6 *Wiedergutmachung*: Complicated Issues

A Sketch of Special Laws and Rights

The history of the Tietz family under National Socialism shows how extensively the Nazi regime and its accomplices accessed the commercial and private property of those persecuted on "racial" grounds. The "Aryanization" of the department store group in 1933 and 1934 was an essential, but ultimately by no means the only, component of the persecution that the family had to endure in the context of discrimination, persecution and robbery. This was followed by the loss of private real estate, their own home and homeland, and not least the state confiscation of the remaining assets through taxes and compulsory levies. The constant anti-Semitic discrimination and life in an environment of constant hostility – a situation that ultimately led to flight and emigration – robbed the members of the formerly respected business family in more than just material ways. The Nazi regime deprived them of life opportunities, blocked career development paths and restricted personal freedom, even to the point of threatening attacks on health and life. The Tietz family's example is ultimately just one case of the theft and destruction of livelihoods on a million-fold scale. But it was precisely the vivid impact of the Nazi regime and with it countless private profiteers intervining so massively in the business landscape and property structures of the German economy and society that made the Allies consider how these property restructurings could be reversed or compensated for during the last years of the Second World War. The USA took on a pioneering role, not least on the initiative of the Jewish interest groups that were most strongly organized there. In initial discussions with the British and French allies, agreement was quickly reached that, in addition to collective reparations from the German state, which were already anchored in international law, a form of individual *Wiedergutmachung*, i.e. provisions relating to financial compensation for National Socialist injustice, had to be found. This was to enable confiscated property to be returned from the hands of private beneficiaries to the rightful owners.[1] In addition to material restitution ("Rückerstattung"), personal financial compensation ("Entschädigung") payments were also included in the considerations at an early stage, which were to give the persecuted the opportunity to claim compulsory payments from the state, but also compensation for the loss of freedom, health and life chances. With restitution and compensation, the field of so-called *Wiedergutmachung* thus acquired a two-part structure.

The general term of *Wiedergutmachung* alone, which in a literal sense implies being able to put things right through financial payments alone and then, in a

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sense, drawing a line under it, is seen as problematic in today's historical research and as a difficult but contemporary expression of the attempt to resolve a burning moral issue. According to the Bochum historian Constantin Goschler, from a moral point of view alone there is a "fundamental incongruity"[2] between the quality of robbery, expulsion and murder and any form of financial compensation. Nevertheless, "Aryanization" and restitution form an inseparable issue and a necessarily strongly connected field of historical investigation. This applies on the one hand to the fact that today we can often only gain decisive clues about what happened during the Nazi era from studying the proceedings of *Wiedergutmachung*. On the other hand, the sources provide historians with key clues about how "Aryanization", discrimination and persecution in the post-war period were materially valued and morally assessed by the German authorities, but above all by the perpetrators and victims, the profiteers and those affected. With this in mind, it seems indispensable to follow the history of encounters between "Aryanizers" and "Aryanized" beyond the break at the end of the war and up to the time of the Federal Republic, in which they faced each other in new roles as those liable and those entitled to make claims on the basis of the new restitution and compensation laws. Here, too, it is important to look at the behavior of the actors on both sides, their scope for action, motives and interests, in order to be able to historically illuminate and classify the early attempts to come to terms with Nazi history.

All of this also applies in particular to the negotiations between Georg Karg and Hertie with the Tietz family and their descendants concerning the "Aryanization" of their department store group. The special circumstances of the relatively early "Gleichschaltung" of the company also gave rise to numerous areas of tension in the restitution process. The question of Georg Karg's responsibility and the role of the banks and Nazi authorities involved was overshadowed by long-simmering suspicions that the Tietz group had already been on the brink of insolvency before the Nazis came to power. As will be shown, the fact of "Aryanization" threatened to be undermined by the interpretation of a restructuring that had only been made possible by the joint efforts of the financiers and the new management in a business environment made difficult by anti-Semitic boycotts. The responsibility for the elimination of the Jewish owners was also blatantly depersonalized and addressed to the Nazi regime in general – a defensive attitude that numerous "Aryanizers" displayed in post-war proceedings. Nevertheless, in the Tietz case, after a few personal discussions, a settlement was reached between Hertie and the family of the former owners as early as 1949. The path to this settlement, the content and disputes, is outlined below. The focus is not only on the question of the restitution of Tietz's company property in the context of the reorganization to form Hertie, but also on the procedures for the restitution of real

estate and compensation for the state's confiscation of assets. Before that can be undertaken, however, it is important to briefly outline the development of the legal framework for compensations within the complex *Wiedergutmachung* laws in order to illustrate the behavior of the actors in these proceedings.

Shortly after the end of the war, intensive negotiations began on the initiative of the US military administration with partners in the British and French occupation zones on the question of how to deal with the massive property-related disruptions that had emanated from the National Socialist regime and in the course of which countless profiteers had made off with the assets of the persecuted. The highest priority was given to developing a legal concept that would enable individual restitution of stolen commercial property. This approach was motivated by the urgent need to provide new legal certainty to the existing civil property order without calling it into question. This point revealed the open confrontation with the Soviet occupation zone, where the first state socialization measures quickly aimed at completely overthrowing the property system and soon undermined any form of private dispute over wealth and property issues.[3] Instead, the Allied considerations were directed at orienting themselves on the property relationships before the National Socialists came to power and, if possible, restoring a status quo ante in terms of property law. With the entry into force of Military Law No. 52 "Blocking and Control of Property" in July 1945, the US military administration had not only confiscated Reich and party assets, but also subjected bank accounts and the operations of commercial enterprises to its control. Property assets allegedly confiscated as part of "Aryanization" and confiscation were subject to a registration requirement in all western occupation zones until the origin of the assets and the economic or political involvement of the current owners with the Nazi regime had been clarified.[4] Even if this requirement – as in the Hertie case – did not necessarily mean that companies had to cease their business completely, their actions were still subject to a retention clause concerning property title. This in turn formed an essential prerequisite for the later enforcement of individual restitution, since the "Aryanizers" in particular were put under pressure to take action themselves. In their attempt to introduce the legal concept of restitution into the German legal system on the basis of the existing property order, the Allied negotiating partners encountered the problem that the traditional legal concepts of robbery or immorality were not sufficient to adequately reflect the characteristics of "Aryanization". In addition, there was the problem that in the immediate post-war years it was difficult to predict when and to what extent a German state of any kind would be able to deal with the claims of the persecuted. The result was that the Allies decided to implement restitution on an independent legal basis with new terminology and their own instances and procedures in the German legal system.[5] While the military governments agreed on

this basic path, a dilemma arose: they could not agree on all the defining details of the claims and obligations involved. The more time passed and the more urgent the restoration of legal certainty became in order not to endanger economic recovery and thus Germany's integration into the western alliance, the more intensively the US military government pressed for solutions. Finally, they dared to go it alone.

On November 10, 1947, Military Law No. 59 concerning the "Restitution of Identifiable Assets to the Victims of National Socialist Repression Measures," USREG for short, came into force in the American ccupation zone.[6] While a regulation that differed in essential points was issued in the French control area on the same day, it was to take until May and July 1949, respectively, before corresponding legal regulations were available for the British occupation zone and for the western sectors of Berlin. However, the so-called BrREG (Law 59) and the Restitution Ordinance of the Allied High Command in Berlin (REAO), in their only slightly simplified versions, were almost entirely based on the American model, which thus had both pioneering and exemplary character.[7]

The Allied legislators placed all legal transactions between 1933 and 1945 "with persons persecuted on the grounds of race, religion, nationality, ideology or political opposition" under a general presumption of confiscation. In doing so, they deliberately avoided the term "Aryanization". Instead, they defined a new type of persecution offense of "giving away assets under pressure of persecution." On the basis of this legal formula, any legal transaction with persecuted persons was labeled unlawful, and the discriminatory circumstances of the property transfers were thus classified as sufficiently legally binding for a claim of restitution. This relieved the claimants in individual cases of the often difficult task of proving that a sale or transfer had been made unlawfully. German legal experts vehemently opposed this approach, as they did not want to rule out the possibility that there had been fair legal transactions in accordance with common commercial standards of conduct. The restitution regulations overrode this objection in favor of those affected. They relieved the victims of the burden of proof by assuming a causal chain between the situation of persecution and "Aryanization". Instead, it was up to the purchasers to refute the legislators' presumption of confiscation if they doubted the unlawful nature of a purchase transaction. The requirements for such a claim were strictly regulated: in legal transactions concluded before the Nuremberg Race Laws were passed in 1935, the purchasers had to prove that they had paid an appropriate purchase price and that the proceeds had actually been freely available to those affected. For transfers of ownership concluded after 1935, the purchaser had to document that he had also tried to actively and with special measures to protect the financial interests of his counterpart. The hurdles for documenting a lawful acquisition were therefore high.[8]

As compensation for the surrender of commercial, real estate or movable property, all Allied laws and regulations provided for restitution in kind, on the condition that the assets were still physically present and could, therefore, be returned in their original form. This meant, at least in theory, that the victims should ideally retain the company shares taken from them in order to restore the original ownership situation with all rights and obligations during the period before 1933. Additionally, the former owners would be returned to their roles as managing directors or shareholders. In practice, however, this idea was not without its drawbacks: firstly, in this case, the claimants had to pay back the purchase price paid during the "Aryanization" to the purchasers – a farce when you consider that many members of the business families had been murdered, robbed or had become destitute while fleeing and emigrating. Secondly, this step would have generally meant a willingness to return to the country of the perpetrators in order to do justice to the administration of the returned assets. Understandably, this was out of the question for most victims, even just on purely emotional grounds.[9] However, the USREG and the BrREG also provided for the determination of compensation by private settlement if the financial loss was irreversible or if it was not the applicants' wish to take over their businesses or residential property in Germany again. The alternative was to calculate their claims as the difference between the value of the property at the time of transfer and the purchase price actually paid. This meant that the profits and losses, in particular any war damage from the Nazi era, also went to the liable parties.

In order to assert claims, those affected had to comply with an application deadline of June 30, 1950.[10] Once a refund application had been received by one of the registration authorities set up in all three western occupation zones, the procedures followed a standardized process. First and foremost, compensation offices (Entschädigungsämter) were specially set up at the administrative district level. Here, the applications were examined, statements requested, and evidence collected. In addition, the offices were supposed to mediate between those entitled and those liable in order to bring about a private settlement. However, the restitution regulations failed to require the offices to conduct investigations on behalf of the injured parties. With the aim of leading the proceedings to a private settlement, the right to compensation remained part of the targeted procedural code. Those affected, therefore, had to inform themselves or rely on lawyers who supported them in the proceedings.[11] Only at the second level did three further, actual judicial instances follow: special restitution chambers were also set up at the regional courts and separate restitution senates at the higher regional courts. While these two instances were embedded in German civil jurisdiction and operated with German judges, the highest restitution courts in the occupied zones – the United States Court of Restitution Appeals of the Allied High Commission for

Germany (CORA) in Nuremberg, the British Board of Review (BOR) in Herford and the French Cour Supérieure pour les Restitutions (CSR) in Rastatt – were headed exclusively by Allied judicial bodies until 1955.[12]

Despite the great effort made by the Allies to establish the new restitution law, it literally reached its limits outside the western occupation zones. Notwithstanding numerous supplementary provisions, which were expanded to include the state confiscation of property by the Federal Restitution Act of July 19, 1957, those affected could only make claims for the restitution of assets located in the territory of the Federal Republic or the western occupation zones. A territorial principle of the place of removal applied to all restitution cases. Due to that, ultimately until the fall of the Berlin Wall in 1989/90, restitution for companies and properties in the eastern part of the country was still pending. This meant a significant restriction, particularly for the corporate property of the Tietz department store, which had focused its activities particularly in the eastern regions, and this fact was also repeatedly addressed in the restitution proceedings.

In parallel to the restitution laws, compensation law developed from 1947 onwards as a second area of *Wiedergutmachung*. In the immediate post-war years, the introduction process was initially characterised by a great inconsistency of various regulations issued by the states and occupation zones.[13] However, they had the common goal of giving those affected by National Socialist persecution the opportunity as individuals to declare the attacks on their life and physical integrity on the one hand and interference with their property rights as a result of persecution on the other. As with the restitution regulations, a draft from the US military government also proved to be groundbreaking for the establishment of compensation law. The "Compensation Act of the South German State Council" (Gesetz zur Wiedergutmachung nationalsozialistischen Unrechts) of April 26, 1949 (USEG), developed jointly with the German regional authorities, structured the complex field of experiences of persecution into three overarching categories of damage. The first group was made up of "damage to life and limb," for which those affected or their relatives could claim compensation, for, among other things, deprivation of liberty in camp imprisonment, for acts of violence and even murder. The second category encompassed "damage to professional and economic advancement." This included the hindrance to free exercise of a profession, the loss of training opportunities or the restriction of earning potential. As a third group, "damage to property and assets" was included in the compensation law and further differentiated. On the one hand, losses of assets due to boycott measures, destruction or looting, as well as the forced abandonment of money or valuables during flight occurrences were considered to be eligible for compensation, and on the other hand, special levies or Reich flight taxes paid, also qualified for compensation.[14] These "facts" were found from 1950 onwards in the first com-

pensation regulations of the French occupation zone as well as in the "Law for the Compensation of Victims of National Socialism" (Gesetz für die Entschädigung der Opfer des Nationalsozialismus) for the western zones of Berlin, which was announced on January 10, 1951, and enshrined shortly thereafter.[15]

In the negotiations leading to the Bonn Transition Treaty and the Hague Agreements, the government of the young Federal Republic finally committed itself to the Western Allies, Israel, and the Jewish Claims Conference in 1952 to incorporate compensation into the German legal system and to standardize it nationwide. Barely a year later, on 18 September 1953, the Bundestag passed a still incomplete "Federal Supplementary Act on Compensation for Victims of National Socialist Persecution" (BErgG),[16] which in turn was replaced in 1956 by a now detailed "Federal Act on Compensation for Victims of National Socialist Persecution" (BEG).[17] The new regulations stipulated that the claims of those affected should be materially compensated either through monetary and capital compensation or through pension-like benefits. The salary and pension tables of German civil service law were used as a guideline for the amount of compensation, according to which the benefit was paid in accordance with a comparable classification and at a conversion rate of 10 RM to 2 DM.[18] In the case of income and property losses, the state was liable up to a maximum of 75,000 DM. The various categories of damage were continued from the first Allied regulations. The circle of those entitled to make claims was necessarily limited to those persecuted who had a residence in West Berlin or in the area corresponding to the Federal Republic before their emigration or deportation.[19]

For the Tietz family, the basic patterns of compensation and restitution law outlined here formed the basis for asserting their claims against Hertie, the German state, and numerous beneficiaries and second purchasers of their former property from 1949 onwards. The claims they made were also individually distinct, in keeping with the different emigration histories and experiences of persecution of the family members after the "Aryanization" of their company. The focus of their efforts was clearly on an adequate settlement of their reimbursement claims, which they brought forward together and which led to a very rapid agreement by way of a settlement. However, even after this settlement, the history of their encounters with the former "Aryanizers," and especially with the German authorities, was not free of conflict and continued well into the 1960s.

Claims and Objections: Early Restitution Negotiations

After the war, the Tietz family was scattered across the world. Emigration meant that their formerly close coexistence and daily exchange in Berlin were lost. After

a veritable odyssey, Hugo Zwillenberg and his family were now living (again) in Amsterdam. Martin Tietz had been living in Cuba with his wife Anni for several years without being able to find an adequate professional position there, while the house of Betty Tietz and her son Georg's family in New York was now the center of family life, where they met several times a year.[20]

Fig. 35: Hertie department store in Munich in the 1930s.

Nevertheless, the family soon made contact with Germany again after the collapse of the Nazi regime. In the summer of 1946, Rösli, born in 1924, traveled to the now largely destroyed Berlin for the first time with her father Georg. A few months earlier, on Christmas 1945, the daughter of the former department store owner had married Kurt Jasen, who was stationed in Germany in the US military and was helping to coordinate reconstruction efforts. Her husband's family had owned a successful construction company in the German capital under the name Jacobowitz until 1937 and had also had to give it up. The two families, who were good friends, met again in New York after their escape, and the Jakobowitz family changed their name to Jasen, which was more easily understood there.[21] In 1948 and 1949, Rösli and Kurt Jasen spent several months in Germany and Switzerland. Georg in particular, but also Martin Tietz, also travelled to Germany several times during these years and explored the possibilities of making compensation claims for their lost private and business property. Kurt Jasen, who had studied law in

Germany and Switzerland before the war and received his doctorate in Basel, advised them on this undertaking.[22]

On July 23, 1948, the Tietz family submitted three applications for restitution to the responsible Central Registration Office (Zentralmeldeamt) in Bad Nauheim on the basis of the American Military Law 59 (USREG). The applicants were Georg and Martin Tietz and Hugo Zwillenberg, and the New York lawyers Dr. Hans Kaliski and Dr. Fritz Moses acted as the executors of the estate of Betty Tietz, who died in 1947. The subject of the restitution claims, each submitted separately, was the return of the family's assets located in Munich, Stuttgart and Karlsruhe.[23] The applications focused explicitly on the real estate that was eligible for restitution in kind and, therefore, seemed most likely to be returned. The claims were consequently directed against both Hertie Waren- und Kaufhaus GmbH and the corresponding real estate companies, which managed this real estate as subsidiaries in the complex Hertie corporate structure.[24]

The fact that the family concentrated on the restitution of their assets in southwest Germany was due to the still uncertain legal situation. The Hertie stores were under the jurisdiction of US occupation law, which at that time was the only one offering a binding framework for restitution and thus for a first step towards *Wiedergutmachung*. Even though corresponding regulations were already being prepared for the British occupation zone and West Berlin, it was difficult to predict when they would be implemented. When the further restitution laws were finally published in the summer of 1949, the family submitted further applications in Berlin, Hamburg, Wuppertal, and subsequently in Frankfurt am Main.[25] The former owners thus consistently pursued their claims, which can be interpreted as an indication of how much they considered the circumstances of their withdrawal from their own company in 1933/34 to be persecution-related, unlawful, and unfair. Nonetheless, the focus of the negotiations with Hertie remained the dispute over the restitution of the assets in the three southwest German cities, since it was in the mutual interest of the parties and the restitution authorities to arrive at the most comprehensive overall solution possible, which promised rapid financial compensation and legal certainty, rather than a lengthy process involving numerous individual proceedings. However, the path to this end proved to be rocky both procedurally and interpersonally.

