

Federal Constitutional Court Issues Decisions Protecting the Professional Freedom of Former East German Judges.

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[1] The Second Chamber of the First Senate of the Federal Constitutional Court (FCC) issued decisions in two Constitutional Complaint proceedings brought by former criminal court judges of the German Democratic Republic (GDR) who had been denied the right to take up practice as, respectively, an attorney and attorney-notary in the reunified Federal Republic of Germany (FRG). The complainant in 1 BvR 514/97 had served as a judge in the former-East Germany from 1974 until as late as 1991 during which time he participated in issuing judgments against GDR citizens for political crimes; acts for which he was indicted but ultimately not prosecuted in the reunited FRG. He was denied the right to practice law after applications in 1991 (by the administrative authorities) and 1993 (by court reversal of the approval granted by the administrative authorities). The complainant in 1 BvR 661/96 had served as a judge in the GDR from 1980 to 1990 and as criminal court judge during the years 1985 to 1988. She was administratively granted the right to practice as an attorney-notary in the reunited FRG but prohibited from taking office by the courts.

[2] The Second Chamber ruled in favor of both complainants, concluding that the prohibitions on the right to practice imposed on the complainants conflicted with the right to occupational and professional freedom guaranteed by Article 12.1 of the Basic Law which states "All Germans shall have the right to choose freely their occupation or profession, their place of work, and their place of training." The Second Chamber ruled that, without further, specific responsibility for human rights violations, mere service as a criminal court judge in the GDR is not enough to disqualify one from the legal profession in the reunited FRG. The Second Chamber distinguished such service from service to the GDR's state security apparatus (STASI) which itself mostly operated outside the bounds of GDR law. A criminal court judge, like the complainants, likely only operated within the bounds of GDR law. The Second Chamber also concluded that, following a necessary case by case analysis (including a detailed examination of the nature, severity and explanations for specific judgments rendered by the complainants during their tenure as judges in the GDR), neither complainant was guilty of (1) violating a fundamental protective norm or (2) failing to act although they could have foreseen such a violation in the future. Finally, the Second Chamber found that the reunification laws did not require generalized scrutiny of the GDR's judges although those laws could have flagged such service as problematic.

For More Information:

The decisions of the FCC are normally published on the Internet at: www.bundesverfassungsgericht.de

The German Basic Law is published on the web in English under the "Statutes" section of <http://juscomp.org/gla>