment of the sum of DM 1,167 from the claimant.

We order that the judgment of the Restitution Chamber be amended to read as follows:

1. The restitutor, Hans Peter Keck, shall return to the claimant, Bruno Meinfelder, the property, the subject matter of this litigation, entered in the Stuttgart Land Title Register.
2. The claimant, Bruno Meinfelder, must assign to the restitutor, Hans Peter Keck, any claims for indemnification appertaining to him because he was denied the free right of disposal of the purchase price with the exception of RM 1,800 paid by the predecessor in interest of the restitutor, Hans Peter Keck.
3. The restitutor, Staedtische Sparkasse Stuttgart, must consent to the cancellation of the mortgage of RM 25,000, securing a loan, entered in the Stuttgart Land Title Register, Volume No. 10642 a, Section III, No. 3 and make all declarations required by such cancellation.
4. The restitutor, Staedtische Girokasse Stuttgart, must consent to the cancellation of the land charge of RM 5,000 entered in the Stuttgart Land Title Register, Volume No. 10642 a, Section III, No. 4, as well as to the cancellation of the notice of the title of the restitutor, Staedtische Girokasse Stuttgart — in its capacity as creditor of the land charge — to cancellation of the mortgage mentioned above under No. 3 in case same is united with the property. It must also make all the declarations required for effectuating the cancellation.
5. The restitutor must pay to the restitutee the sum of DM 1,311.
6. The claimant, Bruno Meinfelder, is entitled to claim from the trustee the entire net profits remaining in the trust account, less the proper expenses incurred in administering the trust.

Immediate execution may be had on this decision.

No costs are assessed against any party in this Court.

IT IS SO ORDERED:



[Handwritten Signature]
NARAYAN

NEST. Police

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**MILITARY GOVERNMENT GAZETTE
GERMANY**

UNITED STATES AREA OF CONTROL

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*) The German text of this Law shall be the official text and the provisions of Paragraph 5 of Article II of Military Government Law No. 4, as amended, shall not apply; (Law No. 59, Article 94).

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*) Der deutsche Text dieses Gesetzes ist der amtliche Text; die Bestimmungen des Absatzes 5 des Artikels II des Gesetzes Nr. 4 der Militärregierung (in seiner geänderten Fassung) finden keine Anwendung; (Gesetz Nr. 59, Artikel 94).

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MILITARY GOVERNMENT — GERMANY
UNITED STATES AREA OF CONTROL

LAW NO. 59
RESTITUTION
OF IDENTIFIABLE PROPERTY

MILITÄRREGIERUNG — DEUTSCHLAND
AMERIKANISCHES KONTROLLGEBIET

GESETZ NR. 59
RÜCKERSTATTUNG FESTSTELLBARER
VERMÖGENSGEGENSTÄNDE

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PART I GENERAL PROVISIONS

ARTICLE 1 Basic Principles

1. It shall be the purpose of this Law to effect to the largest extent possible the speedy restitution of identifiable property (tangible and intangible property and aggregates of tangible and intangible property) to persons who were wrongfully deprived of such property within the period from 30 January 1933 to 8 May 1945 for reasons of race, religion, nationality, ideology or political opposition to National Socialism. For the purpose of this Law deprivation of property for reasons of nationality shall not include measures which under recognized rules of international law are usually permissible against property of nationals of enemy countries.

2. Property shall be restored to its former owner or to his successor in interest in accordance with the provisions of this Law even though the interests of other persons who had no knowledge of the wrongful taking must be subordinated. Provisions of law for the protection of purchasers in good faith, which would defeat restitution, shall be disregarded except where this Law provides otherwise.

PART II CONFISCATED PROPERTY

ARTICLE 2 Acts of Confiscation

1. Property shall be considered confiscated within the provisions of this Law if the person entitled thereto has been deprived of it, or has failed to obtain it despite a well founded legal expectancy of acquisition, as the result of:

- A transaction contra bonos mores, threats or duress, or an unlawful taking or any other tort;
- Seizure due to a governmental act or by abuse of such act;
- Seizure as the result of measures taken by the NSDAP, its formations or affiliated organizations;

provided the acts described in (a) to (c) were caused by or constituted measures of persecution for any of the reasons set forth in Article 1.

2. It shall not be permissible to plead that an act was not wrongful or contra bonos mores because it conformed with a prevailing ideology concerning discrimination against individuals on account of their race, religion, nationality, ideology or their political opposition to National Socialism.

3. Confiscation by a governmental act within the meaning of paragraph 1 (b) shall be deemed to include, among other acts, sequestration, confiscation, forfeiture by order or operation of law, and transfer by order of the State or by a trustee appointed by the State. The forfeiture by virtue of a judgment of a criminal court shall also be considered a confiscation by a governmental act, if such judgment has been vacated by order of an appropriate court or by operation of law.

4. A judgment or order of a court, or of an administrative agency, which, although based on general provisions of law, was handed down solely or primarily with the purpose of injuring the party affected by it for any of the reasons set forth in Article 1 shall be deemed a specific instance of the abuse of a governmental act. The abuse of a governmental act shall also include the procurement of a judgment or of measures of execution by exploiting the circumstance that the opponent was, actually or by law, prevented from protecting his interests by virtue of his race, religion, nationality, ideology or his political opposition to National Socialism. The Restitution Authorities (Restitu-

ERSTER ABSCHNITT ALLGEMEINE VORSCHRIFTEN

ARTIKEL 1 Grundsatz

1. Zweck des Gesetzes ist es, die Rückerstattung feststellbarer Vermögensgegenstände (Sachen, Rechte, Inbegriffe von Sachen und Rechten) an Personen, denen sie in der Zeit vom 30. Januar 1933 bis 8. Mai 1945 aus Gründen der Rasse, Religion, Nationalität, Weltanschauung oder politischen Gegnerschaft gegen den Nationalsozialismus entzogen worden sind, im größtmöglichen Umfange beschleunigt zu bewirken. Eine Entziehung von Vermögensgegenständen aus Gründen der Nationalität im Sinne dieses Gesetzes erstreckt sich nicht auf Maßnahmen, die unter anerkannten Regeln des internationalen Rechts üblicherweise gegen Vermögen von Staatsangehörigen feindlicher Länder zulässig sind.

2. Vermögensgegenstände nach Maßgabe der Bestimmungen dieses Gesetzes sind auch dann an ihren ursprünglichen Inhaber oder dessen Rechtsnachfolger zurückzuerstatten, wenn die Rechte anderer Personen, die von dem begangenen Unrecht keine Kenntnis hatten, zurücktreten müssen. Der Rückerstattung entgegenstehende Vorschriften zum Schutze gutgläubiger Erwerber bleiben außer Betracht, soweit nicht in diesem Gesetz etwas anderes bestimmt ist.

ZWEITER ABSCHNITT ENTZOGENE VERMÖGENSGEGENSTÄNDE

ARTIKEL 2 Entziehungsfälle

1. Vermögensgegenstände sind im Sinne dieses Gesetzes entzogen, wenn sie der Inhaber eingebüßt oder trotz begründeter Anwartschaft nicht erlangt hat infolge

- eines gegen die guten Sitten verstoßenden Rechtsgeschäftes oder einer Drohung, oder einer widerrechtlichen Wegnahme oder sonstigen unerlaubten Handlung,
- Wegnahme durch Staatsakt oder durch Mißbrauch eines Staatsaktes,
- Wegnahme durch Maßnahmen der NSDAP, ihrer Gliederungen oder angeschlossenen Verbände,

sofern die unter (a) bis (c) fallenden Tatbestände durch Verfolgungsmaßnahmen aus den Gründen des Artikels 1 verursacht waren oder solche Verfolgungsmaßnahmen darstellten.

2. Niemand wird mit der Einwendung gehört, seine Handlungsweise sei deshalb nicht rechts- oder sittenwidrig gewesen, weil sie allgemeinen Anschauungen entsprochen habe, die eine Schlechterstellung einzelner wegen ihrer Rasse, Religion, Nationalität, Weltanschauung oder ihrer Gegnerschaft gegen den Nationalsozialismus zum Inhalt hatten.

3. Als Wegnahme durch Staatsakt im Sinne des Absatz 1(b) gelten u. a. Einziehung, Verfallerklärung, Verfall kraft Gesetzes und Verfügung auf Grund staatlicher Auflage oder durch staatlich bestellten Treuhänder. Als Wegnahme durch Staatsakt gilt auch die Einziehung seiner strafgerichtlichen Urteil, wenn das Urteil durch Gerichtsbeschluss oder kraft Gesetzes aufgehoben worden ist.

4. Als Mißbrauch von Staatsakten gilt insbesondere eine auf allgemeinen Vorschriften beruhende, jedoch ausschließlich oder vorwiegend zum Zwecke der Benachteiligung des Betroffenen aus den Gründen des Artikels 1 ergangene Entscheidung oder Verfügung eines Gerichts oder einer Verwaltungsbehörde, ferner die Erwirkung von Entscheidungen und Vollstreckungsmaßnahmen unter Ausnutzung des Umstandes, daß jemand wegen seiner Rasse, Religion, Nationalität, Weltanschauung oder seiner politischen Gegnerschaft gegen den Nationalsozialismus zur Wahrung seiner Rechte tatsächlich oder rechtlich nicht imstande war. Die Wiedergutmachungsorgane (Wiedergutmachungsbehörde,

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tion Agency, Restitution Chamber and Oberlandesgericht) shall disregard any such judgment or order of a court or administrative agency whether or not it may otherwise be appealed or reopened under existing law.

ARTICLE 3

Presumption of Confiscation

1. It shall be presumed in favor of any claimant that the following transactions entered into between 30 January 1933 and 8 May 1945 constitute acts of confiscation within the meaning of Article 2:

- (a) Any transfer or relinquishment of property made during a period of persecution by any person who was directly exposed to persecutory measures on any of the grounds set forth in Article 1;
- (b) Any transfer or relinquishment of property made by a person who belonged to a class of persons which on any of the grounds set forth in Article 1 was to be eliminated in its entirety from the cultural and economic life of Germany by measures taken by the State or the NSDAP.

2. In the absence of other factors proving an act of confiscation within the meaning of Article 2, the presumptions set forth in paragraph 1 may be rebutted by showing that the transferor was paid a fair purchase price. Such evidence by itself shall not, however, rebut the presumptions if the transferor was denied the free right of disposal of the purchase price on any of the grounds set forth in Article 1.

3. A fair purchase price within the meaning of this Article shall mean the amount of money which a willing buyer would pay and a willing seller would take, taking into consideration, in the case of a commercial enterprise, the normal good will which such enterprise would have in the hands of a person not subject to persecutory measures referred to in Article 1.

ARTICLE 4

Power of Avoidance

1. Any transaction entered into by a person belonging to a class referred to in Paragraph 1 (b) of Article 3 within the period from 15 September 1935 (the date of the first Nuremberg laws) to 8 May 1945 may, because of the duress imposed on such class, be avoided by a claimant where such transaction involved the transfer or relinquishment of any property unless:

- (a) The transaction as such and with its essential terms would have taken place even in the absence of National Socialism, or
- (b) The transferee protected the property interests of the claimant (Article 7) or his predecessor in interest in an unusual manner and with substantial success, for example, by helping him in transferring his assets abroad or through similar assistance.

2. In determining under paragraph 1 (a) whether the transaction would have taken place even in the absence of National Socialism, the fact that

the transferor himself offered to sell the property to the transferee, or

the transferor received a fair purchase price (see Article 3, paragraph 3) the free right of disposal of which was not denied him on any of the grounds set forth in Article 1,

shall be considered by the Restitution Authority together with all other facts, but neither fact, either singly or in conjunction with the other, shall be sufficient to show that the transaction would have taken place even in the absence of National Socialism.

Wiedergutmachungskammer und Beschwerdegericht) haben eine solche Entscheidung oder Verfügung eines Gerichts oder einer Verwaltungsbehörde als nichtig zu behandeln ohne Rücksicht darauf, ob sie nach geltendem Recht rechtskräftig ist, und ob sie im Wiederaufnahmeverfahren angefochten werden könnte.

ARTIKEL 3

Entziehungsvermutung

1. Zu Gunsten eines Berechtigten wird vermutet, daß ein in der Zeit vom 30. Januar 1933 bis 8. Mai 1945 abgeschlossenes Rechtsgeschäft eine Vermögensentziehung im Sinne des Artikels 2 darstellt:

- (a) Wenn die Veräußerung oder Aufgabe des Vermögensgegenstandes in der Zeit der Verfolgungsmaßnahmen von einer Person vorgenommen worden ist, die Verfolgungsmaßnahmen aus Gründen des Artikels 1 unmittelbar ausgesetzt war;
- (b) wenn die Veräußerung oder Aufgabe eines Vermögensgegenstandes seitens einer Person vorgenommen wurde, die zu einer Gruppe von Personen gehörte, welche in ihrer Gesamtheit aus den Gründen des Artikels 1 durch Maßnahmen des Staates oder der NSDAP aus dem kulturellen und wirtschaftlichen Leben Deutschlands ausgeschaltet werden sollte.

2. Vorausgesetzt, daß keine anderen Tatsachen für das Vorliegen einer Entziehung im Sinne des Artikels 2 sprechen, kann die Vermutung des Absatz 1 durch den Beweis widerlegt werden, daß dem Veräußerer ein angemessener Kaufpreis bezahlt worden ist. Dieser Beweis allein widerlegt jedoch die Vermutung nicht, wenn dem Veräußerer aus den Gründen des Artikels 1 das Recht der freien Verfügung über den Kaufpreis verweigert worden ist.

3. Ein angemessener Kaufpreis im Sinne dieses Artikels ist derjenige Geldbetrag, den ein Kauflustiger zu zahlen und ein Verkaufslustiger anzunehmen bereit wäre, wobei bei Geschäftsunternehmen der Firmenwert (good will) berücksichtigt wird, den ein solches Unternehmen in den Händen einer Person hätte, die Verfolgungsmaßnahmen aus den Gründen des Artikels 1 nicht unterworfen war.

ARTIKEL 4

Anfechtung

1. Der Berechtigte kann ein Rechtsgeschäft, das von einer zur Gruppe des Absatz 1(b) des Artikels 3 gehörigen Person in der Zeit vom 15. September 1935 (Datum der ersten Nürnberger Gesetze) bis zum 8. Mai 1945 vorgenommen worden ist, wegen der Zwangslage, in der sich diese Gruppe befand, anfechten, wenn das Rechtsgeschäft die Veräußerung oder Aufgabe eines Vermögensgegenstandes zum Inhalt hatte, es sei denn, daß

- (a) das Rechtsgeschäft als solches und mit seinen wesentlichen Bestimmungen auch ohne die Herrschaft des Nationalsozialismus abgeschlossen worden wäre, oder
- (b) der Erwerber die Vermögensinteressen des Berechtigten (Artikel 7) oder seines Rechtsvorgängers in besonderer Weise und mit wesentlichem Erfolg, insbesondere durch Mitwirkung bei einer Vermögensübertragung ins Ausland oder durch ähnliche Maßnahmen, wahrgenommen hat.

2. Bei der Feststellung, ob nach Absatz 1 (a) das Rechtsgeschäft auch ohne die Herrschaft des Nationalsozialismus abgeschlossen worden wäre, können die Tatsachen, daß der Veräußerer den Vermögensgegenstand selbst dem Erwerber angeboten oder daß er einen angemessenen Kaufpreis (Artikel 3, Absatz 3) erhalten hat, ohne daß ihm dabei aus den Gründen des Artikels 1 die freie Verfügung über den Kaufpreis verweigert wurde, zusammen mit anderen Tatsachen in Betracht gezogen werden. Es sollen aber diese beiden Tatsachen, jede für sich allein oder beide zusammen, noch nicht zum Nachweis dafür ausreichen, daß das Rechtsgeschäft auch ohne die Herrschaft des Nationalsozialismus abgeschlossen worden wäre.

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3. Similarly neither of these facts, either singly or in conjunction with the other, shall be sufficient to show that the claimant is estopped from exercising the power of avoidance by reason of his own previous conduct or that of his predecessor in interest.

4. The term "claim for restitution" as used in this Law shall be deemed to include all claims based on the right to exercise the power of avoidance. The exercise of the power of avoidance shall have the effect that the property transferred or relinquished pursuant to the voided transaction shall for the purposes of this Law be deemed to be confiscated property.

5. The filing of a claim for restitution shall, whether or not it is specifically stated, be deemed to be an exercise of the right of avoidance on behalf of the person entitled to exercise such right.

ARTICLE 5

Donations

Where a person persecuted for any of the reasons set forth in Article 1 has transferred property to another gratuitously within the period from 30 January 1933 to 8 May 1945, it shall be presumed that the transfer constituted a bailment or fiduciary relationship rather than a donation. This presumption shall not apply where the personal relations between the transferor and the recipient make it probable that the transfer constituted a donation based on moral considerations (Anstandsschenkung); no claims for restitution may be asserted in such cases.

ARTICLE 6

Bailment and Fiduciary Relationships

1. The provisions of Parts III to VII of this Law shall not apply to bailments and fiduciary agreements entered into in order to prevent damage to property threatened for any of the reasons set forth in Article 1, or to mitigate existing damage to property inflicted for such reasons.

2. The claimant (Article 7) may at any time terminate contracts and any other arrangements described in paragraph 1, such termination to be effective immediately, any contractual or statutory provisions to the contrary notwithstanding.

3. It shall not be an admissible defense for the bailee or fiduciary that the contracts and agreements described in paragraph 1 violated a statutory prohibition existing at the time of the transaction or enacted thereafter, or that a statutory or contractual form requirement had not been complied with, provided that this failure was attributable to the National Socialist regime.

PART III:

GENERAL PROVISIONS ON RESTITUTION

ARTICLE 7

Person Entitled to Restitution (Hereinafter called Claimant)

The claim for restitution shall appertain to any person whose property was confiscated (hereinafter called Persecuted Person) or to any successor in interest.

ARTICLE 8

Successorship of Dissolved Associations

1. If a juridical person or unincorporated association was dissolved or forced to dissolve for any of the reasons set forth in Article 1, the claim for restitution which would have appertained to such juridical person and unincorporated association had it not been dissolved, may be enforced by a successor organization to be appointed by Military Government.

2. The provisions of paragraph 1 shall not be applicable to the organizations referred to in Article 9.

3. Ebensowenig sollen diese beiden Tatsachen, jede für sich allein oder beide zusammen, zum Nachweis dafür ausreichen, daß der Berechtigte sich durch die Anfechtung in unzulässiger Weise zu seinem oder seines Rechtsvorgängers früheren Verhalten in Widersoruch setzt.

4. Der Ausdruck „Rückerstattungsanspruch“ im Sinne dieses Gesetzes umfaßt auch das Anfechtungsrecht und die aus diesem folgenden Ansprüche. Die Ausübung des Anfechtungsrechts hat die Wirkung, daß der durch das angefochtene Rechtsgeschäft übertragene oder aufgebene Vermögensgegenstand als entzogenes Vermögen im Sinne dieses Gesetzes gilt.

5. Die Anmeldung eines Rückerstattungsanspruchs gilt als Ausübung des Anfechtungsrechts seitens des Anfechtungsberechtigten ohne Rücksicht darauf, ob in der Anmeldung eine ausdrückliche Anfechtungserklärung enthalten ist.

ARTIKEL 5

Schenkungen

Hat ein aus den Gründen des Artikels 1 Verfolgter in der Zeit vom 30. Januar 1933 bis 8. Mai 1945 einem anderen Vermögensgegenstände unentgeltlich überlassen, so wird vermutet, daß keine Schenkung, sondern eine Verwahrung oder ein Treuhandverhältnis vorliegt. Die Vermutung gilt nicht, soweit nach den persönlichen Beziehungen zwischen dem Überlassenden und dem Empfänger das Vorliegen einer Anstandsschenkung naheliegt; ein Rückerstattungsanspruch ist in diesem Falle nicht gegeben.

ARTIKEL 6

Verwahrungs- und Treuhandverhältnisse

1. Auf Verwahrungsverträge und treuhänderische Rechtsgeschäfte, die die Abwendung oder Verminderung eines aus den Gründen des Artikels 1 drohenden oder eingetretenen Vermögensschadens bezweckten, finden die Vorschriften des III. bis VII. Abschnitts dieses Gesetzes keine Anwendung.

2. Verträge und sonstige Rechtsgeschäfte der in Absatz 1 bezeichneten Art können ohne Rücksicht auf entgegenstehende vertragliche oder gesetzliche Bestimmungen von dem Berechtigten (Artikel 7) jederzeit mit sofortiger Wirkung gekündigt werden.

3. Der Verwahrer oder Treuhänder wird nicht mit dem Einwand gehört, daß Verträge und sonstige Rechtsgeschäfte der in Absatz 1 bezeichneten Art gegen ein zur Zeit ihres Abschlusses bestehendes oder später erlassenes gesetzliches Verbot verstoßen, oder daß ein auf Gesetz oder Rechtsgeschäft beruhendes Formerfordernis nicht erfüllt wurde, sofern die Form wegen der nationalsozialistischen Herrschaft nicht eingehalten wurde.

DRITTER ABSCHNITT

**ALLGEMEINE BESTIMMUNGEN
 ÜBER DIE RÜCKERSTATTUNG**

ARTIKEL 7

Berechtigter

Der Rückerstattungsanspruch steht demjenigen zu, dem ein Vermögensgegenstand entzogen wurde (Verfolgter) oder seinem Rechtsnachfolger.

ARTIKEL 8

Rechtsnachfolger aufgelöster Personenvereinigungen

1. Ist eine juristische Person oder eine nicht rechtsfähige Personenvereinigung aus den Gründen des Artikels 1 aufgelöst oder zur Selbstauflösung gezwungen worden, so kann der Rückerstattungsanspruch, der ihr zustehen würde, wenn sie nicht aufgelöst worden wäre, von einer von der Militärregierung zu bestimmenden Nachfolgeorganisation geltend gemacht werden.

2. Die Vorschriften des Absatz 1 finden auf die in Artikel 9 aufgeführten Gesellschaften und juristischen Personen keine Anwendung.

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ARTICLE 9

Rights of Individual Partners

If a partnership, company or corporation organized under the Commercial Law, was dissolved or forced to dissolve for any of the reasons set forth in Article 1, the claim for restitution may be asserted by any associate (partner, member or shareholder). The claim for restitution shall be deemed to have been filed on behalf of all associates who have the same cause of action. The claim may be withdrawn or compromised only with the approval of the appropriate Restitution Authority. Notice of the filing of the claim shall be given to all other known associates or their successors in interest and to a successor organization competent according to Article 10. Within the limits of its authority the successor organization may represent in the proceedings any associate whose address is unknown, in accordance with the provisions of Article 11.

ARTICLE 10

Successor Organization as Heir to Persecuted Persons

A successor organization to be appointed by Military Government, shall, instead of the State, be entitled to the entire estate of any persecuted person in the case provided for in Section 1936 of the Civil Code (Escheat of estate of person dying without heirs). Neither the State nor any of its subdivisions nor a political self-governing body will be appointed as successor organization. The same shall apply to other rights in the nature of escheat based on any other provision of law.

ARTICLE 11

Special Rights of Successor Organizations

1. If within six months after the effective date of this Law no petition for restitution has been filed with respect to confiscated property, a successor organization appointed pursuant to Article 10 may file such a petition on or before 31 December 1948 and apply for all measures necessary to safeguard the property.
2. If the claimant himself has not filed a petition on or before 31 December 1948, the successor organization by virtue of filing the petition shall acquire the legal position of the claimant. Only after that date, and not prior thereto, shall it be entitled to prosecute the claim.
3. The provisions of paragraphs 1 and 2 hereof shall not apply if, and to the extent to which, the claimant, in the period from 8 May 1945 to 31 December 1948, has delivered a waiver of his claim for restitution, in writing and in express terms, to the restitutor, the appropriate Restitution Authority, or the Central Filing Agency.

ARTICLE 12

Obligation of Successors in Interest to Give Information

1. If so ordered by the appropriate Restitution Authority a claimant who acquired the claim for restitution directly or indirectly from the persecuted person shall submit, if known to him, either the address of his predecessors in interest, in particular of the persecuted person, or of his heirs, or execute an affidavit to the effect that he does not know the present address or any data from which it might be ascertained.
2. The successor organization appointed pursuant to Article 10 shall submit the address of the person entitled to restitution, provided it is known to it, or such data known to it which might serve to locate this person, or an affidavit signed by its legal representative to the effect that it knows neither the address of the person entitled to restitution nor any data which might serve to locate this person.

ARTICLE 13

Designation of Successor Organizations

Regulations to be issued by Military Government will provide for the manner of appointment of successor organizations, their obligations to their persecutee charges, and any further rights or obligations they may have under Military Government or German law.

ARTIKEL 9

Rechte einzelner Gesellschafter

War eine Gesellschaft oder juristische Person des Handelsrechts aus den Gründen des Artikels 1 aufgelöst oder zur Selbstauflösung gezwungen worden, so kann der Rückerstattungsanspruch, solange keine Nachfolgeorganisation bestimmt ist, von jedem Gesellschafter geltend gemacht werden. Der Rückerstattungsanspruch gilt als zu Gunsten aller Gesellschafter, denen der gleiche Anspruch zusteht, erhoben. Die Rücknahme des Antrags oder ein Vergleich muß von dem Wiedergutmachungsorgan genehmigt werden, vor dem der Anspruch anhängig ist. Von der Erhebung des Antrags müssen die anderen bekannten Gesellschafter oder ihre Rechtsnachfolger einschließlich einer gemäß Artikel 10 zuständigen Nachfolgeorganisation benachrichtigt werden. An die Stelle von Gesellschaftern, deren Anschrift unbekannt ist, tritt für das Verfahren die Nachfolgeorganisation im Rahmen ihrer Befugnisse nach Maßgabe des Artikels 11.

ARTIKEL 10

Nachfolgeorganisation als Erbe von Verfolgten

Im Falle des § 1936 BGB. ist Erbe eines Verfolgten hinsichtlich des gesamten Nachlasses an Stelle des Staates eine von der Militärregierung zu bestimmende Nachfolgeorganisation. Als Nachfolgeorganisation darf weder der Staat, noch eine Gliederung desselben, oder ein gemeindlicher Selbstverwaltungskörper bestimmt werden. Das gleiche gilt für Heimfall-, Anfall- und Rückfallrechte auf Grund sonstiger gesetzlicher Bestimmungen.

ARTIKEL 11

Besondere Rechte der Nachfolgeorganisation des Artikels 10

1. Eine nach Artikel 10 bestimmte Nachfolgeorganisation kann, wenn innerhalb von sechs Monaten nach dem Inkrafttreten dieses Gesetzes hinsichtlich eines entzogenen Vermögensgegenstandes kein Rückerstattungsanspruch angemeldet wird, diesen bis zum 31. Dezember 1948 anmelden und alle zur Sicherstellung des Vermögensgegenstandes erforderlichen Maßnahmen beantragen.
2. Sofern nicht der Berechtigte bis zum 31. Dezember 1948 seinerseits den Anspruch anmeldet, erwirbt die Nachfolgeorganisation auf Grund ihrer Anmeldung die Rechtsstellung des Berechtigten. Erst mit diesem Rechtserwerb erlangt sie das Recht, den Anspruch weiter zu verfolgen.
3. Die Absätze 1 und 2 finden keine Anwendung, soweit der Berechtigte in der Zeit vom 8. Mai 1945 bis zum 31. Dezember 1948 schriftliche und ausdrücklich gegenüber dem Rückerstattungspflichtigen, der zuständigen Rückerstattungsbehörde oder dem Zentralanmeldeamt auf seinen Rückerstattungsanspruch verzichtet hat.

ARTIKEL 12

Auskunftsspflicht von Rechtsnachfolgern

1. Berechtigte, die den Rückerstattungsanspruch mittelbar oder unmittelbar von dem Verfolgten erworben haben, sind auf Anordnung eines Wiedergutmachungsorgans verpflichtet, eine ihnen bekannte Anschrift ihrer Rechtsvorgänger, insbesondere des Verfolgten oder seiner Erben, mitzuteilen oder eine eidesstattliche Versicherung darüber beizubringen, daß ihnen weder deren gegenwärtige Anschrift noch Anhaltspunkte zu deren Ermittlung bekannt sind.
2. Eine nach Artikel 10 bestimmte Nachfolgeorganisation ist verpflichtet, eine ihr bekannte Anschrift des Berechtigten oder ihr bekannte Anhaltspunkte zur Ermittlung desselben anzugeben oder eine eidesstattliche Versicherung eines gesetzlichen Vertreters darüber beizubringen, daß weder die gegenwärtige Anschrift des Berechtigten noch Anhaltspunkte zur Ermittlung desselben bekannt sind.

ARTIKEL 13

Bestimmung von Nachfolgeorganisationen

Ausführungsbestimmungen der Militärregierung werden des näheren regeln; Das Verfahren betreffend die Bestimmung von Nachfolgeorganisationen, deren Pflichten gegenüber den betreuten Geschädigten und deren sonstige Rechte und Pflichten nach Maßgabe des Rechts der Militärregierung und des deutschen Rechts.

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ARTICLE 14

Persons Liable to Make Restitution

The person liable to make restitution (hereinafter referred to as restitutor), within the meaning of this Law, is the present possessor of confiscated tangible property or the present holder of a confiscated intangible interest, or of an aggregate of tangible and intangible property.

ARTICLE 15

Effect of an Adjudication of a Restitution Claim

1. Unless otherwise provided in this Law, a judgment directing restitution shall have the effect that the loss of the property shall be deemed not to have occurred and that afteracquired interests by third persons shall be deemed not to have been acquired.

2. Any adjudication of a restitution claim shall be effective for and against any person who participated in the proceeding or who, being entitled to participate, was duly served.

ARTICLE 16

Alternative Claim for Additional Payment

If he relinquishes all other claims under this Law the claimant may demand, from the person who first acquired the property, payment of the difference between the price received and the fair purchase price of the property as defined in Article 3, paragraph 3. Proper interest shall be added to this amount in accordance with the provisions on profits contained in this Law.