In the autumn of 1948, the Central Registration Office duly forwarded the individual applications to the three responsible regional authorities. After months of examining the claims filed, the restitution offices in Stuttgart, Karlsruhe, and Munich agreed in March 1949 to merge the individual proceedings and transfer them to the jurisdiction of the Upper Bavarian Restitution Authority (Wiedergutmachungsbehörde Oberbayern) in Munich. From a purely formal point of view, this also seemed justified by the fact that immediately after the end of the war,

Hertie GmbH was headquartered in Munich as well as in Berlin.[26] Informally, however, it also played a role that the applicants found a trustworthy environment around the Bavarian authorities in which to pursue their claims. This was particularly due to the person of Dr. Philipp Auerbach, who was probably already well known to them and who – himself an Auschwitz survivor – acted in Munich as Attorney General for *Wiedergutmachung* and State Commissioner for those persecuted for racial, religious, and political reasons.[27] Auerbach supported the ambitions of the Munich Restitution Authority to persuade the parties to reach a settlement outside of court proceedings and acted as an intermediary between the Tietz family and the representatives of Hertie GmbH. There was evidently an intensive exchange from April 1949 onwards. In the background, the negotiations were conducted by the Munich lawyers Fritz Neuland for the applicants and Dr. Otto Lenz for the Hertie Group. Georg Karg and the Tietz brothers also contacted each other directly, at least by telephone.[28]

At this point, the two parties' ideas about the basis for a possible agreement were still very divergent. Georg and Martin Tietz demanded the return of all commercial and private properties in the three cities and a one-off payment of 22 to 25 million DM to compensate for all losses of assets and lost purchase price payments suffered during the "Aryanization" of Hermann Tietz OHG.[29] However, the family did not express any interest in returning permanently to Germany, the country where they had experienced persecution and wartime destruction, nor were they interested in again running a department store group themselves.[30]

For Georg Karg and Hertie, these demands must have seemed like another major mortgage on top of reconstruction costs. There was little hope of regaining ownership of their large commercial buildings in Berlin, Gera or Weimar, which were now in the Soviet zone. This meant that all of the Hertie GmbH branches in Karlsruhe, Stuttgart and Munich, which were run under the established brand name "Union," as well as the Alsterhaus in Hamburg, formed the core of the remaining business base.[31] Still, a great deal of capital had to be invested in the reconstruction and repair of the in many instances badly damaged branches, while consumption in the "collapsed society"[32] only began to pick up very slowly. The demands for reimbursement therefore appeared difficult to meet, regardless of any legal or moral considerations.

Against this background, the Hertie side showed a double face in dealing with the restitution claims in the spring of 1949. While Georg Karg tried to have a calm, personal exchange with the former owners, the lawyers launched a legal frontal attack against the restitution applications. On May 25, 1949, Otto Lenz filed an objection to the restitution claims on behalf of Hertie GmbH and rejected all claims.[33] In a first step, he formally questioned the jurisdiction of the Upper Bavarian Restitution Authority, since it concerned the restitution of GmbH shares of

Fig. 36: Union department store in Karlsruhe, 1958.

a company based in Berlin. This was a legally legitimate but, due to the preliminary negotiations, flimsy legal maneuver to move the applicants into a worse negotiating position. Much more important, however, were the substantive justifications presented in a second step, which downplayed the "Aryanization" with stereotypical arguments claimiing that it was just restructuring and, at the same time, shifting the company's responsibility for every form of discrimination and persecution of those affected entirely to the Nazi state and to unchangeable circumstances. According to an account by Hans Otto Eglau, Georg Karg shared this view. In order to underpin it legally, he commissioned the lawyer Lenz, who shortly afterwards rose to become State Secretary in the Chancellery in the Adenauer government, to collect evidence for this view from the banks and authorities involved at the time.[34]

"There is no claim for restitution," Lenz ultimately ruled dryly in the objection letter.[35] In 1932, the Hermann Tietz company, Lenz claimed, had only been able to put off its creditors and simply could no longer pay the bills that had come in. The company had therefore been without liquidity even before the Nazis came to power, which was particularly evident in the fact that it could no

longer meet its repayment obligations to the banks with its total debt burden of 94.5 million RM.

"The applicants," wrote Lenz, "also admit the 'difficulties' – or more accurately, their insolvency – and merely claim that the Tietz family had been prevented from creating their own credit, or that the Deutsche Bank und Disconto-Gesellschaft had not granted a loan that had been promised in 1929. The claim that the Tietz family was able to obtain credit for themselves is downright absurd for anyone who knows the situation even slightly."[36] Even with the Jewish creditor banks, Mendelssohn, Warburg, and Hirschland, all creditworthiness had already been lost by 1932, the Munich lawyer explained without any evidence. With this argument, he probably wanted to underline that even the most well-intentioned creditors had turned away from Hermann Tietz – without noticing that he was also carelessly repeating anti-Semitic stereotypes from the Nazi era about the supposedly particularly close Jewish financial networks. He was certain that – if Deutsche Bank had actually withdrawn its loan agreement – Hertie GmbH could not be held responsible, because "this could not possibly have had anything to do with persecution measures."[37] The Hertie representative carefully concealed the anti-Semitic resentment that had already started in 1933; the massive consequences of the boycott of department stores, which broke out violently in 1933, or the direct interventions of government and party bodies to force the Tietz family out of the company. In Lenz's account, the banks, the Hertie management and even the Reich Commissioner had made great efforts to restructure and thus save the company, in the course of which "a new management structure was implemented at the same time."[38]

In the end, Lenz went so far as to completely reverse the roles of the victims, which was not uncommon among German company representatives who were confronted with demands for reimbursement in the post-war years. The heavy burden of restructuring and the achievement of the new managers in steering the company through such a difficult time were emphasized. Lenz not only implicitly, but quite openly suggested that without the Hertie solution, the Tietz family would "certainly have lost all their assets." It is therefore not surprising that "the Tietz family themselves wanted to withdraw and leave the restructuring of their group to the banks." In return, the former owners received an extraordinarily high settlement of seven million RM, "if one takes into account that the restructuring of the company only had to be carried out after the departure of the Titz family [sic!] and that the creditors were forced to make considerable sacrifices in the process."[39] Here the lawyer deviated from the facts or reinterpreted them with the aim of justifying the behavior of the company and all those involved in its "Aryanization". After all, according to the letter of the USREG law, he was concerned with documenting a passive role of Hertie GmbH, in which they had treated the founding family of the department store group in a commercially

fair way and within the bounds of a common business standard. In this context, Lenz also mentioned that the new management of Hertie had campaigned for the Tietz family to obtain special permits to transfer their assets abroad. Hertie was not to blame for the fact that the official permits had not achieved "the desired result."[40]

Even if it cannot ultimately be clearly documented, it can be assumed that the Tietz family was informed in detail about the relativizing content of the objection letter. It was not only the discrepancies in the perception of the events of 1933/34 and the different views, for example, on the amount of the purchase price paid – the Tietz family assumed three million RM – that must have been perceived as an affront by those entitled to restitution. Rather, it was the choice of words and the sharp tone with which Lenz described the applicants literally as "activists" for restitution that must have been perceived as disparaging and insulting by those affected.[41] With this in view, it is surprising that the negotiations by no means stalled, but were quickly led to an out-of-court settlement. The compensation board played a major role in this, signaling to Hertie's representatives at an early stage that their line of argument would not hold water in court.[42] Not least in view of this circumstance, the parallel discussions at the level of the current and former managing directors took place in a different, entirely objective, and constructive atmosphere, according to a later statement by both sides.[43]

On May 25, 1949, the same day that the objection was filed, Georg Karg met personally with the Tietz brothers and Hugo Zwillenberg in the Munich office of Attorney General Auerbach. Georg and Martin Tietz traveled from New York for these talks and settled in the Bavarian metropolis for a few weeks in anticipation of an expected marathon of negotiations.[44] At this meeting, Karg presented a very specific settlement offer.

It was based on USREG No. 59, to which direct references were made. The core of the offer was that the Hertie company would transfer the Union department stores in Karlsruhe and Stuttgart in the US zone, as well as the Hertie department store in Munich, back to the Tietz heirs. The prerequisite was that all mortgage charges on the commercial buildings were to be paid off by Hertie in advance. Only the Munich branch was to be left with a burden that had already been placed on it when it was taken over in 1933. This stipulation was to fulfill a key point of the USREG, the restoration of ownership to the status quo before the Nazis came to power.[45] The draft also provided for a settlement regarding compensation for lost use of the commercial assets. Here, too, Georg Karg gave in by acknowledging that the Tietz owners had not been able to continue running the department stores due to the persecution measures. The compensation for this so-called loss of use was not to be made in monetary terms. No additional payment was planned. Instead, all investments that had changed the asset value of

the property over the past 15 years were added up. The construction investments that had been made in the buildings in 1933 and 1948 were, in a sense, compared with the reconstruction measures that Hertie had invested in the structural substance of the buildings in 1948/49. The Tietz representatives were, therefore, supposed to acknowledge that Hertie GmbH had invested around 2 million RM in modernization between 1934 and 1945 and at the same time declare their willingness to compensate for these services by assuming around 1.25 million DM of the recently incurred maintenance costs as the "new old" property and estate owners.[46] In this way, the so-called restitution clause of USREG No. 59 was seen to be implemented, which provided for the return of identifiable assets in accordance with their condition before seizure. At the same time, this stratagem was supposed to allow the parties to take into account the asset value of the properties and the difference between the higher market value of the properties located directly in the city center, which had not been measured in the "Aryanization process". At the same time, it was meant to offset the lost benefits of use of the old owners during the regime years against the mortgage debts they were burdened with at the time of transfer. This was an extremely pragmatic concept that spared the parties the difficult task of retroactively assessing the value of each individual property unit. For the Tietz family, such an approach also ensured that they would now receive back their three commercial houses without any mortgages and in good overall condition.[47]

The actual core of the settlement proposal, however, was that the Tietz heirs would lease the commercial buildings that had been restituted to them back to the Hertie company immediately after the contract was signed. The basic idea was that this would enable the department store group to continue using the branches. At the same time, a long-term lease, calculated on the basis of a percentage share of sales, would allow the founding family to participate in the company's future success and compensate them sequentially for the loss of their family firm.[48] Such a solution restored legal certainty and gave the Hertie Group time to reduce its restitution obligations in installments, as it were, in view of the still difficult economic situation.

On the basis of this settlement proposal, further consultations between the parties took place over the next two days. The negotiations took place in the Munich office of Fritz Neuland, who had already run a successful law firm in the 1920s together with the later Bavarian Prime Minister Wilhelm Hoegner. During the Nazi era, Neuland, like all Jewish lawyers, lost his license to practice, but continued to represent Jewish victims of persecution as a legal consultant. From 1942 onwards, he was forced to do several years of forced labor. Then, shortly before the end of the war, he went into hiding with family and friends, and in the summer of 1945, he reopened a law firm that increasingly specialized in *Wiedergut-*

machung cases.[49] Thanks to a historical coincidence, we have access to a closer look at the course of the negotiations concerning the Tietz claims at the end of May 1949: Fritz Neuland's daughter, Charlotte Knobloch (born 1932),[50] took part in the discussions as a 16-year-old listener. In a contemporary witness interview, she reported that, among other things, long-time president of the Zentralrat der Juden in Deutschland (Central Council of Jews in Germany) and the Israelitische Kultusgemeinde München und Oberbayern (Israelite Religious Community of Munich and Upper Bavaria), in addition to Georg Tietz, Martin Tietz and Hugo Zwillenberg, Charlotte Kücher-Eigner and, on the side of those liable for restitution, Georg Karg and presumably Guido Schell and Otto Lenz took part in the meetings. From her memory she stated, that she was surprised and – given her immense knowledge of the thousands of robberies and murders during the Nazi era – at the same time annoyed at how friendly and conflict-free the negotiations were. It was obvious that the parties had known each other personally for a long time and were looking for a pragmatic solution together in a relatively agreeable atmosphere. Georg Karg and the Hertie representatives no longer denied the legitimacy of the restitution claims at the large wooden negotiating table, but rather cooperated in meeting the Tietz family's demands. During the talks, they hardly dealt with the past and the circumstances of "Aryanization" anymore, but instead sought a mutually acceptable conclusion aimed at the future.[51] On this constructive basis, the negotiations were quickly successful. On the evening of May 27, 1949, Auerbach finally reported that the deal had been concluded. The parties had agreed in principle to reach a settlement on the basis of Karg's proposal. He commented with relief: "I believe that we are providing our economy with a great service by doing this."[52]

Not only the mediator, but also the Tietz family welcomed the agreement. This is evidenced by private letters from Georg Tietz in which he informed his children about the progress. At the beginning of June, he reported that after long, exhausting negotiations, "some calm had finally set in. The current status is that, as requested, all of the properties of the department stores in Munich, Stuttgart and Karlsruhe have been obtained, along with warehouses in the southwest and two residential buildings each in Munich and Karlsruhe. To settle the claims relating to their displacement from Hermann Tietz OHG, Hertie will pay up to a sum of 30 million DM. However, this will be in annual installments for twenty years, which will be determined based on a percentage of the turnover from the current business. In any case, I will get back between 12 and 17 million DM for my part,"[53] commented Georg Tietz, who evidently felt that his financial expectations had been fulfilled.

From the historian's point of view, it is ultimately difficult to assess commercially whether the payments and restitutions listed here actually corresponded to

an adequate equivalent value of the losses suffered by the Jewish victims of the "Aryanization process". For such a calculation, the handling of the company assets that have to be considered individually is too complex, and the number of unknowns is too high. For example, the structural condition of properties, renovation needs of buildings as well as regional market prices for the prime locations would have to be considered. After such a long time, these are usually impossible to reconstruct and cannot be identified from correspondence. But what we can say is, that generally the purchase prices for Jewish companies or real estate were – under pressure from the Nazi authorities – calculated on the basis of the significantly lower net asset value after 1933. This meant that only the basic substance values from the company books were taken into account. The significantly higher goodwill value, which would include the potential for future profit and a fair market value, was not considered.[54] Obviously, the Tietz family and Hertie refrained in the restitution process from a detailed calculation of what would have been a "fair" price for pragmatic reasons, which would have lengthened and complicated the process. In the practice of this restitution case, it was more important to both parties to reach a solution in which both sides could find common ground and see their interests taken into account. This was reflected above all in the respectful way they dealt with each other.

However, overall, Georg Karg and Hertie showed in this, ultimately ethical aspect, both strengths and weaknesses. Reading the sources gives the impression that both sides in the negotiations increasingly switched to a factual mixture of distance and concession. For example, Georg Tietz reported in his private letters how much the long negotiations and the stay in Germany had burdened him: "We are all fed up with Munich and living too close together, and it takes all my competence not only externally and towards Zwillenberg, but also internally to keep us all on course, living together and doing productive work – when everything is finished I will need a vacation."[55] The strenuous debates also caused tension within the Tietz and Zwillenberg families, which were ultimately also due to their different experiences of persecution. Hugo Zwillenberg apparently left the negotiating table at times because the discussions seemed like a burden to him. The family members tried to appear confident and consistent towards the defendants, acting in different roles as, literally, "the tough one" and at other times "the lenient one" when it came to the still extremely difficult negotiation of "formulation, details and secondary instruments, etc."[56]

Regarding his impressions from the meetings with Karg, Georg Tietz admitted that he too had changed roles. At first, Lenz and the Hertie managing director took a defensive stance. But then the discussions took place in a more pleasant atmosphere, "since Karg has made every effort to be friendly towards us from the moment of our substantive agreement, and we are also able to tolerate him."[57]

Wherever common interests were touched upon in the negotiations, the parties quickly found a forward-looking form of cooperation. This related, for example, to a construction project in Berlin, about which Tietz remarked: "We have already taken steps against the second purchaser at his [Karg's] request in order to thwart the construction of a commercial building on 2nd Kant-Joachimsthalerstrasse in Berlin that Victoria wanted to build there." The property was a former Tietz property in an excellent location in West Berlin that Viktoria Versicherung had taken over from Hertie following the group takeover. "Perhaps the new K.D.W. [Kaufhaus des Westens] will be built on the second or third floor on this site," said Georg Tietz, describing the informal joint plans.[58] Similarly, Tietz and Hertie found a common line regarding how to deal with any tax burdens that arose from the settlement. On this point, it was easy to reach an agreement since potential taxation undermined both Hertie's efforts to rebuild the company and the idea of *Wiedergutmachung*: "[. . .] the Germans normally make amends by giving something with their right hand and taking everything back with their left fiscal hand,"[59] criticized Tietz. In fact, the applicants were threatened with high tax burdens in Germany as well as in the USA, since the benefits paid to them were subject to income and wealth tax. A one-off payment was hardly feasible for the applicants in view of the high tax burdens to be expected. Even dividing direct compensation payments into installments would have only minimally reduced the tax amount. In contrast, the idea put forward by Karg and his advisors of a "filigreed leasing scheme"[60] for the restitution-related claims appeared to be significantly more advantageous in tax terms. Ultimately, this solution was a clever tax maneuver by the two negotiating parties, which is documented here for the first time and was specifically based on the models of asset organization in the hands of separate operating and property companies that are common in the department store industry. However, this special approach required a legal review and the approval of the responsible Bavarian tax authorities, since there was a need for further clarification in the context of the lease regarding the handling of land, value improvement and related separation tax obligations. As it turned out, the Bavarian state government was open to the chosen alternative. With the support of Georg Karg, the family began negotiating with an interministerial commission headed by Philipp Auerbach and the Bavarian Minister of Finance, Hans Kraus,[61] in the summer of 1949. Despite the complex nature of the matter, both were willing to cooperate and were on friendly terms, as evidenced by the fact that Georg Tietz referred to the members of the commission in his correspondence as "friend Auerbach" and "friend Kraus."[62] From this perspective, he soon became optimistic that an amicable solution would be reached.

