opinion

by the German Bar Association
the Constitutional Law Committee and the
Committee Intellectual Property

to the constitutional complaint
of Mr. S. (2 BvR 739/17)

Opinion No .: 3/2018 Berlin, January 2018

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The German Bar Association (DAV) is the voluntary association of the German
Lawyers. The DAV currently has around 65,000 members
represents the interests of German attorneys at national, European and national level
international level.

A. Summary

The constitutional complaint is directed against that of the Bundestag and Bundesrat
adopted *law on the Convention of 19 February 2013 on a*
United Patent Court ('the *Law* on Contracts'), by which the 25
Member States of the European Union (without the participation of the European Union
self-signed Convention on a Unified Patent Court (EPC)
nationally. The violation of the
same-sex law from Article 38 (1) sentence 1, Article 20 (1) and (2) i. V. m.
Art. 79 (3) Basic Law due to various alleged violations of the German law
Constitutional identity.

The German Bar Association considers the constitutional complaint inadmissible, at least
but for unfounded.

Admittedly, the fundamental rights equalized by the complainant as infringed
Right under Art. 38 para. 1 sentence 1 i. V. m. Art. 20 para. 1, 2 and 3 GG the implementation
a constitutional identity check on the scale of Art. 79 (3) Basic Law. It
speaks also a lot for that this identity control not only on the
Transfer of competences of the legislature, especially German
Bundestag but also to the transfer of any public authority
to supranational organizations that are so far in the constitutionally by
Article 79 (3) GG guaranteed core contents of the German constitutional order and
not only on the principle of democracy, but also on the rule of law
must be measured.

However, the BVerfG examines this within the scope of such identity checks
only violations of the core contents protected by Art. 79 (3) Basic Law
the German constitutional order. Therefore, not every "simple"
Constitutional violation of a suitably justified constitutional complaint concerning

Help success. In particular, it is contrary to the complainant's view
does not require that the EPC in any respect with German constitutional law
and in conformity with Union law. The Federal Constitutional Court has therefore

in the present proceedings exclusively to assess whether an infringement of the EPC Article 79 (3) Basic Law. It can not be any democratic or

constitutional deficit equated to a violation of Article 79 (3) of the Basic Law

become. For Article 79 (3) Basic Law prohibits only a "touch" of the mentioned there

Principles, ie their principle disclosure.

The rules of the EPC acting on the constitutional complaint leave one

such principled abandonment of the democratic and / or the rule of law principle not

recognize.

B. Facts

More specifically, the constitutional complaint is based on the following facts:

I. The EPC as an international agreement without direct or

indirect participation of the European Union

The establishment of an international court for European patents with or without

uniform impact is central to the European patent system. The

Unified Patent Court (EPG) spares it the patent owner who is against infringers

and competitors who are wrongly granted a European patent

want to revoke legal disputes in various Contracting States of the

European Patent Convention (EPC). The project brings Europe,

as far as the judicial enforcement is concerned (decentralized entry levels, central

Court of Appeals), at the same level as the main international competitors,

namely USA, Japan, South Korea, China. The German Bar Association has therefore

through its Intellectual Property Committee, plans to establish a

EPG supported from the beginning.

1. The EPC is an international (international) agreement without

   direct or indirect participation of the European Union (EU). The

   participating States already with the European Union

   Patent Convention (EPC), the grant of a European patent (EP) in the

   Central European Patent Office (EPO) also lay down with the EPC

   their national jurisdiction regarding the violation and annihilation

   European patents for reasons of rationalization together: So far must

   the national patent courts on the existence of the same EP

   uniform rules in relation to the same state of the art and in the

   Infringement proceedings on the same type of infringement according to uniform rules

   decide on the scope of protection. Under the EPC, they will now be replaced by

a single patent court that replaces this *identical* matter
should decide *centrally* . So it is - as in the creation of the

European Patent Office - an international rationalization measure.