2. The demand for payment shall not be permissible:
- (a) after the property has been restored to the claimant by a judgment no longer subject to appeal; or
 - (b) after the Restitution Agency or Chamber has rendered a decision on the merits; or
 - (c) after the claimant and the restitutor have reached an amicable agreement with regard to the restitution claim.

ARTICLE 17

Valuation

1. Where the value of property is relevant according to the provisions of this Law, increases in the price caused by the decrease of the purchasing power of money shall not be considered an enhancement in the value.

2. Future implementing regulations may provide for the valuation of property which, because not now determinable, is at present not subject to the property tax. The provision of Article 27, paragraph 2 shall remain unaffected.

PART IV

LIMITATIONS ON THE RIGHT TO RESTITUTION

ARTICLE 18

Expropriation

1. Confiscated property which, after the time of confiscation, was expropriated for a public purpose, or sold or assigned to an enterprise for the benefit of which the right of expropriation could be exercised, shall not be subject to restitution if on the effective date of this Law the property is still used for a public purpose, and if such purpose is still recognized as lawful.

2. If property is not subject to restitution for the reasons set forth in paragraph 1, the present owner shall compensate the claimant adequately to the extent to which his claims pursuant to Article 29 et seq. infra, do not result in such compensation.

ARTIKEL 14

Rückerstattungspflichtiger

Unter dem Rückerstattungspflichtigen im Sinne dieses Gesetzes zu verstehen ist der derzeitige Inhaber der Eigentümerstellung an der entzogenen Sache oder derzeitige Inhaber des entzogenen Rechts oder Inbegriffs von Sachen und Rechten.

ARTIKEL 15

Rechtswirkung der Entscheidung über den Rückerstattungsanspruch

1. Eine dem Rückerstattungsanspruch stattgebende Entscheidung hat die Wirkung, daß der Verlust des Vermögensgegenstandes als nicht eingetreten, und später erworbene Rechte Dritter als nicht erworben gelten, soweit nicht dieses Gesetz etwas anderes bestimmt.

2. Eine Entscheidung über den Rückerstattungsanspruch wirkt für und gegen alle Personen, die am Verfahren teilgenommen haben oder zur Teilnahme am Verfahren berechtigt waren und hierzu vorschrittmäßig aufgefordert wurden.

ARTIKEL 16

Wahlweiser Anspruch auf Nachzahlung

1. Der Berechtigte kann unter Verzicht auf alle sonstigen Ansprüche aus diesem Gesetz verlangen, daß ihm der Ersterwerber den Unterschied zwischen dem erlangten Entgelt und dem angemessenen Preis (Artikel 3, Absatz 3) des Vermögensgegenstandes nachbezahlt. Zu dem Unterschiedsbetrag treten angemessene Zinsen; hierbei finden die Vorschriften dieses Gesetzes über Nutzungen entsprechende Anwendung.

2. Das Verlangen ist nicht mehr zulässig,
- (a) wenn der Vermögensgegenstand dem Berechtigten rechtskräftig wieder zuerkannt ist,
 - (b) wenn hierüber eine Sachentscheidung der Wiedergutmachungsbehörde oder der Wiedergutmachungskammer ergangen ist,
 - (c) wenn sich der Berechtigte mit dem Rückerstattungspflichtigen über den Rückerstattungsanspruch geeinigt hat.

ARTIKEL 17

Wertberechnung

1. Soweit es nach den Bestimmungen dieses Gesetzes auf den Wert eines Vermögensgegenstandes ankommt, gelten als Wertsteigerung nicht Preiserhöhungen, die durch Verminderung der Kaufkraft des Geldes hervorgerufen sind.

2. Für die Bewertung von Vermögensgegenständen, die wegen Unbestimmbarkeit zur Zeit nicht zur Vermögenssteuer herangezogen werden, bleiben Ausführungsvorschriften vorbehalten. Die Bestimmung des Artikels 27, Absatz 2 bleibt unberührt.

VIERTER ABSCHNITT

BEGRENZUNG DER RÜCKERSTATTUNG

ARTIKEL 18

Zwangsenteignung

1. Entzogene Vermögensgegenstände, die nach der Entziehung für einen öffentlichen Zweck zwangsenteignet oder an ein Unternehmen veräußert oder einem Unternehmen zugewendet wurden, zu dessen Gunsten eine solche Zwangsenteignung stattfinden konnte, unterliegen der Rückerstattung nicht, wenn im Zeitpunkt des Inkrafttretens dieses Gesetzes der Vermögensgegenstand noch für einen öffentlichen Zweck benützt wird und dieser Zweck noch als gesetzmäßig anerkannt ist.

2. Unterliegen Vermögensgegenstände aus den in Absatz 1 bezeichneten Gründen nicht der Rückerstattung, so muß der jetzige Eigentümer den Berechtigten für den Wert des entzogenen Vermögensgegenstandes angemessen entschädigen, soweit die Ansprüche gemäß Artikel 29 ff. dieses Gesetzes nicht zu einer solchen Entschädigung führen.

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ARTICLE 19

Protection of Ordinary and Usual Business Transactions

Except as provided in Articles 20 and 21, tangible personal property shall not be subject to restitution if the present owner or his predecessor in interest acquired it in the course of an ordinary and usual business transaction in an establishment normally dealing in that type of property. However, the provisions of this Article shall not apply to religious objects or to property which has been acquired from private ownership if such property is an object of unusual artistic, scientific, or sentimental personal value, or was acquired at an auction, or at a private sale in an establishment engaged to a considerable extent in the business of disposing of confiscated property.

ARTICLE 20

Money

Money shall be subject to restitution only if at the time he acquired the money the restitutor knew or should have known under the circumstances that it had been obtained by way of confiscation.

ARTICLE 21

Bearer Instruments

1. Bearer instruments shall not be subject to restitution if the present holder proves that, at the time he acquired the instrument, he neither knew nor should have known under the circumstances that the instrument had been confiscated at any time. Unless special circumstances indicate otherwise, good faith shall be presumed within the scope of this provision, if such property was acquired in the course of ordinary and usual business transactions, especially on the stock exchange, and if the transaction did not involve a dominant participation.

2. The provisions of paragraph 1 shall also apply to interests in bearer instruments deposited in a central account (Sammelverwahrung).

3. Bearer instruments and interests in bearer instruments shall, however, be unconditionally subject to restitution if they represent:

- (a) a participation in an enterprise with a small number of members, such as a family corporation; or
- (b) a participation in an enterprise the shares of which had not been negotiated on the open market; or
- (c) a dominant participation in an enterprise as to which it was known, generally or in the trade, that a dominant participation was held by persons who belonged to one of the classes described in Article 3, paragraph 1 (b); or
- (d) a dominant participation in a business establishment which was registered under the Third Ordinance to the Reich Citizen Law (Reichsbürgergesetz) of 14 June 1938 (RGBl. I, p. 627).

4. For the purpose of subsections (c) and (d) of paragraph 3, a participation shall be deemed to be dominant if it permitted the exercise of a considerable amount of influence upon the management of the business enterprise either by itself or on the basis of a working agreement which existed prior to or at the time of the confiscation.

ARTICLE 22

Restitution in Event of Changes in the Legal or Financial Structure of an Enterprise

If a participation of the type described in Article 21, paragraph 3 had been confiscated and if the enterprise had been dissolved or merged into, or consolidated with, or transformed into another enterprise, or had been changed in any other way in its legal or financial structure, or if its assets had been transferred wholly or in part to another enterprise, the claimant may demand that he be given an appropriate share in the modified or newly formed enterprise or in the enterprise which had acquired wholly or in part the assets of the original enterprise, thereby restoring as far as possible his original participation and the rights incident thereto.

ARTIKEL 19

Schutz des ordnungsmäßigen üblichen Geschäftsverkehrs

Vorbehaltlich der Bestimmungen der Artikel 20, 21 unterliegen nicht der Rückerstattung bewegliche Sachen, die der Eigentümer oder sein Rechtsvorgänger im Wege des ordnungsmäßigen üblichen Geschäftsverkehrs aus einem einschlägigen Unternehmen erworben hat. Dies gilt nicht für Kultgegenstände; es gilt ferner nicht für Gegenstände von besonderem künstlerischen oder wissenschaftlichen Wert oder besonderem persönlichen Erinnerungswert, sofern sie aus Privatbesitz stammten oder im Wege der Versteigerung oder von einem Unternehmen erworben wurden, das sich in erheblichem Umfange mit der Verwertung entzogener Vermögensgegenstände befaßte.

ARTIKEL 20

Geld

Geld unterliegt der Rückerstattung nur, wenn der Rückerstattungspflichtige bei seinem Erwerb wußte oder den Umständen nach annehmen mußte, daß es im Wege der Entziehung erlangt worden war.

ARTIKEL 21

Inhaberpapiere

1. Inhaberpapiere unterliegen der Rückerstattung nicht, wenn der Inhaber nachweist, daß er zur Zeit des Erwerbs weder wußte noch den Umständen nach annehmen mußte, daß das Inhaberpapier zu irgendeiner Zeit Gegenstand einer Entziehung war. Sofern nicht besondere Umstände entgegenstehen, ist guter Glaube im Sinne dieser Bestimmung anzunehmen, wenn der Erwerb im ordnungsmäßigen üblichen Geschäftsverkehr, insbesondere im Börsenverkehr erfolgte, und es sich nicht um eine maßgebliche Beteiligung handelte.

2. Die Bestimmungen des Absatz 1 finden auch Anwendung auf Anteilsrechte an Inhaberpapieren, die sich in Sammelverwahrung befinden.

3. Inhaberpapiere sowie Anteilsrechte an solchen unterliegen jedoch bedingungslos der Rückerstattung, wenn sie darstellen:

- (a) eine Beteiligung an Unternehmen mit geringer Gesellschafterzahl, z. B. Familiengesellschaften.
- (b) eine Beteiligung an Unternehmen, deren Anteile im allgemeinen Geschäftsverkehr nicht gehandelt wurden,
- (c) eine maßgebliche Beteiligung an Unternehmen, von denen es allgemein oder in Geschäftskreisen bekannt war, daß eine maßgebliche Beteiligung an ihnen in der Hand von Personen war, die zu einer der in Artikel 3, Absatz 1 (b) bezeichneten Gruppen gehörten.
- (d) eine maßgebliche Beteiligung an Gewerbebetrieben, die auf Grund der dritten Verordnung zum Reichsbürgergesetz vom 14. 6. 1938 (RGBl. I S. 627) in ein Verzeichnis eingetragen wurden.

4. Als maßgeblich im Sinne der Bestimmungen in Absatz 3 (c) und (d) gilt eine Beteiligung dann, wenn sie durch sich allein oder auf Grund einer vor oder bei der Entziehung bestandenen Interessenverbindung einen erheblichen Einfluß auf die Geschäftsführung des Unternehmens ermöglichte.

ARTIKEL 22

Rückerstattung bei Veränderung der rechtlichen oder Kapitalstruktur von Unternehmen

Ist eine Beteiligung der in Artikel 21 Absatz 3 bezeichneten Art entzogen worden und ist das Unternehmen selbst aufgelöst oder mit einem anderen Unternehmen verschmolzen oder in ein anderes Unternehmen umgewandelt oder sonstwie in seiner rechtlichen Struktur oder seiner Kapitalstruktur verändert worden oder ist dessen Vermögen ganz oder teilweise auf ein anderes Unternehmen übertragen worden, so kann der Berechtigte verlangen, daß er an dem veränderten oder neu gestalteten Unternehmen oder dem Unternehmen, das das Vermögen des ursprünglichen Unternehmens ganz oder teilweise übernommen hat, in einer angemessenen Weise beteiligt wird; die, soweit möglich, seine ursprüngliche Beteiligung und die aus ihr fließenden Rechte wiederherstellt.

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ARTICLE 23

Enforcement of the Principles Set Forth in Article 22

The Restitution Chamber shall take all measures necessary and appropriate to effectuate the rights granted to the claimant under Article 22, provided his claims under Article 29 et seq. do not result in sufficient indemnification within the purview of Article 22. To that end the Restitution Chamber shall order, if necessary, the cancellation, new issue or exchange of shares, participation certificates, interim certificates, and other instruments evidencing a participation; or the establishment of a partnership relation between the claimant and the enterprise as described in Article 22, and it shall order the performance of any act required by law in order to effectuate those rights. These measures shall be taken primarily at the expense of those who are liable to make restitution according to the principles of this Law. If such measures would affect any other shareholder they shall be ordered only to the extent to which such other shareholder benefited directly or indirectly from the confiscation in connection with the facts as described in Article 22; or if the enterprise itself would be liable to make restitution or to damages under this Law or under the generally applicable rules of law, especially on the principle of *respondet superior*.

ARTICLE 24

Other Enterprises

The provisions of Articles 22 and 23 shall be applicable if the object of the confiscation was a business owned by an individual; or a participation in a partnership or a limited partnership; or a personal participation in a limited partnership corporation (Kommanditgesellschaft auf Aktien); or a share in an association with limited liability (Gesellschaft mit beschränkter Haftung) or in a cooperative; or a share of a similar legal nature.

ARTICLE 25

Service

Insofar as it may become necessary pursuant to Articles 22 to 24 to make service on any unknown associate or on any associate whose present address is unknown, service shall be made by publication pursuant to Article 61.

ARTICLE 26

Delivery of a Substitute in Lieu of Restitution

1. Where subsequent to the confiscation the object otherwise subject to restitution has undergone fundamental changes considerably enhancing its value, the Restitution Chamber may order the delivery of an adequate substitute in lieu of restitution; in determining the adequacy of the substitute the Restitution Chamber shall consider the value of the property at the time of the confiscation and the equitable interests of the parties. The claimant may, however, demand the assignment of an appropriate share in the property unless the restitutor offers a substitute of similar nature and of like value. The claimant may avail himself of the provisions of the first and second sentence above, even if the fundamental change did not result in a considerable enhancement of the value of the object.

2. The restitutor shall not be entitled to benefits of the provisions of paragraph 1 if he had acquired the object by way of an aggravated confiscation within the meaning of Article 30, or if he knew or should have known under the circumstances at the time the fundamental changes were made that the object at any time had been obtained by way of an aggravated confiscation.

3. Where the restitutor has combined the object subject to restitution with another object as an essential part thereof, he may separate the latter object and appropriate it. In this case, he shall restore the object to its former condition at his own expense. Where the claimant obtained possession of the combined objects prior to the separation he shall be required to permit the separation; he may, however,

ARTIKEL 23

Durchführung des Grundsatzes des Artikels 22

Die Wiedergutmachungskammer hat, soweit die Ansprüche des Berechtigten auf Grund der Artikel 29 ff. nicht zu einer im Sinne des Artikels 22 ausreichenden Wiedergutmachung führen, alle Maßnahmen zu treffen, die notwendig und geeignet sind, die dem Berechtigten in Artikel 22 eingeräumten Rechte zu verwirklichen. Sie hat zu diesem Zweck insbesondere nötigenfalls die Einziehung und Neuausgabe oder den Austausch von Aktien, Anteilscheinen, Zwischenscheinen und sonstigen Beteiligungspapieren oder die Begründung eines Gesellschaftsverhältnisses zwischen dem Berechtigten und dem in Artikel 22 bezeichneten Unternehmen sowie die Vornahme der zur Verwirklichung der Rechte gesetzlich vorgeschriebenen Handlungen anzuordnen. Diese Maßnahmen haben grundsätzlich zu Lasten derjenigen zu erfolgen, die bei entsprechender Anwendung der Vorschriften dieses Gesetzes rückerstattungspflichtig erscheinen. Zu Lasten sonstiger Anteilsberechtigter an dem Unternehmen sollen solche Maßnahmen nur insoweit angeordnet werden, als diese Anteilsberechtigten aus der Entziehung in Verbindung mit dem in Artikel 22 bezeichneten Sachverhalt mittelbar oder unmittelbar Nutzen gezogen haben oder das Unternehmen selbst auf Grund von Vorschriften dieses Gesetzes oder des bürgerlichen Rechts dem Berechtigten zur Herausgabe oder zum Schadensersatz verpflichtet ist, insbesondere für ein Handeln seiner Organe einzustehen hat.

ARTIKEL 24

Sonstige Unternehmen

Die Bestimmungen der Artikel 22, 23 finden entsprechende Anwendung, wenn eine Einzelfirma oder die Beteiligung an einer Offenen Handelsgesellschaft oder Kommanditgesellschaft oder die persönliche Beteiligung an einer Kommanditgesellschaft auf Aktien oder der Anteil an einer Gesellschaft mit beschränkter Haftung oder an einer Genossenschaft oder Anteile ähnlicher rechtlicher Art Gegenstand der Entziehung gewesen sind.

ARTIKEL 25

Zustellung

Soweit in den Fällen der Artikel 22 bis 24 eine Zustellung an unbekannte Gesellschafter oder an Gesellschafter, deren gegenwärtige Adresse unbekannt ist, notwendig wird, erfolgt dieselbe durch öffentliche Zustellung gemäß Artikel 61.

ARTIKEL 26

Ersatzleistung bei Veränderung einer Sache

1. Wäre eine Sache zurückzuerstatten, die nach der Entziehung wesentlich verändert worden ist und dadurch eine erhebliche Wertsteigerung erfahren hat, so kann die Wiedergutmachungskammer unter Berücksichtigung der berechtigten Interessen der Beteiligten eine nach dem Wert der Sache zur Zeit der Entziehung angemessene Ersatzleistung an Stelle der Rückerstattung anordnen. Der Berechtigte kann jedoch die Einräumung von Miteigentum zu angemessenem Bruchteil verlangen, es sei denn, daß der Rückerstattungspflichtige sich zur Ersatzleistung durch Übertragung ähnlicher gleichwertiger Vermögensgegenstände erbiertet. Die Bestimmungen der Sätze 1 und 2 gelten zu Gunsten des Berechtigten auch dann, wenn durch die wesentliche Veränderung der Sache eine erhebliche Wertsteigerung nicht eingetreten ist.

2. Der Rückerstattungspflichtige kann sich auf die Bestimmungen des Absatz 1 nicht berufen, wenn er die Sache mittels einer schweren Entziehung im Sinne des Artikels 30 erlangt hat oder im Zeitpunkt der Vornahme der wesentlichen Veränderung wußte oder den Umständen nach annehmen mußte, daß die Sache zu irgendeiner Zeit durch eine schwere Entziehung erlangt worden war.

3. Hat der Rückerstattungspflichtige mit der zurückzuerstattenden Sache eine andere Sache als wesentlichen Bestandteil verbunden, so kann er sie abtrennen und sich aneignen. Er hat im Falle der Wegnahme die Sache auf seine Kosten in den vorigen Stand zu setzen. Erlangt der Berechtigte den Besitz der Sache, so ist er verpflichtet, die Abtrennung zu gestatten; er kann die Gestattung ver-

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withhold his consent unless security is given to save him harmless from any damage resulting from the separation. The restitutor shall not have the privilege of separation if he is not entitled to compensation for expenditures according to the provisions of this Law; or if he is indemnified at least for the value which the separable part of the object would have to him after separation.

4. In determining whether property has been enhanced in value within the meaning of paragraph 1, sentence 1, only such enhancement in value for which the restitutor may claim compensation under the provisions of this Law shall be taken into account.

ARTICLE 27

Restitution of an Aggregate of Properties

1. The claimant may not limit his demand for restitution to separate items out of an aggregate of properties if the aggregate can be returned as a whole and if the limitation of the restitution to separate items would inequitably prejudice the restitutor or the creditors.

2. The claimant may refuse to include in his petition any claim against a public agency falling within the scope of Article 1 of the Laws on Judicial Aid for the Equitable Settlement of Contracts, as uniformly enacted, with the consent of the Laenderrat, in Bavaria, Hesse, and Wuerttemberg-Baden, where such claims are among the assets of a commercial enterprise or of any other aggregate of property subject to restitution.

ARTICLE 28

Protection of Debtors

Until notified of the filing of the petition for restitution, the debtor of a confiscated claim may discharge his obligation by payment to the restitutor. The same rule shall apply in favor of a debtor who prior to the entry in the Land Title Register (Grundbuch) of an objection to its correctness or a notice of restitution makes a payment to a restitutor entered in the Land Title Register.

PART V

COMPENSATION AND ANCILLARY CLAIMS

ARTICLE 29

Subrogation

1. Upon request of the claimant, a former holder of confiscated property who would be liable to restitution if he were still holding it shall turn over any compensation or assign any claim for indemnification which he might have acquired in connection with the event preventing the return of such property. Whatever the claimant receives from one of several restitutors shall be credited against the claims he holds against the remaining ones.

2. The same shall apply with respect to any compensation or any claim for compensation which the holder or former holder of confiscated property acquired in connection with deterioration of such property.

3. In case of the confiscation of a business enterprise the claim for restitution shall extend to the assets acquired after the confiscation, unless the restitutor shows that such assets were not paid for with funds of the enterprise. If the purchase was paid for out of the funds of the enterprise, a corresponding increase in the value of the business shall be deemed to constitute profits within the meaning of Articles 30, 32, and 33. This rule shall be applicable also to any other aggregate of property. If the purchase was not made with funds of the enterprise the restitutor shall have the privilege of separation as set forth in Article 26, paragraph 3, provided, however, that the claimant shall have the privilege of taking over the property pursuant to Article

weigern, bis ihm für den mit der Abtrennung verbundenen Schaden Sicherheit geleistet wird. Das Recht zur Abtrennung ist ausgeschlossen, wenn der Rückerstattungspflichtige nach den Bestimmungen dieses Gesetzes für die Verwendung Ersatz nicht verlangen kann oder ihm mindestens der Wert ersetzt wird, den der Bestandteil nach der Abtrennung für ihn haben würde.

4. Bei der Bestimmung, ob ein Vermögensgegenstand eine Wertsteigerung im Sinne des Absatz 1, Satz 1 erfahren hat, dürfen Wertsteigerungen, für die der Rückerstattungspflichtige nach Maßgabe der Bestimmungen dieses Gesetzes keinen Ersatz verlangen kann, zu Gunsten des Rückerstattungspflichtigen nicht berücksichtigt werden.

ARTIKEL 27

Rückerstattung eines Inbegriffs von Gegenständen

1. Der Berechtigte kann die Rückerstattung einzelner Vermögensgegenstände aus einem entzogenen Inbegriff von Gegenständen nicht verlangen, wenn der Inbegriff zurückerstattet werden kann und die Beschränkung der Rückerstattung auf einzelne Vermögensgegenstände zu einer unbilligen Schädigung des Rückerstattungspflichtigen oder der Gläubiger führen würde.

2. Befinden sich unter den Aktiven eines zurückzuerstattenden geschäftlichen Unternehmens oder sonstigen Vermögensinbegriffs Forderungen gegen die öffentliche Hand im Sinne des Artikels 1 der mit Zustimmung des Länderrats einheitlich in den Ländern Bayern, Hessen und Württemberg-Baden erlassenen Vertragshilfegesetze, so ist der Berechtigte befugt, deren Übernahme abzulehnen.

ARTIKEL 28

Schuldnerschutz

Ist eine Forderung entzogen worden, so kann der Schuldner mit befreiender Wirkung an den Rückerstattungspflichtigen leisten, bis ihm die Anmeldung des Rückerstattungsanspruchs bekanntgegeben wird. Das gleiche gilt für denjenigen, der bis zur Eintragung des Rückerstattungsvermerks oder eines Widerspruchs gegen die Richtigkeit des Grundbuchs an einen im Grundbuch eingetragenen Rückerstattungspflichtigen leistet.

FÜNFTER ABSCHNITT

ERSATZ- UND NEBENANSPRÜCHE

ARTIKEL 29

Ersatz

1. Ein früherer Inhaber des entzogenen Vermögensgegenstandes, der rückerstattungspflichtig sein würde, wenn er noch Inhaber wäre, hat auf Verlangen des Berechtigten den Ersatz herauszugeben oder den Ersatzanspruch abzutreten, den er infolge des die Rückerstattung unmöglich machenden Umstandes erlangt hat. Der Berechtigte muß sich das, was er von einem von mehreren Verpflichteten erlangt hat, auf seine Ansprüche gegen die übrigen Verpflichteten anrechnen lassen.

2. Das gleiche gilt hinsichtlich des Ersatzes oder Ersatzanspruches, den der Inhaber oder ein früherer Inhaber des entzogenen Vermögensgegenstandes für eine Verschlechterung desselben erlangt hat.

3. Im Falle der Entziehung eines geschäftlichen Unternehmens erstreckt sich der Rückerstattungsanspruch auch auf die nach der Entziehung für das Unternehmen neu beschafften Vermögensgegenstände, es sei denn, daß der Rückerstattungspflichtige nachweist, daß die Neubeschaffung nicht mit Mitteln des Unternehmens erfolgt ist. Ist die Neubeschaffung von Vermögensgegenständen mit Mitteln des Unternehmens erfolgt, so gilt eine dadurch eingetretene Steigerung des Wertes des Unternehmens gegenüber dem Zeitpunkt der Entziehung als Nutzung im Sinne der Artikel 30, 32, 33. Die Bestimmungen gelten entsprechend für einen sonstigen Inbegriff von Vermögensgegenständen. Soweit die Beschaffung nicht mit Mitteln des Unternehmens erfolgt ist, steht dem Rückerstattungspflichtigen das Recht zur Abtrennung nach Artikel 26, Absatz 3 zu mit der Maßgabe, daß der Berechtigte das Übernahmerecht des Artikels 26, Absatz

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26, paragraph 3, third sentence only if otherwise the operation of the enterprise would be hampered considerably.

4. Any claims of the claimant pursuant to Article 30 et seq. which are more extensive shall remain unaffected.

ARTICLE 30
Strict Liability

1. Any person who has obtained the confiscated property from the persecuted person through a transaction *contra bonos mores* or as the result of threats made by him or on his behalf, or by an unlawful taking or other tort (hereinafter referred to as aggravated confiscation), shall be liable under the general rules of the Civil Code governing tort liability for damages arising from failure to return such property on the ground of impossibility or from deterioration and also for surrender of profits and for any other indemnification provided therein.

2. The possessor or former possessor of confiscated property shall be subject to the same liability if he knew or should have known under the circumstances (within the meaning of Section 259 of the Penal Code) at the time he acquired the property that it had been obtained at any time by way of an aggravated confiscation.

3. If the claimant is entitled to profits he may demand that they be computed on the basis of the usual rate of profits for that particular type of property, such rate to be specified by an implementing regulation, unless it is manifest in an individual case that these standard rules are substantially inappropriate.

ARTICLE 31
Mitigated Liability

1. Any holder or former holder of confiscated property who acquired the property by means of a confiscation not constituting an aggravated confiscation within the meaning of Article 30, paragraph 1, (hereinafter referred to as simple confiscation) shall be liable in damages if he is unable to return the property or if it has deteriorated, unless he can prove that he has exercised due diligence.

2. Any holder or former holder shall be similarly liable from the time when he knew, or should have known under the circumstances, that the property at any time had been obtained by way of a confiscation within the meaning of this Law.

3. Where real property or any interest in the nature of real property has been confiscated, a possessor or former possessor shall be liable according to paragraph 1, unless he shows that because of unusual circumstances he neither knew, nor should have known under the circumstances that the property at any time had been obtained by way of confiscation within the meaning of this Law.

ARTICLE 32
Return of Profits in Case of Simple Confiscation

1. Any holder or former holder of confiscated property who at any time obtained such property by way of a simple confiscation shall pay the claimant adequate compensation for the period of time in which such holder enjoyed the profits of the property. Article 31, paragraphs 2 and 3, shall be applicable.

2. The amount of the net profits of the property less the amount of an adequate remuneration for management of the property by the restitutor shall be deemed to be an adequate compensation. The remuneration for management shall not exceed 50% of the net profits drawn from the property, except where relatively small amounts are involved. Profits which the restitutor willfully diminished or neglected to draw shall be added. Taxes paid on the net income drawn from the property and the interest on the purchase price paid by the restitutor shall adequately be taken into consideration. Paragraph 3 of Article 30 shall be applicable.

3, Satz 3 nur dann geltend machen kann, wenn ohne dieses Recht der Betrieb des Unternehmens besonders beeinträchtigt würde.

4. Weitergehende Ansprüche des Berechtigten auf Grund der Artikel 30 ff. bleiben unberührt.

ARTIKEL 30
Strenge Haftung

1. Wer den entzogenen Vermögensgegenstand von dem Verfolgten mittels eines gegen die guten Sitten verstößenden Rechtsgeschäfts oder durch eine von ihm oder zu seinen Gunsten ausgeübte Drohung oder durch widerrechtliche Wegnahme oder sonstige unerlaubte Handlung erlangt hat (schwere Entziehung), haftet auf Schadensersatz wegen Unmöglichkeit der Herausgabe oder Verschlechterung des entzogenen Vermögensgegenstandes, auf Herausgabe von Nutzungen und auf sonstigen Schadensersatz nach den allgemeinen Vorschriften des bürgerlichen Rechts über den Schadensersatz wegen unerlaubter Handlung.

2. Ebenso haftet ein Inhaber oder früherer Inhaber des entzogenen Vermögensgegenstandes, der bei dem Erwerb desselben wußte oder den Umständen nach annehmen mußte (§ 259 des RStGB), daß dieser zu irgendeiner Zeit durch eine schwere Entziehung erlangt worden war.

3. Soweit ein Anspruch auf Herausgabe von Nutzung besteht, kann der Berechtigte verlangen, daß für deren Berechnung ein durch Ausfuhrungsvorschriften zu bestimmender, für derartige Vermögensgegenstände üblicher Nutzungssatz zugrundegelegt wird, sofern nicht diese Richtsätze im Einzelfall offenbar in erheblichem Maße unangemessen sind.

ARTIKEL 31
Gemilderte Haftung

1. Auf Schadensersatz wegen Unmöglichkeit der Herausgabe oder Verschlechterung des entzogenen Vermögensgegenstandes haftet auch der Inhaber oder ein früherer Inhaber des entzogenen Vermögensgegenstandes, welcher diesen durch eine nicht den Tatbestand des Artikels 30, Absatz 1 erfüllende Entziehung (einfache Entziehung) erworben hat, es sei denn, daß er nachweist, daß er die im Verkehr erforderliche Sorgfalt angewendet hat.

