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Federal Constitutional Court voids the German UPCA Ratification Law

Thorsten Bausch (Hoffmann Eitle) · Friday, March 20th, 2020

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The Federal Constitutional Court (FCC) issued its long-awaited decision in the case 2 BvR 739/17 on the constitutional appeal of Dr. Stjerna about the compatibility of the German ratification law for the Agreement on a Unified Patent Court (UPCA) with the German Basic Law (BL) this morning. It declared the German Ratification Law as unconstitutional and void.

The decision was issued by the full 2nd Senate of the FCC and can be found [here](#) (in German)

The constitutional appeal was successful, because the ratification law was not signed by the requisite 2/3 majority of the “members of the Bundestag”. While the Bundestag’s decision was unanimous, only about 35-38 MPs were present when it came to the final vote.

The FCC held the constitutional appeal admissible only to the extent that it related to the (alleged) violation of complainant’s rights under Article 38(1), first sentence, BL in conjunction with Article 20(1) and (2) BL, and Article 79(3) BL by violation of the requirement of a qualified (i.e. 2/3) majority for the UPCA ratification law under Article 23(1), third sentence, in conjunction with Article 79(2) BL. Otherwise the complaint was held inadmissible.

This is significant because it allows the Bundestag, at least in theory, to repeat the vote and pass the ratification bill in an orderly and constitutional process. This, however, is extremely unlikely to happen, since the UPCA will have to be amended anyway to take the developments in the UK and the UK’s intended farewell from the Unified Patent Court Agreement into full account. It will therefore take some (!) time before a ratification bill will again be presented to the Bundestag.

However, this decision also means that at least the FCC will most likely not establish unsurmountable hurdles against the establishment of the UPCA. Negotiations about the future shape of the UPCA can therefore be started or resumed without a further sword of Damocles hanging above the negotiators’ heads.

The key reasons expressed in the decision can be found [here](#) in English, and I would direct readers there for more information. Interestingly, the decision was not uncontroversial and three of the eight judges issued a dissenting opinion, which is also summarized in the helpful English press release by the FCC.

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