2. The EPC is a sub-agreement to the EPC, on the basis of which the

European Patent Office for the Contracting States to the EPC (EPC-VS) European

Patents whose legal effects are determined in each Contracting State by its

national law. The EP is therefore simplified also as a "bundle

The authorization to conclude this patent

Sub-agreements which, in relation to the entirety of the EPC-VS (including the

Switzerland and Turkey are EPC-VS) was required in Art. 149a para. 1 No. 1

EPC included. The provision is worded as follows:

> *"This Convention leaves the right of all or some*
>
> *States Parties, special agreements on all*
>
> *European patent applications or patents issues*
>
> *to conclude, under this Convention, national law*
>
> *are governed and regulated there, in particular*
>
> *(a) an agreement on the establishment of a common organization*
>
> *European Patent Court for its members*
>
> *Contracting States.* "

The history confirms that the EPCU is a pure

international agreement of EPC-VS without EU involvement.

The predecessor of the EPC is the Community Patent Convention (CPC) with

his Protocol on Dispute Settlement, as an international agreement

was planned, but lacking a sufficient number of ratifications

Force has entered. In 2004, an attempt by the European Commission failed

Specialized court below the ECJ and the EU court on the basis of the

to create today's Art. 262 TFEU.

At the same time, as of 2000, part of the EPC-VS was initiated by France

together to create a so-called European treaty

Patent litigation (European Patent Litigation Agreement, EPLA) at the level

of international law, without the participation of the European Union.

This initiative was taken up by the EU Commission in 2007 and developed with the

EPC-VS concerned the first draft of an EPC, in which the

Member should be involved.

Following the presentation of the C-1/09 opinion of the European Court of Justice, the EPC-VS,

the structure of the EPLA as a purely international treaty without the participation of the EU to return. The result is the EPC, as it is today, historically

seen a revised EPLA, so a purely international contract without

Participation of the EU in creating a common court of the participating countries

EPC-VS (Article 149a EPC).

3. The EPC was signed by 25 EPC-VS on 19 February 2013, namely

by ministers or substitutes responsible under national law, for

Germany by the Federal Minister of Justice. It is one of the rules of the

Vienna Convention on Contract Law (WVRK) closed international

Convention, the interpretation and the existence of which are governed by the rules of

WVRK judges.

4. Essentially the same group of EPC-VS, authorized by the

Art. 149a EPC (unified court) has made use of on the

Based on Art. 142 (1) EPC, the legal consequences of granting the EP to it

Territory unified. This unification is how the creation of the

Art. 142 (1) EPC

but in the form of a regulation (see below). The rule has

the following wording:

"(1) A group of Contracting States which are members of a special

Convention has determined that those granted to those States

European patents for all their territories

can provide that European patents are only for

all these states can be issued together. "

With this agreement, only the first relative clause was realized

part of the provision that specifies a group of Contracting States

has that the European patents granted to these states for the whole

their territories are uniform. Was not realized in the provision

included possibility to provide that EP only for all these states

can be issued jointly.

The realization of only the first part of the provision means that the

Unification did not take place in the grant procedure, ie at the time of the

EP is implemented by the EPO so that

Grant procedure at the request of the patent proprietor. In other words:

The international standardization (Art 142 EPC) is limited to

EP granted by the EPO and, following the award of the

Patentee. Thus, initially a bundle of national patent rights is created (as in an EP where a request for harmonization is not made),

in which, however, if the request for unification is granted,

retroactively the international legal legal consequences of standardization

occur (EP with unitary effect, EPeW). The EPO is in the

Unification included because the Office's request for unification

answers.

For this task of the EPO special organs are formed within the EPO.

Relevant for this is Art. 143 EPC, which has the following wording:

"(1) The group of Contracting States may become a member of the European

Patent Office transferred additional tasks.

(2) For the implementation of the additional requirements referred to in paragraph 1

Tasks may be specific to the European Patent Office, the

States of the group.