2. Ebenso haftet der Inhaber oder ein früherer Inhaber von dem Zeitpunkt an, von dem er weiß oder den Umständen nach annehmen mußte, daß der Vermögensgegenstand zu irgendeiner Zeit durch eine Entziehung im Sinne dieses Gesetzes erlangt worden ist.

3. Im Falle der Entziehung eines Grundstücks oder grundstücksgleichen Rechtes haftet der Inhaber oder ein früherer Inhaber nach Absatz 1, sofern er nicht nachweist, daß er infolge besonderer Umstände weder wußte, noch den Umständen nach annehmen mußte, daß der Vermögensgegenstand zu irgendeiner Zeit durch eine Entziehung im Sinne dieses Gesetzes erlangt worden ist.

ARTIKEL 32
Herausgabe von Nutzungen bei einfacher Entziehung

1. Der Inhaber oder ein früherer Inhaber des entzogenen Vermögensgegenstandes, welcher diesen zu irgendeiner Zeit durch eine einfache Entziehung erlangt hat, hat für die Zeit, in der er Nutzungen des Vermögensgegenstandes gezogen hat, dem Berechtigten eine angemessene Vergütung zu entrichten. Die Bestimmungen des Artikels 31, Absatz 2 und 3 gelten entsprechend.

2. Als angemessen gilt der Betrag der gezogenen reinen Nutzungen, abzüglich eines angemessenen Entgeltes für die Geschäftsführung des Verpflichteten. Das Entgelt für die Geschäftsführung soll 50% der gezogenen Reinnutzungen nicht übersteigen, es sei denn, daß es sich um kleinere Beträge handelt. Nutzungen, die der Verpflichtete böswillig nicht gezogen oder vermindert hat, sind hinzuzurechnen. Die aus dem Reinertrag des Vermögensgegenstandes entrichteten Steuern und die Verzinsung des vom Verpflichteten für den Erwerb des Vermögensgegenstandes entrichteten Entgeltes sind angemessen zu berücksichtigen. Artikel 30, Absatz 3 gilt entsprechend.

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ARTICLE 33

Release from Liability

1. A holder or former holder of confiscated property shall not be liable in damages if he is unable to return the property or because the property has deteriorated, nor shall he be liable to account for profits, as long as he neither knew, nor should have known under the circumstances, that the property at any time had been obtained by way of confiscation. The provisions of Article 31, paragraph 3, shall remain unaffected.

2. Profits which under rules of good husbandry are not to be regarded as income from such property shall be returned in any event, pursuant to the rules of the Civil Code on unjust enrichment.

3. Under no circumstances shall remuneration for management be paid for a period for which the claimant cannot claim an accounting for profits.

ARTICLE 34

Compensation for Expenditures

1. Ordinary expenses for the maintenance of property subject to restitution shall not be refunded; they may, however, be taken into consideration in determining the net profits under Articles 30 and 32.

2. For other necessary expenditures compensation may be demanded to the extent that such expenditures should not have been written off in the course of proper management of the confiscated property.

3. For other than necessary expenditures the restitutor may demand compensation only to the extent that such expenditures should not have been written off in the course of proper management of the confiscated property and only to the extent to which the value of the property is still enhanced by such expenditures at the time of the restitution. In this case the liability of the claimant shall be limited to the restituted property and any other compensation to which he is entitled under this Law. The exercise of the claimant's privileges of limiting his liability shall be governed by Sections 1990 and 1991 of the Civil Code.

4. A person who at any time obtained the confiscated property by way of an aggravated confiscation may demand compensation only for necessary expenditures under the conditions set forth in paragraph 2 hereof and under the further condition that such expenditures were in the claimant's interest. The same rule shall apply to any holder or former holder of the confiscated property from the time when he knew, or should have known under the circumstances, that the property at any time has been obtained by way of an aggravated confiscation.

5. Where the provision of Article 26, paragraph 1, are found to be applicable, no compensation can be claimed for any expenditures which resulted in a fundamental change substantially enhancing the value of the property within the meaning of Article 26, paragraph 1.

ARTICLE 35

Duty to Furnish Particulars

The parties shall be liable to furnish particulars, where such information is necessary to effectuate claims under this Law. Sections 259 to 261 of the Civil Code shall be applicable.

ARTICLE 36

Title to Increase

The provisions of the Civil Code shall be applicable to the acquisition of title to the produce and other increase of confiscated property. Where the possessor or former possessor did not obtain the property by way of an aggravated confiscation, he shall be deemed to be the owner of the produce and other increase of the confiscated property, without prejudice, however, to his obligation to return any profits.

ARTIKEL 33

Haftungsausschluß

1. Der Inhaber oder ein früherer Inhaber eines entzogenen Vermögensgegenstandes ist zum Schadensersatz wegen Unmöglichkeit der Herausgabe oder wegen Verschlechterung des entzogenen Vermögensgegenstandes und zur Vergütung gezogener Nutzungen für die Zeit nicht verpflichtet, während der er weder wußte noch den Umständen nach annehmen mußte, daß der Gegenstand zu irgendeiner Zeit durch eine Entziehung erlangt worden ist. Die Bestimmung des Artikels 31, Absatz 3 bleibt unberührt.

2. Nutzungen, die nach den Regeln einer ordnungsmäßigen Wirtschaft nicht als Ertrag der Sache anzusehen sind, sind in jedem Falle nach den Vorschriften des Bürgerlichen Gesetzbuches über die Herausgabe einer ungerechtfertigten Bereicherung herauszugeben.

3. Für einen Zeitraum, für welchen der Berechtigte keine Nutzungen beanspruchen kann, wird ein Entgelt für Geschäftsführung in keinem Falle gewährt.

ARTIKEL 34

Verwendungsansprüche

1. Gewöhnliche Erhaltungskosten für den zurückzuerstehenden Vermögensgegenstand sind unbeschadet ihrer Berücksichtigung bei Ermittlung der Reinnutzungen nach Artikel 30 und 32 nicht zu ersetzen.

2. Für sonstige notwendige Verwendungen kann Ersatz insoweit verlangt werden, als sie bei ordnungsmäßiger Bewirtschaftung des entzogenen Vermögensgegenstandes noch nicht als abgeschrieben zu gelten haben.

3. Für andere als notwendige Verwendungen kann der Rückerstattungspflichtige Ersatz nur insoweit verlangen, als sie bei ordnungsmäßiger Bewirtschaftung des entzogenen Vermögensgegenstandes noch nicht als abgeschrieben zu gelten haben und durch die Verwendungen der Wert der Sache noch zur Zeit der Rückerstattung erhöht ist. Die Haftung des Berechtigten beschränkt sich in diesem Falle auf den zurückerstatteten Vermögensgegenstand und die sonstigen ihm aus der Rückerstattung zustehenden Ansprüche. Für die Geltendmachung der Haftungsbeschränkung finden die Vorschriften der §§ 1990, 1991 BGB entsprechende Anwendung.

4. Wer den entzogenen Vermögensgegenstand zu irgendeiner Zeit mittels einer schweren Entziehung erlangt hat, kann Ersatz nur für notwendige Verwendungen unter den Voraussetzungen des Absatz 2 und unter der weiteren Voraussetzung verlangen, daß die Verwendungen dem Interesse des Berechtigten entsprachen. Dasselbe gilt für den Inhaber oder einen früheren Inhaber des entzogenen Vermögensgegenstandes von dem Zeitpunkt an, von dem er wußte oder den Umständen nach annehmen mußte, daß der Vermögensgegenstand zu irgendeiner Zeit mittels einer schweren Entziehung erlangt worden war.

5. Für Verwendungen, die zu einer wesentlichen Veränderung und dadurch zu einer erheblichen Wertsteigerung einer Sache im Sinne des Artikels 26, Absatz 1 geführt haben, kann kein Ersatz verlangt werden, wenn die Bestimmungen des Artikels 26, Absatz 1 Anwendung finden.

ARTIKEL 35

Auskunftspflicht

Soweit es zur Geltendmachung von Ansprüchen auf Grund dieses Gesetzes notwendig ist, sind die Beteiligten einander zur Auskunftserteilung verpflichtet. Die Bestimmungen der §§ 259—261 BGB finden entsprechende Anwendung.

ARTIKEL 36

Eigentumserwerb an Früchten

Für den Erwerb des Eigentums an Erzeugnissen und sonstigen zu den Früchten der entzogenen Sache gehörenden Bestandteilen gelten die Bestimmungen des Bürgerlichen Gesetzbuches. Hat ein Besitzer oder früherer Besitzer die Sache auf andere Weise als mittels einer schweren Entziehung erlangt, so gilt er unbeschadet seiner Verpflichtung zur Herausgabe von gezogenen Nutzungen als Eigentümer der Erzeugnisse und sonstiger zu den Früchten der entzogenen Sache gehörenden Bestandteile.

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PART VI
CONTINUED EXISTENCE OF INTERESTS
AND LIABILITY FOR DEBTS

ARTICLE 37

Continued Existence of Interests

1. Any interest in the confiscated property shall continue to be effective to the extent to which it existed prior to the act constituting the confiscation, and insofar as it has not been extinguished or discharged thereafter. The same shall apply to any interest created at a later date to the extent to which the total amount of all claims (principal and accessory claims) does not exceed the total amount of all such claims as they existed prior to the act constituting the confiscation (hereinafter referred to as limit of encumbrances). An interest which does not involve payment of money shall continue to be effective only where an interest of the same kind already existed prior to the confiscation and the interest subsequently created is not more burdensome than that existing at the time of the confiscation, or where such interest would have come into existence even though the property had not been confiscated.

2. The limit of encumbrances shall be raised to the extent to which any interest of a third person results from expenditures for which the restitutor may claim compensation pursuant to Article 34. Any other interest of a third person which exceeds the limit of encumbrances set forth in paragraph 1 of this Article and which results from expenditures for which the restitutor cannot claim compensation pursuant to Article 34 shall be extinguished, unless at the time of the restitution the value of the object is still increased correspondingly as the result of the expenditure and the third person shows that he neither knew, nor should have known under the circumstances that the property had been obtained by way of an aggravated confiscation.

3. Interests in the property subject to restitution which, in connection with the confiscation, had been created in favor of the claimant or his predecessor in interest shall continue to be effective irrespective of the limit of encumbrances. This shall be without prejudice to any claim of the claimant for the restitution of such interests in case they had been confiscated.

4. Interests resulting from the conversion of the Home-Rent Tax, with the exception of overdue payments, shall continue to be effective irrespective of the limit of encumbrances

ARTICLE 38

Devolving of Encumbrances

If real property has been encumbered by any transaction, legal act, or any governmental act constituting a confiscation within the meaning of this Law, such an encumbrance shall devolve on the claimant and shall not be considered in computing the limit of encumbrances as provided in Article 37. This shall apply particularly to encumbrances which were entered in the Land Title Register (Grundbuch) in connection with the Capital Flight Tax, the Property Tax on Jews and similar enactments.

ARTICLE 39

Personal Liability

If, prior to the confiscation of real property, the claimant or his predecessor in interest was personally liable in respect of any debt which was secured by a mortgage, land charge (Grundschuld) or annuity charge (Rentenschuld) on the real property, he shall assume personal liability at the time of recovery of title to the extent to which the mortgage, land charge or annuity charge continues to be effective under the preceding provisions. The same shall apply in case of obligations in regard to which the restitutor may demand to be released pursuant to Article 34 of this Law and Section 257 of the Civil Code. The same shall apply also in the case of liabilities which continue to be effective according to Article 37, paragraph 1, second sentence, and which replace charges for which the claimant or his predecessor in interest had been personally liable.

SECHSTER ABSCHNITT
FORTBESTAND VON RECHTEN UND HAFTUNG
FÜR VERBINDLICHKEITEN

ARTIKEL 37

Fortbestand von Rechten

1. Rechte an dem entzogenen Vermögensgegenstand bleiben bestehen, soweit sie bestanden haben, bevor die die Entziehung darstellende Handlung vorgenommen worden ist, und sie seither nicht getilgt oder abgelöst worden sind. Das Gleiche gilt für später entstandene Rechte, soweit die Gesamtsumme aller Haupt- und Nebenforderungen nicht höher ist als die Gesamtsumme aller Haupt- und Nebenforderungen, die bestanden haben, bevor die Entziehung vorgenommen worden ist (Belastungsgrenze). Rechte, die nicht auf Zahlung von Geld gerichtet sind, bleiben nur dann bestehen, wenn gleichartige Rechte vor der Entziehung bereits bestanden haben und die später entstandenen Rechte nicht lästiger sind als die zur Zeit der Entziehung bestehenden Rechte, oder wenn die Rechte auch ohne die Entziehung entstanden wären.

2. Die Belastungsgrenze erhöht sich, soweit Rechte Dritter aus Verwendungen herrühren, für die der Rückerstattungspflichtige gemäß Artikel 34 Ersatz verlangen kann. Sonstige die Belastungsgrenze des Absatz 1 übersteigende Rechte Dritter, die aus Verwendungen herrühren, für die der Rückerstattungspflichtige gemäß Artikel 34 Ersatz nicht verlangen kann, erlöschen, es sei denn, daß der Wert der Sache zur Zeit der Rückerstattung durch die Verwendung noch entsprechend erhöht ist und der Dritte nachweist, daß er weder wußte noch den Umständen nach annehmen mußte, daß die Sache mittels einer schweren Entziehung erlangt war.

3. Rechte, die für den Berechtigten oder seinen Rechtsvorgänger an dem zurückzuerstattenden Vermögensgegenstand anlässlich der Entziehung begründet waren, bleiben ohne Rücksicht auf die Belastungsgrenze bestehen. Ansprüche des Berechtigten auf Rückerstattung derartiger Rechte, soweit sie ihm entzogen worden sind, bleiben unberührt.

4. Rechte, die aus der Abgeltung der Hauszinssteuer herrühren, mit Ausnahme des Rechtes auf rückständige Leistungen, bleiben ohne Rücksicht auf die Belastungsgrenze unberührt.

ARTIKEL 38

Übergang von Rechten

Wenn ein Grundstück durch ein eine Entziehung im Sinne dieses Gesetzes darstellendes Rechtsgeschäft, Rechtshandlung oder Staatsakt belastet worden ist, so geht das Recht aus einer solchen Belastung auf den Berechtigten über und ist bei Berechnung der in Artikel 37 vorgesehenen Belastungsgrenze nicht zu berücksichtigen. Dies gilt insbesondere für Rechte, die im Zusammenhang mit der Reichsfluchtsteuer, Judenvermögensabgabe und ähnlichen Maßnahmen im Grundbuch eingetragen sind.

ARTIKEL 39

Schuldübernahme

Soweit der Berechtigte oder sein Rechtsvorgänger vor der Entziehung eines Grundstücks persönlicher Schuldner einer Forderung war, für die an dem Grundstück eine Hypothek, Grundschuld oder Rentenschuld bestellt worden war, übernimmt der Berechtigte mit der Wiedererlangung des Eigentums die persönliche Schuld, insoweit als die Hypothek, Grundschuld oder Rentenschuld nach den vorstehenden Bestimmungen bestehen bleibt. Das gleiche gilt, soweit es sich um Verbindlichkeiten handelt, bezüglich deren der Rückerstattungspflichtige Befreiung gemäß Artikel 34 dieses Gesetzes, § 257 BGB. verlangen kann. Das gleiche gilt ferner bei Verbindlichkeiten, die nach Artikel 37, Absatz 1, Satz 2 bestehen bleiben und an Stelle von Verbindlichkeiten getreten sind, für die der Berechtigte oder sein Rechtsvorgänger persönlicher Schuldner gewesen war.

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ARTICLE 40

Demand for Assignment

1. The claimant may demand the assignment to him, without compensation, of any mortgage, land charge or annuity charge against real property subject to restitution which is held by any holder or former holder of such property who at any time obtained the property by way of an aggravated confiscation. This shall not apply to the personal debt on which the mortgage is based. Any interest created prior to the confiscation shall be subject to the provisions of Article 46, paragraph 3.
2. The provisions of this Article shall not apply to encumbrances created pursuant to the provisions of this Law.

ARTICLE 41

Liability for Debts of a Business Enterprise

1. If the claimant recovers a business enterprise or another aggregate of properties, the creditors holding debts incurred in the operation of the enterprise or obligations with which the aggregate of properties has been encumbered may, from the time of the recovery, also assert against the claimant such claims as existed at such time.
2. In this case the liability of the claimant shall be limited to the restituted property and any other compensation to which he is entitled under this Law. The claimant's privilege of limiting his liability shall be governed by Sections 1990 and 1991 of the Civil Code.
3. The claimant shall not be liable under paragraphs 1 and 2 to the extent to which the total amount of liabilities exceeds the limit of encumbrances to be computed in an analogous application of Article 37, and insofar as the excess in the amount of liabilities is not covered by an excess of assets resulting from the application of Article 29, paragraph 3. In such case the Restitution Chamber, in its equitable discretion, shall take the requisite measures in analogous application of Article 37. Debts held by creditors who neither knew nor should have known under the circumstances that the business enterprise or other aggregate of properties at any time had been obtained by way of confiscation within the meaning of this Law shall have preference. Liabilities of equal priority shall be reduced pro rata, if necessary.

ARTICLE 42

Leases

1. If a restitutor or any former possessor has leased real property to a third person, the claimant may terminate the lease by giving notice, the termination to become effective on the date prescribed by Law. Such notice cannot be given until the Restitution Authority has determined that the property is subject to restitution, and such determination is no longer subject to appeal, or until the fact that the property is subject to restitution has been acknowledged in any other way. The notice must be given within three months from such date, or from the date when the claimant in fact takes possession of the real property, if he takes possession at a later date.
2. The provisions of the Law for the Protection of Tenants (Mieterschutzgesetz) in the version of 15 December 1942 (RGBl. I, page 712) shall not apply to any restitutor or his predecessor in interest who obtained the property subject to restitution by way of an aggravated confiscation or who, at the time he acquired the property, knew, or should have known under the circumstances, that the property at any time had been obtained by way of an aggravated confiscation. The provisions of the Law for the Protection of Tenants shall also not apply insofar as the claimant is in need of adequate dwelling space for himself or his close relatives. Similarly, the Law for the Protection of Tenants shall not apply if dwelling space, which at the time of the

ARTIKEL 40

Übertragungsanspruch

1. Der Berechtigte kann verlangen, daß ihm eine an dem zurückzuerstattenden Grundstück eingetragene Hypothek, Grundschuld oder Rentenschuld, die einem Besitzer oder früheren Besitzer des Grundstücks zusteht, der dieses zu irgendeiner Zeit mittels einer schweren Entziehung erlangt hatte, entschädigungslos übertragen wird. Dies gilt nicht bezüglich der der Hypothek zugrundeliegenden persönlichen Forderung. Bei Rechten, die vor der Entziehung begründet worden waren, findet Artikel 46, Absatz 3 entsprechende Anwendung.
2. Absatz 1 findet keine Anwendung auf Belastungen, die gemäß den Vorschriften dieses Gesetzes einzutragen sind.

ARTIKEL 41

Haftung für Geschäftsverbindlichkeiten

1. Erlangt der Berechtigte ein geschäftliches Unternehmen oder einen sonstigen Vermögensbegriff zurück, so können die Gläubiger der im Betrieb des Unternehmens begründeten oder auf dem sonstigen Vermögensbegriff lastenden Verbindlichkeiten von dem Zeitpunkt der Wiedererlangung an ihre zu dieser Zeit bestehenden Ansprüche auch gegen den Berechtigten geltend machen.
2. Die Haftung des Berechtigten beschränkt sich auf den zurückerstatteten Vermögensgegenstand und die sonstigen ihm aus der Rückerstattung zustehenden Ansprüche. Für die Geltendmachung der Haftungsbeschränkung finden die Vorschriften der §§ 1990, 1991 BGB. entsprechende Anwendung.
3. Die Haftung des Berechtigten gemäß Absatz 1 und 2 tritt nicht ein, soweit der Gesamtbetrag der Verbindlichkeiten die in entsprechender Anwendung des Artikels 37 zu errechnende Belastungsgrenze übersteigt und der übersteigende Betrag der Verbindlichkeiten auch nicht durch einen nach Artikel 29, Absatz 3 sich ergebenden Mehrbetrag der Aktiven gedeckt erscheint. Die Wiedergutmachungskammer trifft in diesem Falle nach billigem Ermessen die erforderlichen Maßnahmen in sinngemäßer Anwendung des Artikels 37. Hierbei gehen Verbindlichkeiten, deren Gläubiger beim Erwerb der Forderung weder wußten noch den Umständen nach annehmen mußten, daß das Unternehmen oder der sonstige Vermögensbegriff zu irgendeiner Zeit durch eine Entziehung im Sinne dieses Gesetzes erlangt worden war, grundsätzlich anderen Verbindlichkeiten vor. Bei gleichrangigen Verbindlichkeiten findet, soweit erforderlich, eine Kürzung nach dem Verhältnis ihrer Beträge statt.

ARTIKEL 42

Miet- und Pachtverhältnisse

1. Hat der Rückerstattungspflichtige oder ein früherer Besitzer ein Grundstück an einen Dritten vermietet oder verpachtet, so kann der Berechtigte das Miet- oder Pachtverhältnis mit der gesetzlichen Kündigungsfrist kündigen. Die Kündigung ist erst zulässig, wenn die Wiedergutmachungsorgane die Rückerstattungspflicht rechtskräftig festgestellt haben oder diese Pflicht anderweit anerkannt ist. Die Kündigung muß binnen 3 Monaten von diesem Zeitpunkt oder von der tatsächlichen Übernahme des Grundstücks an, wenn diese später erfolgt, vorgenommen werden.
2. Die Bestimmungen des Mieterschutzgesetzes in der Fassung vom 15. Dezember 1942 (RGBl. I, S. 712) finden keine Anwendung auf Rückerstattungspflichtige oder deren Rechtsvorgänger, die den zurückzuerstattenden Vermögensgegenstand durch schwere Entziehung erlangt haben oder beim Erwerb wußten oder den Umständen nach annehmen mußten, daß der Vermögensgegenstand zu irgendeiner Zeit durch eine schwere Entziehung erlangt worden war. Die Bestimmungen des Mieterschutzgesetzes finden ferner keine Anwendung, soweit der Berechtigte Wohnräume für sich oder seine nahen Angehörigen zum angemessenen Wohnen benötigt. Das gleiche gilt, wenn Wohnraum, der im Zeitpunkt der Entziehung oder der Erhebung des Rückerstattungsanspruchs im Zusammenhang mit dem Betrieb eines zurückzuerstattenden geschäftlichen Unternehmens

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confiscation or of the filing of the petition for restitution was used in connection with the operation of a business enterprise subject to restitution, is needed for the continued operation of such enterprise. The provisions of the Law for the Protection of Tenants shall not be applicable to space used for commercial purposes if the claimant has a legitimate interest in the immediate return of such space.

3. Leases entered into with the approval of Military Government may be cancelled only with the consent of Military Government.

ARTICLE 43
Employment Contracts

Irrespective of any contractual provision to the contrary, the claimant may terminate any existing employment contract made since the confiscation by the restitutor or any former holder of a business enterprise subject to restitution by giving notice as provided in a collective labor-agreement or in the absence thereof within the statutory period; this shall not prejudice the right of the claimant to terminate an employment contract for just cause without notice. Notice cannot be given until the Restitution Authorities have determined that the enterprise is subject to restitution and such determination is no longer subject to appeal, or until the fact that an enterprise is subject to restitution has been acknowledged in some other way. Such notice must be given within three months from such date, or from the time when the claimant in fact obtains possession of the enterprise, if he obtains possession at a later date.

PART VII
CLAIMS OF THE RESTITUTOR FOR REFUND AND INDEMNIFICATION

ARTICLE 44
Obligation to Refund

1. In exchange for the restitution of the confiscated property the claimant shall refund to the restitutor the consideration received by him, in kind if possible. This amount shall be increased by the amount of any encumbrance against the confiscated property existing at the time of confiscation and discharged thereafter, unless such encumbrance has been replaced by another encumbrance which continues to be effective, and unless the discharged encumbrance was created as the result of a confiscation within the meaning of this Law.

2. Where several items of property were confiscated for a consideration consisting of a lump sum, but restitution takes place in regard to some of these items only, the lump sum shall be reduced pro rata, in the ratio which at the time of the confiscation existed between the lump sum and the value of those items to be restituted.

3. If at the time of the confiscation the claimant, for any of the reasons set forth in Article 1, did not obtain, wholly or in part, the power freely to dispose of the consideration received, the refund shall be diminished by a like amount. The claimant shall assign to the restitutor any claim for indemnification to which he may be entitled with respect to this amount.

4. Under no circumstances shall the claimant be required to refund any amount exceeding the value of the confiscated property at the time of restitution, less the value of the encumbrance recognized against the property.

ARTICLE 45
Equitable Lien

The restitutor shall have no equitable lien (Zurückbehaltungsrecht) for his claims insofar as such lien would substantially delay the speedy restitution of the confiscated property. The same shall apply to any execution or attachment of the confiscated property based on any counterclaim.

benutzt wurde, zur Weiterführung des Unternehmens benötigt wird. Bei Geschäftsräumen sind die Bestimmungen des Mieterschutzgesetzes insoweit nicht anwendbar, als der Berechtigte an deren alsbaldiger Rückgabe ein begründetes Interesse hat.

3. Miet- und Pachtverträge, die mit Genehmigung der Militärregierung abgeschlossen worden sind, können nur mit deren Zustimmung gekündigt werden.

ARTIKEL 43
Dienstverträge

Der Berechtigte kann laufende Dienstverträge, die der Rückerstattungspflichtige oder ein früherer Inhaber eines zurückzuerstattenden geschäftlichen Unternehmens in diesem nach der Entziehung abgeschlossen hatte, vorbehaltlich eines etwaigen Rechtes auf fristlose Kündigung, ohne Rücksicht auf abweichende Einzel-Vertragsbestimmungen mit der tariflichen oder gesetzlichen Kündigungsfrist kündigen. Die Kündigung ist erst zulässig, wenn die Wiedergutmachungsorgane die Rückerstattungspflicht rechtskräftig festgestellt haben oder diese Pflicht anderweit anerkannt ist. Sie muß binnen 3 Monaten von diesem Zeitpunkt an oder von der tatsächlichen Übernahme des Unternehmens an, wenn diese später erfolgt, vorgenommen werden.

SIEBENTER ABSCHNITT
ANSPRÜCHE DES RÜCKERSTATTUNGSPFLICHTIGEN AUF RÜCKGEWÄHR UND AUSGLEICH

ARTIKEL 44
Rückgewährpflicht

1. Der Berechtigte hat dem Rückerstattungspflichtigen gegen Rückerstattung des entzogenen Vermögensgegenstandes das erhaltene Entgelt, wenn möglich in Natur, herauszugeben. Das Entgelt erhöht sich um den Betrag der vor der Entziehung bestehenden und seither getilgten Belastungen des entzogenen Vermögensgegenstandes, soweit an deren Stelle nicht andere bestehenbleibende Belastungen getreten sind oder die getilgte Belastung nicht selbst auf Grund einer Entziehung im Sinne dieses Gesetzes entstanden ist.

2. Findet im Falle der Entziehung mehrerer Vermögensgegenstände gegen ein Gesamtentgelt die Rückerstattung nur in Ansehung einzelner Vermögensgegenstände statt, so ist das Gesamtentgelt in dem Verhältnis herabzusetzen, in welchem zur Zeit der Entziehung der Vermögensgegenstände das Gesamtentgelt zu dem Wert der zurückzuerstattenden Vermögensgegenstände stand.

3. Hat der Berechtigte bei der Entziehung ganz oder teilweise aus den Gründen des Artikels 1 nicht die freie Verfügung über die Gegenleistung des Erwerbers erlangt, so vermindert sich das Entgelt um diesen Betrag. Der Berechtigte hat einen ihm etwa zustehenden Wiedergutmachungsanspruch dem Rückerstattungspflichtigen abzutreten.

4. Der Berechtigte hat in keinem Falle mehr zurückzugewähren, als den Wert des entzogenen Vermögensgegenstandes im Zeitpunkt der Rückerstattung abzüglich des Wertes der bestehenbleibenden Belastungen.

ARTIKEL 45
Zurückbehaltungsrecht

Für Ansprüche des Rückerstattungspflichtigen kann ein Zurückbehaltungsrecht insoweit nicht geltend gemacht werden, als dies die schleunige Rückerstattung des entzogenen Vermögensgegenstandes erheblich verzögern würde. Das gleiche gilt für Zwangsvollstreckung und Arrestvollziehung auf Grund von Gegenansprüchen in die entzogenen Vermögensgegenstände.

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ARTICLE 46

Judicial Determination of Terms of Payment

1. The Restitution Authorities shall determine the terms of payments to be made in connection with restitution, taking into consideration the purpose of this Law, the debtor's ability to pay, and existing statutory prohibitions and limitations on payments.

2. In cases involving the restitution of real property and interests in the nature of real property, the claimant may demand that an adequate period not exceeding ten years be allowed for the payment of the refund and expenditures, provided that a refund-mortgage bearing 4% interest be executed on the property in favor of the restitutor. The terms shall be specified by the Restitution Authorities upon application.

3. In cases provided for in Article 34, paragraph 3, and Article 37, paragraph 2, the Restitution Authorities shall determine the maturity dates of debts and the terms of payment in such a way that the restitution of the confiscated property will not be prejudiced under any circumstances nor its enjoyment by the claimant unduly impaired.

ARTICLE 47

Claims for Indemnification

1. Claims for indemnification which the restitutor may have against any of his predecessors in interest shall be governed by the rules of the Civil Law. The liability to make restitution shall be deemed to constitute a defect in title within the meaning of the Civil Code. Section 439, paragraph 1 of the Civil Code shall not be applicable.

2. In case of restitution of real or tangible personal property, any claim provided in paragraph 1 may be asserted not only against the original party to the contract but also against any predecessor in interest who was not in good faith at the time he acquired the property. Such predecessors in interest shall be liable as joint debtors. They shall not be liable, if the restitutor himself was not in good faith.

