

# **European Court of Justice, ECHR, and German Federal Constitutional Court**

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# Topics

- I. Overview**
- II. EU Court of Justice**
- III. European Court of Human Rights**
- IV. German Federal Constitutional Court**
- V. Problems**

## Three Courts with Different Tasks

- **Court of Justice of the European Union**
- **European Court of Human Rights (no EU Court)**
- **Federal Constitutional Court of Germany**

# **COURT OF JUSTICE OF THE EUROPEAN UNION**

# Court of Justice of the EU

- **Legal Sources:**
  - **Treaty on the European Union**
  - **Art. 251-281 Treaty on the Functioning of the European Union**
  
- **The Court of Justice of the European Union:**
  - **Court of Justice**
  - **General Court**
  - **Specialized Courts**

## Today: Three Courts on EU Level

- **Court of Justice** shall ensure that interpretation and application of the **Treaties** is observed
- Besides own judgements it gives preliminary rulings, at the request of courts or tribunals of the Member States, on the interpretation of Union law or the validity of acts adopted by the institutions
- **General Court** deals with cases brought forward by private individuals, companies and some organisations, and cases relating to competition law
- **EU Civil Service Tribunal** rules on disputes between the European Union and its staff

## Court of Justice of the EU

- Court of Justice has one **judge** per EU country
- Court may sit as a full court, in a Grand Chamber of 15 Judges or in Chambers of three or five Judges
- Court has nine ‘advocates-general’ to present opinions on the cases brought before the Court
- Most of the times the Court would follow these opinions
- Judges and advocate-generals are appointed for a term of six years, which can be renewed
- EU-governments have to agree on appointments

# Court of Justice: Types of Cases

## Most common types of cases:

- **Request for a preliminary ruling:** National courts ask the Court of Justice to interpret EU law
- **Action for failure to fulfil an obligation:** Brought against government of member state for not applying EU law
- **Action for annulment:** Claim against EU law thought to violate the EU treaties or fundamental rights
- **Action for failure to act:** Claim against EU institution for failing to make decisions required of them
- **Direct actions:** Brought by individuals, companies or organisations against EU decisions or actions



## **Preliminary Ruling**

- **The national courts in each EU member State are responsible for ensuring that EU law is properly applied in that country**
- **Courts might interpret EU law in different ways**
- **If national court is in doubt about the interpretation or validity of an EU law, it may – and sometimes must – ask the Court of Justice to deliver interpretation of EU law.**

## **Proceeding for Failure to Fulfil Obligation**

- **EU Commission can start proceeding if it believes that member State is failing to fulfil its obligations under EU law**
- **Proceedings may also be started by another EU member State**
- **Court of Justice gives judgment**
- **If member State is found to be at fault, it must put things right at once**
- **If Court finds that member State has not followed its ruling, it can issue a fine**

## Direct action

- **Any person or company who has suffered damage as a result of the action or inaction of the Community or its staff can bring an action seeking compensation before the General Court**