At the end of July of that year, a viable compromise proposal was finally made: Hertie GmbH committed to paying an annual flat tax of 100,000 DM to the Bavarian Ministry of Finance. This included the Tietz family's share of tax of

25,000 DM per year, which Karg was also to withhold in advance from the revenue share for lease compensation to the previous owners. In total, the German tax burden of the family members amounted to a moderate 500,000 DM over a twenty-year lease period.[63] Hertie GmbH, as the operating company, assumed three quarters of the annual burden, i.e. the remainder of 75,000 DM per year, and thus took on a proportionate share of the land charge and value adjustment levies (Wertbesserungssteuer) of the Tietz family, who were now able to take over their properties largely free of encumbrances.[64] This approach consequently concealed additional restitution payments from the group to the family amounting to around 1.5 million DM.[65] However, this concession also paid off for Hertie, since in return it also received preferential tax treatment from the Bavarian tax authorities. The latter agreed that Hertie could record the interest payable on the capital value of the debts as well as property taxes and equalization levies as business expenses and thus make them tax deductible. In addition, the value of the Munich department store's business equipment was permitted to be increased to seven million DM and depreciated annually at ten percent. In this way, the restitution payment was subsidized by the Bavarian state in terms of taxation in the long term.[66] The authorities involved actively worked to balance the claims and obligations of those involved through this preferential treatment. However, it would take until autumn 1949 until all the technical questions had been clarified and the conditions for signing the settlement had been created.

The Settlement with Hertie in 1949: Restitution by Leasing

On October 10, 1949, Hertie GmbH and the Tietz family concluded the restitution settlement before the Upper Bavarian Restitution Authority, which was comprehensively documented in the text of the contract and the minutes of the meeting. Georg and Martin Tietz, their legal representative Siegfried Neuland and Fritz Mosse for the estate of Betty Tietz attended the meeting on behalf of the applicants. Hugo and Elise Zwillenberg were represented by their Düsseldorf lawyer Walter Schmidt. Hertie was represented by Otto Lenz and Georg Karg as well as his son Hans Georg, who had previously been involved in the negotiations at certain points.[67] In addition to Hertie GmbH and its eight real estate companies, Union Vereinigte Kaufstätten GmbH in Munich joined the proceedings. The company was specifically founded by Hertie before the contract was signed in order to take over the processing of payments and the implementation of tax agreements as a holding company based in Bavaria. Hertie GmbH – "Hertie East" – also transferred its department store operations in Munich, Stuttgart and Karls-

ruhe with all assets and liabilities to the Union GmbH – also referred to as "Hertie West" in the contracts – in order to enable the settlement.[68]

After a brief statement that they had reached a settlement on the requested restitution claims, the participants enshrined one of the central points of their agreement: the determination of the material, temporal, and spatial scope of application. This gave the settlement a generalized character. In return for the settlement of their claims, the Tietz representatives declared themselves willing to waive all future claims within the scope of the current restitution legislation of the western occupation zones and West Berlin.[69] Such a clause was quite common in the restitution proceedings for commercial assets in the 1950s and 1960s. On the one hand, the general clause was intended to give those liable for restitution legal certainty for the continued operation of their business. On the other, it was often an indispensable way for applicants to speed up the proceedings and avoid being forced into decades of legal disputes by the defendants.[70] Accordingly, the participants stipulated that the restitution authorities in Hamburg, Berlin, Frankfurt am Main, and Wuppertal would also be informed of the settlement. The restitution applications submitted in parallel in these other cities were thus deemed invalid.[71]

At the same time, the parties unanimously requested that all property control measures against Hertie be lifted, the accounts unfrozen, and the restitution notes deleted from the land registers.[72] However, both sides refrained from commenting on the circumstances of the "Aryanization" and thus on the behavior of the defendants under the conditions of the dictatorship. Consequently, there are repeated examples in the text of the settlement in which the parties asserted that the events were solely due to the discriminatory political circumstances or "the tragic conditions for Jews in Germany"[73] under the Nazi regime. However, exempting the purchasers from moral responsibility in this way in order to reach an agreement was apparently out of the question. In the settlement itself, the general stipulation was simply stated: "The Tietz family guarantees that the subsidiaries that remain with it or that were later founded by it will waive any kind of claims for reimbursement against Hertie and its subsidiaries."[74] Proceedings against third parties that would be brought based on the contracts of 1933 and 1934 were to be discussed in advance with Union GmbH in Munich and approved by it. At this level, Hertie and the Tietz family declared that they wanted to work together in the future not only as operators and tenants, but also on future issues of reversing ownership in the department store sector. The joint approach in the Viktoria case was, therefore, to serve as a model.

The parties found a similarly cooperative solution with regard to the still open question of how to deal with the currently inaccessible property in the area of the Soviet occupation zone. Due to the circumstances, they agreed in advance

on a settlement solution based on the model of a land swap. In the course of this, the Alexanderplatz property was to serve as compensation for all other Berlin properties owned by Tietz, while the house and land on Frankfurter Allee in Berlin were intended as restitution for all other claims in the greater region of the so-called Eastern Zone. As soon as an option to regain these properties arose, they agreed to inform each other and pursue their interests together.[75]

Tab. 12: Properties returned according to the settlement of October 10, 1949.[76]

Location	Address	Property type
Munich	Bahnhofplatz 7	department store
	Luitpoldstraße 9	residential building
	Luitpoldstraße 10	residential building
Stuttgart	Königstraße 27	department store
	Königstraße 29	department store
	Königstraße 112	department store
	Schmale Straße 6	residential and commercial building
	Steiermärker Straße 5	warehouse
Karlsruhe	Kaiserstraße 92	department store
	Zähringerstraße 79	warehouse
	Herrenstraße 7	residential and office building
	Herrenstraße 9	residential and office building

The focus of the settlement was the detailed procedure for how the claims for restitution were to be fulfilled. As already stated in the preamble, this was done in two steps: firstly, the return of the southwest German properties, and secondly, the leasing back to Hertie GmbH.

In the course of the direct restitution transfer in kind, a total of twelve, partially connected properties from the possession of Hertie-West were transferred to the ownership of the Tietz family (Table 12).[77]

Within the group of those entitled to reimbursement, the family agreed on a distribution key according to which Georg and Martin Tietz each received 35 percent and the Zwillenbergs 30 percent of the ownership shares. The land register entries were made accordingly. In a memorandum signed on the same day as the settlement, the family agreed to pursue and manage the claims and obligations arising from the restitution agreement in a harmonious manner.[78] If it were necessary for the family to make joint statements, claims, or approvals for the restitution process, it would be sufficient for two authorized members or heirs from the three family groups of the two brothers Tietz and Hugo Zwillenberg to give their consent.[79] This was intended to make it easier to coordinate with one an-

other and to act in unison towards Hertie. However, as will be shown later, this well-intentioned arrangement was to cause problems as early as the 1950s. In order to facilitate the financial settlement of the resolution contents, joint accounts were set up for the most part at the Bayerische Vereinsbank. The former secretary and trusted "right-hand woman" of Georg Tietz, Charlotte Kücher-Eigner, was to coordinate the implementation on-site in Munich and to receive the necessary legal powers of attorney from the family.[80]

In a second step, the "new old" owners established a comprehensive usufruct right over the returned properties in favor of Union Vereinigte Kaufstätten GmbH in Munich. The lease was anchored for a term of 20 years until June 30, 1970. On the date of the settlement, Hertie committed itself to a one-off payment of 130,000 DM. The further restitution payments were made in the form of rent, staggered in quarterly installments, which increased in two stages from July 1, 1950 to June 30, 1960 and from July 1, 1960 to the end of the contract term in 1970.[81]

The extent of the lease obligations was also divided into three categories based on the type of use of the property. The highest lease rate was estimated for the most valuable properties with department store development. Hertie paid the Tietz family two percent of the turnover of the three department stores in the first decade and 2.5 percent in the second decade for their continued use.[82] All parties to the settlement, including the tax authorities, made a rough estimate that future annual turnover would be around 50 million DM with an interest rate of up to seven percent. This calculation could at the time only be based on an extremely poor forecast, to which Georg Karg had raised objection in advance.[83] In order to protect the Tietz family's claims for reimbursement against loss of sales, a clause was introduced that guaranteed them a minimum annual lease payment of 600,000 DM in this negative case. Given the indeterminable entrepreneurial risk, it was agreed that the lower benefit limit would be twelve million DM by 1970. In the positive case of prosperous consumer development, the scale was open at the top.[84]

The rents were lower in the second category of property, residential and commercial buildings. The owners initially received a third of the turnover, i.e., the rental income. For the corresponding Karlsruhe properties, they even waived payments, as Hertie in return assumed all taxes, the costs of adequate building insurance, and all applicable burden equalization payments. For the third group, the warehouse properties, it was only stipulated that a local rent should be paid. If agreement could not be reached on the amount, the Chamber of Commerce was to be called in as an expert.[85] While the family viewed their ownership of the residential and warehouse properties as a long-term capital investment that could be sold at a profit after the lease expired, the sales shares in the department stores formed the actual basis of the refund as a largely tax-free and continuous

property annuity. In order to ensure that their property retained its value over the next 20 years and thus create the conditions for an increase in sales and continuous rent payments, the Tietz family contributed financially to the necessary construction and maintenance costs. However, they left the practical implementation of these measures to the responsibility of the tenant. In the first phase, the family waived half of the turnover-based rent. At the same time, Hertie committed to investing this one percent of sales directly in modernization. The Tietz family had to be informed of all construction measures that changed the value of the houses and demanded that a concrete investment plan be submitted for approval.[86] A clause on the exclusion of competition served as a further component to secure the reimbursement payments. Hertie undertook not to operate any new department stores in Munich, Stuttgart and Karlsruhe during the lease period without first obtaining permission from the Tietz family. All subsidiaries in which Hertie owned more than 50 percent were also to be subject to this requirement.[87] The ban protected the right to a share of sales because it prevented Hertie from relocating its business from the traditional branches to specially founded competing companies and thus circumventing its obligations. In addition, this left the family open to operate the department stores themselves again after the lease expired without encountering strong competitors in their immediate vicinity. The exclusion of competition thus guaranteed the preservation of the value of their properties and the opportunity to become active in the department store sector again.[88] For Hertie, which agreed to this clause quite unhesitatingly in 1949, the competition clause would prove, sooner than expected, to be an obstacle to further growth and diversification of the group.

When the initial "small prosperity"[89] in the Federal Republic of Germany in the 1950s developed into a sustained drive towards a modern mass consumer society, the department stores profited greatly. New department stores from competitors were built everywhere. At the same time, low-price chains were winnig new customers.[90] From 1952, Hertie also planned to expand its retail space in the major cities of southwest Germany with its low-price chain bilka. From the mid-1950s onwards, this situation was to lead to growing dissonance with, and within the Tietz family.

At first, however, the department store boom also had a very positive effect on the Tietz family. The strong growth of the group was reflected in an increase in sales of the leased Hertie department stores, which quickly exceeded expectations. The lease payments were correspondingly higher. The sales figures of the three businesses in 1950, at around 47 million DM, were only roughly equivalent to the 50 million DM range that had been used as a benchmark for comparison. In 1951, total turnover was already over 80 million DM, and in 1954, it exceeded the 100 million mark level for the first time.[91] In 1961, at the start of the second

lease phase, turnover totalled 188.5 million DM. In one quarter alone, business income reached the long-outdated assessment rate.[92] As a result, the restitution payments for the Tietz family also quadrupled. Around 4.5 million DM (1961) were transferred to their joint accounts annually on the basis of the now 2.5 percent shareholding. In addition to this, there was the rental income for the residential buildings and warehouses.[93] The family clearly benefited from the sharply increasing sales during the years of the "economic miracle." But Hertie also had no problems paying off its now significantly increased compensation payments, since they were easily financed from the growing profits.[94]

Harmonies and Dissonances: The Implementation of the Settlement

From 1955 onwards, the initially calm settlement was overshadowed by the first conflicts, which moved increasingly from the relationship with Hertie into Tietz family relations. The trigger and driver of the dissonances was the legitimate and economically understandable interest of the department store group in clarifying at an early stage what would happen to the Tietz family's property after the leases expired, and also from its urgent, growing desire to relax the competition clause in order to adapt its sales areas to the increasing demand.

Georg Karg, now 67 years old, had been working intensively on key issues concerning the future of his company since the early 1950s. After the settlement had stabilized the uncertain legal situation of Hertie, and the inglorious past was now to be put to rest, Karg implemented an aggressive expansion strategy by taking over the Wertheim Group, Hansa AG, and many other, mostly family-run department stores, in order to make his company more competitive in the growing competition within the industry. The integration of the new parts of the group urgently required a reorganization of the company structure. By establishing the Karg Family Foundation in 1953, the Hertie boss cleverly combined this task with the arrangements for his own estate and the upcoming succession. Under the umbrella of the company-affiliated foundation, he reorganized the individual operating and real estate companies, directed the inflow and outflow of profits and capital, and secured the financial security of his family.[95] Karg's goal of addressing the outstanding questions from the restitution agreement with the Tietz family also fell within the context of these future plans.

Preemption and Expansion: Future Plans in the Corset of Restitution

In the summer of 1954, Karg began negotiations with the Tietz family about the implementation or mitigation of the two contract points. After the death of Georg Tietz in 1953, however, he encountered a new, more complex structure of a community of heirs in which it was more difficult to coordinate common interests. As part of the inheritance settlement of Georg Tietz's estate, his wife Edith, his son Herman, and his daughter Rösli (Roe) Jasen took over the 35 percent lease claims of the family branch from the compensation settlement on March 16, 1955. Edith received three-quarters of the inheritance share (26.25 percent), and the children each received one-eighth (4.375 percent). Edith Tietz also disposed of her husband's estate as executor by power of attorney from her children.[96] She thus became Hertie's contact person alongside Hugo Zwillenberg and Martin Tietz, who, as the new "senior" of the family, was now increasingly taking the lead in the upcoming negotiations with Hertie.[97]

Only a short time after the Georg Tietz estate had been settled, Georg Karg and Hertie managing director Dr. Guido Schell approached Edith Tietz and made known their desire to agree as quickly as possible on a pre-emption right for Hertie addressing the southwest German properties. Karg had already had initial discussions in this direction with Martin Tietz and Hugo Zwillenberg, and there was soon agreement that the restitution agreement had to remain untouched. Consequently, the resolution could only be a precautionary arrangement regarding the whereabouts of the ownership shares after the leases expired. The only viable solution for such an undertaking turned out to be that the Tietz family would make an early purchase offer, which Hertie could only legally accept by July 1, 1970. Whether and under what conditions the three Tietz groups were prepared to make such a sales offer had to be clarified individually with the respective contact persons. This also applied to Georg Tietz's community of heirs, which now consisted of three so-called fractional owners. Since Edith Tietz had no objection to an advanced settlement, the testamentary representative had the necessary purchase offers prepared individually for her and her children. From a purely technical point of view, the procedure was to be carried out via a preliminary entry of transfer for Hertie in the land register and the entry of an owner's mortgage. The deposited mortgage was, in turn, to be acquired in trust by the Hamburgische Kreditbank and paid out to the share owners.[98] The drafts, which were available at the end of March 1955, directed the purchase offer to the Westelbische Grundstücksgesellschaft mbH, a Hamburg real estate subsidiary of the Hertie Group. With an estimated total value for all the properties of around 26 million DM, the agreed selling price for the three inheritance shares was 5.7 million DM. The purchase price was to be divided accordingly among the par-

tial owners of the family branch. In addition, Hertie was to reimburse the payments that had been invested in the redesign of the commercial buildings up to 1955 at the expense of the Tietz family. This corresponded to a further equivalent of around 1.5 million DM.[99]

When it came time to actually finalize the pre-purchase agreements that were ready to be signed, differences of opinion arose within the Tietz family as to how to deal with Hertie's request. Criticism and skepticism, particularly on the part of Rösli Jasen, Herman Tietz, and their uncle Martin, were not so much directed at the actual purchase option, but rather at a side agreement that Georg Karg had initiated in individual discussions with Edith Tietz. The draft contracts of the Georg Tietz heirs had already included a clause that would allow Hertie to use the adjacent properties of the southwest German department stores to expand the retail space during the modernization process. The family was largely positive about this plan, as larger sales areas would also lead to higher sales, from which they would benefit directly. But now Karg also asked the family for permission to build an additional department store in Munich under the label of Hertie's own bilka brand. Although such a store in terms of its low-price range was not in direct competition with the much larger "all-round suppliers" under the Hertie name Union, the plan clearly violated the exclusion of competition clause in the 1949 settlement.[100] Martin Tietz warned Georg Karg not to mix up these two central issues and to ensure a consistent flow of information for all parties involved. Herman Tietz and his sister even refused to cooperate on principle under these conditions.

Rösli Jasen, usually represented by her authorized husband Kurt, made her position clear by deliberately withholding her mortgage declarations, which had to be deposited in order to conclude the pre-purchase agreement. The Hertie side reacted angrily to this pressure. In particular, the sharply worded demands of the managing director Schell to sign the papers further poisoned the atmosphere. He wrote in November 1955: "We hope that you will fulfill your obligations in the interests of continued good cooperation, but we would like to leave no doubt that we will abandon our previously always accommodating attitude towards the relatives of Mr. Georg Tietz if you do not keep the obligations you have entered into with us."[101] Rösli Jasen then turned to Georg Karg personally. She made it clear that, given that negotiations were being conducted using ultimatums, she was not prepared to continue to correspond on the matter: "This form may be successful for others, but under these circumstances I refuse to make any statements, no matter how insignificant. If you wish that the contracts concluded between me and the Westelbische Grundstuecksgesellschaft m.b.H should be cancelled, I am happy to negotiate how this can best be done."[102] Obviously personally hurt, she added: "I am the daughter of Georg Tietz and the granddaughter of Oskar Tietz, the founder of the company whose name Hertie you still bear with pride today."[103]

It is clear that Hertie, from the now self-confident position of a growing large corporation, treated the Tietz family more and more as ordinary contractual partners who were to be induced to act through pressure. This lack of sensitivity had a degrading effect on those affected, whose memories of "Aryanization" and persecution were still very vivid.

