

## **Jan Martin Hoffmann**

Die Europäische Menschenrechtskonvention und nationales Recht

Ein Vergleich der Wirkungsweise in den Rechtsordnungen des Vereinigten Königreichs und der Bundesrepublik Deutschland

The European Convention on Human Rights is the most successful instrument of protection of human rights on the regional level. In particular the establishment of the European Court of Human Rights in Strasbourg enhanced the effectivity of this instrument. However, the system is currently under growing pressure due to the continuous accession of new Contracting States; as a result the number of potential applicants has risen to 800 billion.

Different concepts of reform are being debated to alleviate this pressure. In contrast to most of these the present work concentrates on the implementation of the convention provisions at the national level as an effective implementation will dispose potential applicants of the need to have recourse to the Strasbourg court. The measures taken by the authorities of the United Kingdom and Germany are being examined respectively and compared. Since the constitutional systems of both states differ significantly this comparison is of special interest.

The implementation of the Rights of the European Convention on Human Rights by the respective legislature is being considered, but above all, the reception of the judgments of the European Court of Human Rights, which specify the Convention provisions on international level. Of prominent importance is the latter aspect, because the interpretation of the Court is what allows national authorities to apply the convention to concrete cases. Although the jurisprudence of the court is not generally binding the British and German institutions will follow it in all but very exceptional circumstances. In the United Kingdom this results to the fact that the Strasbourg interpretation is the maximum or the ceiling of human rights protection, whilst in Germany the Convention rights merely work in addition to the basic rights of the Basic Law so that a greater protection is possible and the general rule.

With regard to the consequences of a judicially established violation of the Convention, further fundamental differences show: the British judges cannot declare an Act of Parliament null and void but only its incompatibility with the Convention rights. It is up to Parliament to change or abolish the law. This deficit is mitigated by the possibility of a very broad interpretation of statutes that is not bound by the literal meaning of the words used.

Such a broad interpretation is not available to the German courts. However, the Federal Constitutional Court can declare statutes to be void. Obviously, the statute will be measured against the basic rights of the Basic Law, but as these have to be interpreted according to the Convention rights and their interpretation by the European Court of Human Rights the Convention rights are bestowed an indirect constitutional rank.

Overall, the study shows that by a Convention-compliant interpretation of national law, the provisions of the Convention can be carefully but efficiently implemented in a national legal system. Accordingly, a consistent application of the Convention rights will help decrease the number of applications to the Strasbourg court and thereby facilitate the functioning of the Convention system.