ARTICLE 48

Lien of Third Persons on Claims of the Restitutor

1. Any interest in confiscated property which ceases to be effective pursuant to Article 37 shall remain a lien on any claim which the restitutor may have for payment of expenditures, refund of consideration and for indemnification under Articles 34, 44 and 47; and on the proceeds which the restitutor obtains on the basis of such claims.

2. This provision shall not apply in favor of such persons who by granting loans have aided an aggravated confiscation.

PART VIII

GENERAL RULES OF PROCEDURE

ARTICLE 49

Basic Principles

1. The restitution proceedings shall be conducted in such a manner as to bring about speedy and complete restitution. The Restitution Authorities may deviate in individual cases from procedural rules declared applicable by this Law, if to do so will serve to accelerate restitution, provided that such deviation does not impair complete investigation of the facts or the legal right to a fair hearing.

2. In ascertaining the facts of the case the Restitution Authorities shall bear fully in mind the circumstances in which the claimant finds himself as a result of measures of persecution for the reasons set forth in Article 1. This shall particularly apply where the producing of evidence has been rendered difficult or impossible through the loss of

ARTIKEL 46

Gerichtliche Festsetzung für Zahlungen

1. Die Wiedergutmachungsorgane haben die Zahlungsbedingungen für Geldleistungen, die im Zusammenhang mit der Rückerstattung stehen, unter Berücksichtigung des Zwecks des Gesetzes, der Zahlungsfähigkeit des Verpflichteten und bestehender gesetzlicher Zahlungsverbote und Zahlungsbeschränkungen festzusetzen.

2. Der Berechtigte kann im Falle der Rückerstattung von Grundstücken und grundstücksgleichen Rechten verlangen, daß seine Verbindlichkeiten zur Rückgewähr des Entgelts und zum Ersatz von Verwendungen gegen Eintragung einer mit 4 v. H. verzinlichen Rückerstattungshypothek an dem Grundstück zu Gunsten des Rückerstattungspflichtigen angemessen, jedoch nicht länger als 10 Jahre, gestundet werden. Die näheren Bedingungen bestimmen auf Antrag die Wiedergutmachungsorgane.

3. In den Fällen der Artikel 34, Absatz 3, und 37, Absatz 2, haben die Wiedergutmachungsorgane die Fälligkeit von Verbindlichkeiten und die Zahlungsbedingungen so zu regeln, daß keinesfalls die Rückerstattung des entzogenen Vermögensgegenstandes gefährdet oder die Nutzung des Berechtigten an demselben unbillig beeinträchtigt wird.

ARTIKEL 47

Rückgriffsansprüche

1. Die Rückgriffsansprüche des Rückerstattungspflichtigen gegen jeden mittelbaren Rechtsvorgänger bestimmen sich nach den Vorschriften des Bürgerlichen Rechts. Die Rückerstattungspflicht bildet einen Mangel im Recht im Sinne des Bürgerlichen Gesetzbuches. Die Bestimmung des § 439 Absatz 1 BGB findet keine Anwendung.

2. Die nach Absatz 1 zulässigen Ansprüche können im Falle der Herausgabe einer Sache auch gegen jeden Rechtsvorgänger geltend gemacht werden, der beim Erwerb der Sache nicht im guten Glauben gewesen ist. Diese Rechtsvorgänger haften als Gesamtschuldner. Ein Anspruch gegen sie ist ausgeschlossen, wenn auch der Rückerstattungspflichtige nicht im guten Glauben war.

ARTIKEL 48

Rechte Dritter an den Ansprüchen des Rückerstattungspflichtigen

1. Rechte an dem entzogenen Vermögensgegenstand, die nach Artikel 37 nicht an ihm bestehen bleiben, setzen sich fort an dem Anspruch des Rückerstattungspflichtigen auf Ersatz von Verwendungen, Rückgewähr des Entgelts und Rückgriff gemäß Artikel 34, 44, 47 und an demjenigen, was der Rückerstattungspflichtige auf Grund dieser Ansprüche erlangt.

2. Diese Bestimmung gilt nicht zu Gunsten von Personen, die zu einer schweren Entziehung durch Darlehensgewährung Beistand geleistet haben.

ACHTER ABSCHNITT

ALLGEMEINE VERFAHRENSBESTIMMUNGEN

ARTIKEL 49

Grundsatz

1. Das Rückerstattungsverfahren soll eine rasche und vollständige Wiedergutmachung herbeiführen. Die Wiedergutmachungsorgane können von Verfahrensvorschriften, die in diesem Gesetz für anwendbar erklärt sind, im Einzelfall abweichen, wenn dies der Beschleunigung der Rückerstattung dient und dadurch weder die volle Aufklärung des Sachverhalts noch die Gewährung des rechtlichen Gehörs beeinträchtigt wird.

2. Die Wiedergutmachungsorgane haben die Lage, in die der Berechtigte durch die Verfolgungsmaßnahmen aus den Gründen des Artikels 1 geraten ist, bei der Ermittlung des Sachverhalts weitgehend zu berücksichtigen. Dies gilt insbesondere, soweit die Beibringung von Beweismitteln durch Verlust von Urkunden, Tod oder Unauffindbarkeit von

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documents, the death or unavailability of witnesses, the residence abroad of the claimant, or similar circumstances. Affidavits of the claimant and his witnesses shall be admitted. This shall apply even though the affiant died after signing the affidavit.

ARTICLE 50

Right of Succession and Foreign Law

1. Any person who bases any claim upon a right of succession on death must establish such right.
2. Foreign law must be proved so far as it is unknown to the Restitution Authorities.

ARTICLE 51

Presumption of Death

Any persecuted person, whose last known residence was in Germany or a country under the jurisdiction of or occupied by Germany or its Allies and as to whose whereabouts or continued life after 8 May 1945 no information is available, shall be presumed to have died on 8 May 1945; however, if it appears probable that such a person died on a date other than 8 May, the Restitution Authorities may deem such other date to be the date of death.

ARTICLE 52

Safeguarding

1. The Restitution Authorities shall, if the situation so requires, safeguard confiscated property in a suitable manner. They may to that end issue temporary injunctions (einstweilige Verfügung) or restraining orders (Arrest), either upon their own motion or upon application. Such injunctions or orders shall be modified or vacated if the property can be safeguarded by any other measures than those taken, or if there is no further need for their continuation.
2. The provisions of the Code of Civil Procedure on "Arrest und einstweilige Verfügung", as amended or as hereafter amended, shall be applicable.

ARTICLE 53

Trustee

1. Where supervision of the confiscated property is necessary, a trustee shall be appointed provided no other authority exercises jurisdiction over such property.
2. Unless provided otherwise by implementing regulation, the rules concerning the Administration of Blocked Property shall apply to the appointment and supervision of a trustee.

ARTICLE 54

Jurisdiction of Other Authorities to Take Measures as Set Forth in Articles 52 and 53

Where the safeguarding measures described in Articles 52 and 53 are within the jurisdiction of another agency, the Restitution Authorities will request the appropriate agency to take such measures.

PART IX

FILING OF CLAIMS

ARTICLE 55

Central Filing Agency

1. A Central Filing Agency for the filing of petitions for restitution will be established under regulations to be issued by Military Government.
2. The Central Filing Agency shall transmit the petition to the appropriate Restitution Agency or Agencies.

Zeugen, Auslandsaufenthalt des Berechtigten und ähnliche Umstände erschwert oder unmöglich geworden ist. Eidesstattliche Versicherungen des Berechtigten und von ihm benannter Zeugen sind zuzulassen. Dies gilt auch dann, wenn die die eidesstattliche Versicherung abgebende Person nach Abgabe der Versicherung verstorben ist.

ARTIKEL 50

Erbrecht und ausländisches Recht

1. Wer sich auf eine erbrechtliche Stellung beruft, hat diese nachzuweisen.
2. Ausländisches Recht bedarf des Beweises, soweit es den Wiedergutmachungsorganen unbekannt ist.

ARTIKEL 51

Todesvermutung

Wenn ein Verfolgter seinen letzten bekannten Aufenthalt in Deutschland oder in einem von Deutschland oder seinen Alliierten besetzten oder annektierten Gebiet hatte und sein Aufenthalt seit dem 8. Mai 1945 unbekannt ist, ohne daß Nachrichten darüber vorliegen, daß er zu diesem oder einem späteren Zeitpunkt noch gelebt hat, so wird vermutet, daß er am 8. Mai 1945 verstorben ist. Falls nach den Umständen des Einzelfalls ein anderer Zeitpunkt des Todes wahrscheinlich erscheint, so können die Wiedergutmachungsorgane diesen anderen Zeitpunkt als Zeitpunkt des Todes feststellen.

ARTIKEL 52

Sicherungspflicht

1. Die Wiedergutmachungsorgane haben entzogene Vermögensgegenstände, wenn ein Bedürfnis besteht, in geeigneter Weise sicherzustellen. Sie können hierzu auf Antrag oder von Amts wegen einstweilige Verfügungen anordnen oder Arrestbefehle erlassen. Diese sind abzuändern oder aufzuheben, wenn die Sicherstellung durch andere als die getroffenen Maßnahmen erreicht werden kann, oder das Bedürfnis nach ihrer Aufrechterhaltung entfällt.
2. Die Vorschriften der Zivilprozeßordnung über Arrest und einstweilige Verfügungen sind in der jeweils geltenden Fassung entsprechend anwendbar.

ARTIKEL 53

Treuhänder

1. In Fällen, in denen für entzogene Vermögensgegenstände eine Fürsorge erforderlich ist, ist ein Treuhänder zu bestellen, soweit nicht hierfür die Zuständigkeit einer anderen Behörde begründet ist.
2. Für die Bestellung und Beaufsichtigung des Treuhänders gelten die Vorschriften über die Verwaltung beschlagnahmten Vermögens, soweit nicht durch Ausführungsvorschriften Abweichendes bestimmt wird.

ARTIKEL 54

Zuständigkeit anderer Behörden zu Maßnahmen nach Artikel 52, 53

Soweit zu den in Artikel 52, 53 bezeichneten Sicherungsmaßnahmen andere Behörden zuständig sind, haben die Wiedergutmachungsorgane diese hierum zu ersuchen.

NEUNTER ABSCHNITT

ANMELDEVERFAHREN

ARTIKEL 55

Zentralanmeldeamt

1. Für die Anmeldung von Rückerstattungsansprüchen wird ein Zentralanmeldeamt errichtet. Die näheren Bestimmungen hierüber erläßt die Militärregierung.
2. Das Zentralanmeldeamt hat die Anmeldung den zuständigen Wiedergutmachungsbehörden zu übermitteln.

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ARTICLE 56

Form Requirements and Period of Limitation for Filing Claims

1. A petition for restitution pursuant to this Law shall be submitted to the Central Filing Agency in writing on or before 31 December 1948. Details as to the form of filing will be provided in regulations to be issued by Military Government.
2. The petition shall be substantiated by documents or affidavits.
3. The petition may be effectively filed by any one of several co-claimants.
4. Any petition, filed by a person who is not entitled to restitution of the property, shall be deemed to have been effectively filed in favor of the true claimant, or where Articles 8, 10 and 11, are applicable, in favor of the successor organizations mentioned therein. The same shall apply to the filing of petition by any such successor organization.

ARTICLE 57

Relation to Other Remedies

Unless otherwise provided in this Law, any claim within the scope of this Law may be prosecuted only under the provisions and within the periods of limitation, set forth in this Law. However, any claim based on tort, outside the scope of this Law, may be prosecuted in the ordinary courts.

ARTICLE 58

Contents of Petition to be Filed

1. The petition shall contain a description of the confiscated property. Time, place and circumstances of the confiscation shall be stated as exactly as is possible under the circumstances. If a claim is made for the payment of money, the sum demanded shall be specified if feasible; the basis for the claim shall be substantiated.
2. So far as known to the claimant, the petition shall contain the name and address of the restitutor, the names and addresses of all persons having or claiming to have an interest in the property, lessees and tenants, if any, and a statement as to all encumbrances existing at the time of the confiscation of the property.
3. The Central Filing Agency or the Restitution Authorities may request the claimant to supplement his petition by a statement containing the data set forth in paragraphs 1 and 2. They may further require the claimant to swear to his statement.
4. If the claimant does not have his domicile or residence in one of the four Zones of Occupation of Germany or in the City of Berlin, and if he has not appointed there an attorney authorized to accept service of legal papers, he may nominate in his petition a person domiciled there, authorized to receive such papers. If he fails to nominate such a person, the Restitution Agency shall do so and notify the claimant of the appointment.
5. After a petition has been filed, a receipt shall be issued by the Central Filing Agency notifying the claimant of the Restitution Agency or Agencies to which the petition has been transmitted pursuant to Article 55, paragraph 2.
6. The period of limitation provided for in Article 56, paragraph 1, shall be deemed to have been complied with by the filing of a written petition with the Central Filing Agency, although it is incomplete or in improper form.

ARTICLE 59

Venue

1. Any petition for restitution shall be transmitted by the Central Filing Agency to the Restitution Agency of the district in which the property subject to restitution is located. If it appears that a petition has been transmitted

ARTIKEL 56

Form und Frist der Anmeldung

1. Rückerstattungsansprüche nach diesem Gesetz sind bis spätestens 31. Dezember 1948 schriftlich bei dem Zentralanmeldeamt anzumelden. Die näheren Bestimmungen über die Form der Anmeldung erläßt die Militärregierung.
2. Der angemeldete Anspruch soll durch Urkunden oder eidesstattliche Versicherungen glaubhaft gemacht werden.
3. Die Anmeldung kann rechtswirksam durch einen von mehreren Mitberechtigten erfolgen.
4. Die Anmeldung seitens eines vermeintlichen Berechtigten wirkt zu Gunsten des wahren Berechtigten und unter den Voraussetzungen der Artikel 8, 10 und 11 zu Gunsten der dort bezeichneten Nachfolgeorganisationen. Das gleiche gilt für die Anmeldung seitens dieser Nachfolgeorganisationen.

ARTIKEL 57

Verhältnis zum ordentlichen Rechtsweg

Ansprüche, die unter dieses Gesetz fallen, können, soweit in diesem Gesetz nichts anderes bestimmt ist, nur im Verfahren nach diesem Gesetz und unter Einhaltung seiner Fristen geltend gemacht werden. Ansprüche aus unerlaubter Handlung, die nicht unter die Bestimmungen dieses Gesetzes fallen, können jedoch im ordentlichen Rechtsweg geltend gemacht werden.

ARTIKEL 58

Inhalt der Anmeldung

1. Die Anmeldung muß eine Beschreibung des entzogenen Vermögensgegenstandes enthalten. Zeit, Ort und Umstände der Entziehung sollen, so genau als es den Umständen nach möglich ist, beschrieben werden. Soweit tunlich, sollen Geldansprüche beziffert sein; der Grund des Anspruchs soll dargelegt werden.
2. Die Anmeldung soll, soweit dem Berechtigten bekannt, Namen und Anschrift des Rückerstattungspflichtigen, Namen und Anschrift aller Personen, die ein Recht an dem Vermögensgegenstand haben oder geltend machen, etwaige Mieter und Pächter und die Angabe der zur Zeit der Entziehung an dem Vermögensgegenstand bestehenden Belastungen enthalten.
3. Das Zentralanmeldeamt oder die Wiedergutmachungsorgane können die Ergänzung einer Anmeldung durch die in Absatz 1 und 2 vorgesehenen Angaben von dem Berechtigten verlangen; sie können ihm die eidesstattliche Versicherung seiner Angaben auferlegen.
4. Hat der Antragsteller seinen Wohnsitz oder gewöhnlichen Aufenthalt nicht in einer der vier Besatzungszonen Deutschlands oder der Stadt Berlin, und hat er daselbst auch keinen zum Empfang von Zustellungen bevollmächtigten Prozeßvertreter bestellt, so hat er in der Anmeldung einen daselbst wohnhaften Zustellungsbevollmächtigten zu benennen. Benennt er einen Zustellungsbevollmächtigten nicht, so hat die Wiedergutmachungsbehörde einen solchen zu bestellen und den Antragsteller hiervon zu benachrichtigen.
5. Über die erfolgte Anmeldung ist seitens des Zentralanmeldeamtes eine Bescheinigung zu erteilen, in der der Berechtigte davon in Kenntnis gesetzt wird, an welche der Wiedergutmachungsbehörden die Anmeldung gemäß Artikel 55, Absatz 2 übermittelt worden ist.
6. Die in Artikel 56, Absatz 1 vorgesehene Frist für die Anmeldung eines Rückerstattungsanspruchs gilt als gewahrt, wenn diese schriftlich bei dem Zentralanmeldeamt erfolgt ist, selbst wenn sie unvollständig und nicht in der vorgeschriebenen Form vorgenommen worden ist.

ARTIKEL 59

Örtliche Zuständigkeit

1. Das Zentralanmeldeamt hat die Anmeldung des Rückerstattungsanspruchs an die Wiedergutmachungsbehörde des Bezirks zu übermitteln, in dem sich der zurückzuerstattende Vermögensgegenstand befindet. Ergibt sich die Unzuständig-

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to a Restitution Agency which lacks jurisdiction, such petition shall be referred by such Restitution Agency to the Restitution Agency having jurisdiction. The order of reference shall be binding on the Agency to which the petition has been referred.

2. An implementing regulation may provide for additional rules on venue, especially of claims for compensation and ancillary claims.

ARTICLE 60

Jurisdiction of Subject Matter

The Restitution Authorities shall have jurisdiction of the subject matter irrespective of whether under any other law a claim for restitution would come within the jurisdiction of any ordinary, administrative, or other court, or whether no court whatsoever would have jurisdiction.

ARTICLE 61

Notice of Claim

1. The Restitution Agency shall give notice of the petition by formal service on the parties concerned requiring that an answer be filed within two months. Parties concerned shall be deemed the restitutor, persons holding interests *in rem*, lessees or tenants of the confiscated property, as well as any other person the claimant might demand to be joined in the proceedings. If the German Reich, a Land, a former Land, the former NSDAP or one of its formations or affiliated organizations is a party concerned, service shall be made upon the State Minister of Finance. In the cases described in sentence 3 the State shall be authorized to join the proceedings as a party in interest.

2. Where the restitutor or his present address is unknown or where it appears from the petition that any unknown third person may have an interest in the confiscated property, the Restitution Agency shall cause the service by publication of the petition; the restitutor and the unknown third persons shall be requested thereby, within two months, to declare their interests together with proof thereof with the Restitution Agency. Service by publication shall be made pursuant to Section 204, paragraph 2, of the Code of Civil Procedure as amended by Control Council Law No. 38 in the form prescribed for a summons. Service shall be deemed to be effective one month after publication in the periodical specified in Section 204, paragraph 2, of the Code of Civil Procedure.

3. Upon service of the petition the case shall be deemed to be pending (rechtshängig).

4. When the claim for restitution affects real property or an interest in the nature of real property, the Restitution Agency shall request that an entry in the Land Title Register be made to the effect that a claim for restitution has been filed. (Notice of restitution, Rückerstattungsvermerk.) The notice of restitution shall be effective against any third person.

5. The provisions of the Code of Civil Procedure concerning Third Party Practice shall be applicable.

ARTICLE 62

Procedure before the Restitution Agency

1. If no objection has been raised against a petition within the time specified in the notice or in the service by publication, the Restitution Agency shall issue an order granting the petition. Where there is no dispute as to the limit of encumbrances and as to the continued existence of interests, it shall also make the appropriate findings on these matters.

2. If, however, the claim for restitution does not state a cause of action, or the truth of any of the allegations contained therein is controverted by entries in public records or by public documents available to the Restitution Agency, the latter shall order the claimant to submit a statement within an appropriate period of time. The Agency shall dismiss the petition on the merits if the claimant does not

keit einer Wiedergutmachungsbehörde, so verweist sie den Rückerstattungsanspruch an die zuständige Wiedergutmachungsbehörde. Der Verweisungsbeschluß ist für diese bindend.

2. Durch Ausführungsverordnung können weitere Vorschriften über die örtliche Zuständigkeit, namentlich zur Geltendmachung von Ersatz- und Nebenansprüchen, erlassen werden.

ARTIKEL 60

Sachliche Zuständigkeit

Die Wiedergutmachungsorgane sind sachlich zuständig ohne Rücksicht darauf, ob unter anderen gesetzlichen Bestimmungen ein Rückerstattungsanspruch zur Zuständigkeit der ordentlichen Gerichte oder der Verwaltungs- oder sonstiger Gerichte gehören würde oder der Rechtsweg ausgeschlossen wäre.

ARTIKEL 61

Bekanntgabe der Anmeldung

1. Die Wiedergutmachungsbehörde hat den Rückerstattungsanspruch den Beteiligten zur Erklärung binnen zwei Monaten durch förmliche Zustellung bekanntzugeben. Beteiligte sind der Rückerstattungspflichtige, dinglich Berechtigte, Mieter und Pächter des entzogenen Vermögensgegenstandes, sowie diejenigen sonstigen Betroffenen, deren Einbeziehung in das Verfahren der Berechtigte beantragt. Wenn der Beteiligte das Deutsche Reich, ein Land oder ein früheres Land, die vormalige Nationalsozialistische Deutsche Arbeiterpartei, eine ihrer Gliederungen oder angeschlossenen Organisationen ist, so erfolgt die Zustellung an den Staatsminister der Finanzen. Das Land ist in den Fällen des Satzes 3 berechtigt, als Partei im Verfahren aufzutreten.

2. Ist der Rückerstattungspflichtige oder seine gegenwärtige Anschrift unbekannt oder ist auf Grund der Anmeldung anzunehmen, daß unbekannt Dritte in Ansehung des entzogenen Gegenstandes Rechte besitzen, so hat die Wiedergutmachungsbehörde die Anmeldung des Rückerstattungsanspruchs öffentlich zuzustellen und dabei die Rückerstattungsobpflichtigen und die unbekannt Dritten aufzufordern, ihre Rechte binnen zwei Monaten bei der Wiedergutmachungsbehörde anzumelden und zu begründen. Die öffentliche Zustellung erfolgt nach Maßgabe des § 204, Absatz 2 der ZPO in der Fassung des Kontrollratsgesetzes Nr. 38 in der für Ladungen vorgeschriebenen Form. Die Zustellung gilt als an dem Tage erfolgt, an welchem seit der Einrückung in das in Absatz 2 des § 204 ZPO bezeichnete Mitteilungsblatt ein Monat verstrichen ist.

3. Die Rechtshängigkeit tritt mit der Zustellung der Anmeldung ein.

4. Richtet sich der Anspruch auf Rückerstattung eines Grundstücks oder grundstücksgleichen Rechtes, so hat die Wiedergutmachungsbehörde die Eintragung der Anmeldung des Rückerstattungsanspruchs im Grundbuch herbeizuführen (Rückerstattungsvermerk). Der Rückerstattungsvermerk wirkt gegen jeden Dritten.

5. Die Bestimmungen der Zivilprozessordnung über die Streitverkündung und Nebenintervention finden entsprechende Anwendung.

ARTIKEL 62

Verfahren vor der Wiedergutmachungsbehörde

1. Wird innerhalb der Erklärungsfrist oder der durch die öffentliche Bekanntmachung erfolgten Anmeldefrist kein Widerspruch erhoben, so gibt die Wiedergutmachungsbehörde durch Beschluß dem Antrag statt. Wenn über die Belastungsgrenze und den Fortbestand von Rechten kein Streit besteht, so trifft sie auch hierüber die erforderlichen Feststellungen.

2. Ist jedoch der Rückerstattungsantrag nicht schlüssig begründet oder stehen der Richtigkeit der zu seiner Begründung vorgebrachten Behauptungen Einträge in öffentlichen Registern oder öffentlichen Urkunden, die der Wiedergutmachungsbehörde vorliegen, entgegen, so hat die Wiedergutmachungsbehörde den Antragsteller zur Erklärung darüber binnen einer von ihr zu setzenden angemessenen Frist aufzufordern. Wird innerhalb der Frist eine den Rückerstattungsanspruch rechtfertigende Aufklärung und Ergän-

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submit within this period an explanation justifying his petition or supplementing the facts alleged therein.

3. If an objection is made the Restitution Agency shall attempt to reach an amicable settlement unless the futility of such effort is evident. When an amicable settlement has been reached the Restitution Agency shall, on application, record the settlement in writing, and shall deliver a certified copy of the settlement to the parties concerned.

ARTICLE 63

Reference to the Court

1. If an amicable agreement cannot be reached in whole or in part or if the measures to be taken are not within the power of the Restitution Agency, it shall refer the case to the extent necessary to the Restitution Chamber of the District Court having jurisdiction over the Restitution Agency. This shall apply in particular also to cases where only the limit of encumbrance, or the continued existence of interests or the liability for debts is disputed.

2. Implementing regulations may confer jurisdiction on certain District Courts or on District Courts other than those specified in paragraph 1.

3. The Restitution Agency may stay the proceedings for a period not exceeding six months before referring the case to the Restitution Chamber, if the claimant consents and an amicable agreement may be expected.

ARTICLE 64

Appeal (Einspruch)

1. Any party to the case, by filing an appeal with the Restitution Agency, may appeal to the Restitution Chamber from a decision of the Restitution Agency rendered pursuant to Article 59, paragraph 1, second sentence, or Article 62, paragraphs 1 and 2; the period in which to file the appeal shall be one month; it shall be three months, if the appellant resides in a foreign country. The period to appeal shall begin to run with the service of the decision to be appealed from. Article 61, paragraph 2, shall be applicable.

2. The appeal may be based only on a violation of Article 59, paragraph 1, second sentence, or Article 62, paragraphs 1 or 2.

ARTICLE 65

Execution

Agreements recorded by the Restitution Agency and orders of the Restitution Agency which are no longer subject to appeal may be enforced by execution pursuant to the provisions of the Code of Civil Procedure. For this purpose, the Restitution Agency shall have the powers of a court (Vollstreckungsgericht). In effecting execution, the Restitution Agency may avail itself of the services of other agencies, especially of the courts.

PART X

JUDICIAL PROCEEDINGS

ARTICLE 66

Members of the Restitution Chamber

The Restitution Chamber shall be composed of a Presiding Judge and two Associate Judges, eligible for the office of judge or for the higher Administrative Service. The Presiding Judge shall be a judge normally assigned to a court. The Associate Judges shall be appointed for a term of three years, unless they are professional judges. One of the three judges shall belong to a class of persons persecuted for any of the reasons set forth in Article 1.

ARTICLE 67

Procedure

1. The Restitution Chamber shall adjust the legal relations of the parties in interest according to the provisions of this Law.

zung des Vorbringens seitens des Antragstellers nicht gegeben, so hat die Wiedergutmachungsbehörde den Antrag als unbegründet zurückzuweisen.

3. Wird Widerspruch erhoben, so hat die Wiedergutmachungsbehörde den Versuch einer gütlichen Einigung zu machen, sofern nicht die Erfolglosigkeit eines solchen Versuchs mit Bestimmtheit vorauszusehen ist. Kommt eine gütliche Einigung zustande, so hat die Wiedergutmachungsbehörde die Vereinbarung auf Antrag schriftlich niederzulegen und den Beteiligten von Amts wegen eine Ausfertigung der Niederschrift zu erteilen.

ARTIKEL 63

Verweisung an das Gericht

1. Kommt eine gütliche Einigung ganz oder teilweise nicht zustande oder übersteigen die erforderlichen Maßnahmen die Zuständigkeit der Wiedergutmachungsbehörde, so verweist diese insoweit die Sache an die Wiedergutmachungskammer des für den Sitz der Wiedergutmachungsbehörde zuständigen Landgerichts. Dies gilt insbesondere auch, wenn lediglich über die Belastungsgrenze, den Fortbestand von Rechten oder die Haftung für Verbindlichkeiten Streit besteht.

2. Durch Ausführungsverordnungen kann die Zuständigkeit allgemein auf bestimmte oder andere als die in Absatz 1 bezeichneten Landgerichte übertragen werden.

3. Die Wiedergutmachungsbehörde kann das Verfahren vor der Verweisung bis zur Höchstdauer von sechs Monaten aussetzen, sofern der Berechtigte zustimmt und eine gütliche Einigung zu erwarten ist.

ARTIKEL 64

Einspruch

1. Gegen eine Entscheidung der Wiedergutmachungsbehörde gemäß Artikel 59, Absatz 1, Satz 2 und gemäß Artikel 62, Absatz 1 und 2 kann jeder Beteiligte binnen einem Monat und wenn er im Ausland seinen Wohnsitz hat, binnen drei Monaten die Entscheidung der Wiedergutmachungskammer durch Einspruch zur Wiedergutmachungsbehörde anrufen. Die Frist beginnt mit der Zustellung der anzufechtenden Entscheidung. Artikel 61, Absatz 2 findet entsprechende Anwendung.

2. Der Einspruch kann nur auf eine Verletzung der Vorschriften des Artikels 59, Absatz 1, Satz 2 oder des Artikels 62, Absatz 1 und 2 gegründet werden.

ARTIKEL 65

Vollstreckbarkeit

Aus den von der Wiedergutmachungsbehörde ausgefertigten Vereinbarungen und aus den rechtskräftigen Beschlüssen der Wiedergutmachungsbehörde findet die Zwangsvollstreckung nach den Vorschriften der Zivilprozessordnung statt. An Stelle des Vollstreckungsgerichts tritt die Wiedergutmachungsbehörde. Sie kann sich bei der Durchführung der Vollstreckung anderer Behörden, insbesondere des Vollstreckungsgerichts, bedienen.

ZEHNTER ABSCHNITT

GERICHTLICHES VERFAHREN

ARTIKEL 66

Besetzung der Wiedergutmachungskammer

Die Wiedergutmachungskammer besteht aus einem Vorsitzenden und zwei Beisitzern, welche die Befähigung zum Richteramt oder zum höheren Verwaltungsdienst haben müssen. Der Vorsitzende muß ein Richter der ordentlichen Gerichtsbarkeit sein. Die Beisitzer werden, soweit sie nicht selbst Berufsrichter sind, auf die Dauer von drei Jahren ernannt. Einer der drei Richter soll dem Kreise der aus den Gründen des Artikels 1 Verfolgten angehören.