At the same time, in the autumn/winter of 1955, Rösli sought close contact with her mother. In an extensive correspondence, she expressed her irritation at their frankness in Hertie matters. In fact, Edith had just reported to her "dear partners," i.e. her brother-in-law Martin and Hugo Zwillenberg, that she had no objections to new buildings being built in Munich, Stuttgart or Karlsruhe. The only thing that still needed to be negotiated was how the Tietz community would share in the turnover in this case.[104] At this point, the three representatives of the family group had already received informal compensation offers from Georg Karg. In them, he declared himself willing to give the Tietz family a one percent share of future turnover.[105] He rejected the accusation that his move was undermining the restitution settlement. Instead, he insisted on the relevant settlement clause, which stated that the competition provision only applied to companies in which Karg or other holders of Hertie shares owned more than half of the capital. Since this was not the case with bilka, the company could not be assigned to Hertie.[106] Rösli rejected the argument that bilka did not belong to the group – quite rightly – as a clever ploy to mitigate the families' claims and circumvent the competition clause. In fact, a separate bilka company with appropriately adjusted ownership structures was to be created in Munich. The Berlin-based holding company of the same name, however, was completely under the control of Hertie.[107]

With these developments in mind, Rösli warned her mother against getting too close to Karg and Schell. At the same time, she pointed out the potential financial consequences of being too lenient. Ultimately, she argued, it was not just about appropriate compensation for the stolen assets, but more about preserving the intellectual legacy that her ancestors had built up over the years before the war. "Is the name Hertie or Union worth nothing?" she asked provocatively. If you look at comparable cases, Rudolf Mosse, for example, received one million DM and a 20 percent share of the profits just for the successor companies to be allowed to continue using the name Rudolf Mosse Code for telegram encryption. If they were to settle for no compensation or such a small one, "it would mean a gift of many millions to Hertie."[108] In all negotiations about expansions, it was assumed that Hertie's total turnover in the city in question would subsequently be included in the calculation of the restitution payments. At the same time, she asked her uncle Martin Tietz "to advise my mother with all her heart not to agree to any changes to the original restitution contract drawn up by you and Daddy."[109]

However, after intensive discussions within the family, Rösli Jasen gave in and finally signed the mortgage documents for the department store group's preemption offer in April 1956, a good six months after her mother. The purchase price remained at 5.7 million DM, which was to be paid immediately, but only half of this went to Edith Tietz and a quarter to each of the children, 1.425 million DM.[110] This deviation from the original distribution of the share ownership within the community of heirs was not a concession to Herman Tietz and Rösli Jasen, as might have been assumed at first glance. Rather, this branch of the family had agreed in the inheritance settlement to raise the claims for the restituted estate objects to the level of the German compulsory share.[111]

By giving in, the Jasen couple submitted to the majority wish of the family, at least on this point. Overall, it proved to be a difficult task to balance the individual interests and opinions of the six family members involved, along with their respective legal representatives in Germany and the USA. However, Martin Tietz was not the only one who made every effort to act as a mediator, both internally and externally. Charlotte Kücher-Eigner's Munich "family office" became the secret hub, where documents, drafts, and information were collected and distributed. This is where the payment statements were prepared and posted, the monthly sales and investment reports were received, and the numerous trips and telephone and personal meetings of the various family members with the Hertie management were coordinated. As the at least partially preserved correspondence documents for the second half of the 1950s show, the intensity of the dialogue within the family and the frequency of the exchange with the Hertie Group was extremely high, especially during the heated phases of the negotiations. Personal consultations took place monthly, sometimes weekly, to which the Tietz family traveled from their homes in the USA, Switzerland, the Netherlands, or Berlin. In addition, contact was maintained primarily through short letters, which Charlotte Kücher-Eigner regularly exchanged with Edith Tietz in New York, for example. The private secretary was more than just a dutiful employee. For 'Mr. Martin" and Messrs. Zwillenberg and Jasen, she acted as an informal but distant contact person, for Rösli Jasen and especially Edith Tietz, as a close confidant and sometimes also a sounding board.[112] Through this method of communication, the family initially managed to maintain the goal it had agreed on in 1949, to act with a healthy degree of unity towards Karg and Hertie and, as happened in this case, to have a collective disciplinary effect. However, this did not mean that the individual family groups did not also come to their own agreements with the company in the negotiations. And thus, shortly after Edith, Martin Tietz and Hugo Zwillenberg also came to an agreement with Hertie about the future fate of their land shares after the lease. The Zwillenbergs likewise agreed to sell their properties to Hertie as a whole package for at least 7.5 million DM.[113]

Martin Tietz chose a different path. On February 18, 1956, he made Georg and Hans Georg Karg an offer to extend the usufruct provision until December 31, 1985. In return, the lessee, Union GmbH, would pay 1.1 percent of the annual turnover of the buildings, but at least 700,000 DM annually. Martin Tietz clearly planned to keep this property in his own hands for himself and his heirs and to continue working with the Hertie Group. This supposition is further supported by the fact that he also obliged Hertie to offer him co-ownership as soon as the company expanded its business premises in the cities or opened new sales outlets.[114]

The emerging tensions from these critical decisions could only be calmed for a short time. The reason was that Edith Tietz, in consultation with Martin Tietz and Hugo Zwillenberg, decided to approve the controversial extension agreement in Stuttgart. Karg's primary concern was to open a restaurant area for the Union department store in an adjacent commercial building.[115] The Jasen couple inevitably felt ignored. In their role as joint owners, they also demanded to be heard in all negotiations and decisions. The conflicts thus led to an obvious weakness in the restitution agreement: namely, a personal and thus uncertain regulation of the powers of attorney for legal representation on the Tietz side. Edith Tietz, as the executor of her husband's will, saw herself as authorized to represent her branch of the family in accordance with the settlement agreement together with her brother-in-law and Hugo Zillenberg. It was stated there that the consent of two of the three former owners of Hermann Tietz OHG was sufficient to make joint statements. The Hertie management also followed this opinion, accepting its important negotiating partner as the authorized representative and sole representative of the community of heirs, certainly also for pragmatic reasons.[116]

Rösli now fundamentally doubted this interpretation. In far-reaching decisions that affected the interests of all owners, every member, she felt, should also be able to exercise their right of consent. Legally, after Georg Tietz's death, an undivided community of heirs took his place. The decision-making rights were therefore indivisible, and had to be exercised individually by the three heirs.[117] In her opinion, the executor's authority only extended to the movable parts of Georg Tietz's estate still in Germany, but not to the immovable assets.[118]

Despite this objection, the Jasen couple ultimately did not openly oppose the Stuttgart project. Nevertheless, the different positions would prove to be a heavy burden for the debates that would arise in the following years about the opening of a bilka department store in Munich.

Fig. 37: Union department store in Stuttgart 1954.

Frictions and Factions: The Battle over the Details of the Expansion Plans

In the summer of 1958, the Jasens again turned to Georg Karg. This time with the message that they had learned from a third party that Hertie was continuing to negotiate new department store openings behind their backs. They made it unmistakably clear that they would treat any kind of agreement without their express consent as a violation of the restitution agreement. Karg must have taken as a threat the suggestion that in such a case the couple would also declare the prepurchase agreement concluded in 1955/56 null and void.[119]

In addition, Rösli Jasen rejected her mother's offer to clarify the distribution of rights and obligations within the community of heirs. She rejected the revised draft of an inheritance settlement because Edith as the executor of the will of her husband still wanted to take the lead in dealing with Hertie. The co-heirs were only to be granted a limited right to information and consent. Instead, Rösli Jasen tried to have all the powers of representation that she had given her mother in 1955 revoked.[120] The Munich Regional Court, which intervened, followed her argument that there was a risk of overstretching these powers in the sense of a permanent testamentary execution. However, the Stuttgart Land Registry rejected an application to delete the note on the testamentary execution as unfounded.[121]

Due to this uncertain situation, Hertie began to enter into negotiations directly with the couple Jasen and Herman Tietz about the conditions under which they would be prepared to give up the competition clause in general or in individual cases without violating the 1949 contract.[122] Both Karg and his legal advisors were aware that the Jasens could permanently block all of his future plans. However, the mood in which the talks were held continued to deteriorate. When Herman Tietz repeated his expectation that in return for approval at the usual rates they would receive a share of the group's total urban turnover, he received the flimsy answer from Guido Schell, "this is illogical because the existing houses are the property of the Tietz family and the new houses to be built are the property of Hertie or its subsidiaries." If the company did not agree with the one percent increase in sales remuneration offered by the group, he repeated his position, "we would have no other option [. . .] than to set up a company in which Karg would not have a stake of more than 50 percent."[123] This reaction from Hertie showed less a willingness to respect the statutes of the restitution settlement in the intended sense than to circumvent them.[124]

The community of heirs' tone in dealing with each other also became sharper in the winter of 1958. It should be noted that Edith Tietz and her children were in fact able to separate business and private matters. In the substantial correspondence there are many passages – familiar greetings, inquiries about their well-being, or descriptions of everyday life – that suggest a friendly relationship. In the matter at hand, however, the respective viewpoints were expressed in an unvarnished manner. It is to be assumed that large parts of the legal texts were preformulated by legal representatives or by Kurt Jasen. When asked about the conflicts in a personal interview by the authors of this book, Rösli Jasen confirmed this assessment with the pragmatic statement: "Some had their own lawyers, others had theirs. So we always came to a solution with Hertie and among ourselves."[125] In this sense, the emotions were directed less at the family than at Hertie's behavior. Suspicion was completely foreign to her mother, according to Rösli in 1959. The Hertie Group had exploited this leniency through its one-sided negotiation:

> It is my conviction that the real differences are not between my mother and me, but between your interests and mine. Since you have complete influence over my mother through her advisors and lawyers, and since I refused to give my unconditional consent to all of your measures, you have tried to negotiate exclusively with my mother and exclude me. As you know, I have received various complaints about your accounts, and I drew your attention to them [. . .] Above all, however, I refused to give my consent to an agreement that would give Hertie the right to open a new building in Munich without adequately protecting the interests of the property owners of the existing buildings.[126]

The impression of Georg Tietz's children was that Hertie, in the person of Guido Schell, was trying to drive a wedge between the family members. Their mother did not have enough business experience to be able to form her own opinion, especially in legal matters, said Rösli Jasen.[127] Viewed differently, their mother, but also Martin Tietz and Hugo Zwillenberg, had a good degree of trust in Georg Karg and his advisors. This in turn suggests that, despite their difficult shared past, a respectful closeness developed. In internal correspondence with Charlotte Kücher-Eigner, Edith Tietz confirmed this impression. She said that in the last difficult months she had "constantly stood up for one thing: namely the inviolability of Karg and that of my representatives."[128]

Against this background, Edith Tietz felt compelled to take a step that would in no way lead to a deescalation of the situation. On February 20, 1959, she informed her children that she had decided to make use of her right as executor of her husband's will as a means to reach a settlement of her inheritance and the claims against Hertie. "I will pay you out accordingly. [. . .] In the hope that all disagreements between us have now been resolved, I am, with warm regards, your mom."[129] According to a valuation report by the Berlin Treuverkehr-Deutsche Treuhand AG, she set a sum of 2.69 million DM as the settlement amount, half of which she transferred to the accounts of each of her co-heirs without being asked to do so. She had received the money for this move as a loan from Georg Karg. The Treuhandverkehr was selected on the recommendation of Guido Schell, and was therefore a closely coordinated measure.[130] This explanation of her actions is also supported by the fact that Edith Tietz and Hertie had a new pre-purchase agreement notarized on the same day. With this agreement, Edith Tietz, as the presumed sole owner of the 35 percent shareholding, transferred all remaining claims, rights and obligations from the restitution settlement to Hertie as of July 1970. This step was also to be carried out immediately in the event of her premature death.[131] The aim was to bring the long-stalled attempts to clarify the pending questions of subsequent ownership to an end.

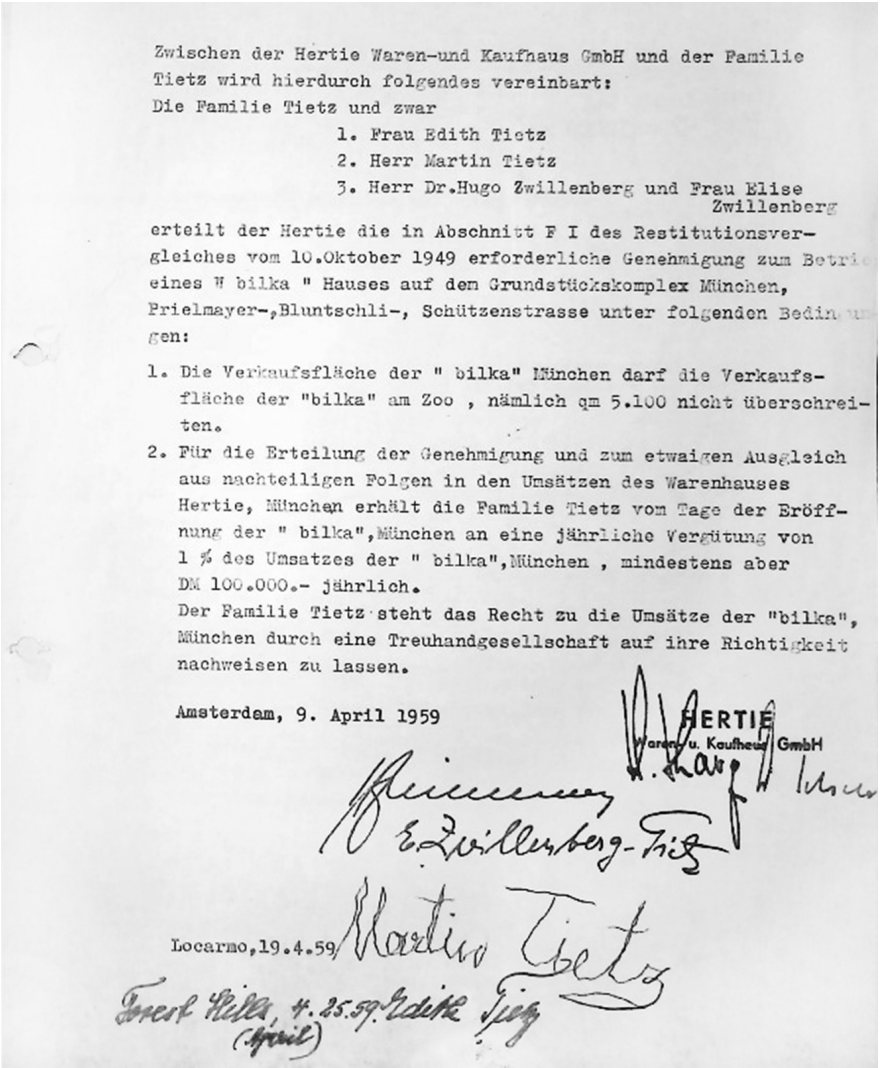
Edith's daughter initially reacted angrily to this move. She expressly declared that she did not agree to the settlement of her current claims. There was no passage in her father's will that would legitimize such a step. Instead of the stated intention of reaching an amicable agreement, it was more likely that "I should be kicked out."[132] She immediately returned the severance payment.[133]

At the same time, Kurt Jasen also turned directly to his mother-in-law. His criticism was well considered, and he was particularly concerned that Hertie and a very obviously biased trust company were behind the action. Even if a one-off payment were considered, the calculations of the severance payment were biased, since the claims still outstanding up to 1970 had only been calculated on the basis of current sales; neither the expected increase in sales nor a potential ex-

pansion of Hertie branches was taken into account.[134] These were arguments that also hold up when looking back at a historical analysis, since an insufficiently specified future component was added to the contemporary value of the claims at the end of the 1950s.[135] A more precise calculation would have put the individual claim value of the fractional owner alone at around 2 to 2.3 million DM. With this in mind, the Jasen couple were once again concerned that their mother and mother-in-law were being taken in by Hertie. At the same time, however, the Jasens were open to personal discussions so as not to place additional strain on their private family ties.[136]

Outside of Georg Tietz's branch, the family did not initially appear to be permanently divided – on the contrary: Edith and Martin Tietz as well as Hugo Zwillenberg now also apparently found a basis for reaching an agreement with Hertie on the upcoming future issues. On April 9, 1959, they jointly approved Hertie's opening of an additional bilka branch in Munich. For this concession and as compensation for possible loss of sales that could potentially arise in the local Hertie department store due to competition within the group, Hertie paid the family an annual sales commission of one percent of bilka's revenue, which was expected to add up to a minimum of another 100,000 DM per year. The only requirement was that the sales area of the new department store be limited to 5,100 square meters.[137] Legally, this agreement initially constituted an exemption from the competition clause of the reimbursement settlement and thus had no precedent for possible further expansion projects. Certainly, as Charlotte Kücher-Eigner described it, the negotiations were tough and, not least due to the disagreements within the family, also put a strain on the health of Martin Tietz, who was trying to moderate the negotiations. Nevertheless, an agreement acceptable to both sides was reached (Fig. 38).[138]

Behind the description of difficult conditions lay the fact that the conflicts between Hertie and the Jasens continued with unabated intensity in 1959. Hertie approached the Jasens and Herman Tietz with new offers of negotiation. Their aim was above all to clarify the fundamental question of which of the heirs had the legitimacy to exercise the rights and obligations of the settlement. Bruno Klein, the Berlin-based legal representative of Hertie GmbH, was already in March 1959 no longer ruling out filing a declaratory action in order to resolve the simmering conflicts of representation in a way that was legally sound.[139] The positions were clear and hardened. Rösli Jasen continued to doubt her mother's right to represent her, refused to accept the new inheritance settlement and considered any expansion of the department store without her consent and an adequate 2.5 percent share of the sales to be a breach of the law.[140] She, for her part, openly toyed with the idea of taking legal action against the Hertie management. In preparation for this, she commissioned a comprehensive legal report from a Hamburg



Zwischen der Hertie Waren-und Kaufhaus GmbH und der Familie Tietz wird hierdurch folgendes vereinbart:
Die Familie Tietz und zwar

1. Frau Edith Tietz
2. Herr Martin Tietz
3. Herr Dr.Hugo Zwillenberg und Frau Elise Zwillenberg

erteilt der Hertie die in Abschnitt F I des Restitutionsvergleiches vom 10.Oktober 1949 erforderliche Genehmigung zum Betrieb eines " bilka " Hauses auf dem Grundstückskomplex München, Prielmayer-,Bluntschli-, Schützenstrasse unter folgenden Bedingungen:

1. Die Verkaufsfläche der " bilka" München darf die Verkaufsfläche der "bilka" am Zoo , nämlich qm 5.100 nicht überschreiten.
2. Für die Erteilung der Genehmigung und zum etwaigen Ausgleich aus nachteiligen Folgen in den Umsätzen des Warenhauses Hertie, München erhält die Familie Tietz vom Tage der Eröffnung der " bilka",München an eine jährliche Vergütung von 1 % des Umsatzes der " bilka",München , mindestens aber DM 100.000.- jährlich.
   Der Familie Tietz steht das Recht zu die Umsätze der "bilka", München durch eine Treuhandgesellschaft auf ihre Richtigkeit nachweisen zu lassen.

