

## Compensation for Jewish Victims Of the Nazi Regime

By David J. Rowland, Esq.

Following reunification on Oct. 3 Germany has moved quickly to adopt regulations to compensate victims of the Nazi Regime In East Germany. These regulations elect Individuals or associations who were persecuted by the Nazis from Jan 30 1933 until May 8 1945, and because of racial political or religious persecution lost property through forced sale, confiscation or otherwise.<sup>1</sup> These regulations are of significant interest to the Jewish community in New York and other areas of the United States. On Oct. 5. 1990 reunified Germany adopted the Third Regulation on the Filing of Claims," which modifies the first and second regulations for the filing of claims. Those regulations were previously discussed in "Deadline Looms for Filing East German Compensation Claims" (NYLJ Oct. 2, 1990) One of the central elements of the new regulation is that the dead line for filing such claims has been set for March 31, 1991.<sup>2</sup> This gives victims, or their heirs additional time, beyond the previously designated Oct 13, 1990 deadline (for claims based upon confiscatory taking from 1949 on), to file claims for property lost in the former country of East Germany due to Nazi persecution. This means that victims of German persecution, and their heirs, who lost property in East Germany between 1933 and 1945, should file a claim for compensation no later than March 31, 1991, to preserve their rights to either a return of the lost property or momentary compensation. As set forth in the "First Regulation for the Filing of Claims" the kinds of property covered by the regulations are as follows:

1. Real estate or rights to real estate (e.g. rights of use mortgages rental Income).
2. Moveable items (e.g. art Antiques, household items).
3. Credit balances and claims against debtors residing in East Germany.
4. Businesses and their assets (provided they are located in East Germany and East Berlin).<sup>3</sup>

The claim may be made either for the retransfer of assets, or monetary compensation, as requested by the entitled party.<sup>4</sup> Therefore, as a practical matter, claimants with real property claims may choose to receive a cash award, instead of return of the actual real property, which may subject the owner to real property assessment (which due to reconstruction may be substantial). In certain cases, where the property has been used for public purposes, such as for the construction of public houses or where religious or non-profit organizations have obtained ownership rights in good faith prior to Oct. 18. 1989, retransfer is excluded and only monetary compensation is available.<sup>5</sup> Restitution is also excluded where the property is required for special investment purposes (e.g. for housing employment and Infrastructure).<sup>6</sup>

### Content of the Claim

Claims should be submitted in written form in the German language, and should contain as much precise information as possible regarding an exact description of the lost or confiscated property and the chain of inheritance, which entitles the claimant to make the claim. It is possible that claims submitted in English may be accepted but there is no guarantee. Where the claim involves real property, the claimant should provide as precise legal description as possible in order to insure that the property is adequately identified. This should include the page and paragraph number of the property as it is registered in the German land registry. Provided the

claim is made prior to March 31, 1991 such claims which property Identify the property will have the effect of freezing further transfer of the property until the issues raised in the claim have been resolved.<sup>7</sup>

In order to prove the claimant's right to make the claim he or she should identify the individual who originally owned the property and provide documentation proving a chain of legal inheritance. Where possible this should include any relevant legal document including the German Certificate and relevant U. S. documents (i.e. last will and testament, death certificates). Certified translations in the German language should be attached to any such documentation. In some cases decisions of the Foreign claims Settlement Commission of the United States may be useful.

In many cases, it may be necessary to reach inheritance and property Information In the area formerly known as East Germany. This often requires sending a German law student or attorney to various country and governmental offices where such records are kept. Due to the under staffing of such offices and the high demand for information, this can be a frustrating and time consuming process Additional problems arise where records are either negligently or intentionally destroyed. For the reason it is important to fully review all family records to assist in the information gathering process.

In the event that specific information is not available at the time of filing the claim, it is possible to file a general claim with the possibility of amending the claim when further information becomes available. However, lack of specificity runs the risk of not properly identifying the property for purposes of freezing it Until the claim is decided.

#### Where to File the Claim

Compensation claims must be filed in the county office (Kreisverwaltung) or at the city office (Sladtverwaltung) where the entitled party last resided in East Germany.<sup>8</sup> In the case where the claimant never resided in East Germany or East Berlin, the claim must be filed in the country or city where the property is loted.<sup>9</sup> Where the claim is one through inheritance, it should be filed where the testator resided in East Germany. In order to simplify the filing process, claimants who reside, or whose main office is located outside of Germany, may file claims with the German Justice Ministry in Bonn.<sup>10</sup> Individuals or organizations wishing to file a claim are urged to begin the filing process as soon as possible since it often involves time consuming investigatory work and administrative delays.

#### Footnotes:

1. "Third Regulation on the Filing of Claims", Journal of Federal Law (Bundesgesetzblatt), Part I, page 2150, 1990 at Article I, § 1(a).
2. Id. at Article I, § 3.
3. "Regulation on the Filing of Claims" Law Gazette of the German Democratic Republic, Part I, No. 44, page 718, July 11, 1990 at § 1, par. 3.
4. "Law Regulating Open Property Questions" (Gesetz zur Regelung offener Vermoegensfragen) at § 8, par. 1.

5. Id. at § 4, par. 2.
6. "Special Investment Law" (Gesetz ueber besondere Investitionen in dem in Artikel 3 des Einigungsvertrages genannten Gebiet) at § 1, par. 1.
7. "Regulation on the Filing of Claims", supra, at § 6, par. 2.
8. "Third Regulation on the Filing of Claims", supra, at Article I, § 2(b).
9. Id.
10. Id.

Reprinted with the permission of *New York Law Journal*.