[DE] Binding Effect of Judgments of the European Court of Human Rights

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In a decision of 14 October 2004, the Bundesverfassungsgericht (Federal Constitutional Court) declared that judgments handed down by the European Court of Human Rights are not always binding on German courts.

The Bundesverfassungsgericht referred the case back to the Oberlandesgericht (Court of Appeal), which, it ruled, was not bound by the earlier judgment by the ECHR. International agreements were incorporated into German law by formal enactment of legislation and had the status of a federal law. German courts should therefore observe and apply the European Convention on Human Rights (ECHR) when interpreting national legislation and in particular when defining the content and scope of fundamental rights. However, the Convention and its additional protocols "were not a direct constitutional basis for a court's review".

According to the Bundesverfassungsgericht, ECHR judgments were binding, but only insofar as compliance was possible without violating the binding effect of statute and law. The extent to which judgments of the Court were to be observed depended therefore on the latitude available in domestic law. Compliance with a judgment of the ECHR must neither restrict nor reduce the protection of fundamental rights under the Basic Law. If a violation of fundamental principles of the constitution could not otherwise be averted, there was no contradiction with the aim of commitment to international law if the legislature, exceptionally, did not comply with the law established by international treaties. In particular when the relevant national law was intended to achieve an equilibrium between differing fundamental rights, the possible effects of ECHR judgments for this balanced system must be taken into account.

This decision is of particular significance in connection with the ECHR's recent "Caroline judgment" (see IRIS 2004-8: 2), where the Court found that Princess Caroline von Hannover was right to have complained about publication of photographs of her private life taken without her knowledge. One of the reasons given by the Federal Government for not appealing against the ECHR judgment was that German courts were not bound by the decision of the ECHR.

Decision of the Bundesverfassungsgericht of 14 October 2004 (Az.: 2 BvR 1481/04)

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