Amsterdam, 9. April 1959

HERTIE Waren- u. Kaufhaus GmbH

E. Zwillenberg-Tietz

Locarno,19.4.59 Martin Tietz

Ernst Heiss, 4.25.59 Edith Tietz (April)

Fig. 38: Approval contract for the construction of a bilka branch in Munich, April 9, 1959.

professor at the Max Planck Institute for Foreign and International Private Law, Prof. Dr. Dölle, to substantiate her position.[141] In doing so, she also had the assessment basis and the practiced method of paying out the sales share via a joint account of the executor of the will, meaning Edith Tietz, examined. The background to this was that with the initial payment from her mother that she had rejected, no more payments from the settlement were made to her. What was to prove par-

ticularly unfortunate for all those involved, however, was that the legal opinion was followed by a new discussion of whether the settlement payments were actually legally lease payments or restitution payments. Simply by raising this question, not only the implementation of the settlement was now in question, but also the tax agreement with the Bavarian tax authorities.[142] Hertie, in the person of Guido Schell, asked for restraint on this point, even if his company itself was not affected by this tax issue:

> However, as you yourself probably know, there is a very great danger for the Tietz family if your opinion were to be accepted as correct, because then of course the tax benefits [. . .] would, in our opinion, be retroactively cancelled and thus the members of the Tietz family would have to pay taxes on all of these payments; the consequences that inevitably arise with regard to foreign taxes should also not be overlooked.[143]

Hertie now sought above all to calm all parties down so as not to lose the Jasens at the negotiating table. The management repeatedly asserted that "we have no reason to exclude you."[144] In June 1959, the first cautious rapprochement began. The Jasen couple indicated that they could imagine dropping their claims if the compensation was recalculated and appropriately based on Hertie's growth potential.[145] Just when their diplomatic efforts were beginning to bear fruit, Hertie counteracted their efforts with a move that temporarily put a great strain on relations with the entire family.

The trigger for the argument was a construction fence near the Stuttgart train station. While traveling through Stuttgart on his way to Switzerland, Kurt Jasen discovered a large construction site with a poster on the roadside indicating that Hertie was the developer. The other family members were informed and Charlotte Kücher-Eigner was asked what this project was about. It turned out that a new department store was being built for a "Kaufstätten für Alle, Zweigniederlassung Hertie Waren- und Kaufhaus GmbH (KfA)." A single-storey branch of this Hertie offshoot had already existed in Stuttgart before the settlement was concluded, and was therefore not taken into account as an existing property by the negotiating parties in 1949. The company had been founded in 1945 by two local merchants and had initially been temporarily housed in the so-called Wilhelmsbau from 1948 onwards. Shortly afterwards, the KfA was absorbed by Hertie.[146] Hertie managing director Schell had informed the Tietz family in passing, via Charlotte Kücher-Eigner, in mid-1959 that the KfA was planning to move to modern premises. But the family was now extremely surprised that "the small KfA" had now been moved to a large, multi-story building in a central location.[147] In an internal memo, their private secretary sensed the consequences: "One thing is certain: something is now starting to happen again, the extent of which cannot be foreseen. I am also under no illusions that terms such as 'betrayed,' etc. will be

immediately at hand; they are just waiting to pin something on us."[148] This subordinate clause was primarily intended for Kurt Jasen, who had warned of this scenario.

But this time he was not the only one who was outraged. Martin Tietz and Hugo Zwillenberg demanded their consent to such a large project and indicated that they were prepared to take legal action.[149] Edith Tietz felt exposed if "it is now wrong or appears to be wrong"[150] that she had always defended Georg Karg as a reliable contractual partner. Legally, the Tietz family could hardly do anything against the project, but they now showed much more distance to the Hertie team and found a new sense of unity. This was especially true within the Georg Tietz Group. On the initiative of Martin Tietz and Hugo Zwillenberg, the family entered into initial talks with Georg Karg and the legal representatives of both sides in the spring of 1960. This time, however, all authorized representatives and also the fractional owners were to be included in the negotiations. Even if it was ultimately not legally clarified whether the relocation of the KfA required such a permit, Hertie agreed to the negotiations. The motivation was certainly that the rights of representation were still unclear. In addition, the department store group was very interested in not having to fight through each future investment program individually in lengthy procedures. In the medium term, a blanket agreement for all Hertie, KfA or bilka projects was the goal.

In June 1960, Director Schell presented the representatives of the opposing party with a draft agreement on the KfA case. In accordance with the established distribution key, they were to receive a share of the turnover of the department store at Stuttgart Central Station in three stages: up to an annual turnover of 30 million DM, an amount of 100,000 DM, an additional two percent of turnover exceeding the 30 million DM mark, and 2.5 percent annually above the 40 million DM turnover.[151]

The agreement had been prepared in numerous direct negotiations in Berlin and examined by the lawyers of the authorized representatives. As can be seen from internal letters, the family's requirement was that all other groups and individual owners accepted the same arrangement. Martin Tietz and Hugo Zwillenberg viewed the signing of the oral agreement as a formality and signed it. Edith Tietz hesitated and waited for the written consent of the Jasens. They initially complained about the detailed wording and finally demanded that the KfA agreement include their own, subsequent arrangement for their share of the sales for the Munich bilka building.[152] This time, Edith showed solidarity with her children, so as not to completely cut the ties in business matters. This, however, arroused the displeasure of her two other relatives. Martin Tietz was disappointed that his mediation efforts had apparently failed.

"As senior boss, he has to experience that everything he does is meaningless because Hertie is being put in a situation that rules out any further good cooperation," said Charlotte Kücher-Eigner. "Conditions are being negotiated that bring in ridiculous amounts, but a Bilka in Munich [. . .] will not be built for that. [. . .] I openly admit that I no longer understand anything and now have only one wish, andl that is not to be drawn into the dispute."[153] It could hardly be shown more clearly how difficult it was to balance the interests of all those involved within a complex family structure and how the family's behavior varied between distance and closeness to Hertie.

The reaction of the Hertie management was again rigorous and now also confrontational. In mid-September 1960, the director wrote directly to Rösli Jasen that he felt compelled to withdraw from the agreement and compensation due to her lack of consent. The newly opened department store in Stuttgart would no longer be operated by the established Hertie branch "Kaufstätten für Alle" but by a newly founded "KFA Warenhaus GmbH." Georg Karg was no longer involved in this company. The company's capital, however, was held 50 percent each by Hans-Georg Karg and Brigitte Gräfin von Norman.[154] It was obvious that this was an extremely flimsy step, with which the department store group resorted to the option it had already announced to the family several times, namely to eliminate the competition clause in the restitution settlement by other means. The owners of KfA Warenhaus were Karg's children, his son worked for Hertie GmbH, and both were beneficiaries of the Karg Family Foundation. "With these interlocking provisions," commented a lawyer for the Jasens, Hertie "still can not escape its obligation under the competition ban in section F I; the intention to circumvent it is too clear."[155] In retrospect, however, it can be assumed that this was precisely the department store group's intention, in order to confidently demonstrate its legal tools in the long-simmering conflict.

This toolbox also included an injunction filed in March 1961 against Rösli Jasen, who was then summoned to the Munich Palace of Justice. Barely 25 years after her escape, the Tietz heiress was thus threatened with being brought before a German court. The conflict over the implementation of the restitution settlement had escalated.

From Legal Dispute to Consensus: Supplementary Agreements on Restitution

Hertie's injunction was a sure signal that the negotiations over the representation rights and expansion plans had reached a dead end. The Jasens were concerned about their equal treatment and inclusion in the restitution settlement. Martin and Edith Tietz made a sincere effort, in changing factions, to ensure that the

stressful renegotiations with Hertie did not have a negative impact on their family's private life. They certainly had to demand their rights to information and participation more often than they had expected from the company, which was obliged to make restitution, but also eager to expand. Georg Karg and Hertie were fundamentally keen to adapt the clauses of the settlement amicably to the challenges that they faced in the booming department store market. Nevertheless, they did not shy away from defending their business interests by any means necessary, when their expansion plans were threatened to be permanently handicaped. In the winter of 1960/61, Georg Karg and his son Hans-Georg, who managed the Munich stores, were faced with a concrete dilemma. The start of construction of the bilka building, which had been planned since 1955 with all building contracts long since commissioned, was just around the corner. The Stuttgart KfA business building had already opened. However, the Tietz family's approval was still pending, so the company had to push for a decision in order to achieve legal certainty for both projects. Accordingly, the statement of claim accused the defendant Rösli Jasen of deliberately blocking the opening of the bilka store, although according to the restitution settlement two family branches had agreed to the project. She was also obliged to refrain from opposing the relocation and expansion of the department store company "Kaufstätten für Alle" in Stuttgart. As a fractional owner, she was just as ineligible to demand immediate proportional payments from the restitution settlement as she was to demand unilaterally increased rents.[156]

The Jasen side responded with a more than 30-page statement of defence and applied to the Munich Regional Court to dismiss the case.[157] At the same time, the defendant commissioned the respected Munich lawyer Rudolf Nörr to represent her and her husband in the dispute with Hertie. The first small success came in July 1961. It was evidently in the ultimate interests of both parties not to let the matter come to a final legal conclusion. It was therefore agreed to enter into personal negotiations with the Hertie management on July 4, 1961. The court date scheduled for the following day was postponed until September in order to discuss the complex issues surrounding the right of representation, the construction projects and the methods of invoicing the restitution payments as comprehensively as possible. Guido Schell stressed that all those involved must now be concerned with finally eliminating the ongoing dangers of objections in restitution matters,[158] while Kurt Jasen noted in a letter to his legal representative that he was prepared to reach a settlement primarily "because I do not want to further worsen the relationships within the family."[159]

In the three months that followed, a veritable conference marathon developed between the two negotiators, Jasen and Schell, during which Edith and Martin Tietz as well as Georg and Hans-Georg Karg were also consulted personally. At the end

of the meeting, there were several additional agreements to the restitution settlement: firstly, two settlement agreements on the intra-family inheritance arrangement, and secondly, interests of both parties not to agreement between Rösli Jasen and Hertie. All of the papers were signed on the same day on October 26, 1961 – a fact that once again shows the close connection between the problem areas.

The question of settling the Georg Tietz estate had already begun to move. Herman Tietz cashed out. He accepted the compensation offered to him two years previously for the outstanding lease payments and sold his shares in the department store properties to Hertie for 3.925 million DM. The only exception to this was the property used as a warehouse in Steiermärkerstraße, Stuttgart-Feuerbach.[160]

In a first contract from October, Rösli Jasen assured Hertie that, on the basis of a new inheritance settlement, her mother was now the only one authorized to make statements in the context of the 1949 restitution agreement. At the same time, the amount of her ongoing share of the sales turnover was modified by this settlement. With regard to the pending legal dispute, it was noted in the agreement process that their conflicts had primarily arisen from the previous form of invoicing for the restitution payments.[161] Therefore, by mutual agreement, they came to the understanding that the provision of services should be strictly simplified. With retroactive effect from October 1, 1961, Rösli Jasen now received a flat rate of five percent of all payments that Hertie made as rent to the other parties to the contract. This rate was around 0.6 percent higher than before. This served to cover future increases in performance, for example in the course of additional building permits, and to guarantee a fair distribution within the Tietz family. No one should be "worse off, but also not better off, than they were after the compensation settlement," was the credo.[162] The payments due were now no longer to be processed via the joint accounts, but paid directly to the Tietz heiress in order to document her release in this way from the community of heirs.[163] In return for this agreement, Hertie withdrew the lawsuit at the district court. The one-sided focus of the settlement on these accounting practices had the advantage that both contracting parties were not embarrassed to assess in legal or moral terms the other party's behavior in the various disputed points. This was a pragmatic approach, as had already been practiced in the negotiations of 1949. The introduction to the agreement concluded in parallel between Edith Tietz and Hertie GmbH, in which the details of the updated inheritance settlement of the estate community were notarized, now seemed much friendlier. The purpose of this agreement, it was said somewhat euphemistically, was "that the harmonious cooperation between the members of the Tietz family and Hertie involved in the restitution settlement is maintained." This was an expression of intent on which future cooperation was to be based.[164]

The core of the agreement was that Edith Tietz would in future be in charge of all rights and obligations arising from her 35 percent share in the restitution complex. She undertook not to sell her share until the settlement rule expired in 1970. If she died earlier or was unable to exercise these rights, they were to be placed in the hands of her New York lawyer Richard C. Flesch, who was appointed trustee in consultation with Hertie and her daughter.[165] In this way, it was documented that Rösli Jasen completely withdrew from the community of heirs in this context. This step was also supported by the fact that she promised to sell the property shares transferred to her to Hertie for a fee after the dispute had taken place. This reduced the number of legitimate contacts for the department store group to the already well-established circle of Hugo Zwillenberg and Edith and Martin Tietz.[166]

The last component of this package of additional contracts to the original restitution settlement was the sale of Rösli Jasen's share of the property to the company. In this case, it was not a purchase offer, but a concrete takeover contract effective July 1, 1970. After Guido Schell had already declared the advance purchase to be a basic requirement for an agreement in the first meeting in summer 1961, he presented the Jasen family with a price of 5 million DM as the upper limit that Hertie was prepared to pay. The basis was an expert report prepared by Treuhand AG for Trade and Industry (Treuhand AG für Handel und Industrie) in Munich, which estimated the current market value of the southwest German properties in question at a total of around 46 million. In relation to the seller's 8.75 percent share, the proposed sales price was thus around a quarter higher in order to take into account further increases in value, but also taxes, charges and inflation.[167] As with Herman Tietz, the ownership rights for the property in Stuttgart-Feuerbach and the option rights for the East property with Rösli Jasen were to remain unaffected.[168] Unlike her children, Edith Tietz consequently decided in 1961 to hand over the potential rights to the Berlin properties located in the GDR to Hertie.[169]

Kurt Jasen personally prepared the first draft of a purchase agreement within this framework. He demanded that Hertie take closer account of the tax issue, as the capital gains tax potentially incurred in Germany and the USA on a one-off payment represented a particular burden for him. After lengthy negotiations, the parties were finally able to agree on an amicable settlement for both sides. Hertie paid 4.15 million DM and also declared itself willing to assume the tax burden of an expected 25–30 percent up to a further sum of 1.5 million DM.[170] The purchase price was also transferred in installments. The approximately 1.4 million DM from the preliminary offer, which had been deposited as mortgages since 1956, were also included in the calculation, as were two individual payments for the years 1962 and 1963.[171] In return, there was now another clause in the contract in

Fig. 39: Rösli (Roe) and Kurt Jasen, around 1970.

which the Jasens waived all further claims and objections to the realization of the bilka and KfA department stores. As a result, the most pressing problem facing the Hertie Group management was solved and the interests balanced.

With the signing of these supplementary contracts, the obstacle to further investment plans by the Hertie Group also seems to have been resolved. Within the next 15 months or so, up to February 1963, the Tietz siblings and the Zwillenbergs concluded no fewer than eight further agreements in quick succession, which allowed the company to expand its business premises or to create new ones. This

included Edith Tietz's still-missing approval for the relocation of the KfA in Stuttgart and the new bilka building in Munich. Hertie was now also allowed to modernize and expand its flagships, the Hertie department store in Munich and the Union stores in Stuttgart and Karlsruhe. At the same time, in 1961 the Tietz family immediately approved the opening of another Hertie branch in Munich-Schwabing.[172] Up to that point, the two parties had always handled these various projects using project-based approvals, each of which was drawn up in three versions and mostly worded identically. In order to change this costly practice, which involved a great deal of personal and bureaucratic effort for all involved, Georg and Hans-Georg Karg finally asked them to consider whether a blanket arrangement could be reached. The Tietz family immediately agreed to this new constellation. From February 1963, general agreements were in place "for the acquisition, construction and operation of new stores," on the one hand for the large Hertie-Union chain, and on the other for the smaller bilka department stores. The remuneration rates for the family were linked to the sales development of the respective stores according to a new model. In the full-range department stores, the family members received three quarters of a percent as compensation for annual sales of up to 25 million DM. If sales rose to up to 35 million DM, they received 1 percent, and above that 1.5 percent as annual rent. These tiered rates were to be accompanied by fixed minimum contributions. In the case of bilka's partial or reduced-range stores, the rates were half to a full percentage point lower and ran along the lines of ten and 20 million DM annual sales. Payments were made quarterly in accordance with the well-established distribution key from 1949, less a free investment allowance depending on the amount of the construction costs incurred.[173]

On the basis of these common rules, the implementation of the restitution settlement in the following years went smoothly. This was also ensured by Edith Tietz appointing her long-time confidante Charlotte Kücher-Eigner as her representative for her property rights. The billing of the individual services was carried out in a well-coordinated manner and the flow of information within the family and with Hertie was smooth.

