

Alcan, German Federal Constitutional Court, decision of 17 February 2000, case number: 1 BvR 1210/98, EuZW, (2000) 445, with annotation by Vögler on 447.

In two recent decisions, the German Bundesverfassungsgericht has further elaborated on the relationship between EC law and German constitutional law. The Alcan decision* concerns the review by the German Constitutional Court of European acts alleged to be ultra vires, including judgements of the European Court of Justice. The "banana litigation" decision addresses the question under what circumstances a national court may refer a case to the Constitutional Court arguing that European legislation infringes German fundamental rights. Both cases clarify controversial issues arising from the famous Maastricht decision, with a tendency to reduce potential conflicts between German constitutional law and European law and thus calming possible tensions between their respective guardians.

In a decision previous to the Alcan case, the German Federal Court of Administration (BVerwG) referred the case to the European Court of Justice which decided, inter alia, that the national authorities are bound by Community law to order the repayment of illegally gained subsidies even where the deadline under national law has expired (Case C 24/95, Alcan II, [1997] ECR I-1591). Alcan introduced a constitutional complaint against this decision. It maintained that its right to property (Art. 14 Grundgesetz) and its right to freedom (Art. 2 Grundgesetz) had been violated. According to its arguments, the decision of the ECJ was in contravention of the constitutional principle of legitimate expectations and could therefore not serve as a reason to restrict its freedom. Alcan pleaded that the ECJ had exceeded its limits of jurisdiction by creating far-reaching procedural laws and that his sort of judge-made law could be ignored in Germany as it was not part of the German ratification Act to the EC Treaty. The German Federal Constitutional Court decided not to deal with the substance of the constitutional complaint. It ruled that there were no fundamental questions involved which had not yet been decided upon and that the complaint was inadmissible regarding the claims of infringements of fundamental rights as weighing competing interests leads to giving priority to the restoration of national and European legal order. Besides, the Bundesverfassungsgericht held that the question of an "ultra vires" act in the sense of the Maastricht judgement did not arise. In its view, the ruling of the Court of Justice only served the enforcement of the Commission's competence under Article 88 (2) EC to order the repayment of illegal subsidies. ·