

The banana litigation decision, German Federal Constitutional Court, decision of 7 June 2000; case number: 2 BvL 1/97, EuZW, (2000) 702, with annotation by Mayer on 685

The claimants of this case were German importers of bananas from Latin America. Their quotas for import licences were reduced since the 1993 EC Council Regulation favours so-called "ACP Bananas" originating from those African, Caribbean and Pacific countries that have long-lasting ties with some countries within the Community. The German Administrative Court in Frankfurt/ Main referred a case to the Constitutional Court arguing that there is a complete lack of transitory measures for the benefit of importers of bananas from Latin America, the interference with their right to free profession and their right to property were not only disproportionate and discriminatory but also fell below the level of indispensable human rights protection guaranteed by the German constitution. The Constitutional Court, four years later, decided that the referral was inadmissible. Following an overview on its jurisprudence as to the justiciability of secondary European law, it emphasised that in *Solange II* and in *Maastricht* it had declared itself satisfied that human rights protection within the Community legal order as developed by the ECJ was generally assured and essentially comparable to the level of human rights protection under the German Basic Law. Therefore, court referrals under Art. 100 (1) of the Basic Law and constitutional complaints attacking secondary Community law on the basis of German fundamental rights were "ab initio" inadmissible, if they did not maintain that the level of European human rights protection including the case law of the ECJ after *Solange II*, fell below the necessary level.