The restitution agreement expired on July 1, 1970. The department store group exercised the purchase options that had already been deposited for the properties in southwest Germany. Only Martin Tietz's leasehold interest remained in place until 1985. After his death in the same year, it was taken over by his children, who continued to work with Hertie in this way. A few years later, the Iron Curtain opened with German reunification, which created new challenges of restitution and compensation, particularly in the real estate sector – and which have in many cases not been fully resolved to this day. These tasks were now faced not only by a new generation of Tietz heirs, but also by new players on the company side in 1993 after Hertie was taken over by Karstadt.

Duty or Charity: The Restitution Case of Paul Held Nachf. 1953/54

In May 1953, a second restitution case was looming for Georg Karg and Hertie GmbH. In terms of its potential legal and financial consequences, it was of a much smaller dimension than the Tietz case. However, at that time and under the political conditions of a divided Germany, the fact that it would be confronted at all surprised those responsible at Hertie. It concerned claims arising from the takeover of Paul Held Nachf. OHG between 1934 and 1938. The process undoubtedly had the character of "Aryanization". However, the well-known textile retailer's business premises were located on Invalidenstraße in Berlin and thus in the now Soviet-occupied sector of the city. This meant that the assets were neither physically tangible at the time, nor was there a restitution report in the Allied registration offices.[174]

Georg Karg had taken over the company in 1934 from the Jewish senior manager Hugo Aufrichtig (1875–1953) and the silent partners Richard Ladeburg and Rosa Joel, née Gumpertz. The gradual "Aryanization" was carried out according to a similar pattern to the Tietz case: Paul Held Nachf. OHG, which was under strong pressure from the anti-Jewish boycott, was converted into a GmbH with the same name. In a first step, Georg Karg had secured 51 percent of the company shares. The rest of the capital initially remained in the hands of Rosa Joels (37 percent) and Richard Ladeburg (12 percent), while the company's business and residential properties remained half owned by Aufrichtig and the widow of his business partner Max Joel, who had died in 1930. In 1937, all shares and property were finally acquired by Georg Karg. Even in 1945, his brother Walter was still managing the textile department store, which had now been integrated into the Hertie Group.[175]

After the end of the Second World War, the company initially continued to exist at its original headquarters on Invalidenstraße. However, when it was confiscated by the Soviet occupation zone magistrate in 1951 and placed under trusteeship, its headquarters were moved to Lehrter Straße 18–19 in West Berlin. Here it operated under the name "Kaufhaus Paul Held Nachf. Vermögensverwaltungs-Gesellschaft mbH."[176] The residential and commercial buildings in the eastern part seemed lost for the time being and therefore not eligible for restitution. The company consequently began to build its first West German branches in Steglitz and Gesundbrunnen.

The former Held owners Aufrichtig and Joel had been living in New York since their emigration in 1935 and 1939 respectively. Hugo Aufrichtig in particular had great difficulty finding his way in the USA personally and professionally. The businessman, who was now of retirement age, was unable to find work for years.

Without a steady income, he and his wife Hedwig (1893–1955) lived off what little they had saved and lived in a small rented apartment.[177] Since they were aware that their former property was now under the control of the Soviet occupation authorities, they, like Rosa Joel, initially saw no chance of reclaiming in kind their property in Germany under the existing restitution laws. Shortly after the first compensation ordinance was passed in Berlin in January 1951, they submitted an application for compensation for the restrictions they had suffered in their economic advancement. The law firm Herbert Wendler, which specialized in proceedings of *Wiedergutmachung*, and the lawyer Hartmut Ruge took on the task of bringing their claims against the public authorities – this too with only moderate prospects of success.[178]

The case seemed to bypass Held Nachf. GmbH and thus Hertie for the time being. This was to change in the spring of 1953, however. The Wendland law firm became aware of the opening of a new Held department store in West Berlin via radio and press advertising. The lawyers contacted Joel and the Aufrichtig couple and advised them to pursue their restitution claims in light of this changed situation. A short time later, in May, they contacted Guido Schell at Hertie headquarters.[179]

The department store group was sure that there would be a suitable answer to the two lawyers' request. An internal report by Hertie's Berlin legal representative Bruno Köhler pointed out that the deadline for filing claims for restitution had long since expired at the end of 1950. In addition, restitution in kind simply seemed impossible, since all of Held GmbH's assets were located in the eastern sector and thus outside the scope of Allied legislation. A message to Hertie's management stated: "The question of the [. . .] claims for restitution presented can be considered settled."[180]

The opposing side's legal representatives did not dispute these facts. Nevertheless, they managed to find arguments that brought Hertie to the negotiating table. They reported on plans drawn up by the Allied Command to amend the previous orders to the effect that claims for restitution could also be filed retrospectively within six months of the announcement of a relocation of operations to the West. The company itself had deliberately sought private exchanges with the group first. In this way, Hertie would be given the opportunity to prevent a trustee from being appointed to the newly opened Held department store after an official notification to the authorities. From the lawyers' point of view, however, it was important to clarify whether there were legal concerns about the naming of the store, and whether it would not be better to find a solution to the question of Held's ownership in the Soviet occupation zone by means of an amicable settlement, which would possibly arise soon or even in the distant future.[181] This approach signaled determination to Hertie, but at the same time a willingness to work together in a spirit of trust and in the interests of both parties.

This message had an effect because Hertie management now also began to have doubts about how watertight their legal position really was. On the one hand, it was clear that according to the letter of the Allied restitution laws, the seizure and transfer of the department store company's shares and its land ownership had to be considered separately. While the properties were permanently located in the eastern part of the city, the shares had already been moved to the western part in 1948, thus before the Berlin Restitution Ordinance came into force – when the GmbH's headquarters were moved. Several internal letters warned, on the one hand, that this could potentially lead to the accusation that Hertie had not complied with its obligation to register confiscated company assets.[182] On the other hand, Guido Schell and Georg Karg reflected in-depth on a decision by the Federal Court of Justice that was relevant in this context. In the spring of 1953, this court had upheld the claim of a person entitled to restitution for compensation due to excessively long court proceedings and had informed those liable for restitution of their obligation to declare confiscated assets. The Supreme Chamber of Wiedergutmachung (Oberste Wiedergutmachungskammer) had expressly stated that company assets outside the scope of the current laws had to be registered in order to enable a later, potential treatment of restitution claims in the Soviet occupation zone. Karg concluded that, independently of "avoiding the assertion of claims by Mr. Hugo Aufrichtig," a proactive way had to be found of settling any claims arising from the obligation to pay damages under the German Civil Code and the Berlin Laws.[183]

At this point it becomes clear that the legal requirements were effective at least in the sense that they gave the purchasers of Jewish property little legal leeway to completely avoid confrontation with restitution claims. However, this did not affect how they fulfilled their obligations in material and moral terms. While Georg Karg and Hertie decided in the Tietz case, after an initial refusal, to act "on an equal footing" with the founding family, they made it clear to the Aufrichtig and Joel families, despite cooperative negotiations, that they were viewed more as supplicants. It was in particular the weak position of the former Held managing director Hugo Aufrichtig, who was by no means legally without means, but personally weak, that led them to take this stance. Like so many previously respected and well-off Jewish emigrants, Aufrichtig was plagued by old age and financial and health problems at the beginning of the 1950s. In September 1953, he therefore asked his friend Martin Nachmann to represent him "in settling his affairs with Mr. Karg." Nachmann, who also lived in New York, was a businessman and not a lawyer, although Aufrichtig openly justified his choice by saying that he simply did not have the means to pay expensive lawyers in Berlin and New York and to reduce the potential settlement amount even further with their fees. Accordingly, he had his friend inform the Hertie management that he "wants to

avoid at all costs going to court against Mr. Karg and his lawyers and getting involved in a lawsuit. On the contrary, he attaches the greatest importance to bringing about this settlement in the most friendly way possible through a private agreement."[184]

As a result, the management of the department store group took the negotiating position that the assessment of the matter itself would remain with the simple rejection of all claims. Regardless of the question of the deadline, they were certain that "the purchase transaction was handled quite fairly at the time." Nevertheless, Guido Schell indicated in his reply to Nachmann that they were still willing to hold personal discussions, but not for reasons of legal necessity, but purely out of long-standing ties to the Held company: "If Mr. Aufrichtig's financial circumstances were such that he had difficulty covering his living expenses, Mr. Karg would be willing to help Mr. Aufrichtig."[185] This attitude showed a certain understanding for the situation of the Aufrichtig family, but at the same time degraded possible restitution payments to charitable alms. Hertie now had the chance to clarify the claims for compensation that the Aufrichtig couple and Joel might face in the future in the West and East, by "seeking an understanding through a moderate sacrifice,"[186] as one of Hertie's lawyers put it.

On this basis, negotiations with the Aufrichtig couple began quickly. They were overshadowed by the death of Hugo Aufrichtig in December 1953 and ultimately accelerated even further, as his childless heir Hedwig now pressed even harder for a speedy settlement. At the end of the process there were two contracts which, on closer historical examination, only allow the verdict that Hertie made full use of its possibilities and simply "ripped off" the claiments.

In the first contract dated January 29, 1954, the parties reached an agreement on possible and future claims for restitution. It was signed by Martin Nachmann as authorized representative and by Willy Karg, another of Georg's brothers, who represented Kaufhaus Paul Held Nachf. GmbH as sole managing director. Hedwig Aufrichtig received a one-off payment of 50,000 DM as well as a lifelong monthly pension of 1,000 DM "in recognition of her current financial hardship." In return, she had to agree to waive all other current or future claims against Held GmbH. This applied to all claims arising from shares and properties in the entire Berlin area and also in the event that the restitution legislation changed in her favor.[187]

The second agreement, which was notarized a day later, was a purchase contract for a piece of land. Hedwig Aufrichtig sold her property in East Berlin, Invalidenstraße 1, to Charlottenburger Grundstücksverkehr GmbH, a real estate subsidiary of the Hertie Group, which was now also to manage the land for the Held department store. This inheritance was a piece of land that was her husband's private property, which he had also been forced to sell in 1938.[188] It was within earshot of the old Jandorf department store. Since there was currently no legal

access to this property either, Hedwig Aufrichtig passed on her rights to a deferred, future restitution to Hertie, in this case to Walter Karg as managing director of Charlottenburger Grundstücksverkehr. A purchase price was not agreed upon. Hertie therefore made no further payments to the heiress, but merely committed itself to bearing the public charges on the property, which would have fallen back to the seller in the event of restitution. In this shoddy way, the department store group secured both the option on the three old company properties and on another valuable property in the eastern part of the city.[189] There was no serious assessment of the value of the property as the basis for both contracts, as the current unit values were considered to be impossible to determine. This was therefore a fictitious restitution in two senses on a legally sound basis.[190]

Hedwig Aufrichtig did not recognize the large discrepancy between the settlement amount and the actual value of her claims – or perhaps she did not want to be aware of it. Her motives for agreeing to these contracts were obvious and were also known to the Hertie representatives. She preferred that the contract would provide immediate security for her retirement rather than waiting in uncertainty for a chance to receive more later for the restitution complex. Her representative Nachmann openly reported on conversations with his client in which she always emphasized that she was, literally, "more fond of the sparrow in the hand than the pigeon on the bush."[191] Barely a year after the contract was signed, Hedwig Aufrichtig was unfortunately to see her views confirmed. In January 1955, in a very personal letter to Walter Karg, she reported on her own health problems and the high costs associated with them in the USA. Since she had invested the majority of the settlement sum in long-term investments, she asked Karg for an advance from her current pension payments. The Held managing director and Hertie immediately complied with this request.[192] A few weeks later, on May 10, 1955, Hedwig Aufrichtig died. In his condolence message to Walter Karg, her estate administrator wrote: "During the last years of her life Mrs. Aufrichtig repeatedly expressed her satisfaction and happiness about the amicable manner in which the relations between her late husband and you were settled."[193] Apparently, despite the business negotiations of "Aryanization" and restitution, a good personal relationship had developed.

Rosa Joel was not under such strong constraints as Hedwig Aufrichtig due to her better life circumstances. She was therefore in a stronger position and chose a more self-confident strategy to assert her claims. Held and Hertie also denied to her that there were any assets in West Berlin that could be restituted, which meant that no legal claims could be made at the moment.[194] Nevertheless, they wanted to ignore the legal safeguards and enter into an agreement, "because, in view of Mr. Aufrichtig's poor financial situation, a solution had to be found for

him, and a differentiated treatment of the two contracting parties did not seem appropriate."[195]

This pretext was of no use to Joel. Her lawyers not only demanded a deferred restitution settlement for the "Aryanized" properties, but also compensation for lost usage and naming rights to the Held company.[196] Against this background, it was necessary to break down in detail the extent to which Joel had been adequately compensated when she gave up her shares in the company and what earning opportunities she had lost after she left. On this point, the private, so to speak extra-official settlement talks combined elements from the compensation and restitution legislation, both of which considered the loss of use for confiscated assets as grounds for a claim.[197] Joel's lawyers estimated the profits of Held GmbH for the years from 1937 to 1944 at around 4.34 million RM and presented the relevant tax documents for the period as the basis for their estimate. Since Rosa Joel had held 37 percent of the company shares until she left, they calculated a loss of use of 1.6 million RM. From this they deducted the purchase price of 330,000 RM paid by Georg Karg at the time and offset it against the profits for the years from 1945 to the currency reform, which had not yet been determined in detail. According to this calculation, which was optimistic, especially in the last point, the prescribed ratio of 10:1 resulted in a sum of 1.5 million RM or 150,000 DM. Joel's claim to be reinstated as a shareholder in the GmbH was still open in this calculation. She offered to forego this step in return for a payment of a further 100,000 DM, so that her total claim against Hertie amounted to 250,000 DM.[198]

The representatives of Hertie GmbH showed little understanding for these demands, which they considered to be too high. They criticized the fact that, according to established case law, when calculating compensation for lost use for corporations and GmbHs, the benchmark should not be profit, but net income, i.e. the dividends paid. Since no Held shareholder, neither Georg nor Walter Karg, had withdrawn any profits until 1945, Rosa Joel was obliged to pay them interest on her share in the company and an appropriate compensation for the expenses of the management. With this line of argument, Hertie itself left the legal framework of the right to compensation.[199] And at the same time, they retreated into the role of victim: they lamented the new injustice that was happening to them with the obligation to make restitution under the most difficult economic conditions for a new reconstruction, and they speculated that if Joel had remained a shareholder, she would most likely have had to accept the fate of being disenfranchised in East Berlin today, like all large retail companies.[200]

The talks stalled, the positions of the lawyers on both sides seemed deadlocked, and Rosa Joel asked Martin Nachmann to mediate the dispute. Ultimately, it remains unclear whether the ever-increasing fees of the law firms commis-

sioned or the success of the mediation in the Aufrichtig case were responsible for this decision. However, it can be seen that the negotiations made progress again in the already experienced constellation of people. In March 1954, Bruno Köhler submitted a first settlement offer to Hertie GmbH "of 30,000 DM as final severance payment," but this was still too far from the original demand of 250,000 DM. After another five months, they reached a settlement at about the middle of that amount.[201]

By the settlement date of July 7, 1954, the Held department store paid a sum of 125,000 DM in four installments to cover all the restitution payments stemming from the Held company complex, which Joel was currently and in the future entitled to. It was important to the subsidiary, as in the Aufrichtig contract, to include two descriptive clauses in the contract, in which their willingness to reach a private settlement was declared. On the one hand, this made clear the doubts about the legality of the claims with regard to the company assets that were currently politically blocked. On the other hand, it was stated that the private settlement was sought solely in order not to be guilty of violating the obligation to register confiscated assets in accordance with the current case law of the Federal Court of Justice.[202]

Nevertheless, it must be taken into account that at the end of the restitution negotiations, the company itself secured the claims of the previous owners to a potential return of the properties in the eastern part of the city. By making amends for the past, more or less, it acquired a future option on assets that would pay off commercially in the long term.[203] More than fifty years later, it was not the previous owners but the heirs of the Karg family who applied for the return of the Held property at Brunnenstraße 178/9 and Invalidenstraße 162/64. While the property on Brunnenstraße was finally transferred successfully in 1998, the State Office for the Settlement of Open Assets (LAROV) refused to refund the second property because it was no longer visibly restitutionable due to the consequences of the war and numerous public building conversions.[204] One might consider it a distant hint from a now legally settled past that the LAROV finally determined in the course of the return process that the purchase price recorded in 1935 was actually around 50 percent below the standard value.[205]

Overall, when looking at the Hertie restitution cases, it becomes clear that the restitution legislation provided a binding, but very loose framework for the disputes between those liable and those entitled to make claims. It ensured that the surrender of business property had to be reported and negotiated. In the negotiations, which were conducted directly and personally, excluding the judicial process, it was not just one's own legal position that decided success or failure. The lasting consequences of "Aryanization" continued to have an impact on many of the persecuted well into their emigration. In the end, living conditions also de-

termined how interests were shaped in the restitution proceedings in the immediate post-war period. This is evident in the case of the Aufrichtigs, who were in a personal predicament and were also clearly poorly advised by their friend, a legal layman. German restitution law left these applicants to their own devices with their task of understanding the complex issues of restitution law and having the strength to enforce them in negotiations, despite their age or personal circumstances.