ARTIKEL 67

Verfahren

1. Die Wiedergutmachungskammer hat die Rechtsbeziehungen der Beteiligten gemäß diesem Gesetz zu gestalten.

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2. Unless this Law provides otherwise, the procedure shall be governed by the rules of procedure applicable in matters of non-contentious litigation, subject, however, to the following modifications:

- (a) The Chamber shall order an oral hearing; the hearing shall be public.
- (b) The proceedings may be stayed for a period not to exceed six months, at the request of the claimant. Repeated stays may be granted after the case has been reopened.
- (c) The Chamber shall render partial judgment on one or more of the claims before it, or on part of a claim, where the determination of any counterclaim, offset or equitable lien or any other defense in the nature of an offset or a counterclaim would substantially delay the decision on restitution.
- (d) Without prejudice to the final decision, the Chamber may order the temporary surrender of the confiscated property to the claimant either with or without security. In this case the claimant shall have, with respect to third persons, the rights and obligations of a trustee.

ARTICLE 68

Form and Contents of the Decision

1. The decision of the Restitution Chamber shall be pronounced in an order supported by an opinion; the order shall be served on the parties concerned. Immediate execution may be had on this order, a subsequent appeal notwithstanding. The provisions of Sections 713, paragraph 2, and Sections 713a to 720 of the Code of Civil Procedure shall be applicable.

2. An appeal (sofortige Beschwerde) may be taken from this order within one month; the appeal may be filed within three months if the appellant resides in a foreign country. The time to appeal shall begin to run from the date of service of the order; Article 61, paragraph 2, shall be applicable. The Civil Division of the Court of Appeals (Oberlandesgericht) shall hear the appeal. The appeal may be based only on the ground that the decision violated the law. The provisions of Sections 551, 561 and 563 of the Code of Civil Procedure shall be applicable.

3. Implementing regulations may confer jurisdiction to hear such appeals on a certain Court of Appeals.

ARTICLE 69

Board of Review

A Board of Review shall have the power to review any decision on any claim for restitution under this Law and to take whatever action is deemed necessary with respect thereto. Regulations to be issued by Military Government will provide for the appointment and composition of the Board, its jurisdiction, procedure, and such other matters as are deemed appropriate.

PART XI

SPECIAL PROCEEDINGS

ARTICLE 70

Petition by the Public Prosecutor

Where no petition for the restitution of confiscated property has been filed on or before 31 December 1948, the Public Prosecutor at the seat of the Restitution Chamber may file the petition for restitution on behalf of a successor organization provided for in Article 10. This provision shall not apply if the claimant has waived his claim for restitution in accordance with Article 11, paragraph 3. The petition of the Public Prosecutor must be filed on or before 30 June 1949.

2. Soweit keine anderweitigen Bestimmungen in diesem Gesetz getroffen sind, sind für das Verfahren die Vorschriften über das Verfahren in Sachen der freiwilligen Gerichtsbarkeit mit den folgenden Maßgaben entsprechend anwendbar:

- (a) Die Kammer muß eine mündliche Verhandlung anordnen. Die Verhandlung ist öffentlich.
- (b) Auf Antrag des Berechtigten kann das Verfahren bis zur Höchstdauer von sechs Monaten ausgesetzt werden. Die Aussetzung kann nach Fortsetzung des Verfahrens wiederholt werden.
- (c) Die Wiedergutmachungskammer hat ein Teilurteil hinsichtlich einzelner von mehreren Ansprüchen oder eines Teils eines Anspruchs zu erlassen, wenn die Entscheidung über eine Widerklage, einen Aufrechnungsanspruch, ein Zurückbehaltungsrecht oder einen ähnlichen Rechtsbehelf die Entscheidung über die Rückerstattung erheblich verzögern würde.
- (d) Die Kammer kann vorbehaltlich der endgültigen Entscheidung die vorläufige Herausgabe entzogener Vermögensgegenstände gegen oder ohne Sicherheitsleistung an den Antragsteller anordnen. Der Antragsteller hat in diesem Falle gegenüber Dritten die Rechtsstellung eines Treuhänders.

ARTIKEL 68

Form und Inhalt der Entscheidung

1. Die Wiedergutmachungskammer entscheidet durch einen mit Gründen versehenen Beschluß, der den Beteiligten zuzustellen ist. Der Beschluß ist vorläufig vollstreckbar. §§ 713, Absatz 2, 713a bis 720 ZPO finden entsprechende Anwendung.

2. Gegen den Beschluß findet innerhalb einer Frist von einem Monat und wenn der Beschwerdeführer seinen Wohnsitz im Ausland hat, innerhalb einer Frist von drei Monaten die sofortige Beschwerde statt. Die Frist beginnt mit der Zustellung; Artikel 61, Absatz 2 findet entsprechende Anwendung. Über die Beschwerde entscheidet der Zivilsenat des Oberlandesgerichts. Die Beschwerde kann nur darauf gestützt werden, daß die Entscheidung auf einer Verletzung des Gesetzes beruhe. Die Vorschriften der §§ 551, 561, 563 ZPO finden entsprechende Anwendung.

3. Durch Ausführungsverordnungen kann die Zuständigkeit zur Entscheidung über Beschwerden allgemein auf eines von mehreren Oberlandesgerichten übertragen werden.

ARTIKEL 69

Board of Review

Ein Board of Review ist ermächtigt, alle Entscheidungen nachzuprüfen, die einen nach Maßgabe dieses Gesetzes erhobenen Rückerstattungsanspruch betreffen, sowie die nach Sachlage erforderlichen Maßnahmen zu ergreifen. Ausführungsvorschriften der Militärregierung werden die Ernennung und Zusammensetzung des Board, seine Zuständigkeit, das Verfahren und alle weiteren Einzelheiten regeln.

ELFTER ABSCHNITT

BESONDERE VERFAHREN

ARTIKEL 70

Antragsrecht der Staatsanwaltschaft

Wird bezüglich entzogener Vermögensgegenstände ein Rückerstattungsanspruch bis zum 31. Dezember 1948 nicht geltend gemacht, so kann die Staatsanwaltschaft am Sitze der Wiedergutmachungskammer den Rückerstattungsanspruch zu Gunsten einer in Artikel 10 vorgesehenen Nachfolgeorganisation geltend machen. Dies gilt nicht, wenn der Berechtigte auf seinen Rückerstattungsanspruch gemäß Artikel 11, Absatz 3 verzichtet hat. Der Antrag der Staatsanwaltschaft kann nur bis zum 30. Juni 1949 gestellt werden.

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ARTICLE 71
Conflict of Jurisdiction

1. If claims as described in Articles 1 to 48 are asserted by a person entitled to restitution in a court proceeding including the stage of compulsory execution by way of complaint, defense or counterclaim, the Court shall notify the Restitution Agency. The Court may, and on request by the Restitution Agency must, stay the proceedings or temporarily suspend execution by an order from which no appeal may be taken. The Restitution Agency may direct that the claim be dealt with under this Law to the exclusion of the jurisdiction of the ordinary civil courts, or it may authorize the claimant to prosecute his claim before the ordinary civil courts; such authorization shall be binding on the latter courts. If an action in the ordinary civil courts is terminated because the claim is being dealt with under this Law, the court fees shall be remitted and neither party shall be entitled to costs incurred out of court.

2. The Court shall report to the Central Filing Agency any action taken under paragraph 1.

PART XII
ASSESSMENT OF COSTS

ARTICLE 72
Costs

1. As a rule no court fees shall be assessed in favor of the State (Gerichtskosten) in proceedings before Restitution Authorities. However, implementing regulations may provide for the assessment of costs, fees and expenses.

2. No advance payment, or bond or security for costs may be demanded from a claimant.

PART XIII
DUTY TO REPORT AND PENALTIES

ARTICLE 73
Duty to Report

1. Anyone who has, or has had in his possession, at any time after it was transferred by or taken from a persecuted person, any property which he knows or should know under the circumstances

- (a) is confiscated property within the meaning of the provisions of Article 2; or
- (b) is presumed to be confiscated property pursuant to the provisions of paragraph 1 of Article 3; or
- (c) has been at any time the subject of a transaction which may be avoided pursuant to the provisions of paragraph 1 of Article 4.

shall report this fact in writing to the Central Filing Agency on or before 15 May 1948.

The report to be filed hereunder shall show the exact circumstances under which the reporting person obtained possession of the property; it shall also contain the name and address of the person from whom the reporting person acquired the property as well as the consideration paid, and in case the property no longer is in his possession, the name of the person to whom the property was transferred.

2. The following property need not be reported:

- (a) Tangible personal property which had been acquired in the course of an ordinary and usual business transaction in an establishment normally dealing in that type of property, provided, however, that property acquired at an auction, or at a private sale in an establishment engaged to a considerable extent in the business of auctioning or otherwise disposing of confiscated property, must be reported;

ARTIKEL 71
Zuständigkeitsbereinigung

1. Werden Ansprüche der in den Artikeln 1 bis 48 bezeichneten Art in einem gerichtlichen Verfahren einschließlich der Zwangsvollstreckung vom Berechtigten klage- oder einedeweise geltend gemacht, so hat das Gericht die Wiedergutmachungsbehörde zu benachrichtigen. Das Gericht kann durch unanfechtbaren Beschluß das Verfahren aussetzen und die Zwangsvollstreckung einstweilen einstellen; auf Ersuchen der Wiedergutmachungsbehörde sind diese Anordnungen zu treffen. Die Wiedergutmachungsbehörde kann die Weiterbehandlung des Anspruchs nach Maßgabe dieses Gesetzes mit der Wirkung des Ausschlusses des Rechtsweges anordnen oder mit Bindung für das Gericht den Berechtigten die Geltendmachung des Anspruchs im ordentlichen Rechtsweg überlassen. Findet ein Rechtsstreit durch Weiterbehandlung des Anspruchs nach Maßgabe dieses Gesetzes seine Erledigung, so werden die Gerichtskosten niedergeschlagen, die außergerichtlichen Kosten gegeneinander aufgehoben.

2. Das Gericht hat dem Zentralanmeldeamt jede gemäß Absatz 1 getroffene Maßnahme mitzuteilen.

ZWÖLFTER ABSCHNITT
KOSTENBESTIMMUNGEN

ARTIKEL 72
Kosten

1. Das Verfahren vor den Wiedergutmachungsorganen ist grundsätzlich gerichtskostenfrei. Im übrigen werden Ausführungsverordnungen die Tragung und Festsetzung von Kosten, Gebühren und Auslagen regeln.

2. Der Berechtigte ist nicht verpflichtet, Vorschüsse oder Sicherheit für Kosten zu leisten.

DREIZEHENTER ABSCHNITT
ANZEIGEPFLICHT UND STRAFBESTIMMUNGEN

ARTIKEL 73
Anzeigepflicht

1. Wer Vermögensgegenstände, von denen er weiß oder den Umständen nach annehmen muß,

- (a) daß sie im Sinne des Artikels 2 dieses Gesetzes entzogen sind; oder
- (b) daß eine solche Entziehung nach den Vorschriften des Artikels 3, Absatz 1 vermutet wird; oder
- (c) daß sie zu irgendeiner Zeit Gegenstand eines Rechtsgeschäfts waren, das nach den Bestimmungen des Artikels 4, Absatz 1 angefochten werden kann,

im Besitz hat oder zu irgendeinem Zeitpunkt, nachdem der Verfolgte über sie verfügt hat oder sie ihm entzogen worden sind, im Besitz hatte, muß dies schriftlich dem Zentralanmeldeamt bis zum 15. Mai 1948 anzeigen. Die Anzeige muß genaue Angaben darüber enthalten, wie der Anzeigerstatter in den Besitz des Vermögensgegenstandes gelangt ist, sie muß Namen und Wohnort desjenigen angeben, von dem der Anzeigerstatter den Vermögensgegenstand erhalten hat, das entrichtete Entgelt und, falls der Vermögensgegenstand nicht mehr im Besitz des Anzeigerstatters ist, den Namen desjenigen, an den der Vermögensgegenstand übertragen worden ist.

2. Die Anzeigepflicht entfällt:

- (a) Bei beweglichen Sachen, die im Wege des ordnungsmäßigen üblichen Geschäftsverkehrs aus einem einschlägigen Unternehmen erworben worden sind; anzeigepflichtig sind jedoch Sachen, die im Wege der Versteigerung erworben worden sind, oder in Unternehmen, die sich mit der Versteigerung oder sonstigen Verwertung entzogener Vermögensgegenstände in erheblichem Maße befaßen;

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- (b) Tangible personal property, the value of which did not exceed RM 1,000 at the time of the confiscation;
- (c) Donations made to close relatives (as defined in Section 52, paragraph 2 of the Criminal Code) and donations which without doubt were made for moral consideration;
- (d) Property which has already been restituted and property as to which the claimant has relinquished his right of restitution expressly and in writing at any time between 8 May 1945 and the effective date of this Law.

3. No report filed pursuant to paragraph 1 by any person shall be considered, in proceedings before a Restitution Authority, as an admission of the reporting party that the property so reported is subject to restitution or as a waiver of any defense he might have had if the report had not been filed. It shall be admissible, however, as an admission of the facts stated therein.

4. The Central Filing Agency upon receiving a report under this Article shall forward a copy of the report to the appropriate Restitution Agency or Agencies in each district in which property affected by the report is situated. All reports filed pursuant to the provisions of this Article shall be open to inspection.

ARTICLE 74

Obligation to Inspect the Land Title Register and other Public Registers

1. Anyone holding real property or an interest in the nature of real property, shall ascertain by inspection of the Land Title Register whether or not the property in question must be reported. The same shall apply with respect to other property interests which are recorded in any other public register.

2. Whenever a public authority or other public agency learns of the whereabouts of property which must be reported, it shall report such fact without delay to the Central Filing Agency. Article 73, paragraph 4, shall be applicable.

ARTICLE 75

Penalties

- 1. Any person who
 - (a) intentionally or negligently fails to comply with his duty to report as set forth in Article 73 and 74; or,
 - (b) knowingly makes any false or misleading statements to the Restitution Authorities,

shall be punished with imprisonment not exceeding five years, or a fine, or both, unless heavier penalties under any other law are applicable.

2. No penalty shall be imposed in the case of subparagraph (a), where the report required by this Law has been made voluntarily and prior to discovery.

ARTICLE 76

Penalties (continued)

1. Whoever alienates, damages, destroys, or conceals any property coming under the provisions of this Law in order to thwart the rights of a claimant, shall be punished with imprisonment not exceeding five years, or a fine, or both, unless heavier penalties under any other law are applicable.

2. Confinement in a penitentiary up to five years may be imposed in especially serious cases.

3. The attempt shall be punishable.

- (b) bei beweglichen Sachen, deren Wert im Zeitpunkt der Entziehung den Betrag von RM 1.000,— nicht überstiegen hat;
- (c) bei Schenkungen zwischen nahen Verwandten (§ 52, Absatz 2 StGB) und bei unzweifelhaften Anstandsschenkungen;
- (d) bei bereits zurückerstatteten Vermögensgegenständen und bei solchen Vermögensgegenständen, auf deren Rückerstattung der Berechtigte in der Zeit vom 8. Mai 1945 bis zum Inkrafttreten dieses Gesetzes ausdrücklich schriftlich verzichtet hat.

3. Eine gemäß Absatz 1 erstattete Anzeige darf im Verfahren vor den Wiedergutmachungsorganen nicht als Geständnis des Anzeigenden gewertet werden, daß die angemeldeten Vermögensgegenstände der Rückerstattung unterliegen; ebensowenig darf eine solche Anzeige als Verzicht auf einen Einwand ausgelegt werden, den der Anzeigende hätte geltend machen können, wenn er die Anzeige nicht erstattet hätte. Die Anzeige kann jedoch als ein Geständnis in bezug auf die darin mitgeteilten Tatsachen gewertet werden.

4. Das Zentralanmeldeamt hat nach Erhalt einer auf Grund der Bestimmungen dieses Artikels erstatteten Anzeige eine Abschrift der Anzeige an die zuständige Wiedergutmachungsbehörde oder die zuständigen Wiedergutmachungsbehörden in dem Bezirk weiterzuleiten, in dem sich irgendwelche in der Anzeige in Bezug genommene Vermögensgegenstände befinden. Die Einsicht in alle gemäß den Vorschriften dieses Artikels erstatteten Anzeigen ist gestattet.

ARTIKEL 74

Pflicht zur Einsicht des Grundbuchs und anderer öffentlicher Register

1. Wer ein Grundstück oder ein grundstückgleiches Recht besitzt, ist verpflichtet, sich durch Einsicht des Grundbuchs zu vergewissern, daß es sich nicht um einen anzeigepflichtigen Vermögensgegenstand handelt. Das gleiche gilt von Vermögensgegenständen, die in anderen öffentlichen Registern eingetragen sind.

2. Erlangt eine Behörde oder öffentliche Dienststelle Kenntnis von dem Verbleib eines anzeigepflichtigen Vermögensgegenstandes, so hat sie unverzüglich dem Zentralanmeldeamt Mitteilung zu machen. Artikel 73, Absatz 4 gilt entsprechend.

ARTIKEL 75

Strafbestimmungen

1. Mit Gefängnis bis zu fünf Jahren und mit Geldstrafe oder mit einer dieser Strafen wird, soweit nicht auf Grund anderer Bestimmungen eine höhere Strafe verwirkt ist, bestraft,

- (a) wer seiner Anzeigepflicht auf Grund der Artikel 73 und 74 vorsätzlich oder fahrlässig nicht nachkommt,
- (b) wer gegenüber den Wiedergutmachungsorganen wissentlich falsche oder irreführende Angaben macht.

2. Der Täter bleibt im Falle des Absatzes 1 (a) straflos, wenn er vor Entdeckung die nach diesem Gesetz vorgeschriebene Anzeige freiwillig nachholt.

ARTIKEL 76

Strafbestimmungen, (Fortsetzung)

1. Mit Gefängnis bis zu fünf Jahren und mit Geldstrafe oder mit einer dieser Strafen wird, soweit nicht auf Grund anderer Bestimmungen eine höhere Strafe verwirkt ist, bestraft, wer Vermögensgegenstände, die unter die Bestimmungen dieses Gesetzes fallen, veräußert, beschädigt, vernichtet oder beiseite schafft, um sie dem Zugriff des Berechtigten zu entziehen.

2. In besonders schweren Fällen tritt Zuchthausstrafe bis zu fünf Jahren ein.

3. Der Versuch ist strafbar.

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ARTICLE 77

Penalties (continued)

In the cases within the scope of Articles 75 and 76, nobody may plead ignorance of facts which he could have ascertained by the inspection of public books and registers, if and to the extent to which Article 74 imposed on him the obligation of such inspection.

PART XIV

**RE-ESTABLISHMENT
 OF RIGHTS OF SUCCESSION AND ADOPTION**

ARTICLE 78

Exclusion from Inheritance

1. An exclusion from the right of succession or the forfeiture of an estate which occurred during the period from 30 January 1933 to 8 May 1945 by virtue of a law or an ordinance for any of the reasons set forth in Article 1 shall be deemed not to have occurred.

2. The succession shall be deemed to have occurred at the effective date of this Law for the purpose of determining the periods of limitation.

ARTICLE 79

Avoidance of Testamentary Dispositions and of Disclaimers of Inheritance

1. Testamentary dispositions and contracts of inheritance made in the period from 30 January 1933 to 8 May 1945 in which any descendant, parent, grandparent, brother, sister, half-brother, half-sister, or their descendants, as well as a spouse, was excluded from inheritance for the purpose of avoiding a seizure of the estate by the State, expected by the testator for any of the reasons set forth in Article 1, shall be voidable. The power of avoidance shall be governed by Sections 2080 et seq. or 2281 et seq. of the Civil Code, unless paragraph 3 *infra* provides otherwise.

2. Disclaimers of inheritance by persons described in paragraph 1 shall be voidable, provided that such disclaimers were made within the period from 30 January 1933 to 8 May 1945 in order to prevent an expected seizure of the property by the State for any of the reasons set forth in Article 1. The right of avoidance shall be governed by Sections 1954 et seq. of the Civil Code, unless paragraph 3 of this Article provides otherwise.

3. Testamentary dispositions, contracts of inheritance or disclaimers of inheritance must be voided on or before 31 December 1948. The exercise of the power of avoidance within this period shall be deemed timely.

ARTICLE 80

Testamentary Disposition of a Persecuted Person

1. A testamentary disposition made between 30 January 1933 and 8 May 1945 shall be valid in spite of complete non-compliance with form requirements if the testator made such disposition in view of an actual or imaginary immediate danger to his life based on measures of persecution for any of the reasons set forth in Article 1, and where the circumstances were such that he could not or could not be expected to, comply with the statutory form requirements.

2. Any testamentary disposition coming within the scope of paragraph 1 shall be deemed not to have been made if the testator was still capable of making a testamentary disposition complying with the statutory form requirements after 30 September 1945.

ARTICLE 81

Re-Establishment of Adoptions

1. If an adoption relationship was cancelled within the period from 30 January 1933 to 8 May 1945 for any of the reasons set forth in Article 1, such relationship may be reinstated *nunc pro tunc* by a contract between the foster parent or his heirs and the child or his heirs. Sections 1741

ARTIKEL 77

Strafbestimmungen, (Fortsetzung)

Niemand kann sich in den Fällen der Artikel 75, 76 auf die Unkenntnis von solchen Tatsachen berufen, die er auf Grund einer Einsicht in öffentliche Bücher oder Register erfahren hätte, wenn und soweit er nach Artikel 74 zu einer solchen Einsicht verpflichtet war.

VIERZEHNTER ABSCHNITT

**WIEDERHERSTELLUNG VON ERBRECHTEN
 UND KINDESANNAHMEVERHÄLTNISSEN**

ARTIKEL 78

Erbverdrängung

1. Ein in der Zeit vom 30. Januar 1933 bis 8. Mai 1945 aus den Gründen des Artikels 1 durch Gesetz oder Verordnung erfolgter Ausschluß von Erwerb von Todes wegen oder Verfall des Nachlasses gilt als nicht eingetreten.

2. Für die Fristenberechnung gilt der Erbfall mit dem Inkrafttreten dieses Gesetzes als eingetreten.

ARTIKEL 79

Anfechtbarkeit von Verfügungen von Todes wegen und Erbschaftsausschlagungen

1. Letztwillige Verfügungen und Erbverträge aus der Zeit vom 30. Januar 1933 bis 8. Mai 1945, in welchen Abkömmlinge, Eltern, Großeltern, voll- und halbblütige Geschwister und deren Abkömmlinge, sowie Ehegatten von der Erbfolge ausgeschlossen wurden, um ihren Erbteil einem vom Erblasser aus den Gründen des Artikels 1 erwarteten Zugriffes des Staates zu entziehen, sind anfechtbar. Vorbehaltlich der Bestimmungen des Absatz 3 finden auf die Anfechtung die Vorschriften der §§ 2080 ff. bzw. 2281 ff. BGB. Anwendung.

2. Erbschaftsausschlagungen durch die im Absatz 1 genannten Personen sind anfechtbar, wenn sie in der Zeit vom 30. Januar 1933 bis 8. Mai 1945 erfolgten, um dadurch einen aus den Gründen des Artikels 1 erwarteten Zugriff des Staates auf den Erbteil zu verhindern. Vorbehaltlich der Bestimmungen in Absatz 3 finden auf die Anfechtung die Vorschriften der §§ 1954 ff. BGB Anwendung.

3. Die Anfechtung von letztwilligen Verfügungen und Erbverträgen sowie von Erbschaftsausschlagungen muß bis 31. Dezember 1948 erfolgen. Eine innerhalb dieser Frist erfolgte Anfechtung gilt als rechtzeitig.

ARTIKEL 80

Verfolgten-Testament

1. Der Gültigkeit einer in der Zeit vom 30. Januar 1933 bis 8. Mai 1945 erklärten letztwilligen Verfügung steht das Fehlen jeglicher Form nicht entgegen, wenn der Erblasser zu der Verfügung durch eine aus den Gründen des Artikels 1 erwachsene unmittelbare Todesgefahr, in der er sich befand oder zu befinden glaubte, veranlaßt wurde und ihm die Festlegung in gesetzlicher Form nach den Umständen unmöglich oder nicht zuzumuten war.

2. Eine nach Absatz 1 zu beurteilende letztwillige Verfügung gilt als nicht getroffen, wenn der Erblasser nach dem 30. September 1945 zu einer formgerechten letztwilligen Verfügung noch in der Lage war.

ARTIKEL 81

Wiederherstellung von Kindesannahmeverhältnissen

1. Ein in der Zeit vom 30. Januar 1933 bis 8. Mai 1945 aus den Gründen des Artikels 1 aufgehobenes Kindesannahmeverhältnis kann durch Vertrag des Annehmenden oder seiner Erben mit dem Kinde oder seinen Erben rückwirkend zum Zeitpunkt der Aufhebung wiederhergestellt

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to 1772 of the Civil Code, with the exception of Sections 1744, 1745, 1747, 1752 and 1753, shall apply to the contract of reinstatement. A contract of reinstatement may be judicially confirmed even after the death of the parties to it. If one of the parties concerned is not available, a guardian (Pfleger) may be appointed to represent his interests in the proceedings to reinstate the adoption.

2. Where an adoption was cancelled by decision of a court during the period from 30 January 1933 to 8 May 1945 for any of the reasons set forth in Article 1, and if no facts have appeared which thereafter would have caused contracting parties to revoke the adoption on their own initiative, either party to the contract or his heirs may demand that the decision be vacated.

3. The local court (Amtsgericht), which cancelled the adoption shall have jurisdiction in the cases set forth in paragraph 2. The principles of paragraph 1, fourth sentence, above, shall be applicable. The decision of the court shall be discretionary and shall take into account the equities of the parties. When the cancellation of the adoption is vacated, the adoption shall be reinstated *nunc pro tunc*. The court may exclude the retroactive effect of its decision from certain parts thereof.

4. No costs or fees shall be charged in these proceedings.

5. The application for re-establishment of an adoption must be made on or before 31 December 1948.

ARTICLE 82

Jurisdiction

Any claims arising under Articles 78 to 81 shall be decided by the ordinary civil courts. No filing with the Central Filing Agency is required.

PART XV

REINSTATEMENT OF TRADE NAMES AND OF NAMES OF ASSOCIATIONS

ARTICLE 83

Re-Registration of Cancelled Trade Names

1. Where a trade name was cancelled in the Commercial Register within the period from 30 January 1933 to 8 May 1945 after the business establishment had been closed for any of the reasons set forth in Article 1, the cancelled trade name shall be re-registered on application if the business is reopened by its last owner, or owners, or their heirs.

2. If the closed business establishment was conducted at the time of its discontinuation by a single owner, the last owner or his heirs shall be entitled to demand the re-registration of the cancelled trade name. If there are several heirs, and if not all of them participate in the resumption of the enterprise, the re-registration of the cancelled trade name may be demanded, provided the heirs who do not participate in the business assent to the resumption of the trade name.

3. If at the time of its closing the business establishment was conducted by several personally liable partners, re-registration of the cancelled trade name may be demanded if all the personally liable partners establish a business enterprise or if one or several of them do so with the consent of the remaining ones; with respect to heirs of partners the principle of paragraph 2 shall be applicable.

ARTICLE 84

Change of Trade Name

Where a trade name has been changed in the period from 30 January 1933 to 8 May 1945 for any of the reasons set forth in Article 1, the former trade name may be restored upon the application of the person who owned the enterprise at the time the change was made or of his heirs,

werden. Auf den Wiederherstellungsvertrag finden die Vorschriften der §§ 1741 bis 1772 BGB mit Ausnahme der Bestimmungen der §§ 1744, 1745, 1747, 1752 und 1753 Anwendung. Die Bestätigung des Wiederherstellungsvertrags kann auch nach dem Tode der am Wiederherstellungsvertrag beteiligten Personen erfolgen. Ist ein Beteiligter nicht erreichbar, so kann für ihn zum Zwecke der Vertretung bei der Wiederherstellung des Kindesannahmeverhältnisses ein Pfleger bestellt werden.

2. Ist das Kindesannahmeverhältnis in der Zeit vom 30. Januar 1933 bis 8. Mai 1945 durch gerichtliche Entscheidung aus den Gründen des Artikels 1 aufgehoben worden und sind keine Umstände ersichtlich, die die Vertragsschließenden seitdem zur Aufhebung des Kindesannahmeverhältnisses veranlaßt hätten, so können sowohl der Annehmende oder einer seiner Erben, wie das Kind oder einer seiner Erben die Aufhebung dieser Entscheidung beantragen.

3. Zuständig zur Entscheidung gemäß Absatz 2 ist das Amtsgericht, welches das Kindesannahmeverhältnis aufgehoben hat. Absatz 1, Satz 4 gilt entsprechend. Das Gericht entscheidet nach seinem durch Billigkeit bestimmten freien Ermessen. Durch die Aufhebung der gerichtlichen Entscheidung tritt das Kindesannahmeverhältnis rückwirkend wieder in Kraft. Das Gericht kann in seiner Entscheidung die Rückwirkung in einzelnen Beziehungen ausschließen.

4. Das Verfahren ist gebühren- und auslagenfrei.

5. Die Wiederherstellung von Kindesannahmeverhältnissen kann nur bis spätestens 31. Dezember 1948 beantragt werden.

ARTIKEL 82

Zuständigkeit

Über Ansprüche auf Grund der Artikel 78 bis 81 entscheiden die ordentlichen Gerichte. Eine Anmeldung bei dem Zentralanmeldeamt findet nicht statt.

FÜNFZEHNTER ABSCHNITT

WIEDERHERSTELLUNG VON FIRMEN UND NAMEN

ARTIKEL 83

Wiedereintragung einer gelöschten Firma

1. Ist in der Zeit vom 30. Januar 1933 bis 8. Mai 1945 eine Firma im Handelsregister gelöscht worden, nachdem der Betrieb des Handelsgeschäftes aus Gründen des Artikels 1 eingestellt war, so ist, wenn der Betrieb eines Handelsgeschäftes von dem oder den letzten Inhabern oder ihren Erben wieder aufgenommen wird, auf Antrag die gelöschte Firma wieder einzutragen.

