

**CONTERGAN VICTIMS
ARE TO RECEIVE A NEW SPECIAL LEGAL
PROTECTION FOR THEIR BENEFITS**

What happened? – How did it happen? – Who did what? – The result

**Initial situation –
the Brazilian aggrieved parties were threatened with the termination of Contergan
(thalidomide) pensions**

In 2018, the former board of directors of the Contergan Foundation for Disabled People under Ms Marlene Rupprecht initiated proceedings to determine the legal circumstances under which the Contergan Foundation's benefits to Contergan victims or other people affected by Contergan can be revoked.¹

From a legal opinion obtained, it then emerged that the payments to the Brazilian injured parties would be based on "unlawful administrative acts". This is because the harmful preparation containing thalidomide in each case was not from the company Grünenthal within the meaning of Section 2 of the Contergan Foundation Act. Therefore, according to the expert assessment, **the benefits pursuant to 48 VwVfG would have to be withdrawn for the future** if a protection of legitimate expectation state of affairs is not proven in individual cases. In other words, especially with a view to the future, a disposition of assets would have to be proven that can no longer be reversed or can only be reversed with unreasonable disadvantages.²

In accordance with this assessment, the new board of directors under Mr Dieter Hackler was obliged to continue the proceedings and informed the Brazilian aggrieved parties that it intended to discontinue the payments. The board of directors officially consulted the Brazilian aggrieved parties on this matter, in particular on the question of whether there were individual reasons to the contrary.

¹ https://www.contergan-infoportal.de/fileadmin/downloads/2018_12_19_Rechtsgutachten_Rechtmaessigkeit_Abaenderung_bestandskraeftiger_Bescheide.pdf .

² https://www.gesetze-im-internet.de/vwvfg/_48.html .

Call for help from the Brazilian aggrieved parties

After the Brazilian respondents had received the abovementioned consultation letters, they contacted me as their representative.³ The correspondence began in October 2019 with an aggrieved party in Brazil.⁴ I then reminded them several times that the matter had to be taken seriously, especially because of the deadlines. I proposed that the Brazilian thalidomide victims join forces and mandate the German lawyer Karin Buder. A German-speaking Brazilian lawyer was commissioned by the Brazilian aggrieved parties to mediate, who received from me the power of attorney form of the lawyer Karin Buder. The completed powers of attorney and documents in 20 cases – together with the contact details of the persons concerned – were sent to Ms Buder and myself between 5/11 and 11/11/2019.

Over the course of days of work, day and night, Karin Buder continued to work through the cases and put her heart and soul into them.

The legal process

Both the board of directors of the Contergan Foundation – without which a statutory settlement would be ruled out from the outset and which wanted to have a basis for authorising competence centres in the Contergan Foundation Act in any case – and Karin Buder, the representatives of those concerned, Bettina Ehrt and I, the Bundesverband Contergangeschädigter e.V. (Federal Association of Contergan Victims) and Contergannetzwerk Deutschland e.V. then **approached politicians**. There were discussions in a wide variety of constellations.

The two responsible politicians in the grand coalition, Ms Ulla Schulte (SPD) and Mr Stephan Pilsinger (CDU/CSU) **were shocked by the legal situation. They promised to help immediately, proposed special legal protection for Contergan victims** and asked the Federal Ministry

³Correspondence has been received from lawyer Karin Buder.

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for Family Affairs, Senior Citizens, Women and Youth to draft a corresponding law.

The 5th Contergan Foundation Amendment Act

The law now planned is not only intended to ensure that the Brazilian aggrieved parties retain their benefits, but also to provide a corresponding **protective umbrella over all thalidomide victims receiving benefits from the Contergan Foundation**. Contergan victims should no longer be afraid of their benefits being withdrawn.

The draft of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth stated that

"A claim to benefits under this law may only be withdrawn if the claims are based on intentionally incorrect or incomplete information provided by the person entitled to benefits."

(Underlines added)

I considered the restriction that also in the case of "incomplete" information, the special protection of existing rights should be dropped, to be wrong and intervened accordingly against it. Under this term "incomplete" a multitude of possible cases could be debated, which then threatened exclusion from the special protection of existing rights – see also my examples.

My objections were examined by the legal departments of the governmental factions, and the draft was amended in such a way that the incompleteness of the respective application must be based on intent, i.e. on purpose, in order to exclude the special protection of existing rights.

If the draft law is now passed in this way, it will ensure that those receiving benefits from the Contergan Foundation **would be granted an unconditional right of continuance**, which would only lapse in the case of criminal activities.

Acknowledgements

Both on behalf of Contergannetzwerk Deutschland e.V. and in my capacity as a representative of those affected, I would like to express my heartfelt thanks for their commitment with this great result: to the members of parliament Ulla Schulte (SPD), Stephan Pilsinger (CDU/CSU), to the other members of the Family Affairs Committee of the government factions, as well as the Green Party, the Left Party and the FDP. I would also like to thank the board of directors of the Contergan Foundation for Disabled Persons (Mr Dieter Hacker and Margit Hudelmaier), as well as Ms Karin Buder, my co-representative Bettina Ehrt, the board of the Bundesverband Contergangeschädigter e.V., the council of the Contergannetzwerk Deutschland e.V. and everyone else involved.

At last, there is clarity, and at last, the aggrieved parties can live out their later years without fear!

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<http://www.contergannetzwerk.de/index.php/presseerklaerungen/68-pressezusatzinformationen-bilder/137-pressefoto.html>

Information on facebook:

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