The Tietz family was in a better position, at least in this respect. They were able to obtain good advice and representation and had competence within their own ranks. In the settlement proceedings, the Tietz and Karg families delegated the negotiations primarily to specialized lawyers, but also sought personal contact in order to find solutions in critical phases of the negotiations. Despite all the dissonance that characterized the history of the encounters between "perpetrators" and victims and often affected the Tietz family, for the most part a pragmatic approach was taken to dealing with the shared past. This is particularly true of the unusually long period of validity of the settlement agreement in the Tietz case, during which decisions had to be made on very significant future issues for the company. The victims remained fundamentally skeptical, which testifies more to a respectful and goal-oriented relationship than to a truly trusting one. Too often, Hertie looked for ways around its obligations in order to balance its business goals with its obligation to make compensations and restitutions. However, the limits of law and decency were not exceeded, at least in the Tietz restitution process. Nevertheless, a more attentive, responsible and sensitive examination of the experiences of persecution of its counterparts would have been desirable.

Restitution of Real Estate and Land

According to a list compiled by the Wiedergutmachungsamt Berlin (Office of Wiedergutmachung) in the mid-1950s, the restitution settlement in the Tietz v. Hertie case was followed by a further 29 restitution proceedings. They related to the family's real estate and property, which had come into the hands of various buyers since 1934, either individually or from the association of real estate companies.[206] The restitution cases are recorded in highly variable numbers and quality, so that only a selection can be dealt with in more detail. Nevertheless, the compilation shows that the legal framework for restitution in the 1950s was by no means free of regulatory gaps and scope for interpretation, which led to controversies between those entitled to make claims and those liable in practical implementation. While individual properties were returned quickly, the Tietz family also had to experience cases in which they had to fight for their claims against

resistance from the authorities and buyers. One example of this is the restitution proceedings against Victoria Insurance.

Restitution of Properties from Group Companies

In the spring of 1950, Georg and Martin Tietz and the Zwillenberg couple filed claims for the return of a total of ten properties that had been acquired by the insurance group as the "Kurfürstendamm-Block."[207] The responsible Wiedergutmachungsamt recommended that both parties reach an amicable agreement and, in accordance with its legal mandate, offered to mediate the negotiation of a settlement.[208]

It became clear early on, however, that this would be a difficult undertaking. On April 15, 1950, Victoria zu Berlin Allgemeine Versicherungs-Actien-Gesellschaft, a Berlin insurance company, lodged an objection to the claims for reimbursement.[209] Since November 1949, when the Tietz family's application had not yet been submitted, the company had already been considering internally how to respond to possible claims. Thus they expected the Tietz family to take action and collected background documents to defend themselves against it.[210] In its objection, Victoria consequently retreated to the position that it had not acquired the properties from the Tietz family, but from the real estate company Deutsche Boden AG, which was already in the hands of Hertie GmbH at the time the contract was signed.[211] In addition, the transaction had taken place exclusively in the context of the restructuring of the department store group and was therefore to be viewed as a purely economic act, not one related to persecution.[212]

As a result, disputes broke out between the legal representatives of both sides over the question of how the ownership structure and, above all, the unlawful nature of the transfer should be assessed. In fact, Victoria Insurance had acquired the "Kurfürstendamm-Block" on October 11, 1934, around eight weeks after the signing of the settlement agreement between the Tietz family and Hertie on August 13, 1934. The sale was intended to provide the ailing department store group with liquid funds. The seller was Deutsche Boden AG, which bundled the properties as a holding company and whose share capital was almost entirely in the hands of Betty Tietz until the "Aryanization" in August.[213] In a reply to the defendant's objection, the Tietz family's legal representative, Dr. Walter Schmidt, in no way acknowledged these circumstances, but made it clear that Victoria Insurance should also be held liable for restitution in its role as the so-called second purchaser of the "Aryanized" family assets.[214]

His argument referred to a basic principle of the Allied restitution laws, which guaranteed the desired restitution in kind: not only the direct "Aryanizers"

were obliged to return confiscated assets, but rather "whoever has rights of disposal over the confiscated assets when this order comes into force or when a restitution order is issued [. . .]," as the Berlin REAO stated in exemplary fashion.[215] For indirect purchasers who had taken possession of the property through a resale, this meant that they remained liable. Since, according to the current legal opinion, all unlawfully confiscated rights to the assets always remained with the persecuted parties, second or third purchasers had acquired property that had formally never been the property of the first purchaser, in this case Hertie. Only when subsequent purchasers had unknowingly concluded purchase transactions for Jewish property did the restitution regulations provide for exceptions in order to cushion undue hardship. In these cases, they had the option of demanding compensation from the previous purchasers after the property had been returned.[216] However, the idea that Victoria could have acted in good faith when taking over the property was absurd. The Tietz side rightly pointed out that "the Victoria in Berlin was aware of all the processes leading to the Aryanization of the Hermann Tietz company and the transfer of almost all of the Tietz family's assets, including those not belonging to the company's assets [. . .]."[217] The mere fact that director Kurt Hamann was represented on the advisory board of Hertie GmbH and was thus informed of all the steps, made it hopeless for Victoria to deny its restitution obligations.

Faced with the Tietz family's claims, the insurance group found itself under pressure at the beginning of the 1950s due to its weak legal position, but also considering its strained business situation. This led it to try to fend off vehemently possible restitution charges. Victoria's defense strategy focused on three central arguments:

Firstly, the defendant claimed that the transaction was carried out exclusively in the context of the restructuring of the department store group and should therefore be viewed as a necessary economic act, not as a persecution-related act.[218] The Hermann Tietz company's precarious situation had been caused solely by excessive expansion efforts. Regardless of the political conditions, the family would have had to give up its properties anyway in order to be able to meet its obligations.[219] Kurt Hamann, who continued to hold the position of chairman of the board of Victoria, went so far as to claim that the Tietz brothers left the company voluntarily in 1934. As a creditor, he considered it his task at the time to "find a solution to fulfill the wish of the Tietz brothers, who would like to leave the company, but only on the condition that they were released from all debts, which amounted to around 150 million RM [. . .]." In the same note, he thought he remembered a message saying that "the Tietz family fully agreed and would be grateful to us for our willingness."[220]

Secondly, Victoria's lawyers claimed that they had paid a reasonable purchase price. For this reason alone, they were convinced that the suspicion of unjustified confiscation was completely unfounded. This was particularly true because the sale took place before September 15, 1935 – the date from which the legislature assumed that all legal transactions with Jewish owners were unlawful confiscation. For acquisitions before this date, according to Victoria's representatives, it was sufficient that a fair purchase price had been agreed upon and transferred to the family.[221] However, they tacitly ignored the fact that the Allied restitution laws for West Berlin only provided for such a reduction in the burden of proof if there were no other facts or evidence to support a transfer due to persecution.[222] Instead, the defendant tried primarily to justify the relatively low sales price. In so doing, Victoria argued that two appraisals had been prepared at the time, which were based on the standard value, the fire insurance value and the expected rental income. These had led to no other conclusion than that the dilapidated buildings were hardly suitable as "secure pension providers."[223] The purchase had only been made in order to free the company from its fateful connection with the department store.[224] The insurance company, according to the applicants, did not mention that the market value of the property complex in a prime Berlin inner-city location between Joachimsthalerstraße, Kantstraße and Kurfürstendamm should have been assessed significantly higher. Tietz's lawyers did not accept the argument of their opponent that the assessment of the purchase price paid at the time had to take into account significant price fluctuations that had dampened the real estate market in 1934 in such a privileged location. Instead, they pointed out that the Tietz family had received a purchase offer from a third party in 1932 for 20 million RM. In addition, the insurance company had only mortgaged the property for five million RM after the purchase. In their view, this also indicated hidden profits from the transfer.[225]

Thirdly, the insurance company stubbornly insisted that the properties were owned by Deutsche Boden AG. During the preceding "Aryanization", only the shares in the holding company were transferred from the family to Hertie, but not the land itself. However, since only the properties and not the majority of Deutsche Boden AG's shares were acquired, the assets were in no way identical and formally there was thus no case of a second acquisition. With this in mind, the defendant fundamentally doubted the applicants' standing to sue.[226] It instructed the latter to direct any claims for restitution, if at all, to the legal successor of Deutsche Boden AG, Deutsche Boden- und Kaufhausverwaltungs-GmbH, which still existed as a shell company. In this interpretation, the insurance company continued to ignore the basic concept of restitution in kind and, with cunning legal subtlety, circumvented the fact that at the time of the transfer, Deutsche Boden AG's only function had been to manage the family's private properties.[227]

For the former Jewish owners of the "Kurfürstendamm-Block", each of the three arguments put forward must have seemed an affront. From the perspective of the persecuted, it was outrageous that Victoria Insurance, with its director Hamann, who had already been involved in their elimination from their managerial positions at the Hermann Tietz Co. in 1933/34, now denied that "Aryanization" had taken place, and instead argued about a voluntary withdrawal from a self-inflicted economic imbalance. Contrary to the reversal of the burden of proof planned by the legislature, the persecuted found themselves under pressure to justify themselves and to provide evidence of the injustice they had suffered. Accordingly, the Tietz family's lawyers defended themselves against the defendant's statements in a determined but entirely objective manner and made it clear in extensive statements that the crisis situation and the "Aryanization" of Hermann Tietz GmbH were "based exclusively on the persecution and boycott of Jewish department stores and that the contract had only been concluded through personal coercion [. . .] exerted directly against the owners of the Herman Tietz company."[228] The family supported the discrimination and persecution measures with numerous documentary evidence and sworn witness statements.[229]

The positions of the two parties were far apart and appeared irreconcilable. After the Restitution Office had presumably already stopped its attempts at mediation in May/June 1950, the restitution case went to the next, now judicial, instance. The 42nd Chamber of Wiedergutmachung of the Berlin Regional Court (42. Wiedergutmachungskammer des Landgerichts Berlin) first asked the representatives for their statements and scheduled a hearing for October 30, which the Tietz brothers, General Director Hamann and his legal counsel Franke attended in person. These talks also did not lead to an amicable agreement.[230] The parties thus left the decision on the restitution claims to a court order, which was finally issued on December 1, 1950. To the Tietz family's surprise, the Chamber rejected all restitution applications.[231] The civil chamber, which was made up of German judges, followed the argument of the defendant that a formal legal distinction had to be made between share ownership and property ownership. Referring to Article 8 of the REAO,[232] the judges pointed out that Betty Tietz's heirs were not entitled in persona to make a claim that must be reserved only for the legal entity of the company. Since Deutsche Boden AG still existed under the name Deutsche Boden- und Kaufhausverwaltungs-GmbH, the applicants' substantive legitimacy must be denied. This applied regardless of the question of who owned the properties before the "Aryanization" of the parent company. The court even rejected a declaration submitted shortly before the court's decision in which Deutsche Boden- und Kaufhausverwaltung assigned its claims for reimbursement to the Tietz family.[233] Tietz's lawyers immediately lodged an appeal against the decision. On January 25, 1951, they justified their objection by arguing that the court had

failed to recognize in its ruling that the sale of the Berlin properties was inseparably linked to the "Aryanization" of the entire Tietz Group, in which no distinction was ultimately made as to whether the confiscated assets came from the commercial property of the OHG or the private property of the family members. The properties were "split out of the confiscated assets, to which the assets of Deutsche Boden-AG belonged, for the benefit of Victoria, while Hertie-G.m.b.H. received the rest." If several "Aryanizers" had divided the Jewish family assets among themselves, then every profiteer must be obliged to make restitution, regardless of the formal legal guise under which the confiscation took place.[234] At the same time, the Tietz family's legal representatives complained that the Chamber had violated key procedural principles in reaching its decision. On the one hand, it had not included in its assessment some of the key documents submitted late by the applicants, such as the motivation report of 1934, and on the other hand, it had not questioned whether the properties had actually been sold at their true value, as Victoria claimed.[235] After a further thorough examination of all the evidence, the 3rd Civil Senate (Wiedergutmachungssenat) of the Higher Regional Court, as the next higher appellate instance, overturned the decision of the Chamber at the end of August 1951. The Senate also referred the case back to the Regional Court "for further hearing and decision." The Senate had evidently also coordinated with the highest Allied Board of Review when dealing with this restitution case.[236] In the autumn and winter of 1951/52, new settlement talks began between the parties, which were jointly moderated by the 42nd and 44th Chamber of Wiedergutmachung of Berlin. On the basis of new settlement proposals drawn up by the courts, an agreement in the dispute was reached in 1952. The private settlement stipulated that Victoria would now pay one million DM if the claimants in return refrained from a physical restitution of the land.[237] Since the DM assets of Victoria Insurance were not sufficient to meet this obligation, the state of Berlin had to be called in to allocate to the company sufficient compensation claims from the DM conversion calculation. Ultimately, the Berlin Senator for Finance informed the Wiedergutmachungsamt on March 30, 1953 that the city of Berlin would make 740,000 DM available for the restitution liabilities. The insurance company liable for the claim assumed the remaining 260,000 DM from its small business profits.[238]

The "Kurfürstendamm-Block" restitution case illustrates how difficult it was for the restitution authorities after 1945 to understand and adequately assess the complex asset and transfer structures resulting from "Aryanization". Taking this into consideration, it illustrates an effective means of convincing those liable and those entitled to make a moderated settlement, if possible, in order to arrive at pragmatic solutions. However, when the Chamber of Wiedergutmachung was forced to make its own assessments due to the ongoing differences between the parties, it seemed overwhelmed and retreated to a strictly legalistic approach.

This was typical behavior for the German restitution authorities, and they ran the risk of losing sight of the overall view of the interlocking persecution practices of the Nazi era. This experience was frustrating for the Jewish claimants concerned, who rightly expected the courts to protect their interests. Even more painful, however, was having to deal with memory gaps and blatant attempts to distort history on the part of the defendants in the private settlement negotiations. In this respect, Victoria Insurance – in contrast to Hertie – set a very bad example, against which the Tietz family's legal representatives had to fight with great patience. What is particularly remarkable in the end is the amount of the compensation payment of one million DM. With a standard conversion mode of the restitution procedure of 1 DM: 10 RM, this sum corresponded to no less than ten million RM and thus a tacit admission by the purchaser that they had acquired the Tietz properties in 1934 for less than half of their realistic value.

If one compares further examples, it becomes clear that the Tietz family had to struggle with problems, especially with the restitution of properties that had originally been managed by the parent companies of Hermann Tietz OHG or later by Hertie GmbH. Much depended on whether, when and in what way the properties had changed hands after 1934. In cases of property that had been resold only several years after the transfer to Hertie, the restitution offices denied any direct connection to persecution. They attributed such "distant" secondary acquisitions merely to the transfer of company shares and considered the restitution of individual real estate objects to be insufficiently legitimate.[239] If the properties remained in the possession of the Hertie subsidiaries until after 1945, they also fell under the 1949 settlement.

The situation was different in cases where properties had passed directly from the private hands of family members into the possession of one of the Hertie Group companies in the context of the "Aryanization" in 1934. For example, in the autumn of 1934, Georg and Martin Tietz sold the properties at Kaiserdamm 73/79 in Charlottenburg to Grundwert AG Kaiserdamm, which now belonged to Hertie, for a purchase price of 430,000 RM – possibly in exchange for the neighboring property at Kaiserdamm 77/79. In 1937, Hertie resold the property to Nordwestdeutscher Rundfunk for a significantly higher price of 589,250 RM. Accordingly, the Tietz brothers submitted an application for restitution in 1952. By means of a restitution agreement dated May 14, 1955, an agreement was reached with the second purchaser involving compensation of 120,000 DM. At the same time, the property remained in the possession of Nordwestdeutscher Rundfunk and now also became its property.[240]

Like confiscated property, lost rental, share or profit participation could also be treated on the basis of the right of restitution. This is shown by a case in which two already well-known protagonists, Kurt Jasen and Hertie GmbH, appeared. Kurt

Jasen's father, Georg Jacobowitz, had also carried out extensive modernization and reconstruction work with his construction company in 1928 on Kaiserdamm, at the corner of Frederica and Königin-Elisabeth-Straße. The client was the Tietz family through AG West für Textilhandel, a real estate company of the Hermann Tietz Group. The contracting parties had agreed that Jacobowitz would be paid for his services in the joint project with a 50 percent share of the rental surplus. This profit-sharing agreement was to run for twenty years, but could be redeemed on the fixed dates of October 1, 1933 or October 1, 1935 for a one-off payment of 100,000 RM or 87,500 RM, respectively.[241] According to Kurt Jasen, who managed the estate of his father, who died in 1946, Hertie no longer was meeting its obligations under the partnership after it had taken over the department store group. Instead of giving notice of termination within the agreed time, the company forced the Jewish building contractor into a settlement on September 12, 1935. In the meantime, Hertie had accumulated obligations for outstanding rent payments and the outstanding compensation amounting to around 150,000 RM. However, only 45,000 RM were paid out.

Accordingly, Kurt Jasen filed an application to declare the forced termination of the participation agreement null and void and to order Hertie to make a back payment.[242] The Restitution Office that was called in unbureaucratically forwarded the quite unusual claim, which fell somewhere between the fields of restitution and compensation, to Hertie's central administration. Just as immediately, the department store company declared itself willing to compensate the applicant with a sum of 20,000 DM within two weeks. Hertie's representatives expressly emphasized that the termination of the shareholding was not motivated by anti-Semitic behavior, but merely by a difficult investigation into the high mortgage debts that had burdened the property in 1934. Nevertheless, Hertie did not hesitate to meet Kurt Jasen's interests. This step was certainly also undertaken in order not to strain the relationship with Rösli's husband in any way.[243]

Restitution of Private Homes

A similarly mixed assessment can be drawn with regard to the attempted reversal of the "Aryanized" private homes of the Tietz and Zwillenberg families. Here, too, quick and cooperative reimbursements were more or less balanced with complex and accordingly lengthy restitution processes. What was notable, however, was that the claimants did not want to accept financial compensation, but rather wanted to regain possession of their former homes through restitution in kind.

