

**Translation and dissemination of the Strasbourg case-law**

**- The German language experience -**

by **Norbert Paul Engel**, Founder and Publisher of  
Europäische Grundrechte-Zeitschrift (EuGRZ, since 1974);  
[European journal on fundamental rights]  
Human Rights Law Journal (HRLJ, since 1980);  
Revue universelle des droits de l'homme (RUDH, since 1989)

##Dear friends, first of all, I would like to thank the organizers of this event for their kind invitation to give some details about the German language experience in view of the judgments and decisions of the European Court of Human Rights.

##We went to the start, my wife Erika and I, in 1974 with Europäische Grundrechte-Zeitschrift. The driving idea was to juxtapose the judicial protection of fundamental rights enshrined in the European Convention on Human Rights as well as in other international instruments next to the protection of fundamental rights enshrined in different national constitutions. We consider our three journals and over hundred books published in this field mainly serving the dialog of institutions - national and international courts in a comparative way. That is the reason why we have initiated, revised and published since 1974 several hundred translations of judgments of the European Court and decisions of the European Commission of Human Rights in Europäische Grundrechte-Zeitschrift.

##Before giving a chronological overview of the development of German translations let me underline one thought. The fundamental rights of the European Convention are in substance the same as those of national constitutions. This was not common knowledge in the 1970s. And there was a real risk that the Convention and the Strasbourg case-law remain "totes Recht" (dead law). Europäische Grundrechte-Zeitschrift was aiming at preventing that risk. In a certain way - if you allow me to use this expression - we opened the road for German speaking judges, lawyers, civil servants in state administrations and academics to the Strasbourg case-law. And they used it.

##Our translations were made by University assistants, young professors or lawyers in national courts or public administrations, not to forget some members of the legal staff in the secretariat of the Commission and in the registry of the Court. When revising these texts our main concern was to bring them as close as possible to the terminology of constitutional law or to find adequate solutions. One example is the term of "margin of appreciation" for which we decided to use in German: "Beurteilungsspielraum" - not to be confounded with „Ermessen“ wich is discretion.

##[By the way: When you think that there would be one uniform legal language in the three main German speaking countries as Austria, Switzerland and Germany you would be heavily

mistaken. We often were obliged to seek the advice from leading specialists.

##Now, the chronology: When the case-law of the Court was easily to overlook, the Court had a budget to pay for translations to the language in which the case originated. The registry chose a lawyer-translator and then asked the judge coming from the respective country to make the revision of the translation. Between 1968 and 1991 there are 19 registry translations concerning Austrian cases, 4 concerning Swiss cases and 14 concerning German cases.

##The website of the Ministry of Justice in Berlin indicates that they provided since the year 2000 altogether 380 unofficial translations of judgments and decisions in German cases. They are on the internet and may serve for orientation. When using them for publication we make an editorial revision. The same do Herbert Petzold and Jens Meyer-Ladewig for their translations published in *Neue Juristische Wochenschrift*.

##Now I would like to draw your attention to a landmark Collection of Judgments of the Court in German language. This collection starts with the very first judgments in the Lawless case of November 1960, April and July 1961. The German title of the Collection reads: *Europäischer Gerichtshof für Menschenrechte / Deutschsprachige Sammlung, Abbreviation: EGMR-E*. The „-E“ at the end stands for *Entscheidungen*.

##This was made possible and funded for the major part by the German government, for a substantive part by the Swiss

government and for some part by the government of Liechtenstein. The publication in three versions is realised by our publishing house (N.P. Engel Verlag in Kehl): first: printed book (68,- Euro per volume), second, electronic version (44,- Euro per CD) and third, internet-version (free access on the website of Europäische Grundrechte-Zeitschrift, [www.EuGRZ.info](http://www.EuGRZ.info)).

##These translations were made by lawyers in a first step and then in a second step revised by lawyers. We followed this professional practice applied by the translation service of the Court of Justice of the European Union. Our concern is that the translations of the Strasbourg case-law are on the same linguistic level as the official translations of the Court of Justice of the European Union in Luxembourg. This should contribute to the respect of Strasbourg case-law by national constitutional and supreme courts which work in German language. So far for reliable translations.

##To date 4 volumes have seen the light of the day. In other words more than 2,500 printed pages. Volumes 1 to 3 include all judgments delivered by the Court between 1960 and 1987. 160 by number. Volume 4 contains 33 selected judgments delivered in 1988 and 1989. Further volumes are under preparation covering the case-law from 1990 onwards.

##Next question: How to gain trust and authority for translations. At the beginning we published both the authentic version of the judgment (French or English) and the German

translation on the same page - left column: authentic text of the Court, right column: the translation of the journal. After a certain time, when the journal has proven to be reliable, it was no longer necessary to reproduce the authentic text as well.

##Following question in the program of this event: How to give authority to translations? We tried always to interest authors who have proven their professional standards. Let's take some examples published in the year of 1996 in our German language journal: There you can find *inter alia* judgments in the following cases • Amuur vs. France (treatment of asylum seekers in airport transit zone), translation and comment (pp. 569, 577) by *Juliane Kokott*, then Professor at the University in Düsseldorf, now Advocate General on the Court of Justice of the EU in her third renewed six year term [not to forget, in her conclusion she was in favour of the accession of the EU to the Convention]; • case of John Murray vs. UK (the right to remain silent under police questioning) translation and comment (pp. 571, 587) by *Hans-Heiner Kühne*, Professor at the University in Trier; • case of A. and others vs. Danmark (unlawful length of proceedings in a case seeking reparation for aids-infected blood transfusions in a hospital), translation (p. 192) by *Rainer Hofmann*, then professor at the University of Cologne; • markt intern Verlag vs. Germany (protection of the reputation of others prevails freedom of expression), translation and comment (p. 293, 302) by

*Christian Callies*, then assistant at the University in Saarbrücken, today professor in Berlin (Freie Universität) and one of the leading commentators of the EU law; • case of *Hentrich vs. France* (peaceful enjoyment of possessions, pre-emption by revenue), translation (pp. 593, 602) by *Beate Rudolf*, then assistant at the University in Düsseldorf, today Director of the German Institute for Human Rights in Berlin.

## These are just some examples for answering the question: "how to give authority to translations?" In other words: By finding best qualified authors. Those mentioned are *pars pro toto* for many others who contributed over the last 40 years.

##By way of conclusion, I would like to express our ever lasting gratitude to all the authors and members of the editorial advisory board who shared our enthusiasm for the judicial protection of fundamental rights. The success of our initiative would not have been possible, the financial risk would have been in vain without their active (and *pro bono*) help. Take this as a contribution to make sure that not only the Convention but also the Court's case-law will continue to be a *Living instrument*.

Thank you, for your attention.