2. Wurde das eingestellte Handelsgeschäft zur Zeit der Einstellung von einem Einzelkaufmann betrieben, so steht das Recht auf Wiedereintragung der gelöschten Firma dem letzten Inhaber oder seinem Erben zu. Sind mehrere Erben vorhanden und nehmen sie nicht alle den Betrieb wieder auf, so kann die Wiedereintragung der gelöschten Firma verlangt werden, wenn die den Betrieb nicht wieder aufnehmenden Erben der Annahme der gelöschten Firma zustimmen.

3. Wurde das eingestellte Handelsgeschäft zur Zeit der Einstellung von mehreren persönlich haftenden Gesellschaftern betrieben, so besteht das Recht auf Wiedereintragung der gelöschten Firma, wenn die persönlich haftenden Gesellschafter entweder alle, oder einer oder mehrere von ihnen mit Einverständnis der übrigen, den Betrieb eines Handelsgeschäftes aufnehmen. Im Falle des Erbgangs gilt Absatz 2 entsprechend.

ARTIKEL 84

Änderung der Firma

Ist eine Firma in der Zeit vom 30. Januar 1933 bis 8. Mai 1945 aus den Gründen des Artikels 1 geändert worden, so kann die frühere Firmenbezeichnung wiederhergestellt werden, wenn derjenige, der zur Zeit der Änderung Firmen-

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provided they now own the enterprise. The principles of Articles 83, paragraph 2, second sentence, and paragraph 3, shall be applicable.

ARTICLE 85

Names of Corporations

The principles of Articles 83 and 84 shall be applicable to the trade names of corporations.

ARTICLE 86

Reinstatement of Trade Names in Other Cases

Whenever the use of the former trade name is essential for the purpose of full restitution, the Restitution Chamber may permit the reinstatement of a cancelled or changed trade name in cases other than those provided for in Articles 83 to 85.

ARTICLE 87

Names of Associations and Endowments (Stiftungen)

Article 86 shall be applicable to the resumption of the name by an association or an endowment.

ARTICLE 88

Procedure

Applications for the registration in the Commercial Register of former trade names must be filed within the period provided for in this Law for the filing of claims for restitution. The Amtsgericht in its capacity as Court of Registry shall have jurisdiction over these applications except in the cases provided for in Article 86. Otherwise the procedure shall be governed by the rules of procedure applicable in matters of non-contentious litigation. No costs or fees shall be charged in these proceedings.

**PART XVI
 FINAL PROVISIONS**

ARTICLE 89

Claims Reserved to Special Legislation

The reinstatement of lapsed interests arising out of insurance contracts and of lapsed copyrights and industrial rights (patents etc.) may be regulated by special legislation.

ARTICLE 90

Statute of Limitations

To the extent to which the statute of limitations or prescriptive rights of the Civil Code might defeat any claim falling under this Law, the statute of limitations or a prescriptive period shall not be deemed to have expired until six months after such cause of action arises by reason of operation of this Law, but in no event prior to 30 June 1949.

ARTICLE 91

Taxes and Other Levies

1. Taxes and other public levies shall not be imposed in connection with restitution.
2. No taxes, including inheritance taxes, or other public assessments, fees or costs shall be refunded or subsequently levied in connection with the return of confiscated property.

ARTICLE 92

Implementing and Carrying-out Provisions

1. The Restitution Agencies will be designated by implementing regulations.

inhaber war, oder seine Erben, es als jetzige Inhaber der Firma beantragen. Artikel 83, Absatz 2, Satz 2 und Absatz 3 gelten sinngemäß.

ARTIKEL 85

Firmen juristischer Personen

Die Vorschriften der Artikel 83 und 84 finden auf Firmen juristischer Personen entsprechende Anwendung.

ARTIKEL 86

Wiederherstellung von Firmennamen in sonstigen Fällen

Die Wiedergutmachungskammer kann die Wiederherstellung einer gelöschten oder einer geänderten Firma auch in anderen als den Fällen der Artikel 83 bis 85 gestatten, sofern die Führung der alten Firmenbezeichnung zum Zwecke der Wiedergutmachung erforderlich ist.

ARTIKEL 87

Vereins- und Stiftungsamen

Die Bestimmung des Artikels 86 gilt entsprechend für die Wiederannahme des früheren Namens eines Vereins oder einer Stiftung.

ARTIKEL 88

Verfahren

Anträge auf Eintragung von früheren Firmenbezeichnungen im Handelsregister können nur binnen der in diesem Gesetz für Rückerstattungsansprüche vorgesehenen Anmeldefrist gestellt werden. Über diese Anträge entscheidet unbeschadet Artikel 86 das Amtsgericht als Registergericht. Im übrigen sind für das Verfahren die Vorschriften über das Verfahren in Sachen der freiwilligen Gerichtsbarkeit anwendbar. Das Verfahren ist gebühren- und kostenfrei.

**SECHZEHNTER ABSCHNITT
 SCHLUSSBESTIMMUNGEN**

ARTIKEL 89

Vorbehaltene Ansprüche

Besondere gesetzliche Regelung bleibt vorbehalten für die Wiederherstellung erloschener Rechte aus Versicherungsverhältnissen und erloschener Urheberrechte und gewerblicher Schutzrechte.

ARTIKEL 90

Fristenlauf

Soweit Ansprüchen, die unter dieses Gesetz fallen, Verjährung, Ersitzung oder Ablauf von Ausschlussfristen nach den Vorschriften des bürgerlichen Rechts entgegenstehen würden, gilt die Verjährungs-, Ersitzungs- oder Ausschlussfrist als nicht vor dem Ende von sechs Monaten abgelaufen, gerechnet von dem Zeitpunkt, in welchem ein Klageanspruch auf Grund dieses Gesetzes zur Entstehung gelangt ist, keinesfalls jedoch vor dem 30. Juni 1949.

ARTIKEL 91

Steuern und Abgaben

1. Steuern und sonstige öffentliche Abgaben werden aus Anlaß der Rückerstattung nicht erhoben.
2. Eine Erstattung oder nachträgliche Erhebung von Steuern, sonstigen öffentlichen Abgaben, Gebühren und Kosten aus Anlaß des Rückfalls entzogener Vermögensgegenstände einschließlich der Erbschaftssteuer findet nicht statt.

ARTIKEL 92

Ausführungs- und Durchführungsvorschriften

1. Die Wiedergutmachungsbehörden werden durch Ausführungsverordnung bestimmt.

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2. Unless otherwise provided in this Law, or ordered by Military Government, the Minister President of each State or any Ministers designated by him, shall issue the legal and administrative regulations necessary for the implementation of this Law.

ARTICLE 93

Jurisdiction of German Courts

1. German Courts are hereby authorized to exercise jurisdiction in civil cases arising under this Law against any stateless person having the assimilated status of United Nations displaced persons or against any national of the United Nations not falling within categories (3), (4), (5) of Section 10 (b) in Article VI of Military Government Law No. 2, as amended or as hereafter amended.

2. German Courts are hereby authorized to exercise jurisdiction in cases involving offenses against any of the provisions of Articles 73 to 77 of this Law by persons not exempted from the jurisdiction of the German Courts under Section 10 (a) in Article VI of Military Government Law No. 2 as amended or as hereafter amended.

ARTICLE 94

Official Text

The German text of this Law shall be the official text and the provisions of Paragraph 5 of Article II of Military Government Law No. 4, as amended, shall not apply.

ARTICLE 95

Effective Date

This Law shall become effective in Bavaria, Bremen, Hesse and Wuerttemberg-Baden on 10. November 1947.

BY ORDER OF MILITARY GOVERNMENT

Approved: 10 November 1947

2. Soweit nichts anderes in diesem Gesetz bestimmt ist oder von der Militärregierung angeordnet wird, werden die zur Durchführung des Gesetzes erforderlichen Rechts- und Verwaltungsvorschriften vom Ministerpräsidenten eines Landes oder den von ihm bestimmten Staatsministern erlassen.

ARTIKEL 93

Zuständigkeit der deutschen Gerichte

1. Die deutschen Gerichte werden hiermit ermächtigt, die Gerichtsbarkeit in Zivilsachen, die diesem Gesetz unterliegen, gegen Staatenlose, die als verschleppte Personen einer der Vereinten Nationen gelten, oder gegen Staatsangehörige der Vereinten Nationen auszuüben, sofern diese nicht unter eine der in Nr. (3), (4) oder (5) der Ziffer 10 (b) in Artikel VI des Gesetzes Nr. 2 der Militärregierung (in seiner jeweils geltenden Fassung) genannten Personen-gruppen fallen.

2. Die deutschen Gerichte werden hiermit ermächtigt, die Gerichtsbarkeit in Fällen von Zuwiderhandlungen gegen die Bestimmungen der Artikel 73 bis 77 dieses Gesetzes auszuüben, vorausgesetzt, daß der Täter von der Gerichtsbarkeit der deutschen Gerichte nicht gemäß Ziffer 10 (a) in Artikel VI des Gesetzes Nr. 2 der Militärregierung (in seiner jeweils geltenden Fassung) ausgenommen ist.

ARTIKEL 94

Maßgeblicher Text

Der deutsche Text dieses Gesetzes ist der amtliche Text; die Bestimmungen des Absatzes 5 des Artikels II des Gesetzes Nr. 4 der Militärregierung (in seiner geänderten Fassung) finden keine Anwendung.

ARTIKEL 95

Inkrafttreten

Dieses Gesetz tritt in den Ländern Bayern, Bremen, Hessen und Württemberg-Baden am 10. November 1947 in Kraft.

IM AUFTRAGE DER MILITÄRREGIERUNG

Bestätigt: 10. November 1947

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MILITARY GOVERNMENT — GERMANY
UNITED STATES AREA OF CONTROL

REGULATION NO. 1
UNDER MILITARY GOVERNMENT
LAW NO. 59

Establishment of Central Filing Agency and Manner
of Filing Claims for Restitution

Pursuant to Article 55 and 56 of Military Government Law No. 59, "Restitution of Identifiable Property", it is hereby ordered as follows:

I. Establishment of Central Filing Agency

1. There is hereby established the Central Filing Agency (Zentralanmeldeamt) provided for in Article 55 of Military Government Law No. 59, the mailing address of which is:

Zentralanmeldeamt (Central Filing Agency)
Bad Nauheim, Germany

2. This Agency is hereby vested with all powers and responsibilities which the Central Filing Agency has under the provisions of Military Government Law No. 59.

II. Manner of Filing Claims for Restitution

1. In order to facilitate the speedy handling of claims, the petition containing the claim for restitution should follow the outline set out in the Appendix hereto. All information therein requested should be given, to the extent to which it is known, in exact and concise form.

2. Where the claimant desires to give more extensive explanations, they should be added as numbered annexes to the petition, together with appropriate documents and affidavits.

3. No printed forms need be used. The petition shall contain the required information in the order in which it is set forth in the Appendix hereto and each item thereof shall be given a number appearing on the left margin of the paper, corresponding to the number set forth in the Appendix. The sheets of paper on which the claim is typed should, for uniformity, be 8 1/2 inches wide and between 11 and 13 inches long, or have dimensions as similar as possible. All copies should be typewritten on one side of the sheet only and shall be legible. A minimum of five copies of the petition and accompanying documents should be filed together with such additional copies as may be required for the service of one copy on each interested party to the proceeding. (See Article 61 of Military Government Law No. 59).

4. Since the Law will be administered by German agencies, the petition should be written in German, if possible; otherwise, the English language shall be used. Affidavits submitted in any other language shall be accompanied by a translation in German.

5. In so far as possible, a separate petition should be filed for each claim:

- a. where more than one act of confiscation is the basis for the claims, or
- b. where the properties claimed are presently in more than one location.

6. Original documents should not be filed but should be retained by the claimant until requested by the Restitution Authority. However, true copies or photocopies of pertinent

MILITÄRREGIERUNG — DEUTSCHLAND
AMERIKANISCHES KONTROLLGEBIET

AUSFUHRUNGSVERORDNUNG
NR. 1 ZUM GESETZ NR. 59
DER MILITÄRREGIERUNG

Errichtung eines Zentralanmeldeamtes und Form der
Anmeldung von Rückerstattungsansprüchen

Gemäß Artikel 55 und 56 des Gesetzes Nr. 59 der Militärregierung über die Rückerstattung feststellbarer Vermögensgegenstände wird folgendes verordnet:

I. Errichtung eines Zentralanmeldeamtes

1. Gemäß Artikel 55 des Gesetzes Nr. 59 der Militärregierung wird hiermit ein Zentralanmeldeamt errichtet, dessen Anschrift lautet:

Zentralanmeldeamt
Bad Nauheim, Deutschland.

2. Diesem Amt werden hiermit alle Rechte und Befugnisse übertragen, die dem Zentralanmeldeamt nach Maßgabe der Bestimmungen des Gesetzes Nr. 59 der Militärregierung zustehen.

II. Form der Anmeldung von Rückerstattungsansprüchen

1. Zur Erleichterung der beschleunigten Bearbeitung von Rückerstattungsansprüchen soll die Anmeldung von Ansprüchen auf Rückerstattung entsprechend der im Anhang gegebenen Anleitung vorgenommen werden. Alle verlangten Angaben sollen, soweit bekannt, genau und in gedrängter Form gemacht werden.

2. Falls der Berechtigte ausführlichere Angaben machen will, sind sie als Anlage der Anmeldung beizufügen, und zwar zusammen mit sachdienlichen Urkunden und eidesstattlichen Versicherungen. Die Anlagen sind zu nummerieren.

3. Es ist nicht notwendig, gedruckte Formulare zu verwenden. Die erforderlichen Angaben sollen in der Anmeldung in der aus dem Anhang ersichtlichen Reihenfolge gemacht werden; die Antwort auf jede Frage soll am linken Rand des zur Anmeldung verwendeten Bogens mit derjenigen Ziffer bezeichnet werden, welche der im Anhang zur Bezeichnung der Frage verwendeten Ziffer entspricht. Die zur Anmeldung verwendeten Bogen sollen aus Gründen der Einheitlichkeit nicht größer sein als 21 1/2 cm breit und zwischen 28 und 33 cm lang oder eine möglichst ähnliche Größe haben. Die Bogen sollen nur einseitig, lesbar und in Maschinenschrift beschrieben werden. Die Anmeldung und die zugehörigen Urkunden sollen in fünffacher Ausfertigung eingereicht werden. Ferner sollen soviel weitere Abschriften beigefügt werden, wie zwecks Zustellung von je einer Abschrift an jeden am Verfahren Beteiligten erforderlich sind (Artikel 61 des Gesetzes Nr. 59 der Militärregierung).

4. Da das Gesetz von deutschen Behörden angewendet wird, soll die Anmeldung, soweit möglich, in deutscher Sprache abgefaßt sein; andernfalls muß sie in englischer Sprache abgefaßt sein. Eidesstattlichen Versicherungen, die in einer anderen Sprache eingereicht werden, soll eine deutsche Übersetzung beigefügt werden.

5. Soweit als möglich soll für jeden Rückerstattungsanspruch eine besondere Anmeldung vorgenommen werden,

- a. wenn die Ansprüche sich auf mehr als einen Entziehungsvorgang gründen;
- b. wenn die beanspruchten Vermögensgegenstände gegenwärtig an verschiedenen Stellen gelegen sind.

6. Original-Urkunden sollen nicht eingereicht, sondern von dem Berechtigten zurückbehalten werden, bis er von der Rückerstattungsbehörde um die Einreichung ersucht wird. Dagegen sollen beglaubigte Abschriften oder Foto-

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documents should be attached to all claims filed. Pictures or drawings should be furnished, if possible, where they are necessary in order to present an adequate description of the property.

7. Each petition shall be dated and shall be signed by the claimant or by his duly authorized representative; if signed by a person other than the claimant, the power of attorney or other authorization of such a person should accompany the claim.

III. Penalties for False Claims.

Any person knowingly making false statements in connection with a claim for restitution under Military Government Law No. 59 will be liable to punishment under Article II, paragraph 33, of Military Government Ordinance No. 1.

IV. Effective Date.

This regulation shall become effective on 10 November 1947.

BY ORDER OF MILITARY GOVERNMENT.

APPENDIX

OUTLINE OF INFORMATION REQUESTED IN A PETITION FOR RESTITUTION UNDER MILITARY GOVERNMENT LAW NO. 59

PART A

Information Concerning the Claimant, his Attorney or Agent, if any, and the Persecuted Person

I. Information Concerning the Claimant:

1. Last name, first name, and middle name (in full).
2. Permanent residence.
3. Present address.
4. Address to which correspondence with the claimant concerning this claim should be sent.
5. Name and address of person within Germany who is authorized by the claimant to receive service of legal papers on his behalf; (see Article 58, paragraph 4).
6. If claimant is not the persecuted person, state all facts on which claimant bases his right to succeed to claim of the persecuted person. Attach copies of any pertinent documents. In the event that claim is based on an assignment, copies of the Military Government license authorizing such assignment should be attached.

II. Information Concerning the Agent of the Claimant, if any:

7. Last name, first name, and middle name (in full).
8. Address.
9. Nature of agency (attorney-at-law, attorney-in-fact, guardian, etc.). Attach copies of appropriate documents showing agency.

III. Information Concerning Persecuted Person:

10. Last name, first name, and middle name (in full).
11. Present address, if living.
12. Last known residence and address in Germany.
13. Residence and address at the time of the act of confiscation.

PART B

Information Concerning Property Claimed

I. Real Property and Interests in Real Property:

14. Detailed description of real property or of interests therein.
15. Location of the property.
16. Description of entry of property in Land Title Register (Grundbuch).

kopien sachdienlicher Urkunden der Anmeldung beigefügt werden. Wenn eine schriftliche Beschreibung eines Vermögensgegenstandes nicht als ausreichend erscheint, so sollen, soweit möglich, Abbildungen oder Zeichnungen beigefügt werden.

7. Die Anmeldung muß datiert und vom Berechtigten oder seinem bevollmächtigten Vertreter unterschrieben sein; wenn sie von einer dritten Person unterschrieben ist, so muß die Vollmacht oder sonstige Ermächtigung dieser Person mit der Anmeldung eingereicht werden.

III. Strafbestimmungen für unrichtige Anmeldungen

Wer im Zusammenhang mit der Anmeldung eines Anspruchs auf Rückerstattung nach Maßgabe des Gesetzes Nr. 59 der Militärregierung eine wissentlich falsche Angabe macht, macht sich nach den Vorschriften des Artikels II, Ziffer 33 der Verordnung Nr. 1 der Militärregierung strafbar.

IV. Datum des Inkrafttretens:

Diese Verordnung tritt am 10. November 1947 in Kraft.

IM AUFTRAGE DER MILITÄRREGIERUNG.

ANHANG

ANLEITUNG ZUR VORNAHME DER ANMELDUNG EINES RÜCKERSTATTUNGSANSPRUCHS NACH MASSGABE DES GESETZES NR. 59 DER MILITÄRREGIERUNG

TEIL A

Angaben über den Berechtigten, seinen Anwalt oder Beauftragten und den Verfolgten

I. Angaben über den Berechtigten:

1. Familienname, Vorname und weitere Vornamen.
2. Ständiger Wohnsitz.
3. Gegenwärtige Anschrift.
4. Anschrift, welche für Zuschriften an den Berechtigten betreffend den Rückerstattungsanspruch benutzt werden soll.
5. Name und Anschrift eines in Deutschland wohnhaften Zustellungsbevollmächtigten (Artikel 58, Absatz 4).
6. Wenn der Berechtigte und der Verfolgte nicht die gleiche Person sind, müssen alle Tatsachen dargetan werden, aus denen sich ergibt, daß der Berechtigte der Rechtsnachfolger des Verfolgten ist. Abschriften aller sachdienlichen Urkunden sind beizufügen. Falls der Anspruch auf einer Abtretung beruht, sollen Abschriften der Genehmigung der Abtretung seitens der Militärregierung beigefügt werden.

II. Angaben über den Bevollmächtigten des Berechtigten:

7. Familienname, Vorname und weitere Vornamen.
8. Anschrift.
9. Rechtsnatur des Auftragsverhältnisses (Rechtsanwalt, sonstiger Beauftragter, Vormund usw.). Abschriften der sachdienlichen Urkunden, aus denen das Auftragsverhältnis ersichtlich ist, sind beizufügen.

III. Angaben über den Verfolgten:

10. Familienname, Vorname und weitere Vornamen.
11. Gegenwärtige Anschrift (falls am Leben).
12. Letzter bekannter Wohnsitz und letzte bekannte Anschrift in Deutschland.
13. Wohnsitz und Anschrift zur Zeit der Entziehung.

TEIL B

Angaben über das Vermögen, dessen Rückerstattung beansprucht wird

I. Grundstücke und Rechte an Grundstücken:

14. Einzelbeschreibung des Grundstücks oder der Rechte am Grundstück.
15. Lage.
16. Beschreibung im Grundbuch.

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 Entry Osama Bin Laden Assets
 File Osama - Computers
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II. Business Enterprises:

17. Name and description of the business enterprise.
18. Location of the business enterprise:
 - a. at the time of the confiscation,
 - b. if moved, present or last-known address and location.
19. Description of entry in the Commercial Register (Handelsregister).

III. Securities: (Bonds, shares, etc)

20. Give an exact description of the type, certificate number, etc. of the security. If an interest in or an obligation of an organization, give name and address of such organization.
21. Give location of the instrument at the time of the confiscation and present, or last known location.

IV. All Other Personal Property:

22. Give a detailed description of the property involved and all pertinent information with respect thereto, including location at the time of the confiscation and its present or last known location.

V. All Other Property Not Heretofore Mentioned:

23. Give a detailed description of the property involved and all other pertinent information with respect thereto, including, where relevant, location at the time of the confiscation and its present or last known location.

PART C

Statement of Facts Concerning Act of Confiscation

I. Information Concerning Property Prior to the Time of the Confiscation:

24. Date of the acquisition of the property by the persecuted person.
25. Purchase price paid by the persecuted person.
26. Value of the property at the time of the acquisition described at item 24.
27. State in detail facts concerning improvements or any accretions, depreciation, and other changes in value of the property prior to the act of confiscation.
28. In case the claimant, at the time of the confiscation, was not the sole owner of the property claimed, state names, addresses, as well as legal nature, and percentage of interest of all other co-owners of the property.
29. Describe other rights and interests of third persons in the property, such as mortgages, liens, pledges, etc. Give all the facts and data concerning such persons, particularly names, addresses, as well as legal nature, extent and amount of their interests.

II. Information Concerning the Act of Confiscation:

30. Date and place of transaction which constituted the act of confiscation.
31. Give exact information as to the facts and circumstances by reason of which it is claimed that:
 - a. a confiscation within the meaning of Article 2 occurred, or
 - b. a presumption within the meaning of Article 3 arises, or
 - c. the power of avoidance within the meaning of Article 4 arises.
 State clearly if the claim is based on more than one of these categories.

II. Geschäftsunternehmungen:

17. Name und Beschreibung des Geschäftsunternehmens.
18. Angabe darüber, wo das Geschäftsunternehmen
 - a. zur Zeit der Entziehung gelegen war;
 - b. wenn verzogen, gegenwärtige oder letztbekannte Anschrift und Lage.
19. Eintragung im Handelsregister.

III. Wertpapiere (Schuldverschreibungen, Aktien usw.):

20. Genaue Beschreibung des Wertpapiers, seiner Gattung, Effektnummer usw. Bei Anteilsrechten Name und Anschrift des Unternehmens; bei Schuldverschreibungen Name und Anschrift des Schuldners.
21. Angaben darüber, wo sich das Wertpapier zur Zeit der Entziehung befunden hat, wo es sich jetzt befindet oder, falls dies nicht bekannt ist, wo es sich zuletzt befunden hat.

IV. Sonstiges persönliches Vermögen:

22. Eingehende Beschreibung des in Frage stehenden Vermögensgegenstandes und alle sonstigen sachdienlichen auf ihn bezüglichen Angaben einschließlich Angaben darüber, wo er sich zur Zeit der Entziehung befunden hat, wo er sich gegenwärtig befindet und, falls dies nicht bekannt ist, wo er sich zuletzt befunden hat.

V. Sonstige Vermögensgegenstände, soweit sie bisher hier nicht aufgeführt sind:

23. Eingehende Beschreibung des in Frage stehenden Vermögensgegenstandes und alle sonstigen ihn betreffenden sachdienlichen Angaben einschließlich Angaben darüber, wo sich der Vermögensgegenstand zur Zeit der Entziehung befunden hat, wo er sich jetzt befindet oder, falls dies nicht bekannt ist, wo er sich zuletzt befunden hat.

TEIL C

Schilderung des Entziehungsvorganges

I. Angaben über den Vermögensgegenstand vor der Entziehung:

24. Datum des Erwerbs des Vermögensgegenstandes seitens des Verfolgten.
25. Kaufpreis, den der Verfolgte bezahlt hat.
26. Wert des Vermögensgegenstandes zur Zeit des Erwerbs (siehe oben Nr. 24).
27. Eingehende Angaben über Verwendungen, Werterhöhungen, Wertminderungen und andere Veränderungen des Vermögensgegenstandes vor der Entziehung.
28. Im Falle der Berechtigte zur Zeit der Entziehung nicht Alleineigentümer des Vermögensgegenstandes war, sollen die Namen und Anschriften aller an dem Vermögensgegenstand Mitbeteiligten angeführt sowie die Rechtsnatur und Höhe ihrer Beteiligung bezeichnet werden.
29. Sonstige Rechte Dritter an dem Vermögensgegenstand, wie z.B. Hypotheken, gesetzliche und vertragliche Pfandrechte usw. Alle auf diese Personen bezüglichen Tatsachen und Einzelheiten sind anzugeben, besonders ihre Namen und Anschriften sowie die Rechtsnatur, der Umfang und Geldbetrag ihrer Rechte.

II. Angaben über den Entziehungsvorgang:

30. Datum und Ort der Entziehung.
31. Genaue Angaben der Tatsachen und Umstände, auf Grund deren geltend gemacht wird, daß
 - a. eine Entziehung im Sinne des Artikels 2 stattgefunden hat oder
 - b. eine Vermutung im Sinne des Artikels 3 vorliegt oder
 - c. ein Anfechtungsrecht im Sinne des Artikels 4 gegeben ist.
 Genaue Angabe darüber, ob der Anspruch auf mehr als eine der obigen Kategorien gestützt wird und auf welche.

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 By JW NARA Date 9-16-79

RG 200
 Entry German External Assets
 File Omibus - Commers Will
 Box 167

32. Purchase price specified at the time of the transfer of the property.
33. Any other terms specified at the time of the transfer of the property.
34. Consideration received at the time of the transaction and subsequently thereto. State consideration paid or given by the transferee, specify the amounts, time and place of payments, to whom the amounts were paid, and all other pertinent circumstances.
35. State any restrictions placed upon the use by the persecuted person of the consideration paid or given by the transferee.
36. Did the consideration received constitute a fair purchase price within the meaning of Article 3, paragraph 3? If not, what would have been a fair purchase price? State basis of estimate.
37. Give all other pertinent information, particularly names and addresses of witnesses capable of testifying to the statements made in Part C, Section II; attach copies of any pertinent evidentiary documents, etc.

III. Information Concerning the Property After the Act of Confiscation:

38. In instances where an accounting under the Law is claimed, give all pertinent information showing the basis of such claim, including information with respect to profits, losses, accretions, improvements, deterioration, damage, loss, management, expenses, etc. Give all other pertinent information necessary for such accounting between the parties with names and addresses of witnesses capable of testifying to the statements made in Part C, Section III; attach copies of pertinent evidentiary documents, etc.

IV. Information with Respect to the Restitutor and All Other Parties to the Proceedings, Except the Claimant:

39. Give full names, present or last known addresses, and extent of participation in, or knowledge of, the transaction or confiscation with respect to:
 - a. the person who first acquired the property from the persecuted person, also, his address at the time of confiscation;
 - b. all persons (except present holder) subsequently holding the property;
 - c. the present or last known holder;
 - d. all other persons claiming an interest in the property (mortgagees, tenants, etc.).
40. Give all other pertinent information, particularly names and addresses of witnesses capable of testifying to the statements made in Part C, Section IV; attach copies of pertinent evidentiary documents, etc.

V. Other Information:

41. Any other pertinent information deemed necessary to give a full statement of the petitioner's claim for restitution.

**PART D
 Prayer for Relief**

The Restitution Authority will not enter an order for restitution or other relief under this Law unless the claimants sets forth, in a prayer, the relief sought, detailed in the manner in which he desires it to appear in the final order of the Restitution Authority. In setting forth the prayer for relief in this Part, the following information should be included:

32. Angaben über den Kaufpreis, wie er zur Zeit der Veräußerung des Vermögensgegenstandes berechnet wurde.
33. Alle sonstigen Vertragsbedingungen, wie sie zur Zeit der Veräußerung des Vermögensgegenstandes festgelegt wurden.
34. Angaben über das Entgelt, das der Veräußerer im Zeitpunkt der Veräußerung und gegebenenfalls später erhalten hat. Angaben über die Gegenleistung, die der Erwerber gemacht hat; Angaben über die Beträge sowie Zeit und Ort der geleisteten Zahlungen, an wen diese Zahlungen geleistet worden sind und alle sonstigen zur Aufklärung des Sachverhalts dienlichen Umstände.
35. Angaben über etwaige, dem Verfolgten auferlegte Verfügungsbeschränkungen hinsichtlich des gezahlten oder erhaltenen Entgelts.
36. War das Entgelt ein angemessener Kaufpreis im Sinne des Artikels 3, Absatz 3? Falls nein, Angabe des angemessenen Kaufpreises. Worauf beruht die Schätzung dieses angemessenen Kaufpreises?
37. Alle weiteren sachdienlichen Angaben, besonders Namen und Anschriften von Zeugen, die Aussagen in Bezug auf die Angaben unter Teil C, II, machen können. Abschriften etwaiger beweisheblicher Urkunden usw. sind beizufügen.