The restitution of their former residential property at Koenigsallee 69/71 and the associated properties at Hundekehlsee and Gustav-Freytag-Str. 70 proved to be rather

uncomplicated for Georg and Edith Tietz. They asserted their claim on July 27, 1949.[244] They received their property back on September 15, 1951. The restitution was preceded by constructive negotiations with the heirs of the factory owner Willy Vogel, which ultimately resulted in a settlement. The Tietz couple took over their undamaged city villa, fully furnished and including some of the inventory that they had had to leave behind in 1937. In return, they paid 28,000 DM to the Vogel family to offset their interim expenses for value-preserving repairs, modernizations and purchases of furnishings. In this way, the lost use of the Jewish owners was balanced out with the expenses of the interim owners.[245] For Georg and Edith Tietz, however, returning to Berlin was out of the question. Together with their representative Charlotte Kücher-Eigner, the family initially considered an immediate resale. However, as no good purchase price could be achieved on the Berlin real estate market at the time, this plan was initially abandoned.[246] Instead, the family rented it to the Berlin Senate starting in June 1954. In the years that followed, the property briefly flourished as a guest house for the city of Berlin. Among other celebrities, it housed the Bundespräsident Theodor Heuss, and others. He made the Tietz Villa his private residence when he was in Berlin.[247]

Fig. 40: Villa Koenigsallee 71, 1954.[248]

Since the end of the 1950s, however, the preservation of the property, which was now in need of renovation, seemed increasingly uncertain. The rental contract with the city ended and the family tried to sell the house, which had now again been empty for months. After the inheritance dispute following Georg Tietz's death, Kurt Jasen was entrusted by his wife and mother-in-law with the task of bringing about a sale.[249] In 1963, he negotiated for a long time but unsuccessfully with the city of Berlin about an exchange deal for a plot of land on Kleiststraße, at the corner of "An der Urania."[250] Jasen was disappointed by the failed talks, as he had advised the city government on many aspects of reconstruction and had, among other things, enabled the establishment of a Hilton hotel.[251] In 1965, the Historical Commission of Berlin (Historische Kommission zu Berlin), which was based at the Friedrich Meinecke Institute of the Free University, became interested in the villa. With the support of the Volkswagen Foundation, it planned to create a prestigious home for research, teaching and administration.[252] This attempt to sell the property also failed, particularly because the structural condition continued to deteriorate and a massive loss in value set in. Finally, the house and land, which Kurt Jasen had estimated at around 400,000 DM in 1963, were sold to real estate investor Paul A. Strauss on January 1, 1968 for around 300,000 DM. A short time later, the villa was demolished and replaced by apartment blocks.[253]

The department store family's parents' house, built by Oscar and Betty Tietz on Kaiserallee, today Bundesallee 184/185, also did not survive. Some parts of the town villa had already been destroyed during the war. However, reconstruction was impossible because the restitution proceedings initiated in 1949 by Betty Tietz's heirs – Georg and Martin and Elise Zwillenberg – were in limbo for a disproportionately long time. This was partly due to the defendant Bulgaria, which was now integrated into the Eastern Bloc as a People's Republic. But also due to the fact that the German restitution authorities did not initially classify the sale on January 1, 1936 as a result of persecution, since the purchase price had been fully credited to Betty Tietz's account in 1936.[254] Unfortunately, the details of the proceedings are not known. What is certain, however, is that the 142nd Chamber of Wiedergutmachung did not declare the claim admissible in October 1953. More than a year later, on November 12, 1954, the 14th Senate for Wiedergutmachung (Wiedergutmachungssenat) overturned the decision following an appeal by the Tietz family and referred the case back to the regional court. As late as July 1957, Hans Aldenhoff officially complained to the Compensation Board (Entschädigungsamt) Berlin on behalf of the Tietz family that the restitution proceedings had still not been completed.[255] It is believed that the family was not awarded their property until the end of the 1950s.

At this point, the Tietz property was in an extremely dilapidated state, which would worsen by the mid-1960s. The ruins of the house were overgrown with trees and lay fallow.[256] Nevertheless, the more than 6,000 square meter property

in a central inner-city location continued to have a high value, as new construction and renovation plans were constantly being discussed. It was probably for this reason that Rösli Jasen and her husband had the property transferred to them in November 1963 as part of the inheritance dispute with her mother and brother. At the same time, they paid out the other heirs, Martin Tietz and Elise Zwillenberg. The two relatives each received 191,800 DM for the property, which had a standard value of around 313,000 DM. In addition, the couple paid off a registered security mortgage from the People's Republic of Bulgaria for a further 28,650 DM.[257] The sole owners then presumably transferred the property to the real estate company "HoWo" – Hohenzollerdamm Wohnungs GmbH, in which Kurt Jasen bundled his extensive involvement in the Berlin real estate market. The clearing of the site began in 1968 after the property had been resold for an unknown price. New construction began in 1970.[258]

The Zwillenberg couple had particularly ambivalent experiences with regard to the restitution of their residential property. The Dominium Linde estate was located in the territory of the GDR and was therefore not eligible for restitution in the Bonn Republic. It was only after 1989 that her daughter got the property back and set up a research station for scientific nature conservation there, which has been supported by the non-profit Zwillenberg-Tietz Foundation since 2011.[259] The Dahlem residential property at Hohenzollerndamm 100/101, on the other hand, was returned on March 14, 1950 by the Federal Republic as the legal successor to the Reich Treasury, for whose benefit the property had been extorted from the family under duress in 1938.[260]

While the right of restitution only regulated the return of the physically still existing properties, all other damages that had arisen with the confiscation of private assets were treated in the context of compensation (Entschädigung). In this field too, after 1945, legislators were faced with the challenge of classifying the complex instruments of persecution and robbery used by the Nazi regime in a legal and bureaucratic structure of *Wiedergutmachung* that attempted merely to convert the experiences of those affected into financial benefits and could therefore never satisfy them.

Bureaucratic Compensation

The attempts to make amends by means of compensation are a lesson in past (federal) German policy in the 1950s and 1960s.[261] The state's efforts to show responsibility for the numerous forms of discrimination, persecution, robbery and murder that the victims of the National Socialist dictatorship had to endure were evident everywhere. In practice, however, the implementation of the legal con-

cept of compensation suffered from three central deficiencies: Firstly, it took an agonizingly long time for the legislature to create a binding legal framework in several steps – from the early Allied regulations in 1949 to the first Berlin Compensation Act (Berliner Entschädigungsgesetz), based on USEG in 1951/52, the Federal Supplementary Act (Bundesergänzungsgesetz, BergG) of 1953 and finally the uniform Federal Compensation Act (Bundesentschädigungsgesetz, BEG) of 1956.[262] Like many applicants, the Tietz family sought to assert their claims as early as possible. This meant, however, that the regulatory basis changed several times during the ongoing proceedings, new partial claims had to be applied for again and again, additional demands made, and each time forms and evidence had to be submitted. Secondly, the processing of the proceedings suffered from a high level of bureaucratic ballast. This arose from the legally necessary procedure of classifying the complex range of persecution experiences into broad categories of damage in order to be able to process them in a structured manner. The consequence, however, was that a thicket of clauses, claim categories and complicated calculations of material benefits arose, which was almost impossible for those actually affected to understand without the help of specialist lawyers. Thirdly, the high level of formality and bureaucracy frequently resulted in processing times lasting years, which made the in many cases elderly applicants doubt the seriousness of the authorities' efforts to make amends.

The individual members of the Tietz and Zwillenberg families initially made claims based on the Berlin Compensation Act for the confiscation of their private assets as a result of state seizure. On the same day, January 11, 1951, Georg and Edith as well as Martin and Anni Tietz submitted applications for compensation payments for levies and special taxes as well as for the plundering and squandering of their art collections and other belongings.[263] Around a year later, on February 5 and 8, 1952, the Berlin Compensation Office received notification of the financial losses for Betty Tietz, who died in 1947, and for Hugo Zwillenberg.[264] The lawyer Dr. Hans Aldenhoff acted as legal representative for the entire family. The authorites needed until February 1953 to examine the applications and to arrange a first meeting; thereafter Aldenhoff made it clear that "my clients wish to complete the compensation proceedings as quickly as possible and are prepared to reach a settlement of the compensation claims, just as in the [. . .] restitution proceedings."[265]

The hope of a quick processing of their claim was, however, not fulfilled. The Compensation Board acted slowly under the burden of the general flood of applications and initially dealt with the supposedly more easily manageable aspect of the anti-Jewish compulsory levies. According to a uniform regulation, the confiscated funds in the compensation context were to be converted and paid out from RM to DM at a ratio of 10:2. This meant that the exchange rate was better than for

commercial restitution payments, which were per se converted at a rate of 10:1. The background to this original Allied requirement was that the profound loss of life, limb and freedom should also be compensated materially.[266] In the summer of 1953, Martin Tietz was awarded exemplary compensation of 50,660 DM for the Reich flight tax of around 253,300 RM that he had been forced to pay in 1938.[267]

However, it would later become clear that such standard procedures in the Tietz/Zwillenberg compensation proceedings were the rule rather than the exception. This was also typical of the handling of compensation in general. Numerous exceptions, special calculations and cross- and back-references to the restitution proceedings complicated the processing. In the case of Georg Tietz, for example, the compensation authority warned that only the Reich flight tax payments that had been made in 1938 from private cash assets could be paid at a ratio of 10:2. The share that the Jewish entrepreneur had paid from the proceeds of the sale of his property, however, was only refundable according to the restitution rule at a rate of 10:1.[268] The family's lawyer objected to these administrative maneuvers, emphasizing that since "the compensation law represents an exception that limits legitimate claims [. . .] downwards to amounts that – as in the present case – are clearly disproportionate to the damage actually incurred, there is no reason [. . .] to reduce these compensation amounts even further to the lowest level."[269]

It becomes clear what areas of tension arose between the legalistic administrative practice of the German caseworkers and the applicants' experiences of persecution. The potential for conflict was exacerbated by massive delays provoked by the less than pragmatic approach. For example, in the compensation case of Betty Tietz, Aldenhoff felt compelled to openly threaten the Berlin office with a lawsuit for delayed processing at the end of 1956. The reason was that the financial loss of around 863,000 RM, which had been claimed four years previously, had still not been decided, apart from a partial decision on the Jewish property levy.[270] The Compensation Board was obviously waiting for the outcome of a pending restitution procedure. It was therefore not in a position to make the necessary offsetting for funds that had been taken away or reused. It is no longer clear from the available sources when exactly a corresponding decision was made to the heirs.

The administrative coordination between compensation and restitution claims in the Hugo Zwillenberg case took on almost bizarre features. He had submitted his asset losses totaling around 815,000 RM under the Berlin Compensation Laws, including payments for the Reich flight tax of around 202,000 RM, for the Jewish asset levy of around 247,900 RM, and the additional levies of around 125,000 RM extorted in the context of his imprisonment and escape.[271] The Compensation Board subsequently carried out a laborious investigation into which partial amounts Zwillenberg had paid in 1938 from the sale of his Berlin home.

Since the property on Hohenzollerndamm had already been reimbursed in kind by the Federal Republic in 1950, the special levies paid from the purchase price of 218,250 RM were also considered to have already been paid. Accordingly, Zwillenberg was asked as an assignor to transfer the compensation claim for this sum to the Berlin Senator for Finance.[272] As a result, in 1953 the public state authority whose predecessor had confiscated the Jewish assets took over compensation claims against the German state, which had previously acted as an "Aryanizer." The basic idea behind this formal legal step was to prevent double compensation payments and to implement the primacy of restitution in kind. The same procedure was followed with regard to refundable securities that Zwillenberg had given to the Berlin Finance Authority in order to settle his tax debts.[273] For the person concerned, however, this regulation not only meant an enormously longer processing time, but also a high level of bureaucratic effort in order to provide the authorities with detailed evidence of every financial transaction in 1938/39 and to fulfill all the formalities of the required assignment of his claims. It was not until July 4, 1961 that a final compensation decision was issued, awarding Zwillenberg around 119,500 DM for the remaining amount of the compulsory levies of 597,500 RM. The processing of the compensation for his asset losses alone had thus taken more than nine years before it became legally binding.[274]

While these lengthy bureaucratic processes of compensation for the anti-Jewish levies were already met at best with incomprehension from the family, the processing of the other categories of damage triggered additional frustrating conflicts at many points. This applied, for example, to the compensation for the transfer losses suffered by the families of Georg and Martin Tietz. In the 1950s, neither branch of the family had any conclusive documents that could have been used to quantify the exact amount of the loss. This was partly because they had long since lost control of their own assets since the end of the 1930s through account freezes and the law governing fiduciary management of enemy assets. In addition, Georg Tietz died in 1953 and Martin Tietz was too ill after a stroke in the same year to be able to provide the relevant information from memory. Hans Aldenhoff could therefore only ask the authorities to estimate the amount of the loss.[275] He repeated this request several times. In 1963, the family finally had to withdraw the transfer damage claim due to a lack of evidence.[276]

The comprehensive documentation requirement also forced the family to provide page after page of explanations about their own persecution since the beginning of the Nazi regime when justifying so-called damage to professional advancement[277] and when proving alleged boycott damage. The relevant letters were drafted by the family lawyer Aldenhoff, who drew up a detailed picture of the business and living situation of those affected.[278] Despite the cogent description of the well-known persecution situation in which Jewish department stores

had found themselves due to the massive attacks by the Nazi party base, the authorities entangled the family in pedantic discussions about whether each of the owners of the largest family-run department store group at the time was actually entitled to an individual payment of the maximum compensation sum of 75,000 DM. Ultimately, after more than two years of negotiations, the claimants agreed that the maximum amount for boycott damages would only be paid out once for the entire company and would be distributed equally among the former owners and heirs of Hugo Zwillenberg, Georg and Martin Tietz.[279]

Ultimately, it is depressing in many respects to see from a historical perspective how little the official compensation practices succeeded in adequately redressing the reality of the anti-Jewish confiscation measures. This is documented in an exemplary manner in the handling of the squandering of commercial and private property, which according to the law could be settled by means of monetary compensation if the whereabouts of the goods were unknown and restitution in kind was therefore not feasible.[280] With this mind, it was understandable that Georg and Martin Tietz made claims for the squandering of the Mefa GmbH warehouse.[281] The sale was carried out in 1938 by the state-appointed liquidator Freimuth, who had valued the warehouse at around 150,000 RM below its value. The compensation authorities did not accept the idea that this was an act of confiscation by the Nazi regime. Instead, they insisted on the distinction that in 1938 the brothers had only owned Mefa shares. This was, however, not to be equated with operational business ownership. The application for compensation was rejected in 1965 because the injured company, as a legal entity, had no standing under the BEG. This was particularly true because Mefa's headquarters were not in the area of application of the Federal Republic of Germany or West Berlin.[282]

Another example of this kind of practice is the way the authorities dealt with claims for damages relating to private goods to be moved and art and book collections, the whereabouts of which could hardly be ascertained. From 1956 onwards, the BEG stipulated that goods sold, auctioned or thrown away without consent should be compensated by weighing up the material value at the time of the damage and the current replacement value. The assessment was to be based on expert opinions in a value ratio of 1:1 from RM to DM.[283] In February 1963, five and a half years after the compensation application had been submitted by Georg Tietz's heirs in July 1957, the Berlin Compensation Board wrote to Aldenhoff that "the necessary steps had already been taken" and that they were now simply waiting for the results of the expert report on the exceptional Tietz library.[284] The Tietz family and their lawyer Aldenhoff must have been very surprised when they discovered who had been appointed as the expert by the authorities: it was once again Max Niederlechner, who had already valued the collection for the Nazi financial authorities in 1943 and had played a key role in the partial destruc-

tion of the collection. While he had valued the collection at 20,000 RM at the time, he recommended a compensation sum of only 16,000–18,000 DM to the office.[285] Aldenhoff objected to the low assessment and remarked, noticeably annoyed: "When Mr. Niederlechner explains in his report that his work was made more difficult by very imprecise and superficial information, Mr. Niederlechner has evidently forgotten – which is understandable given the time that has passed since then – that he had previously worked as an expert for the Reich Chamber of Literature on the book collection in question." They would be happy, he goes on to say, to negotiate personally with the expert so that "[. . .] questions that may be asked can help Mr. Niederlechner to recall the events at the time in order to then review the report that has already been submitted."[286] The lack of sensitivity and morality in dealing with the claims of those persecuted by German authorities can hardly be demonstrated more directly than in this case. Parallel to the negotiations about the book collection, the Berlin Office of Wiedergutmachung had a second appraisal prepared on the confiscated apartment inventory and Georg Tietz's art collection. The art expert Kurt Wittkowski estimated the total value of the valuable paintings, graphics and arts and crafts furnishings at around 420,000 DM.[287] Due to the immense amount of property damage, the Berlin State Tax Office asked the lawyer for the claimants to negotiate a settlement. His clients Edith and Hermann Tietz as well as Rösli Jasen ultimately accepted an out-of-court settlement in order to finally reach a decision "[. . .] in the interest of a quick end to the injustice committed a quarter of a century ago [. . .]."[288] Understandably, the family's patience had run out. In June 1965, they finally accepted a settlement offer of 275,000 DM for all of the lost items in question.[289]

The compensation process in this form had long since degenerated into a lengthy struggle by the family to have their legitimate claims recognized. As far as compensation for material damage was concerned, Hans Aldenhoff clearly acted as a filter that cushioned the emotional consequences of this treatment. The experience must have been all the more personal and degrading for Hugo Zwillenberg when the compensation authority questioned his family's claims for compensation for the deprivation of liberty suffered in the context of their escape.[290] After Zwillenberg had extensively documented his family's ordeal, the Berlin Compensation Board only wanted to classify the imprisonment in Westerbork until March 9, 1944 as deprivation of liberty. All further stays in the so-called Front-Stalag in France, Algeria and Morocco were classified as "foreign police or foreign and international measures"[291] and not considered to be due to persecution. Although Zwillenberg vividly described the terrible conditions of residence behind barbed wire in the transit camps, the authorities initially rejected compensation for this period of detention in their decision. For the applicants, this approach was simply unacceptable, as Hugo Zwillenberg's legal representative,

Hermann Götze, emphasized in July 1953. His judgment on the authorities' behavior in this individual case can be transferred to the entire compensation context: "It becomes clear how quickly the causal connection between the events was forgotten in the course of time, and how the links in the unfortunate chain are now no longer recognized in their inseparable connection, and are even now completely misunderstood."[292]