The management of these special bodies is the responsibility of the President of the

European Patent Office; Article 10 (2) and (3)

apply accordingly. "

5. The two regulations establishing a European patent with

uniform effect (EPatVO and EPatSprachenVO) define themselves as

Agreements within the meaning of Art. 142 EPC. For instance, Article 1 (2) EPATVO states:

'(2) This Regulation establishes a specific Convention in

Meaning of Art. 142 of the Convention on the Grant

European patents of 5 October 1973, amended on 17

December 1991 and on 29 November 2000 ('the EPC'),

represents. "

The agreement of the EPC-VS in the Council of the EU on the basis of Art. 142 EPC

in the form of a regulation is within the meaning of the Vienna Convention Convention

a contract. Art. 2 para. 1 lit. a WVRK is worded as follows:

"(1) For the purposes of this Convention

a) "Contract" means a written agreement concluded by the

International law certain international agreement between states,

regardless of whether they are in one or more related

Documents and which special name she has ".

Legally, the solution found is to be understood as meaning that the EU international legal consequences of the agreement in the form of a Regulation has also been raised to the level of EU law. The uniform Effect according to the EPatVO therefore has a double legal character: An international legal and a European Union law character. In the EPatVO (and the parallel EPatVlanguageVO) are accordingly two to distinguish between different aspects: the agreement of the EPC-VS in the Meaning of Art. 142 EPC and the additional illustration of the legal consequences in Union law by the EU legislator. It is figurative spoken, a "Janus-headed structure".

Another solution was not legally possible because it was the one from the EPO is an intellectual property right governed by international law, which can only be to standardize the means of international law in its effects

was (Convention under Art. 142 EPC), in addition to which then the Union one European Union law has the same content.

6. The ECJ has this construction in its judgment Spain against parliament (Judgment of 5 May 2015, C-146/13) approved and executed:

> *'[28] It is common ground that the contested regulation was adopted after its Article 1 is a special agreement within the meaning of Article 142 ("Uniform Patents") EPC. From this provision results itself that the Contracting States of such a Convention determine that the Europeans issued for these states Patents are uniform for the whole of their territories and In addition, European patents can only be all these states can be issued together.*
>
> *[29] To that end, the contested regulation creates the legal prerequisites by which one was previously established by the EPO the basis of the provisions of the EPC granted in the territory of the Member States which are unified can be. The seventh recital in the preamble to the contested decision Regulation clarifies in that regard that the uniform protection, which strictly accessory nature, should be achieved "by European patents after grant in accordance with this Regulation and uniform effect for all participating Member States is granted ". As is expressly stated in Article 2 (b)*

and c of this Regulation,
is an EPEW [Note: European patent with uniform
Effect] is a European patent, that is to say a patent issued by the
EPO is granted in accordance with the rules and procedures of the EPC and
uniform effect in the participating Member States.

[30] Accordingly, the subject-matter of the contested regulation is not
even partially laying down the conditions for the
Granting of European patents - these are not in EU law,
but only in the EPC - and it does not "integrate" that

the procedure for the grant of European patents provided for in the EPC
into EU law.

[31] From the classification of the contested regulation as
"Special agreement within the meaning of Article 142 EPC", adopted by the
Kingdom of Spain is not questioned, rather results
inevitably, that this Regulation merely provides for the
Conditions under which one was previously sought by the EPO
application of the European patent granted under the EPC
its holder can be granted uniform effect and
others defined this unified effect.

[32] It follows, as the Advocate General in Rn. 61 of his
Opinion (Bot, ECLI: EU: C: 2014: 2380) has stated that
the first plea, by which the lawfulness of the grant
of a European patent
Administrative procedure with regard to EU law
is to be made, goes nowhere and must therefore be rejected. "

Also, the provision of Art. 18 EPatVO that the VO only with the entry into force of the EPC has been affected by the ECJ in the judgment cited (paragraph 105 et seq.) was declared compatible with EU law, because only the EPG for EP with unitary effect (EPEW). This link changes nothing in the international legal character of the agreement of the EPC-VS under Art. 142 EPC, which underlies the EPatVO.