III. Angaben über den Vermögensgegenstand nach der Entziehung:

38. In denjenigen Fällen, in denen nach Maßgabe des Gesetzes eine Rechnungslegung beansprucht wird, sind alle sachdienlichen Angaben über den Grund dieses Anspruchs sowie über Gewinn, Verluste, Wert erhöhungen, Verwendungen, Verschlechterungen, Schäden, Untergang, Geschäftsführung, Auslagen usw. zu machen. Die für die Rechnungslegung erforderlichen Angaben sollen auch die Namen und Anschriften von Zeugen enthalten, die Aussagen in Bezug auf Angaben in Teil C, III, machen können. Abschriften etwaiger beweisheblicher Urkunden usw. sind beizufügen.

IV. Angaben über den Rückerstattungspflichtigen und alle sonstigen am Verfahren Beteiligten mit Ausnahme des Rückerstattungsberechtigten:

39. Familienname; gegenwärtige und letztbekannte Anschrift; Umfang der Beteiligung an dem die Entziehung darstellenden Vorgang; oder Kenntnis hiervon, und zwar in Bezug auf
 - a. denjenigen, der den Vermögensgegenstand zuerst von dem Verfolgten erworben hat (Ersterwerber) sowie dessen Anschrift zur Zeit der Entziehung;
 - b. alle diejenigen Personen (mit Ausnahme des gegenwärtigen Besitzers oder Eigentümers), die den Vermögensgegenstand späterhin im Besitz oder Eigentum hatten;
 - c. den gegenwärtigen oder letztbekannten Besitzer oder Eigentümer;
 - d. alle sonstigen Personen, die ein Recht an dem Vermögensgegenstand geltend machen, (z. B. Hypothekengläubiger, Mieter usw.).
40. Alle weiteren sonstigen sachdienlichen Angaben, insbesondere Namen und Anschriften von Zeugen, die Aussagen in Bezug auf die Angaben in Teil C, IV, machen können. Abschriften etwaiger beweisheblicher Urkunden usw. sind beizufügen.

V. Sonstige Angaben:

41. Sonstige sachdienliche Angaben, die für eine vollständige Schilderung des Sachverhalts, auf die sich der Rückerstattungsanspruch begründet, erforderlich sind.

**TEIL D
 Rückerstattungsantrag**

Die Rückerstattungsbehörde kann ein die Rückerstattung anordnendes Urteil oder ein sonstiges Urteil auf Grund des Gesetzes nur erlassen, wenn der Anspruchsberechtigte den Anspruch auf Rückerstattung dem Wortlaut nach so genau angibt, wie er seiner Auffassung nach in dem Endurteil der Rückerstattungsbehörde formuliert werden soll; zu diesem Zweck sollen folgende Angaben gemacht werden:

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 By JW NARA Date 9-16-79

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 File Ombuds - Complaints with
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42. State, whether, in lieu of all other claims for restitution, the claimant elects the remedy set forth in Article 16 of the Law, if so, the amount claimed thereunder.
43. In case the remedy set forth in Article 16 is not elected, state with respect to each item of property listed in Part B, and with respect to each person named in Section IV of Part C, the specific relief sought, in particular:
- whether, and to what extent, restitution in kind is requested;
 - in case restitution in kind is not possible or in case of deterioration, whether compensation is requested, and, if so in what amount;
 - whether, and in what amount a claim is made for rents, use, profits, etc.;
 - whether and to what extent any other relief is sought under the provisions of this Law.

PART E

I/We, hereby declare that all information given in the foregoing petition is to the best of my/our knowledge accurate, complete and true.

.....
 Date Signature

42. Ob der Berechtigte an Stelle aller sonstigen Ansprüche auf Rückerstattung den Anspruch nach Maßgabe des Artikels 16 des Gesetzes erhebt, und falls ja, in welcher Höhe.

43. Falls der Anspruch auf Nachzahlung gemäß Artikel 16 nicht erhoben wird, soll in Bezug auf jeden einzelnen in Teil B aufgeführten Vermögensgegenstand und in Bezug auf jede in Teil C, IV, genannte Person angegeben werden:

- ob und inwieweit Rückerstattung in Natur verlangt wird;
- im Falle, daß Rückerstattung in Natur nicht möglich ist, oder im Falle der Verschlechterung des Vermögensgegenstandes, ob eine Entschädigung verlangt wird und falls ja, in welcher Höhe;
- ob und in welcher Höhe ein Anspruch auf Mieten, Gebrauchsüberlassung, Gewinn usw. erhoben wird;
- ob und in welcher Höhe weitere Ansprüche auf Grund dieses Gesetzes erhoben werden.

TEIL E

Ich/Wir erklären hiermit, daß alle in der vorstehenden Anmeldung enthaltenen Angaben nach meinem/unserem besten Wissen und Gewissen genau, vollständig und der Wahrheit entsprechend gemacht worden sind.

.....
 Datum Unterschrift

**MILITARY GOVERNMENT — GERMANY
 UNITED STATES AREA OF CONTROL**

**REGULATION NO. 2
 UNDER MILITARY GOVERNMENT
 LAW NO. 59**

**Filing of Reports as Required by Military
 Government Law No. 59**

Pursuant to Articles 73 and 74 of Military Government Law No. 59, "Restitution of Identifiable Property" (see Appendix 'A'), all persons holding certain property which may be subject to restitution under this Law are required to file, on or before 15 May 1948, a report concerning such property, with the Zentralanmeldeamt (Central Filing Agency), Bad Nauheim, Germany, as established by Regulation No. 1 under this Law. Pursuant to Articles 75, 76 and 77 of this Law (see Appendix 'A'), penalties are provided for the failure of such persons to file such reports. Pursuant to Article 92 of this Law and in implementation of Article 73 and 74 thereof, it is hereby ordered as follows:

I. Manner of Filing Reports:

- The report should follow the outline set out in Appendix 'B'. All information required should be given in exact and concise form.
- When the reporting person desires to give more extensive explanations, they should be added as numbered annexes to the report, together with appropriate documents and affidavits.
- No printed form need be used. The report should contain the required information in the order in which it is set forth in Appendix 'B' and each item thereof shall be given a number, appearing in the left margin of the paper, corresponding to the number set forth in Appendix 'B'. The sheets of paper on which the report is typed should, for uniformity, be 8 1/2 inches wide and between 11 and 13 inches long, or have dimensions as similar as possible.

**MILITÄRREGIERUNG — DEUTSCHLAND
 AMERIKANISCHES KONTROLLGEBIET**

**AUSFÜHRUNGSVERORDNUNG
 NR. 2 ZUM GESETZ NR. 59
 DER MILITÄRREGIERUNG**

**Erstattung von Anzeigen gemäß Gesetz Nr. 59
 der Militärregierung**

Nach Artikel 73 und 74 des Gesetzes Nr. 59 der Militärregierung über Rückerstattung feststellbarer Vermögensgegenstände (siehe Anhang "A") sind alle Personen, welche Vermögensgegenstände, die möglicherweise der Rückerstattung nach Maßgabe des Gesetzes unterliegen, in Besitz oder Eigentum haben, verpflichtet, bis zum 15. Mai 1948 dem auf Grund der Ausnahmsverordnung Nr. 1 zum Gesetz Nr. 59 der Militärregierung errichteten Zentralanmeldeamt in Bad Nauheim (Deutschland) eine Anzeige zu erstatten. Wer seiner Anzeigepflicht nicht nachkommt, macht sich nach Maßgabe der Artikel 75, 76 und 77 des Gesetzes Nr. 59 der Militärregierung (Anhang "A") strafbar. Auf Grund des Artikels 92 dieses Gesetzes und in Verfolg der Artikel 73 und 74 desselben wird hiermit folgendes angeordnet:

I. Form der Anzeige:

- Die Anzeige soll entsprechend der im Anhang "B" gegebenen Anleitung vorgenommen werden. Alle verlangten Angaben sollen genau und in gedrängter Form gemacht werden.
- Falls der Berechtigte ausführlichere Angaben machen will, sind sie als Anlage der Anzeige beizufügen, und zwar zusammen mit sachdienlichen Urkunden und eidesstattlichen Versicherungen. Die Anlagen sind zu numerieren.
- Es ist nicht notwendig, gedruckte Formulare zu verwenden. Die erforderlichen Angaben sollen in der Anzeige in der aus dem Anhang "B" ersichtlichen Reihenfolge gemacht werden; die Antwort auf jede Frage soll am linken Rand des zur Anzeige verwendeten Bogens mit derjenigen Ziffer bezeichnet werden, welche der im Anhang "B" zur Bezeichnung der Frage verwendeten Ziffer entspricht. Die zur Anzeige verwendeten Bogen sollen aus Gründen der Einheitlichkeit nicht größer sein als 21 1/2 cm breit und zwei-

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All copies should be typewritten on one side of the sheet only and shall be legible. The report shall be written in German; one original and two duplicate copies thereof shall be filed.

4. Property in different location should be reported separately.

5. Each report should be dated and shall be signed by the person filing the report or by his duly authorized representative; if signed by a person other than the reporting person, the power of attorney or other authorization of such a person shall accompany the report.

II. Effective Date:

This regulation shall become effective on 10 November 1947.

BY ORDER OF MILITARY GOVERNMENT.

APPENDIX A

RELEVANT ARTICLES FROM MILITARY GOVERNMENT LAW NO. 59 AND FROM REGULATION NO. 1 ISSUED THEREUNDER

EXCERPTS FROM MILITARY GOVERNMENT LAW NO. 59

ARTICLE 2

Acts of Confiscation

1. Property shall be considered confiscated within the provisions of this Law if the person entitled thereto has been deprived of it, or has failed to obtain it despite a well founded legal expectancy of acquisition, as the result of:

- A transaction **contra bonos mores**, threats or duress, or an unlawful taking or any other tort;
- Seizure due to a governmental act or by abuse of such act;
- Seizure as the result of measures taken by the NSDAP, its formations or affiliated organizations;

provided the acts described in (a) to (c) were caused by or constituted measures of persecution for any of the reasons set forth in Article 1.

2. It shall not be permissible to plead that an act was not wrongful or **contra bonos mores** because it conformed with a prevailing ideology concerning discrimination against individuals on account of their race, religion, nationality, ideology or their political opposition to National Socialism.

3. Confiscation by a governmental act within the meaning of paragraph 1 (b) shall be deemed to include, among other acts, sequestration, confiscation, forfeiture by order or operation of law, and transfer by order of the State or by a trustee appointed by the State. The forfeiture by virtue of a judgment of a criminal court shall also be considered a confiscation by a governmental act, if such judgment has been vacated by order of an appropriate court or by operation of law.

4. A judgment or order of a court, or of an administrative agency, which, although based on general provisions of law, was handed down solely or primarily with the purpose of injuring the party affected by it for any of the reasons set forth in Article 1 shall be deemed a specific instance of the abuse of a governmental act. The abuse of a governmental act shall also include the procurement of a judgment or of measures of execution by exploiting the circumstance that the opponent was, actually or by law, prevented from protecting his interests by virtue of his race, religion, nationality, ideology or his political opposition to National Socialism. The Restitution Authorities (Restitution Agency, Restitution Chamber and Oberlandesgericht) shall disregard any such judgment or order of a court or administrative agency whether or not it may otherwise be appealed or reopened under existing law.

schen 28 und 33 cm lang oder eine möglichst ähnliche Größe haben. Die Bogen sollen nur einseitig, lesbar und in Maschinschrift beschrieben werden. Die Anzeige soll in deutscher Sprache abgefaßt sein; es sollen ein Original und zwei Abschriften eingereicht werden.

4. Für Vermögensgegenstände, die sich an verschiedenen Orten befinden, sollen gesonderte Anzeigen erstattet werden.

5. Jede Anzeige soll datiert und muß von dem Anzeigenden oder seinem bevollmächtigten Vertreter unterschrieben sein. Wenn sie von einer anderen Person als dem Anzeigepflichtigen unterschrieben ist, so muß die Vollmacht oder sonstige Ermächtigung der Anzeige beigefügt werden.

II. Datum des Inkrafttretens:

Diese Verordnung tritt am 10. November 1947 in Kraft.

IM AUFTRAGE DER MILITÄRREGIERUNG.

ANHANG A

MASSGEBENDE BESTIMMUNGEN DES GESETZES NR. 59 DER MILITÄRREGIERUNG UND SEINER AUSFÜHRUNGSVERORDNUNG NR. 1

AUSZUG AUS DEN BESTIMMUNGEN DES GESETZES NR. 59 DER MILITÄRREGIERUNG

ARTIKEL 2

Entziehungsfälle

1. Vermögensgegenstände sind im Sinne dieses Gesetzes entzogen, wenn sie der Inhaber eingebüßt oder trotz begründeter Anwartschaft nicht erlangt hat infolge:

- eines gegen die guten Sitten verstoßenden Rechtsgeschäftes oder einer Drohung, oder einer widerrechtlichen Wegnahme oder sonstigen unerlaubten Handlung,
- Wegnahme durch Staatsakt oder durch Mißbrauch eines Staatsaktes,
- Wegnahme durch Maßnahmen der NSDAP, ihrer Gliederungen oder angeschlossenen Verbände,

sofern die unter (a) bis (c) fallenden Tatbestände durch Verfolgungsmaßnahmen aus den Gründen des Artikels 1 verursacht waren oder solche Verfolgungsmaßnahmen darstellten.

2. Niemand wird mit der Einwendung gehört, seine Handlungsweise sei deshalb nicht rechts- oder sittenwidrig gewesen, weil sie allgemeinen Anschauungen entsprochen habe, die eine Schlechterstellung einzelner wegen ihrer Rasse, Religion, Nationalität, Weltanschauung oder ihrer Gegnerschaft gegen den Nationalsozialismus zum Inhalt hatten.

3. Als Wegnahme durch Staatsakt im Sinne des Absatz 1 (b) gelten u. a. Einziehung, Verfallerklärung, Verfall kraft Gesetzes und Verfügung auf Grund staatlicher Auflage oder durch staatlich bestellten Treuhänder. Als Wegnahme durch Staatsakt gilt auch die Einziehung durch strafgerichtliches Urteil, wenn das Urteil durch Gerichtsbeschluß oder kraft Gesetzes aufgehoben worden ist.

4. Als Mißbrauch von Staatsakten gilt insbesondere eine auf allgemeinen Vorschriften beruhende, jedoch ausschließlich oder vorwiegend zum Zwecke der Benachteiligung des Betroffenen aus den Gründen des Artikels 1 ergangene Entscheidung oder Verfügung eines Gerichts oder einer Verwaltungsbehörde, ferner die Erwirkung von Entscheidungen und Vollstreckungsmaßnahmen unter Ausnutzung des Umstandes, daß jemand wegen seiner Rasse, Religion, Nationalität, Weltanschauung oder seiner politischen Gegnerschaft gegen den Nationalsozialismus zur Wahrung seiner Rechte tatsächlich oder rechtlich nicht im Stande war. Die Wiedergutmachungsorgane (Wiedergutmachungsbehörde, Wiedergutmachungskammer und Beschwerdegericht) haben eine solche Entscheidung oder Verfügung eines Gerichts oder einer Verwaltungsbehörde als nichtig zu behandeln ohne Rücksicht darauf, ob sie nach geltendem Recht rechtskräftig ist, und ob sie im Wiederaufnahmeverfahren angefochten werden könnte.

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167**ARTICLE 3****Presumption of Confiscation**

1. It shall be presumed in favor of any claimant that the following transactions entered into between 30 January 1933 and 8 May 1945 constitute acts of confiscation within the meaning of Article 2:

- (a) Any transfer or relinquishment of property made during a period of persecution by any person who was directly exposed to persecutory measures on any of the grounds set forth in Article 1;
- (b) Any transfer or relinquishment of property made by a person who belonged to a class of persons which on any of the grounds set forth in Article 1 was to be eliminated in its entirety from the cultural and economic life of Germany by measures taken by the State or the NSDAP.

(Paragraphs 2 and 3 are omitted).

ARTICLE 4**Power of Avoidance**

1. Any transaction entered into by a person belonging to a class referred to in Paragraph 1 (b) of Article 3 within the period from 15 September 1935 (the date of the first Nuremberg laws) to 8 May 1945 may, because of the duress imposed on such class, be avoided by a claimant where such transaction involved the transfer or relinquishment of any property unless:

- (a) The transaction as such and with its essential terms would have taken place even in the absence of National Socialism, or
- (b) The transferee protected the property interests of the claimant (Article 7) or his predecessor in interest in an unusual manner and with substantial success, for example, by helping him in transferring his assets abroad or through similar assistance.

(Paragraphs 2 to 5 are omitted).

ARTICLE 73**Duty to Report**

1. Anyone who has, or has had in his possession, at any time after it was transferred by or taken from a persecuted person, any property which he knows or should know under the circumstances:

- (a) is confiscated property within the meaning of the provisions of Article 2; or
- (b) is presumed to be confiscated property pursuant to the provisions of paragraph 1 of Article 3; or
- (c) has been at any time the subject of a transaction which may be avoided pursuant to the provisions of paragraph 1 of Article 4,

shall report this fact in writing to the Central Filing Agency on or before 15 May 1948.

The report to be filed hereunder shall show the exact circumstances under which the reporting person obtained possession of the property; it shall also contain the name and address of the person from whom the reporting person acquired the property as well as the consideration paid, and in case the property no longer is in his possession, the name of the person to whom the property was transferred.

2. The following property need not be reported:

- (a) Tangible personal property which had been acquired in the course of an ordinary and usual business transaction in an establishment normally dealing in that type of property, provided, however, that property acquired at an auction, or at a private sale in an establishment engaged to a considerable extent in the business of auctioning or otherwise disposing of confiscated property, must be reported;

ARTIKEL 3**Entziehungsvermutung**

1. Zu Gunsten eines Berechtigten wird vermutet, daß ein in der Zeit vom 30. Januar 1933 bis 8. Mai 1945 abgeschlossenes Rechtsgeschäft eine Vermögensentziehung im Sinne des Artikels 2 darstellt:

- (a) Wenn die Veräußerung oder Aufgabe des Vermögensgegenstandes in der Zeit der Verfolgungsmaßnahmen von einer Person vorgenommen worden ist, die Verfolgungsmaßnahmen aus Gründen des Artikels 1 unmittelbar ausgesetzt war;
- (b) Wenn die Veräußerung oder Aufgabe eines Vermögensgegenstandes seitens einer Person vorgenommen wurde, die zu einer Gruppe von Personen gehörte, welche in ihrer Gesamtheit aus den Gründen des Artikels 1 durch Maßnahmen des Staates oder der NSDAP aus dem kulturellen und wirtschaftlichen Leben Deutschlands ausgeschaltet werden sollte.

(Absätze 2 und 3 hier nicht wiedergegeben.)

ARTIKEL 4**Anfechtung**

1. Der Berechtigte kann ein Rechtsgeschäft, das von einer zur Gruppe des Absatz 1 (b) des Artikels 3 gehörigen Person in der Zeit vom 15. September 1935 (Datum der ersten Nürnberger Gesetze) bis zum 8. Mai 1945 vorgenommen worden ist, wegen der Zwangslage, in der sich diese Gruppe befand, anfechten, wenn das Rechtsgeschäft die Veräußerung oder Aufgabe eines Vermögensgegenstandes zum Inhalt hatte, es sei denn, daß:

- (a) das Rechtsgeschäft als solches und mit seinen wesentlichen Bestimmungen auch ohne die Herrschaft des Nationalsozialismus abgeschlossen worden wäre, oder
- (b) der Erwerber die Vermögensinteressen des Berechtigten (Artikel 7) oder seines Rechtsvorgängers in besonderer Weise und mit wesentlichem Erfolg, insbesondere durch Mitwirkung bei einer Vermögensübertragung ins Ausland oder durch ähnliche Maßnahmen, wahrgenommen hat.

(Absätze 2 bis 5 hier nicht wiedergegeben.)

ARTIKEL 73**Anzeigepflicht**

1. Wer Vermögensgegenstände, von denen er weiß oder den Umständen nach annehmen muß,

- (a) daß sie im Sinne des Artikels 2 dieses Gesetzes entzogen sind; oder
- (b) daß eine solche Entziehung nach den Vorschriften des Artikels 3, Absatz 1 vermutet wird; oder
- (c) daß sie zu irgendeiner Zeit Gegenstand eines Rechtsgeschäfts waren, das nach den Bestimmungen des Artikels 4, Absatz 1 angefochten werden kann,

im Besitz hat oder zu irgendeinem Zeitpunkt, nachdem der Verfolgte über sie verfügt hat oder sie ihm entzogen worden sind, im Besitz hatte, muß dies schriftlich dem Zentralanmeldeamt bis zum 15. Mai 1948 anzeigen.

Die Anzeige muß genaue Angaben darüber enthalten, wie der Anzeigerstatter in den Besitz des Vermögensgegenstandes gelangt ist, sie muß Namen und Wohnort desjenigen angeben, von dem der Anzeigerstatter den Vermögensgegenstand erhalten hat, das entrichtete Entgelt und, falls der Vermögensgegenstand nicht mehr im Besitz des Anzeigerstatters ist, den Namen desjenigen, an den der Vermögensgegenstand übertragen worden ist.

2. Die Anzeigepflicht entfällt:

- (a) Bei beweglichen Sachen, die im Wege des ordnungsmäßigen üblichen Geschäftsverkehrs aus einem einschlägigen Unternehmen erworben worden sind; anzeigepflichtig sind jedoch Sachen, die im Wege der Versteigerung erworben worden sind, oder in Unternehmen, die sich mit der Versteigerung oder sonstigen Verwertung entzogener Vermögensgegenstände in erheblichem Maße befassen;

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- (b) Tangible personal property, the value of which did not exceed RM.1,000 at the time of the confiscation;
- (c) Donations made to close relatives (as defined in Section 52, paragraph 2 of the Criminal Code) and donations which without doubt were made for moral considerations;
- (d) Property which has already been restituted and property as to which the claimant has relinquished his right of restitution expressly and in writing at any time between 8 May 1945 and the effective date of this Law.

3. No report filed pursuant to paragraph 1 by any person shall be considered, in proceedings before a Restitution Authority, as an admission of the reporting party that the property so reported is subject to restitution or as a waiver of any defense he might have had if the report had not been filed. It shall be admissible, however, as an admission of the facts stated therein.

4. The Central Filing Agency upon receiving a report under this Article shall forward a copy of the report to the appropriate Restitution Agency or Agencies in each district in which property affected by the report is situated. All reports filed pursuant to the provisions of this Article shall be open to inspection.

ARTICLE 74

Obligation to Inspect the Land Title Register and Other Public Registers

1. Anyone holding real property or an interest in the nature of real property, shall ascertain by inspection of the Land Title Register whether or not the property in question must be reported. The same shall apply with respect to other property interests which are recorded in any other public register.

2. Whenever a public authority or any other public agency learns of the whereabouts of property which must be reported, it shall report such fact without delay to the Central Filing Agency. Article 73, paragraph 4, shall be applicable.

**ARTICLE 75
 Penalties**

- 1. Any person who
 - (a) intentionally or negligently fails to comply with his duty to report as set forth in Articles 73 and 74; or,
 - (b) knowingly makes any false or misleading statements to the Restitution Authorities,
 shall be punished with imprisonment not exceeding five years, or a fine, or both, unless heavier penalties under any other law are applicable.

2. No penalty shall be imposed in the case of subparagraph (a), where the report required by this Law has been made voluntarily and prior to discovery.

**ARTICLE 76
 Penalties (continued)**

- 1. Whoever alienates, damages, destroys, or conceals any property coming under the provisions of this Law in order to thwart the rights of a claimant, shall be punished with imprisonment not exceeding five years, or a fine, or both, unless heavier penalties under any other law are applicable.
- 2. Confinement in a penitentiary up to five years may be imposed in especially serious cases.
- 3. The attempt shall be punishable.

- (b) bei beweglichen Sachen, deren Wert im Zeitpunkt der Entziehung den Betrag von RM 1000, nicht überstiegen hat;
- (c) bei Schenkungen zwischen nahen Verwandten (§ 52, Absatz 2 StGB) und bei unzweifelhaften Anstandsschenkungen;
- (d) bei bereits zurückerstatteten Vermögensgegenständen und bei solchen Vermögensgegenständen, auf deren Rückerstattung der Berechtigte in der Zeit vom 8. Mai 1945 bis zum Inkrafttreten dieses Gesetzes ausdrücklich schriftlich verzichtet hat.

3. Eine gemäß Absatz 1 erstattete Anzeige darf im Verfahren vor den Wiedergutmachungsorganen nicht als Geständnis des Anzeigenden gewertet werden, daß die angemeldeten Vermögensgegenstände der Rückerstattung unterliegen; ebensowenig darf eine solche Anzeige als Verzicht auf einen Einwand ausgelegt werden, den der Anzeigende hätte geltend machen können, wenn er die Anzeige nicht erstattet hätte. Die Anzeige kann jedoch als ein Geständnis in Bezug auf die darin mitgeteilten Tatsachen gewertet werden.

4. Das Zentralanmeldeamt hat nach Erhalt einer auf Grund der Bestimmungen dieses Artikels erstatteten Anzeige eine Abschrift der Anzeige an die zuständige Wiedergutmachungsbehörde oder die zuständigen Wiedergutmachungsbehörden in dem Bezirk weiterzuleiten, in dem sich irgendwelche in der Anzeige in Bezug genommene Vermögensgegenstände befinden. Die Einsicht in alle gemäß den Vorschriften dieses Artikels erstatteten Anzeigen ist gestattet.

ARTIKEL 74

Pflicht zur Einsicht des Grundbuchs und anderer öffentlicher Register

1. Wer ein Grundstück oder ein grundstücksgleiches Recht besitzt, ist verpflichtet, sich durch Einsicht des Grundbuchs zu vergewissern, daß es sich nicht um einen anzeigepflichtigen Vermögensgegenstand handelt. Das gleiche gilt von Vermögensgegenständen, die in anderen öffentlichen Registern eingetragen sind.

2. Erlangt eine Behörde oder öffentliche Dienststelle Kenntnis von dem Verbleib eines anzeigepflichtigen Vermögensgegenstandes, so hat sie unverzüglich dem Zentralanmeldeamt Mitteilung zu machen. Artikel 73, Absatz 4 gilt entsprechend.

**ARTIKEL 75
 Strafbestimmungen**

- 1. Mit Gefängnis bis zu fünf Jahren und mit Geldstrafe oder mit einer dieser Strafen wird, soweit nicht auf Grund anderer Bestimmungen eine höhere Strafe verwirkt ist, bestraft
 - (a) wer seiner Anzeigepflicht auf Grund der Artikel 73 und 74 vorsätzlich oder fahrlässig nicht nachkommt,
 - (b) wer gegenüber den Wiedergutmachungsorganen wissentlich falsche oder irreführende Angaben macht.

2. Der Täter bleibt im Falle des Absatzes 1(a) strafflos, wenn er vor Entdeckung die nach diesem Gesetz vorgeschriebene Anzeige freiwillig nachholt.

**ARTIKEL 76
 Strafbestimmungen (Fortsetzung)**

- 1. Mit Gefängnis bis zu fünf Jahren und mit Geldstrafe oder mit einer dieser Strafen wird, soweit nicht auf Grund anderer Bestimmungen eine höhere Strafe verwirkt ist, bestraft, wer Vermögensgegenstände, die unter die Bestimmungen dieses Gesetzes fallen, veräußert, beschädigt, vernichtet oder beiseite schafft, um sie dem Zugriff des Berechtigten zu entziehen.
- 2. In besonders schweren Fällen tritt Zuchthausstrafe bis zu fünf Jahren ein.
- 3. Der Versuch ist strafbar.

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ARTICLE 77

Penalties (continued)

In the cases with the scope of Articles 75 and 76, nobody may plead ignorance of facts which he could have ascertained by the inspection of public books and registers, if and to the extent to which Article 74 imposed on him the obligation of such inspection.

**EXCERPT FROM REGULATION NO. 1
 UNDER MILITARY GOVERNMENT LAW NO. 59**

I. Establishment of Central Filing Agency

1. There is hereby established the Central Filing Agency (Zentralanmeldeamt) provided for in Article 55 of Military Government Law No. 59, the mailing address of which is:
 Zentralanmeldeamt (Central Filing Agency)
 Bad Nauheim, Germany
2. This Agency is hereby vested with all powers and responsibilities which the Central Filing Agency has under the provisions of Military Government Law No. 59.
 (Section II to IV are omitted.)

APPENDIX B

Outline of Information to be Reported

PART A

**Information Concerning the Person Filing the Report,
 his Attorney or Agent**

- I. Information Concerning the Person Filing the Report:**
 1. Last name, first name and middle name (in full).
 2. Permanent residence.
 3. Present address.
 4. Address to which correspondence with the person filing this report, should be sent.
- II. Information Concerning the Agent, if any, of the Person Filing the Report:**
 5. Last name, first name and middle name (in full).
 6. Address.
 7. Nature of agency (attorney-at-law, attorney-in-fact, guardian, etc.). Attach copies of appropriate documents showing agency.

PART B

Information Concerning Property Reported

- I. Information Concerning Present Holder and Location of Property Reported:**
 8. State whether reporting person is present possessor of property.
 9. If not, state full name and address of person presently in possession of property, if known.
 10. Present location of property, if known.
- II. Real Property and Interests in Real Property:**
 11. Detailed description of real property or of interest therein.
 12. Location of the property.
 13. Description of entry of property in Land Title Register (Grundbuch).
- III. Business Enterprises:**
 14. Name and description of the business enterprise.
 15. Location of the business enterprise:
 - a. at the time of the acquisition by the person reporting;
 - b. present or last known location.
 16. Description of entry in the Commercial Register (Handelsregister).

ARTIKEL 77

Strafbestimmungen (Fortsetzung)

Niemand kann sich in den Fällen der Artikel 75, 76 auf die Unkenntnis von solchen Tatsachen berufen, die er auf Grund einer Einsicht in öffentliche Bücher oder Register erfahren hätte, wenn und soweit er nach Artikel 74 zu einer solchen Einsicht verpflichtet war.

