

The Jewish Claims Conference and the Constitution

Prof. Fritz Enderlein, Attorney at Law, Potsdam

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Two years ago, I proposed a change to the Property Act.¹ I suggested that § 2 para. 1 sentence 3 of this law be supplemented to read as follows: "However, if eligible Jewish claimants or their successors contact the JCC after the time limit specified in the Property Act has expired, the JCC will be regarded merely as a trustee for the beneficiaries and required to give them an appropriate share of the proceeds or restitution funds." This proposal is fully consistent with the JCC articles of corporation, which state: " The purpose of the association shall be **solely** to voluntarily assist, aid, help and **act for and on behalf of** Jewish persons that were victims of Nazi persecution and discrimination" (text highlighted by the author). Therefore, many Jewish victims believed that the JCC would act in their best interests by taking possession of stolen Jewish property, selling it at a fair market price, subtracting an appropriate administrative fee, and passing on the proceeds to the victims.

My proposal was supported by many victims² who sent petitions describing the plight of their families to the German Bundestag (parliament). However, it was initially rejected by the Ministries of Finance and Justice, as well as by the Chairman of the Legal Committee of the Bundestag (I'm not ready to give up hope). The rejection of my proposal was based, among other things, on the JCC's fundamental property rights under Article 14 of Germany's Basic Constitutional Law.³ Is the JCC protected by Germany's Basic Constitutional Law? The Federal Constitutional Court addressed this question last year in a different context.⁴ According to a unanimous decision from 18 August 2010: "The Federal Constitutional Court assumes that legal entities domiciled in foreign countries **are not, in principle, protected by the basic rights (Basic Constitutional Law)**..."⁵ The Federal Constitutional Court draws this conclusion from Article 19 paragraph 3 of Basic Constitutional Law, which reads: "The basic rights shall also apply to domestic legal entities, to the extent they are inherently applicable." The Jewish Claims Conference, however, is a legal entity based in a foreign country, "...because their place of domicile is not in Germany... (even) if they maintain a branch office here..."⁶

¹ Fritz Enderlein, expropriation by § 30a of the Property Act, ZOV 5/2009, p. 219ff.

² Fritz Enderlein, Restitution bypasses victims: Why the German government needs to take immediate action! ZOV 4/2010, p. 170ff.

³ Letter written on behalf of the Chairman of the Legal Committee of the German Bundestag (parliament), on 16 March 2010, ZOV 4/2010, p. 175

⁴ Supreme Constitutional Court (BVerfG), 1 BvR 3268/07 from 18 Aug. 2011

⁵ Text highlighted by F.E., Supreme Constitutional Court (BVerfG), 1 BvR 3268/07, para. 33

⁶ Ibid, para. 34