The ECJ also explicitly stated in the said judgment that he was responsible for a review of the EPC in the context of Spain's application for annulment responsible is. He stated:

"[100] First, it should be noted that with the first two parts

of the sixth plea, on the one hand, that:

the provisions of the EPC Agreement with EU law

are incompatible and, second, that the participants

Member States can not ratify the EPC Agreement,

without violating their obligations under EU law.

[101] It should be pointed out that the ECJ is part of a

The action brought under Article 263 TFEU under Article TFEU for the

Decision on the lawfulness of one of the Member States

international agreement.

[102] In the context of such an action, the EU judicature is also

not for the decision on the legality of a measure

responsible, which was taken by a national authority (see idS

ECJ, ECLI: EU: C: 2014: 2229 Rn 48 mwN - Liivimaa Lihaveis [Rs.

EUGH C-562/12]). "

The ECJ therefore has not expressly stated that the compatibility of the

EPC decided with EU law. He would have the same effect

of the EPC and of the EPO, but not as compatible with EU law

if he had reservations about the EPC. Advocate General *Bot*

had in the said proceedings C-146/13 (in paragraph 179 of its opinion)

even a commitment of the participating EU Member States (EU MS) to

Ratification of the EPC from the principle of sincere cooperation in accordance with

Art. 4 para. 3 TEU, because the EPatVO only with the ratification of the EPC

takes effect. Obviously he did not have any reservations about that either

Compatibility of the EPC with EU law.

7. Overall, it is apparent from the observations of the ECJ in that judgment,

that the parallel settlement of the effects of the EPC-VS agreement

Article 142 EPC does not affect the nature of that agreement in European Union law

of a contract of international law within the meaning of Art. 2 WVRK.

This parallel rule does not bring the EPCU close to EU law

moved. For EPEW (a right under international law) is the EPG

on the basis of an international agreement (EPC). it

Nothing changes by the fact that the effects of the EPEW are out of EU law

in addition to its international legal character, an EU law

Received character. The EPC therefore remains fully within the framework of the

international law and does not come close to EU law. That this

EPG also decides on EP with uniform effect, it does not matter either
to a court close to the EU, such as the national

Trademarks to EU-friendly courts are when they are about EU brands
(as well as the EU design or EU
Plant variety protection courts designated German courts; Regulation (EU) No
2017/1001 of the European Parliament and of the Council of 14 June 2017 on
the European Union trade mark, OJ L 154, 1; Council Regulation (EC) No 6/2002 of 12
December 2001 on the Community design, OJ. L 3, 1;
Council Regulation (EC) No 2100/94 of 27 July 1994 on the
Community Plant Variety Rights, OJ, L 227, 1).

8. To sum up, it can be stated that both to the Convention of the
EPC-VS pursuant to Art. 149a EPC (Joint Court) and to the
Convention of the EPC-VS under Article 142 EPC (unitary effect of the EP)
The EU has merely "appended" by (1) not hesitating
has ruled that the EPG decides on EPeW and (2) the
Convention under Article 142 EPC (uniform effect of the EP) also applies to
Level of EU law.

However, from the point of view of Article 23 (1) (3) of the Basic Law
The legal character of both EPC agreements has not changed. A *proximity ratio*
of the EPC to EU law within the meaning of the practice of the Federal Constitutional Court
there *is no* such rule (for more details see below, see VII.

