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Tagesthema (Topic of the day)

# How independently does the Foundation work?

## Legal

The Cologne Higher Regional Court will decide whether the pharmaceutical company Grünenthal through its corporate lawyer may have exercised influence over the work of the Contergan Foundation and compensation payments to the victims. *By Hilke Lorenz*

The victims of the Contergan (thalidomide) scandal are now around 60 years old. But it appears that one of the greatest medical scandals in post-war history has not yet come to an end. On Thursday, a court will again concern itself with the reappraisal of the case, and its judgement may possibly open a new chapter in the issue of compensation payments.

The background: In October 1957, the pharmaceutical company Grünenthal launched the sedative Contergan with the active ingredient thalidomide on the market. The company did not withdraw it from the market until four years later, despite growing numbers of alarming reports that the non-prescription medicament, recommended explicitly for pregnant women, could have been the cause of the birth of many handicapped children. In Germany during this time, some 5,000 children were born with severe malformations in their arms and legs. In a study published in 2017, the historian Niklas Lenhard-Schramm showed that the responsible official control authorities had not fulfilled their function and had completely failed.

After bitter struggles about the form of financial compensation, an agreement was reached between the affected persons, the Grünenthal company and the official supervisory authorities. The lawsuit against the responsible executives of the Aachen-based pharmaceutical company was discontinued in 1970. In return, Grünenthal paid 100 million deutschmarks to a foundation which continued the payment of compensation to the victims. A further 100 million deutschmarks was paid from the public purse. In return, the victims agreed to give up their right to make further claims. The money was quickly used up; Grünenthal paid a further 50 million euros. From 1972 onwards, the point of contact for the affected persons became the state – specifically the Federal Ministry of Family Affairs.

## Foundation council member rejects collusion

In 2013, in the third amendment to the Contergan Foundation Act, the victims' pensions were again substantially increased. But with every year of advancing age, their expenses become greater.

Now a judgement by the Cologne Higher Regional Court could shed new light on the work of the Contergan Foundation. Because, unless impressions are highly deceptive, the 15th Civil Senate will announce a judgement on Thursday that could cause a sensation. The case centres on what influence the Grünenthal company exercises over the work of the Contergan Foundation and the compensation of the victims. The dispute which is now being fought out in court was sparked off by statements made by Andreas Meyer, Chairman of the "Bund Contergangeschädigter und Grünenthal-Opfer", at a hearing of the Federal Committee for Family Affairs, Senior Citizens, Women and Youth in the context of the planned amendment of the legislation on 1 February 2013.

Among other things, Meyer told the Committee and the then Family Affairs Minister Kristina Schröder (CDU) that Grünenthal had had access to the medical files of the Contergan Foundation and that the firm had also paid the experts of the Medical Commission. These experts determine, on the basis of a points system, the extent of the victims' damage – and thus the size of their pension. For Meyer, the legal case is about the question, "whether the Contergan Foundation was, or perhaps still is, secretly a branch office of Grünenthal under the eyes of the Federal Government."

Meyer, who was born without arms or legs, has also been a member of the Council of the Contergan Foundation since 2009 as a representative of the victims – and, as shown by his perseverance in the legal dispute, is of a combative nature. His opponent in court is Karl Schucht. Attorney Schucht was Chairman of the Medical Commission of the Contergan Foundation from 2004 until 2009, and subsequently until 2014 a member of the Foundation’s Management Board. In a letter to the Federal Committee, Schucht rejected Meyer’s assertions as untrue. The Federal Government then declared that it shared Schucht’s opinion. In the Contergan Foundation, Schucht is the successor to the medical lawyer Herbert Wartensleben, who from 1972 until the end of 2003 was both the Chairman of the Medical Commission and also Grünenthal’s corporate lawyer. It is his role in particular that concerns Meyer.

#### Parliamentary question from Die Linke supports Meyer’s statement

Meyer went to court and was vindicated to a large degree. In a judgement on 10 May 2017, the Bonn Regional Court forbade Schucht on pain of a fine of 250,000 euros from asserting that Meyer had spoken untruth. Schucht was also ordered to issue a rectification towards the members of the parliamentary committee, declaring that Meyer’s statements were not untrue and that “Grünenthal GmbH in the person of the Head of its Legal Department, Attorney Herbert Wartensleben, (...) had had access to the medical files of the Contergan Foundation.” Both Meyer and Schucht went to appeal. The Cologne Higher Regional Court opened the oral proceedings on 15 February.