# EUROPEAN COURT OF HUMAN RIGHTS

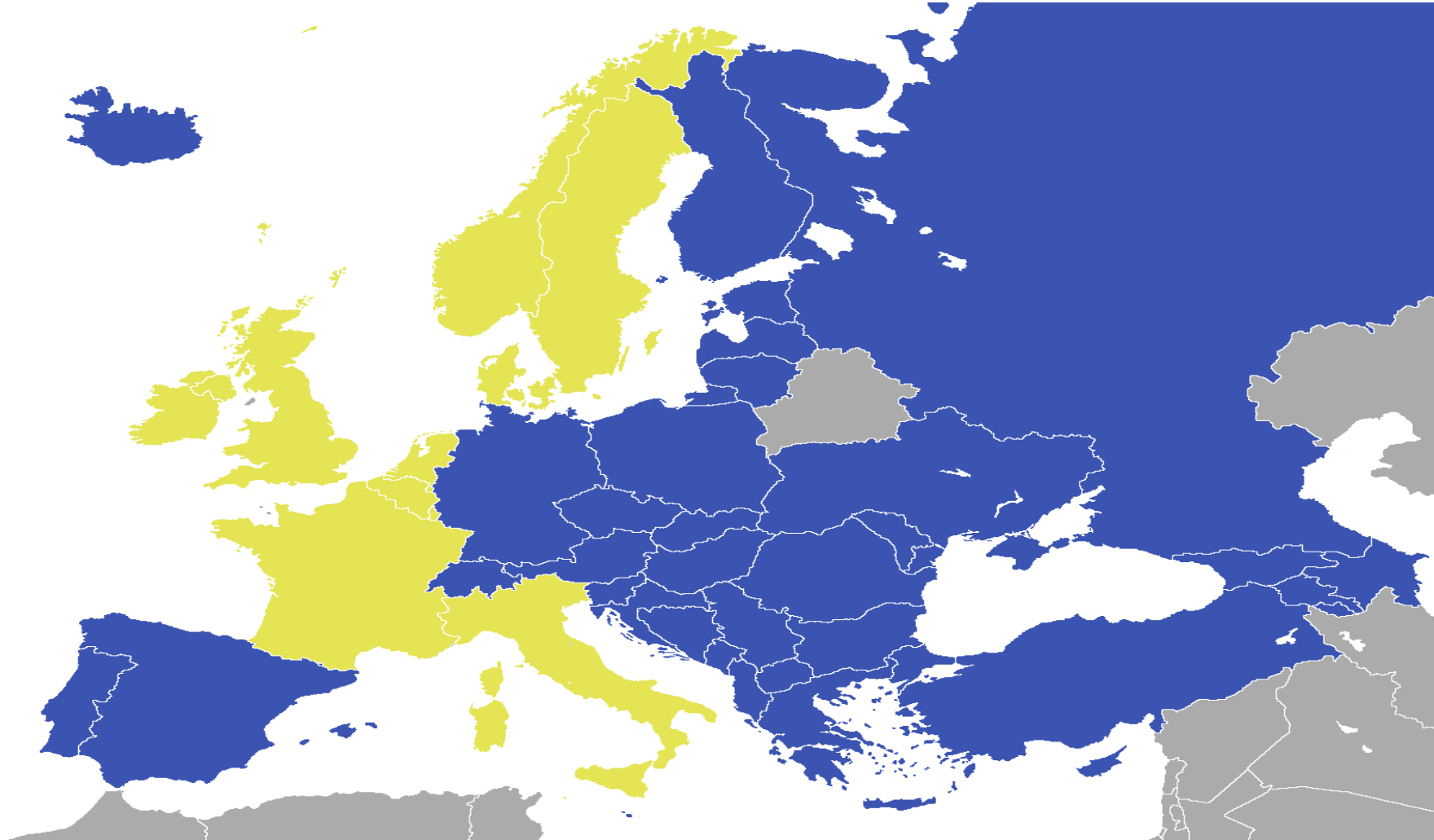
# European Court of Human Rights

- Not an institution of the European Union
- Political Framework: **Council of Europe** (International Law)
- Currently **47 Member States** and 47 judges
- Legal framework: **European Convention on Human Rights**

*Convention for the Protection of Human Rights and Fundamental Freedoms (1950)*

- In Force/Applicable: All Member States of Council of European [≠ European Union, which is much smaller]

# Council of Europe: Member States



## Proceedings before ECtHR

- **Any citizen** of 47 member States of Council of Europe as well as NGOs have:
  - statutory right to file a case with to the Court
  - when she/he feels that her/his **humanrights** under Convention have been violated
- Court deals with a case only after **all domestic remedies** have been **exhausted**
- **Judgement is binding** on State concerned which is obliged to execute it, including compensation for damages
- For **statistical data** go to:  
<http://www.echr.coe.int/Pages/home.aspx?p=reports>