II. The subject of the constitutional complaint

In constitutional terms, the constitutional complaint alleges a violation of the
Equivalent to fundamental rights arising from Article 38 (1) sentence 1, Article 20 (1) and (2) i. V. m.
Art. 79 (3) Basic Law due to various violations of the German law
Constitutional identity. In support of the alleged constitutional violation
The complainant relies in essence on the following legal aspects:

The EPGÜ violated various aspects of *EU law* (and others)
Violation of the principles of autonomy of EU law and of completeness
the system of remedies, lack of competence of the Member States,
Legal protection deficits). These infringements of European Union law affected the constitutional identity
of the Federal Republic of Germany, because sovereign rights only in the context of applicable
Constitution should be transferred and it is necessary that a

Transfer of sovereignty is lawful from all conceivable points of view. The
Therefore, in the context of the
constitutional identity check - including one
Preliminary ruling procedure before the European Court of Justice
become.

A violation of the *constitutional identity of* the Basic Law lies further in this respect
before, as the contract law despite the breakthrough caused by the
Jurisdiction of the Federation and the Länder (Article 92 of the Basic Law) is not the same as that under Article 23 (1)
Sentence 3 i. V. m. Art. 79 sec. 2 GG required constitutional majority
had been decided.

In addition, the procedure of selection and appointment of *judges of* the
United Patent Court and its legal status for various reasons
against the constitutional identity of the Basic Law.

Finally, a violation of identity is also related to the intended
Rules of *Procedure of* the Unified Patent Court and with the prospect
given rules for *reimbursement* .

C. Constitutional appraisal

The German Bar Association considers that the constitutional complaint
with regard to the appointment and dismissal of the complainant
Judge of the EPG unfounded, if not already inadmissible.

I. Inadmissibility of the complaint alleging infringement of EU law

The constitutional complaint is already inadmissible, as far as it asserts, that
EPC infringes EU law. The constitutional complaint is not a legal remedy
to check the compatibility of German law with *Union law* . A
In principle, infringement of EU law can not be compatible with the
Constitutional complaint be reprimanded. Justification has that
Federal Constitutional Court stated:

> "*Since EU law has only one application, no*
> *Validity takes precedence over national law*

Infringement of EU law under German law neither without
further a violation of the Basic Law,
nor does it lead to the nullity of the national legislation. Enough
they comply with national legislation
areas of fundamental protection effectively restrictive
Law even if it violates EU law (...).
Something else does not follow from the principle of
European friendliness (...). Although committed to the principle of
European friendliness of the Basic Law German authorities also
constitutionally to comply with EU law (...). This
does not, however, lead to the fact that EU law itself is
constitutional scale would. His validity and
Application in Germany is based (...) rather on the
the Assent Act to the Treaties
Right application command, which itself no
Constitutional quality. This can not be resorted to
be transferred to the principle of European friendliness. "
(BVerfG v. 4.11.2015 2 BvR 282/13, NJW 2016, 1436, No. 19-
21).

II. Inadmissibility of the complaint alleging infringement of Article 23 (1), third sentence, Basic Law

The constitutional complaint is also inadmissible insofar as it infringes Article 23
Para. 1 sentence 3 GG. A possible breach of the requirement of
qualified majority pursuant to Art. 23 para. 1 sentence 3 i. V. m. Article 79 (2) GG would be in
Framework of this constitutional complaint does not take into account, because it
in this respect, a violation of fundamental rights that is objectionable to the constitutional complaint
missing; because Article 23 (1) of the Basic Law is a legal act of objective
Constitutional law, which also with recourse to Art. 38 para. 1 sentence 1 GG none
Subjectivation is accessible.

The Federal Constitutional Court has already decided in this regard:

"Art. 79 para. 2 GG - also in conjunction with Art. 23 para. 1
Sentence 3 GG - is a rule of objective constitutional law,
the will formation within the Bundestag and the

Federal Council concerns (...). It mediates the voter
(...) - except for the cases of an ultra vires constellation
(...) - no rights because of the scope of
Decision-making powers of the Bundestag, thus the

Substance of suffrage, not dependent on which
Majority of the Bundestag takes its decisions. " (BVerfGE
135, 317, 387 f.).