In a press release before the proceedings began, the Senate explicitly drew attention to the Federal Government’s response to a Minor Interpellation by the Parliamentary Group Die Linke (Left Party) on 23 April 2013. The answers confirm large parts of Meyer’s case. On the first day of the proceedings, the presiding judge also noted that it could not be disputed that the head of the Commission in the Foundation was also an employee of Grünenthal. Sensitivity in Germany towards such a dual function had only increased strongly in subsequent years. “The perception has sharpened, and rightly so,” she is quoted as saying. The Senate will announce its judgement next Thursday.

#### Picture caption:

*In 2008, Contergan victims demonstrate in Hamburg, where the regional court was deciding about the broadcast of the ARD production “Eine einzige Tablette” (One Single Tablet).*

### **SUPPORT FOR THE VICTIMS**

**Payments** The Contergan Foundation for People with Disabilities, which according to information from Grünenthal is a foundation set up by the German Federal Government and independent of the company, supports those affected by the Contergan tragedy in 38 countries with monthly payments ranging from 662 to 7,620 euros, as stated on the company’s internet site. According to this, the company has paid over 100 million euros to the Foundation. There was no interference by the German authorities in the conduct and the end of the legal case, it is stated in the same place.

**Affected persons** According to information from Andreas Meyer of the Bund der Contergangeschädigten, some 2,700 persons are currently living in Germany who are suffering from the consequences of Contergan usage by their mothers during pregnancy. The degree of malformation is dependent on the time of the pregnancy at which the sedative was taken.

## “For me it is corruption”

### **Interview**

Andreas Meyer, the representative of the Contergan victims, demands a commission of enquiry and a new Medical Commission.

*Mr Meyer, what would it mean if the Cologne Higher Regional Court now decided in your favour?*

The judgement would give us the confirmation by a German court that this collusion between the Grünenthal company and the Contergan Foundation had existed.

*How do you interpret the fact that the Grünenthal lawyer had insight into the victims’ medical data?*

The politicians favoured Grünenthal over the Contergan victims. The Contergan Foundation Act of 1972 prevents us, even to this day, from suing the company for damages. The aim was to avoid creating a precedent for the whole of the chemical industry. Now a German court will attest to us that for 30 years a Grünenthal lawyer was able to look into our medical files in the Medical Commission of the Foundation. And in precisely this Commission, he was able to influence who was recognised as a Contergan victim. The Contergan scandal – as it has developed – cannot be explained without the exercise of political influence in favour of Grünenthal. For me it is corruption. Corruption does not only mean bribery but also degeneration and depravity. In the Contergan case, this degeneration affected our democracy.

*What are you demanding concretely?*

Already in 2017, as a lesson from the Contergan scandal, we called for an anti-corruption law. Now we need a commission of enquiry. The Federal Government must explain why, in its reply to a Minor Interpellation from the Parliamentary Group Die Linke (Left Party) through its Ministry of Family Affairs, it lied to the German Federal Parliament. Because it gave its backing to assertions of fact by Mr Schucht that were demonstrably false.

*For 30 years the company also reimbursed the costs of the Medical Commission which took decisions about compensation. What does this mean?*

He who pays the piper calls the tune. And they were all playing Grünenthal's tune together. Grünenthal and the Federal Government have a shared interest. They both want to pay as little as possible. Therefore they set up an assessment monopoly in which they pretended that the Foundation's experts were the only people in the world who were competent to answer the question of whether somebody was damaged by Contergan or not. We have proof of at least one case where Grünenthal's corporate lawyer amended an assessment contrary to the expert opinion of the human geneticist Lenz.

*How are assessments produced?*

Assessments are often produced without the expert ever having seen the affected person. In these cases the assessments are based on medical findings submitted by the victims. As the reason for rejection, an alleged genetic condition is often diagnosed without a blood test or DNA test. And the affected persons fight in vain for their rights in the courts.

*Must new assessments be made now?*

Not only that. The whole Medical Commission must be dismissed. The responsibility for the Contergan Foundation must be transferred to another ministry, preferably the Ministry of Finance. At least they can do their sums. It is just a question of examining whether the funds of the Contergan Foundation flow to where they are intended. The Foundation itself, as in Great Britain, must be in the hands of the Contergan victims. We are all competent people. We don't need any ministry representatives, possibly steered by Grünenthal, who go over our heads and determine what is right or wrong for us.

The interview was conducted by Hilke Lorenz.

## **FIGHTER FOR JUSTICE**

Person: Andreas Meyer (57) founded the Bund Contergangeschädigter und Grünenthal-Opfer, of which he is Chairman, in 2004. The organisation split off from the Bundesverband Contergangeschädigter (National Association of Contergan Victims) in order to be able to act independently. Since 2004, Meyer has been a member of the Council of the Contergan Foundation. He has contested numerous successful court battles against Grünenthal.

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