**German Federal  
Constitutional Court  
(*Bundesverfassungsgericht*)**



# German Federal Constitutional Court

According to Art. 93 German Constitution CC decides, *inter alia*:

- Disagreements or doubt concerning the formal or substantive compatibility of Federal or State (*Land*) law with **Constitution**
- Disagreements or doubts concerning compatibility of law of a State with **federal law**
- Disagreements concerning the rights and duties of the Federation and the States, especially in the execution of federal law by the States and in the exercise of federal oversight

## German Federal Constitutional Court (II)

- **Disputes involving public law** between the Federation and the Länder, between different Länder, or within a Land, unless there is recourse to another court
- Constitutional complaints filed by **municipalities** on the ground that their right to **self-government** under Article 28 has been infringed by a law; in the case of infringement by a Land law, however, only if the law cannot be challenged in the constitutional court of the Land
- Complaint which may be filed by **any person** alleging that one of his fundamental rights or one of his rights under paragraph (4) of Article 20 or under Article 33, 38, 101, 103 or 104 has been infringed by public authority

## Constitutional Complaint by Citizens

- Constitutional complaint by person or other entities most important remedy before Constitutional Court in numbers and in effect
- In general Constitutional Court would only decide after **all other remedies** are **exhausted**
- **Immediate remedy** only in case of urgency while otherwise basic freedom could no longer be enjoyed (e.g. freedom of assembly)
- No equivalent to PIL, *suo moto*, or Art. 142 Indian Constitution in Germany

# **Protection of Fundamental Rights**

## **A German Perspective**

- **„Triangle“ of Fundamental Rights Protection:**
  - **German Constitution**
  - **European Convention of Human Rights (non EU-law)**
  - **EU Charter of Fundamental Rights**
  
- **Which law is applicable in national cases?**
  
- **What happens in case of conflicts of law?**

## EU Law: Conflicts of Law

- **EU Charter on Fundamental Rights** not directly applicable in national cases but binding only on organs of EU (see Art. 51)
- According to German Constitutional Court the Charter as well as ECHR represents „**common core**“ of fundamental rights in Europe
- Primary and secondary European Law might be **incompatible with German Constitution**
- According to the Federal Constitutional Court the German Constitution imposes **limits on Germany's participation in European integration**
- The Federal Constitutional Court can review whether these limits are respected, also upon complaints lodged by individual citizens  
[BVerfG 14.01.2014 on OMT; but see also diss.op.]

## ECHR and German Law

- From a strict approach of „**hierarchy of laws**“ ECHR has no precedence over German laws, because not supranational EU law but only international law being transformed into national law
- However, in case of conflict between State Law or use of Powers with ECHR, national Courts (have to) give **precedence to ECHR**, which is directly applicable by any court
- ECHR in some aspects provides for **better protection** of fundamental rights than German Constitution
- German Constitutional Court has been „**overruled**“ by ECtHR in several cases

## **More information**

**Mail:** [clemens.arzt@hwr-berlin.de](mailto:clemens.arzt@hwr-berlin.de)

**Slides:** <http://www.hwr-berlin.de/prof/clemens-arzt/lehre/>

**Information on EU:**

[http://europa.eu/index\\_en.htm](http://europa.eu/index_en.htm)

**German Law in English:**

[http://www.gesetze-im-internet.de/Teilliste\\_translations.html](http://www.gesetze-im-internet.de/Teilliste_translations.html)

**EU-Law:**

<http://eur-lex.europa.eu/en/index.htm>

<http://new.eur-lex.europa.eu/homepage.html?locale=en>

**European Court of Justice:**

[http://curia.europa.eu/jcms/jcms/Jo2\\_7024/](http://curia.europa.eu/jcms/jcms/Jo2_7024/)

**European Court of Human Rights:**

[www.echr.coe.int/Pages/home.aspx?p=home&c=](http://www.echr.coe.int/Pages/home.aspx?p=home&c=)