**AUSZUG AUS DER AUSFÜHRUNGSVERORDNUNG NR. 1
 ZUM GESETZ NR. 59 DER MILITÄRREGIERUNG**

I. Errichtung eines Zentralanmeldeamtes

1. Gemäß Artikel 55 des Gesetzes Nr. 59 der Militärregierung wird hiermit ein Zentralanmeldeamt errichtet, dessen Anschrift lautet:
 Zentralanmeldeamt
 Bad Nauheim, Deutschland
2. Diesem Amt werden hiermit alle Rechte und Befugnisse übertragen, die dem Zentralanmeldeamt nach Maßgabe der Bestimmungen des Gesetzes Nr. 59 der Militärregierung zustehen.
 (Abschnitte II bis IV hier nicht wiedergegeben.)

ANHANG B

Anleitung zur Vornahme der Anzeige

TEIL A

**Angaben über den Anzeigenden, seinen Anwalt
 oder Beauftragten**

- I. Angaben über den Anzeigenden:**
 1. Familienname, Vorname und weitere Vornamen.
 2. Ständiger Wohnsitz.
 3. Gegenwärtige Anschrift.
 4. Anschrift, an welche Korrespondenz mit dem Anzeigenden gesandt werden soll.
- II. Angaben über den Bevollmächtigten des Anzeigenden:**
 5. Familienname, Vorname und weitere Vornamen.
 6. Anschrift.
 7. Rechtsnatur des Auftragsverhältnisses (Rechtsanwalt, sonstiger Beauftragter, Vormund usw.). Abschriften der einschlägigen Urkunden, aus denen das Auftragsverhältnis ersichtlich ist, sind beizufügen.

TEIL B

Angaben über den zur Anzeige gebrachten Vermögensgegenstand

- I. Angaben über den gegenwärtigen Besitzer oder Eigentümer und Lage des zur Anzeige gebrachten Vermögensgegenstandes:**
 8. Angabe darüber, ob der Anzeigende der gegenwärtige Besitzer des Vermögensgegenstandes ist.
 9. Falls dies nicht zutrifft, Name und Anschrift der Person, die den Vermögensgegenstand gegenwärtig in Besitz hat, soweit bekannt.
 10. Gegenwärtige Lage des Vermögensgegenstandes, soweit bekannt.
- II. Grundstücke und Rechte an Grundstücken:**
 11. Einzelbeschreibung des Grundstücks oder der Rechte am Grundstück.
 12. Lage des Grundstücks.
 13. Beschreibung im Grundbuch.
- III. Geschäftsunternehmungen:**
 14. Name und Beschreibung des Geschäftsunternehmens.
 15. Angabe darüber, wo das Geschäftsunternehmen
 - a. im Zeitpunkt des Erwerbs durch den Anzeiger gelegen war;
 - b. gegenwärtige oder letztbekannte Lage.
 16. Eintragung im Handelsregister.

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IV. Securities: (Bonds, shares, etc.)

17. Give an exact description of the type, certificate number, etc. of the security. If an interest in or an obligation of an organization, give name and address of such organization.
18. Give location of the instrument at the time it was acquired by the reporting person, and present or last known location.

V. All Other Personal Property:

19. Give a detailed description of the property involved and all other pertinent information with respect thereto, including location at the time it was acquired by the reporting person and present or last known location.

VI. Any Other Property Not Heretofore Mentioned:

20. Give a detailed description of the property involved and all other pertinent information with respect thereto, including location at the time it was acquired by the reporting person and the present or last known location.

PART C

Statement of Facts Concerning Acquisition of and Disposal of Property

I. Information Concerning Property at the Time of the Acquisition:

21. Date of the acquisition of the property by the reporting person.
22. Full name and address of the person from whom the property was acquired.
23. Exact circumstances under which the reporting person obtained possession of the property.
24. Purchase price specified at the time of the transfer of the property.
25. Any other terms specified at the time of the transfer of the property.
26. What part of the purchase price or consideration was paid or delivered to third persons or agencies and under what circumstances.
27. Value of the property at the time of its acquisition.
28. In case the reporting person, during the time he held the property, was not the sole owner of the property, state names, addresses, as well as legal nature and percentage of interest of all other co-holders of the property.

II. Information Concerning Property Subsequent to Acquisition:

29. Give any facts deemed advisable concerning appreciation or depreciation in the value of the property during the time it was held by the reporting person, including any change in the status of encumbrances against the property.
30. If property was disposed of by reporting person, give name and address of person to whom it was transferred.
31. Date on which the property was transferred.
32. Purchase price paid by the transferee.
33. Other pertinent terms of the contract of transfer.
34. Value of the property at the time of the transfer.

IV. Wertpapiere (Schuldverschreibungen, Aktien, usw.):

17. Genaue Beschreibung der Gattung des Wertpapiers, seiner Effektnummer usw.; bei Anteilsrechten Name und Anschrift des Unternehmens; bei Schuldverschreibungen Name und Anschrift des Schuldners.
18. Angabe darüber, wo sich das Wertpapier im Zeitpunkt des Erwerbs durch den Anzeiger befunden hat, wo es sich jetzt befindet und, falls dies nicht bekannt ist, wo es sich zuletzt befunden hat.

V. Sonstiges persönliches Vermögen:

19. Genaue Beschreibung des in Frage stehenden Vermögensgegenstandes und alle sonstigen sachdienlichen Angaben darüber einschließlich der Lage zu dem Zeitpunkt, an dem der Vermögensgegenstand von dem Anzeigenden erworben wurde, wo er sich gegenwärtig befindet und, falls dies nicht bekannt ist, wo er sich zuletzt befunden hat.

VI. Sonstige Vermögensgegenstände, soweit sie bisher hier nicht aufgeführt worden sind.

20. Eingehende Beschreibung des in Frage stehenden Vermögensgegenstandes und alle sonstigen ihn betreffenden sachdienlichen Angaben einschließlich Angaben darüber, wo sich der Vermögensgegenstand im Zeitpunkt des Erwerbs durch den Anzeiger befunden hat, wo er sich gegenwärtig befindet und, falls dies nicht bekannt ist, wo er sich zuletzt befunden hat.

TEIL C

Angaben über den Erwerb und die Veräußerung des Vermögensgegenstandes

I. Angaben über den Vermögensgegenstand zur Zeit des Erwerbs:

21. Datum des Erwerbs des Vermögensgegenstandes seitens des Anzeigenden.
22. Familienname, Vorname und weitere Vornamen sowie Anschrift der Person, von der der Vermögensgegenstand erworben wurde.
23. Die genauen Umstände, unter denen der Anzeigende den Besitz des Vermögensgegenstandes erlangt hat.
24. Angaben über den Kaufpreis, wie er zur Zeit des Erwerbs des Vermögensgegenstandes berechnet wurde.
25. Alle sonstigen Vertragsbedingungen, wie sie im Zeitpunkt des Erwerbs des Vermögensgegenstandes festgelegt wurden.
26. Welcher Teil des Kaufpreises oder des Entgelts ist an dritte Personen oder Stellen bezahlt oder ausgehändigt worden und unter welchen Umständen?
27. Wert des Vermögensgegenstandes im Zeitpunkt des Erwerbs.
28. Im Falle der Anzeigende während der Zeit, in der er den Besitz an dem Vermögensgegenstand hatte, nicht dessen alleiniger Eigentümer war, sollen die Namen und Anschriften aller an dem Vermögensgegenstand Mitbeteiligten angeführt sowie die Rechtsnatur und Höhe ihrer Beteiligung bezeichnet werden.

II. Angaben über den Vermögensgegenstand nach dem Erwerb:

29. Hier sind alle für sachdienlich erachteten Angaben zu machen, welche eine Werterhöhung oder Wertverminderung des Vermögensgegenstandes während der Zeit, in der der Anzeigende ihn in Besitz hatte, einschließlich Angaben über jegliche Veränderung, die in den Belastungen des Vermögensgegenstandes eingetreten ist.
30. Wenn der Anzeigende über den Vermögensgegenstand verfügt hat, sind Name und Anschrift der Person anzugeben, an die er weiterveräußert worden ist.
31. Datum, an welchem die Weiterveräußerung stattgefunden hat.
32. Der von dem Neu-Erwerber gezahlte Kaufpreis.
33. Alle sonstigen sachdienlichen Bedingungen des Veräußerungsvertrages.
34. Wert des Vermögensgegenstandes zur Zeit der Weiterveräußerung.

DECLASSIFIED
 Authority 100785007
 By JW NARA Date 9-16-99

RG 200
 Entry German Exchange Assets
 File Embassy - Contracts with
 Box 167

**MILITARY GOVERNMENT — GERMANY
 UNITED STATES AREA OF CONTROL**

**GENERAL AUTHORIZATION NO. 2
 PURSUANT TO REGULATION NO. 1
 UNDER MILITARY GOVERNMENT
 LAW NO. 2**

1. A General Authorization is hereby granted by Military Government pursuant to the provisions of paragraphs 3(b), 5(b), and 5(c) of Regulation No. 1 under Military Government Law No. 2, "German Courts", for the performance of any official act of the character described in paragraph 3(a) of such Regulation, for the entry upon the commercial register, register of cooperatives, register of associations or ship register, as prescribed in paragraph 5(b) of such Regulation and for the entry upon the land register or other public register as prescribed in paragraph 5(c) of such Regulation, provided that such official act or register entry appear necessary or appropriate for the administration of Military Government Law No. 59, "Restitution of Identifiable Property".

2. This General Authorization shall not be deemed to constitute a license under the provisions of either Military Government Law No. 52 (amended), "Blocking and Control of Property", or Military Government Law No. 53, "Foreign Exchange Control".

3. This General Authorization shall become effective on 10 November 1947.

BY ORDER OF MILITARY GOVERNMENT.

**MILITÄRREGIERUNG — DEUTSCHLAND
 AMERIKANISCHES KONTROLLGEBIET**

**ALLGEMEINE GENEHMIGUNG
 NR. 2 AUF GRUND DER AUS-
 FÜHRUNGSVERORDNUNG NR. 1
 ZUM GESETZ NR. 2
 DER MILITÄRREGIERUNG**

1. Gemäß Absatz 3 b, 5 b und 5 c der Ausführungsverordnung Nr. 1 zum Gesetz Nr. 2 der Militärregierung über „Deutsche Gerichte“ wird hiermit für die Vornahme von Amtshandlungen, wie sie in § 3 a dieser Ausführungsverordnung aufgeführt sind, für die Vornahme von Eintragungen in das Handelsregister, Genossenschaftsregister, Vereinsregister oder Schiffsregister nach Maßgabe des § 5 b dieser Verordnung und für die Eintragung in das Grundbuch oder ein sonstiges öffentliches Register nach Maßgabe des § 5 c der Verordnung eine Allgemeine Genehmigung erteilt, vorausgesetzt, daß eine solche Amtshandlung oder Register-eintragung zur Durchführung des Gesetzes Nr. 59 der Militärregierung über „Rückerstattung feststellbarer Vermögensgegenstände“ notwendig oder sachgemäß erscheint.

2. Diese Allgemeine Genehmigung gilt nicht als eine Genehmigung nach Maßgabe der Vorschriften des Gesetzes Nr. 52 der Militärregierung über „Sperrung und Beaufsichtigung von Vermögen“ in seiner abgeänderten Fassung oder des Gesetzes Nr. 53 der Militärregierung über „Devisenbewirtschaftung“.

3. Diese allgemeine Genehmigung tritt am 10. November 1947 in Kraft.

IM AUFTRAGE DER MILITÄRREGIERUNG.

**MILITARY GOVERNMENT — GERMANY
 UNITED STATES AREA OF CONTROL**

**GENERAL LICENSE
 NO. 10**

Issued Pursuant to Military Government Law No. 52 (Amended)

BLOCKING AND CONTROL OF PROPERTY

Also known as

**GENERAL LICENSE
 NO. 4**

Issued Pursuant to Military Government Law No. 53
FOREIGN EXCHANGE CONTROL

1. A General License is hereby granted under Article II of Military Government Law No. 52 and Article I of Military Government Law No. 53, authorizing all transactions within Germany in connection with any claim for restitution filed pursuant to and within the scope of Military Government Law No. 59, provided that:

a. the transaction is necessary and incidental to the filing, prosecution, defense, waiver, settlement or final adjudication of such a claim, and also

b. the claim for restitution is filed on behalf of a persecuted person or his heir or legatee, but not his assignee.

**MILITÄRREGIERUNG — DEUTSCHLAND
 AMERIKANISCHES KONTROLLGEBIET**

**ALLGEMEINE GENEHMIGUNG
 NR. 10**

Erteilt auf Grund des Gesetzes Nr. 52
 der Militärregierung

SPERRE UND KONTROLLE VON VERMÖGEN

Auch bekannt als

**ALLGEMEINE GENEHMIGUNG
 NR. 4**

Erteilt auf Grund des Gesetzes Nr. 53
 der Militärregierung

DEVISENBEWIRTSCHAFTUNG

1. Gemäß Artikel II des Gesetzes Nr. 52 der Militärregierung und Artikel I des Gesetzes Nr. 53 der Militärregierung wird hiermit eine Allgemeine Genehmigung erteilt, alle Rechtsgeschäfte in Deutschland vorzunehmen, die mit einem nach Maßgabe und im Rahmen des Gesetzes Nr. 59 der Militärregierung angemeldeten Rückerstattungsanspruch im Zusammenhang stehen, vorausgesetzt daß:

a. das Rechtsgeschäft mit der Anmeldung, Rechtsverfolgung, Verteidigung, dem Verzicht, Vergleich oder der endgültigen Entscheidung eines derartigen Anspruchs in notwendigen Zusammenhang steht und fernerhin,

b. daß der Anspruch namens eines Verfolgten, seines Erben oder Vermächtnisnehmers, dagegen nicht seines Abtretungsempfängers angemeldet worden ist.

DECLASSIFIED
 Authority WMD 785007
 By JW NARA Date 9-16-99

RG 260
 Entry German Export Assets
 File Ombus - Commerce W/14
 Box 167

2. This General License does not authorize:
- a. the debit to any account blocked pursuant to Military Government Law No. 52, unless the account is in the name of and is owned by a necessary party to the restitution proceeding and such debit is for the payment of the necessary obligations of such party arising in connection with such proceeding.
 - b. the transfer or assignment of title to any property, including funds, located outside Germany,
 - c. the transfer or delivery to any person other than the claimant or his agent, of any restituted property,
 - d. the export of any property from the United States Zone of Occupation in Germany, including Land Bremen.
3. This General License shall become effective on 10 November 1947.

BY ORDER OF MILITARY GOVERNMENT.

2. Diese Allgemeine Genehmigung umfaßt nicht:
- a. die Vornahme der Belastung eines gemäß dem Gesetz Nr. 52 der Militärregierung gesperrten Kontos, es sei denn, daß es sich um ein Konto handelt, das einem an dem Rückerstattungsverfahren notwendig Beteiligten gehört, auf den Namen dieses Beteiligten lautet und es sich um eine notwendige Zahlungsverpflichtung handelt, die im Zusammenhang mit diesem Verfahren entstanden ist;
 - b. die Übertragung oder die Abtretung von Vermögensgegenständen, einschließlich Geld und Geldansprüchen, die außerhalb Deutschlands gelegen sind;
 - c. die Übertragung oder Übergabe eines rückerstatteten Vermögensgegenstandes an irgendeinen anderen als den Berechtigten oder seinen Beauftragten;
 - d. die Ausfuhr eines Vermögensgegenstandes aus der Amerikanischen Besetzungszone einschließlich des Landes Bremen.
3. Diese Allgemeine Genehmigung tritt am 10. November 1947 in Kraft.

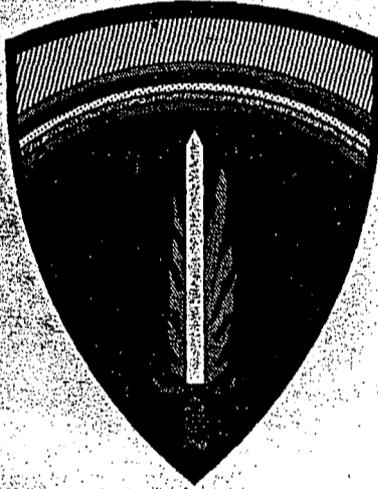
IM AUFTRAGE DER MILITÄRREGIERUNG.

*Summary of Military Government in Germany
Occupation 1945 - U.S. Zone*

Military Government

OFFICE OF MILITARY GOVERNMENT FOR GERMANY (U.S.)

PROPERTY CONTROL
HISTORY, POLICIES, PRACTICES AND PROCEDURES
OF THE
UNITED STATES AREA OF CONTROL, GERMANY



SPECIAL REPORT OF THE
MILITARY GOVERNOR

NOVEMBER 1948

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PROPERTY CONTROL

SUMMARY

68 The two fundamental problems of the Property Control Program have been: first, the methods of locating, placing under custody, safeguarding and administering various specified categories of property under control; and, second, making decisions providing for ultimate disposition of properties and expediting the release thereof. In accordance with Military Government policies, directives, laws and other measures, every effort is being made to release as many properties from control as possible.

68 In line with Military Government policy of transferring greater responsibility to German governmental authorities, Property Control responsibility for custody and administration, as provided for in Military Government Regulation Title 17, was transferred to German Land governments during the latter half of 1946. 69 Special safeguards were provided for properties of United Nations and neutral owners and those properties in the "duress" categories. The German agencies were under the direct supervision of Military Government authorities. 69

70 In June 1947 the emphasis changed from the first phase (that of locating and adequately protecting properties) to implementing and carrying out the second phase (release of properties from control). In June 1947 a program was announced providing for the decontrol of properties belonging to citizens of United Nations and neutral nations (except Spain and Portugal). This program was later extended to former enemy nations with whom peace treaties have been signed.

Control Council Directive No. 50 and Military Government Law No. 58 have established the procedures whereby property of Nazi organizations are being transferred to Land governments or to certain democratic organizations. The properties of individual Nazis are being released from control in accordance with existing denazification procedures. Properties of the Reich are being held pending necessary policy decisions as to disposition. "Duress" properties will be held pending final adjudication of the case as provided for in Military Government Law No. 59. Properties taken under control as "duress" properties for which no claim has been filed will be released from control pursuant to Military Government directives to be issued in the future. It is expected that practically all properties with the exception of "duress" and "Reich" properties will be released from control during the first six months of 1949. } JRSO

On 1 July 1949, it is planned to liquidate completely Military Government Property Control Offices. Residual Property Control duties will in large part be transferred to a Central German Property Control Coordinating Committee composed of the four Land Civilian Agency Heads. Those Property Control functions which cannot be transferred to the Central German Property Control Coordinating Committee will be made the responsibility of one of the Military Governor's Advisers.

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PROPERTY CONTROL

slow procedure, as the remaining litigation will be before the courts for a long time. However, on final adjudication, speedy release will be made by Property Control authorities in accordance with the court's decree.

TREATMENT OF DURESS PROPERTIES AND BRIEF REVIEW OF INTERNAL RESTITUTION PROGRAM UNDER MILITARY GOVERNMENT LAW NO. 59

Introduction

Among the most important categories of properties over which property control has been exercised from the very beginning are so-called "duress" properties. Even prior to the surrender of Germany, it was the announced policy of the United States Government to take appropriate steps for the safeguarding of properties which had been expropriated by National Socialist persecution from their former owners.

This policy was clearly restated in the Directive on U. S. Objectives and Basic Policies in Germany, of 15 July 1947, 1/ which reads as follows:

"It is the policy of your (i.e. American) government that persons and organizations deprived of their property as a result of National Socialist persecution should either have their property returned or be compensated therefore and that persons who suffered personal damage or injury through National Socialist persecution should receive indemnification in German currency. With respect to heirless and unclaimed property subject to internal restitution you will designate appropriate successor organizations."

Administration of Property Control Over Duress Properties

In execution of the above-mentioned policy, Military Government from the beginning has directed control of all properties expropriated or confiscated under circumstances indicating duress. Such control was imposed on the basis of lists of properties compiled in some cases even prior to the surrender of Germany, or as disclosed by field investigations, or made known to Property Control Agencies in the U. S. Zone through communications from former owners, or their successors in interest. Reports required by Military Government from present owners, German governmental agencies, and financial and credit institutions, with respect to properties presumptively expropriated or confiscated under discriminatory measures of National Socialism (persecutory actions for racial or political reasons) were screened, and also resulted in exercise of property control action.

Property Control action was taken on the basis of Section 2, Article I of Military Government Law No. 52 2/ (Revised Text, 20 July 1945) which provided as follows:

"Property which has been the subject of transfer under duress, wrongful acts of confiscation, dispossession or spoliation, whether pursuant to legislation or by procedures purporting to follow forms of law or otherwise, is hereby declared to be equally subject to seizure of possession or title, direction, management, supervision or otherwise being taken into control by Military Government."

1/ Military Government Regulation (MGR) 23-2050.

2/ See Annex VIII.

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Blocking control was applied to savings bank deposits, accounts, funds, securities and other negotiable interests on the same basis.

Custodians appointed by Military Government, or German Property Control Agencies under the direct supervision of Military Government, were charged with the administration of properties under prescribed conditions and requirements for accounting and auditing reports intended to assure adequate safeguarding controls. The control and influence of present owners over the administration of the properties or enterprises were wholly excluded as a matter of principle and policy. All custodians of controlled properties were only appointed on the basis of exemption or clearance under various denazification regulations which became generally applicable.

The 15 August 1945 Directive, 1/ for example, extended the denazification provisions of the 7 July 1945 Directive (Administration of Military Government in the U. S. Zone of Germany) 2/ to influential Nazis and militarists in all walks of life and authorized control action over the properties of all persons removed or designated hostile to Allied purposes. The latter were deemed to be included in the class of persons whose properties were rendered subject to seizure or control by Military Government pursuant to General Order No. 1, issued under Military Government Law No. 52.

The Law for Liberation from National Socialism and Militarism, 3/ enacted by the German Land Governments in the U. S. Zone to replace the 15 August 1945 Directive, has continued German responsibility for denazification in accordance with principles established by Control Council Directive No. 24 (Removal from Office and from Positions of Responsibility of Nazis and of Persons Hostile to Allied Purposes) and is still applicable as Property Control policy.

The consistent policy of Military Government has been to retain properties of a duress nature under control and to safeguard them until such time as the merits of claims for restitution could be evaluated and final disposition determined. The only exception to this policy has been in the application of MGR Title 17-501 4/ which authorize the release of properties of insignificant value, if said properties could be adequately safeguarded by other means, i.e. blocking of transfer of title.

Promulgation of Military Government Law No. 59 5/

Attempts were made through negotiations on a quadripartite basis to develop a uniform program for the restitution of properties to persons and organizations deprived thereof as a result of National Socialist persecution, or, in lieu of restitution of property in kind, for adequate compensation. This proved impossible because of certain fundamental differences among the occupying powers. For the same reasons a bizonal or trizonal law could not be agreed upon. The decision was therefore reached to proceed on a unilateral basis. Over a year before the Laenderrat, representing the Laender of the U. S. Zone of Occupation, had been instructed to draft a proposed restitution law. After approximately one year of work on the part of property specialists a draft of a restitution law was submitted by the Laenderrat for Military Government approval. Certain provisions and reservations contained in this draft were deemed objectionable by Military Government and it was finally decided to promulgate a Military Government law covering the subject.

1/ See Annex IV.

2/ See Annex III.

3/ See Annex V.

4/ See Annex VI.

5/ See Annex XII.

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Military Government Law No. 59, enacted on 10 November 1947, follows the Laenderrat draft, with modifications or revisions of those features which had been considered objectionable.

As of the same date, 10 November 1947, the Central Filing Agency provided for in the law was established and commenced operations at Bad Nauheim (Hesse). Subsequently and successively, Bremen, Hesse, Wuerttemberg-Baden and Bavaria passed the necessary implementing legislation establishing restitution agencies in the respective Laender of the U. S. Zone.

Military Government Law No. 59 provides for filing of petitions with the Central Filing Agency for the restitution of identifiable property. The expiration date for such filing is 31 December 1948.

With a view to securing all possible information concerning properties which had been transferred under duress circumstances, the law also provided for the submission of reports by present owners of duress properties, or by persons or financial institutions having any information concerning transfers of property under duress circumstances.

The principle that duress properties should not escheat to the State because of the lack of heirs or successors in interest was also recognized in the law which provided for the establishment and appointment of successor organizations. This was accomplished by Regulation No. 3 under the law passed on 23 June 1948. On the same date the Jewish Restitution Successor Organization, representing all leading Jewish organizations of the world interested in the establishment of an adequate restitution program, was authorized by Military Government to claim all heirless and unclaimed Jewish properties.

Organization and Administration of Restitution Program under Military Government Law No. 59

The law provides for the establishment of restitution agencies, initially charged with the responsibility of trying to effect amicable settlements of claims between the parties. If such settlements cannot be attained, the claims are then referred to restitution chambers which are part of the German court system. Appeals from the decisions of the restitution chambers may be taken by either party to the Appellate Courts (Oberlandsgerichte), and from the latter to the Board of Review, whose decisions are final.

The Board of Review, composed of Americans assisted by experts on German law, was established pursuant to Regulation No. 4 to Military Government Law No. 59 passed on 2 August 1948. Appointments of the members of the Board of Review were made on 3 November 1948.

There are presently 20 Restitution Agencies, 13 Restitution Courts, and 6 Oberlandsgerichte (Appellate) Courts - exclusive of the Board of Review - in the U. S. Zone.

The Jewish Restitution Successor Organization, established at Nuremberg, with branches located in a number of cities in the different Laender of the U. S. Zone under previous authorization given by Military Government, commenced, in the first week of October 1948, the examination of approximately 80,000 reports affecting properties presumably transferred under duress circumstances. Information secured from these reports has provided a basis for the preparation of petitions. These petitions will be filed with the Central Filing Agency on or before 31 December 1948, the expiration date for the filing of petitions under Military Government Law No. 59, in connection with every Jewish property reportedly transferred between 30 January 1933 and 8 May 1945. The processing of the petitions will, however, be effected after that date, after determination as to whether or not such properties have been claimed by other persons or organizations.

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In the middle of November 1948 authorization was issued for similar examination of the reports on file with the Central Filing Agency by accredited representatives of approximately 14 Military Missions and Consulates of foreign nations.

Difficulties affecting the satisfactory perfection of claims arising from restrictions on remittances or payment of expenses or services of attorneys, the transmittal of information by air mail, and access to information contained in public records of various German governmental agencies or offices have been resolved by appropriate measures and directives issued by Military Government.

A complete reporting system, which will provide information as to the status and progress of every claim, has been devised and will shortly be placed in operation. In addition, required reports, on a current monthly basis, will provide information with respect to the over-all progress of the restitution program.

While there are still some matters which must be provided for through legislative enactment or implementation, these requirements are not necessary for present operation of the law. Appropriate action with respect to such deficiencies as exist in the law are presently under study, and will be accomplished in orderly fashion to facilitate the successful attainment of the objectives of the law.

Numerous requests for extension in the expiration date for the filing of petitions beyond 31 December 1948 have been received by Military Government. Serious consideration has been given to these requests. It has, however, been decided that any extension in the expiration date would be more detrimental to the entire program of restitution than the benefit to the comparatively few claimants would justify.

In reaching this decision, consideration was given to the many efforts of Military Government to secure publicity of the law in all the countries of the world through U. S. Consulates and Missions, and military and diplomatic missions accredited to Germany.

Other considerations were the following:

- a. Claimants have had 13 months in which to file;
- b. Titles to properties which may be claimed for restitution have been in a state of uncertainty for 3 ½ years and will remain so until the final deadline for filing claims;
- c. Modifications of the law with respect to time for filing may lead to requests from various sources to make other changes in the law;
- d. It is desired that all possible burdens and uncertainties imposed by Military Government on the German people and economy be terminated before the Occupation Statute becomes effective.

Most of the requests for an extension in the expiration date have been based upon the argument that information considered essential to a claim was not available or accessible. This argument is not considered to be very strong, and Military Government has, on this point, consistently advised claimants that the provisions of the law are adequate, since minimum information only need be filed initially. A petition containing a description of the confiscated property and stating as exactly as possible, under the circumstances, the time, place and circumstances of the confiscation, and, so far as is known to the claimant, the names and addresses of all persons having, or claiming to have, an interest in

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the property, if filed with the Central Filing Agency before 31 December 1948, would be sufficient to bring their claim within the statute of limitations. Any further information that might be required for settlement or adjudication of the claim could be submitted thereafter to the Restitution Agencies or Restitution Courts, as required.

For all of the foregoing reasons, Military Government has not granted requests for modification of the law so as to extend the expiration date for the filing of claims.

Modification of Property Control Policy Subsequent to Military Government Law No. 59

Subsequent to the enactment of Military Government Law No. 59 (10 November 1947), and after passage of a period of time considered sufficient for the dissemination of knowledge of its provisions, a further modification in policy was deemed advisable. By a Directive, issued 15 July 1948, Property Control action was directed thereafter only in those cases where notice of the filing of petitions under Military Government Law No. 59 with the Central Filing Agency was received. A further Directive, issued 3 August 1948, however, authorized exercise of Property Control action, notwithstanding the fact that no petition had been filed with the Central Filing Agency under Military Government Law No. 59, if it appeared that irreparable damage might be done to a claimant's interests unless the property were taken into control.

Pending final disposition of claims or petitions under Military Government Law No. 59, it is intended to administer properties under control as efficiently as possible and, insofar as the respective parties are concerned, in an impartial manner.

After 31 December 1948, the petitions filed under Military Government Law No. 59 will be checked against properties under control. Those found not to have been claimed, or subject to claims by any of the successor organizations, will be released from control.

Present Status of Restitution Program

Duress properties under control as of 30 November 1948 numbered 31,426.

Petitions Received by the Central Filing Agency as of 30 November 1948

<u>TOTAL</u>	<u>115,955</u>
Complete from claimants	11,187
Incomplete from claimants	4,768
Petitions from Jewish Restitution Successor Organization (JRSO)	70,000
Additional, expected from JRSO	30,000

Reports Received at Central Filing Agency as of 30 November 1948

<u>TOTAL</u>	<u>87,594</u>
Complete reports from individuals	63,271
Incomplete reports from individuals	7,823
Reports from banks	15,000
Reports from agencies	1,500

Restitution in Berlin and British and French Zones

Military Government Law No. 59 is, at present, not applicable to the U. S. Sector of Berlin.

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