

Violation of the Treaty of European Union
Common Provisions Art 6-2
by the Federal Republic of Germany

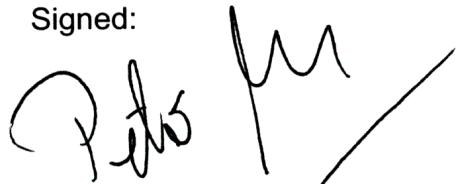
Complaint dated 23.01.2005 (7 pages)

Violation of the Treaty of the European Union

TITLE I
COMMON PROVISIONS
Article 6-2

Complaint against the Federal Republic of Germany

Signed:



(Peter Briody)

Date: 23.01.2005.

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1. Introduction

1.1 *The Decision of the Supreme Court of the Constitution 14.10.2004*

1.1.1 The German Supreme Court of the Constitution (Bundesverfassungsgericht) decided on 14.10.2004 that the decisions of the European Court of Human Rights EUCHR were not binding on German Courts. A translation in English was posted on the web site of the Court under:

http://www.bverfg.de/entscheidungen/rs20041014_2bvr148104.html

1.2 *The Nature of the Complaint*

1.2.1 The mobility of EU-Citizens inside the borders of the EU are guaranteed in the Articles of the Treaty of Maastricht. The treaty is also designed to ensure that EU-Citizens taking advantage of the accorded mobility should be able to expect that, wherever they move, a democracy to the required standards will be in place.

1.2.2 The Complainant is a male Irish Citizen with a British spouse resident in Germany who see in the unilateral declaration by the German Supreme Court of the Constitution a substantial erosion of the guarantees on his human rights in Germany. The Complainant also sees a gross violation of international treaties and standards by the Federal Republic for which he is seeking sanctions to be imposed by the EU.

1.3 *Supporting Information on real Abuses of Human Rights in Germany*

In order to demonstrate that the complaint does not just cover a hypothetical threat to human rights in the Federal Republic of Germany, supporting information - a paper called "The Silence of the LLAMS" - is available on the Internet. This shows that substantial human rights violations are indeed being perpetrated in Germany in everyday practice. The paper can be downloaded on any of the following links:

www.eucars.de/violatio/essay/violaeng.htm
www.beschwerdezentrums.de (Germany)
www.beschwerdezentrums.ch (Switzerland)

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2. An Analysis of the Decision

2.1 The meaningful Passage

- 2.2.1 The decision by the Supreme Constitutional Court of 14.10.2004 not to be bound by the decisions of the European Court of Human Rights was a formal confirmation of Germany's long-standing disregard for human rights. The summarizing lead-in statement to the decision ("Head note") is muddled and confusing both in English and German. The passage under **check mark 17** of the English text, however, contains the quintessential statement:

As a result of the status of the European Convention on Human Rights as ordinary statutory law below the level of the constitution, the ECHR was not functionally a higher-ranking court in relation to the courts of the States parties. For this reason, neither in interpreting the European Convention on Human Rights nor in interpreting national fundamental rights could domestic courts be bound by the decisions of the ECHR.

The Court is saying effectively that European Law is subordinate to German Law (in Germany presumably) and that German courts can please themselves as to whether they adhere to the decisions of the EUHCR or not.

2.3 What the Convention on Human Rights says

- 2.3.1 The European Convention on Human rights was signed by Germany on 4.11.1950. Article 46 makes abundantly clear that the decisions of the EUHCR are binding.

Article 46 – Binding force and execution of judgments

1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

The decision by the Supreme Court of the Constitution of 14.10.2004 was according to Article 46, therefore, a gross violation of the convention.

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2.4 *What the Treaty of Maastricht says*

2.4.1 The Treaty of Maastricht, TITLE I COMMON PROVISIONS Article 6-2 says:

2. The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

The only way to guarantee the *fundamental rights* of *European Convention for the Protection of Human Rights and Fundamental Freedoms* is to abide by the decisions of the European Court of Human Rights. Through violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms therefore, the Federal Republic of Germany has, also violated the Treaty of Maastricht.

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3. Concluding Statements

3.1 The Supporting Information: Misuse to Abuse

3.1.1 The most visible signs of abuses occur in the justice system, mainly because of identifiable process. The Article "The Silence of the LLAMS" reports on some sample cases, but is only unfortunately very much the tip of the iceberg. Other recorded abuses range from old traditions of attacking the right to freedom of expression, sociological ruination and the widespread misuse of psychiatry. The worst cases occur through an aggregate abuse of Administration, Justice as well as banking and commerce. The latter modes - full scale persecution in effect - are far worse than all the old traditions of physical abuse put together.

3.2 The Effects on Union Citizens

3.2.1 The Treaty of Maastricht with its articles of freedom of movement within the EU together with guarantees on human rights imply that each citizen seeking employment or residence in an EU country other than his or her own should expect to find democratic and justice standards matching those of the EU in his country of choice. These guarantees are not now given in the Federal Republic of Germany, mainly because of its unilateral abrogation of its international treaty obligations, as discussed above.

3.3 Sanctions

3.3.1 The decision by the Supreme Court of the Constitution was effectively a tangible "Outing" of Germany's long standing but well-camouflaged contempt for and violations of human rights. This enables the complainant to make the case against Germany without the need for long arguments or having to turn over long litanies of case documentation and other evidence to the EU-Commission.

3.3.2 Germany's violation of the European Convention for Human Rights and Basic Freedoms as well as the treaty of Maastricht make it unsuitable for continued full membership of the EU. In particular Germany should not be allowed to represent the EU in foreign policy or especially in international committees where human rights are at issue. Possibly the model proposed by the parliamentary opposition (CDU/CSU) for Turkey, i.e. privileged partnership instead of full membership may be of interest. Whatever really is judged to be appropriate in the end, at the very least swingeing sanctions against Germany for its live abuses of human rights is long overdue.

3.2.1 The Complainant further requests the EU-Commission to report Germany to the OSCE with a view to expelling it from the Council of Europe, because membership in this body is tied to the observance of the European Convention for Human Rights

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and the decisions of the EUCHR. Article 58-3 of the Convention establishes this dependency:

Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to this Convention under the same conditions

The principle of dependency being a two-way entity, means that Germany has effectively expelled itself from the Council of Europe. It only remains to formally implement this as soon as possible.