Deviation is then only in the cases of an - not relevant - Ultra-
vires constellation (see BVerfGE 142, 123, 193 ae).

III. No violation of the right of equal rights under Article 38 (1), first sentence
i. V. m. Art. 20 para. 1, 2 and 3 GG

Without success, the constitutional complaint remains as far as it is a violation of the
same-sex right from Art. 38 para. 1 sentence 1 i. V. m. Art. 20 para. 1, 2 and 3
GG reprimands.

1. The case law of the Federal Constitutional Court clarifies that the
The right to choose the individual has a claim to be with his
Voting decision influence political decision-making and take something
to be able to effect. The right to vote in particular protects against the rights
of the Bundestag and thus the power of shaping
of the constitutional body that is immediately after the
Principles of free and equal choice. The
The right under Article 38 (1) sentence 1 of the Basic Law, which corresponds to the fundamental right, serves as one in this respect
Subjectivisation of the principle of democracy, which in turn is purely objective and legal
(see, inter alia, BVerfGE 142, 123, 173 f., 189 f.).

2. It has also been clarified that international conventions which are included in a
The core content of the Basic Law, such as
it is not allowed to infringe in Art. 79 (3) Basic Law. Is recognized
this for the protection of fundamental rights and for ultra-vires cases (BVerfG NJW 2016,
1149 (No. 48 ff.); NJOZ 2017, 599 ff .; NJW 2016, 2473 (No. 85 ff., 126 ff.).

3. Of the case constellations which are the subject of the quoted leading decisions of the
Federal Constitutional Court were, the present case differs. It
is not about a "transfer" of tasks of the *German Bundestag*
the European Union or other supranational bodies, but rather,
whether the EPG replaces, within its area of responsibility, the place of
competent national courts. Decisive is then the
Question whether the fundamental right under Art. 38 para. 1 sentence 1 i. V. m. Art. 20
Para. 1, 2 and 3 Basic Law not only in front of a loss of competence of the German

Bundestag, but also from a shift of responsibilities other
German authorities to supranational institutions provides protection if, as
makes the constitutional complaints submitted, such a displacement with
would be fundamental principles of the rule of law in conflict. The
Affirmative answer to this question is two ahead:

(1) That the said fundamental rights equal right not only to a
Loss of identity in terms of Art. 79 para. 3 GG in relation to the principle of democracy,
but also to a loss of identity in relation to the
Rule of law protection granted;

(2) that a loss of identity with respect to the rule of law even at
a transfer of responsibilities other than German authorities
the German Bundestag to over state institutions based on
the fundamental rights same right can be blocked.

4. According to the German Bar Association is the fundamental rights equal right
of Art. 38, para. 1, sentence 1 GG not limited to the induction of an identity control
limited to the principle of democracy with respect.

Although the Constitutional Court stated in its decision OMT:

> *anchored "in The Art. 38 paragraph 1, sentence 1 GG claim of Citizen to democratic self-determination (...) is, however, strictly on the rooted in the dignity of the human core of the Democratic principle limited (Art. 1 in conjunction with Art. 79 Para. 3 GG)* " (BVerfGE 142, 123, 190).

At the same time, the Federal Constitutional Court in this decision as well
literally running:

> *"As part of the Identity Control scans the Federal Constitutional Court, whether by Art. 79 para. 3 GG for inviolable stated principles in the transmission of Sovereign rights by the German legislator or by a measure of organs, body, Ask the European Union to be touched (...). The relates to the preservation of human dignity core of the fundamental rights (...)* ***as well as the principles, the democratic, Law, social and federal principle within the meaning of Art. 20 GG shape*** "(BVerfGE 142, 123, 195, emphasis

only here).

So it has the warranty range of the fundamental rights of equal rights Art. 38, para. 1, sentence 1 i. V. m. Art. 20, para. 1, 2 and 3 to all GG "*Structural changes in the organization of legal state structure*" based (so expressly BVerfGE 142, 123, 190).

This all three powers comprehensive formulation to suggest that the Federal Constitutional Court the scope of fundamental rights same Right to respect for constitutional identity not to the transmission of Sovereign powers of the legislature and not be confined to the principle of democracy want.

In the matter speaks for this comprehensive approach that the principle of democracy under Art. 79 para 3. GG no special place to enjoy. rather protects the provision in all the principles mentioned there - and among other things, the rule of law - equally.

Finally, the intellectual roots of the rule of law suggest that the individual citizen may have the right to basic for a to set disclosure of the rule of law to defend. for the Rule of law does not carry his end in itself. Rather, it serves as evidenced by his history of ideas development, especially the protection of

Freedom of the citizen (see Grzeszick in. Maunz / Dürig (lim), Basic Law, Booth.: 79. EL December 2016, Art. 20 para VII. 2 et seq.). Under the rule of law Point of controversy regarding the organizational structure of Boards of Appeal of the European Patent Office (see. Broß, GRUR Int. 2017, 670 et seq. Mw N.) makes it clear that the transfer of sovereign powers to State organizations a test for the rule of law is.

5. Thus, even if, in the opinion of the German Bar Association in The starting point of a broad understanding of the fundamental rights of equal rights of Art. 38, para. 1, sentence 1 i. V. m. Art. 20, para. 1, 2 and 3 GG is expected that extends the identity check on the rule of law and not on the Transfer of functions of the Bundestag on the European Union and other international institutions is limited, this may be the not helping constitutional complaint to success. For benchmark for Carrying out the identity check is only Art. 79 para. 3 GG. On Identity breach can therefore only be detected when a

Violation of core levels of democracy or rule of law or
other constitutional principles is present (see below a). Such a violation may
are not found here (see below b). In detail:

a) In the jurisprudence of the Federal Constitutional is recognized that the identity control
is limited to whether the core of the Art. 79 para. 3 GG is affected.
Only by such a limitation of the constitutional court
Assessment scale is maintained of the (political) discretion,
to the basic law of the other constitutional members, in particular the
directly democratically elected German parliament, admits. In the
Speech standing limitation is therefore also necessary
to the legal institution of constitutional complaint against its
constitutional procedural conception of an objective
remodel complaint procedures.

Against this background, it is imperative that the Federal Constitutional Court
in the present case to the formulated by himself restrictive
Standard of review holds:

" *38, Section 1 of Art.. Clause 1, however granted no right
to a (via its securing scil. to by Art. 79, para. 3
beyond GG protected core principle of democracy)
Legality democratic majority voting
fertilize. It does not serve the content control democratic
Processes, but is aimed at facilitating the (...).
As a fundamental right to participate in the democratic
Sovereignty of the people gives Art. 38 para. 1 sentence 1 GG
Therefore, in principle, no appeal authority to
Parliament resolutions, in particular resolutions laws.* "
(So BVerfGE 142, 123, 190; similar to the Federal Constitutional Court, decision of 18 July..
2017 Az .: 2 BvR 859/15, juris Rn. 46; Highlights only
here).

Accordingly, namely the complainant's view
rejected the German state bodies are likely a transfer of
Sovereign rights by an international agreement

"*In general only agree (...) if this
Convention itself is lawful* " (see above page 75 and similar
Page 122 of the Constitution of appeal).

Such a claim on a comprehensive review of legality

founded Art. 38 para. 1 sentence 1. V. m. Art. 20 para. 1, 2 and 3 GG straight

Not.

Rather, true that not every democratic or constitutional deficit

a supranational institution automatically a violation of Art. 79

represents para. 3 GG. Art. 79 para. 3 GG namely does not demand

best possible implementation of the principles contained therein, but

only prohibits the "touch", ie the principal disclosure (see.

BVerfGE 30, 1, 24; 94, 12, 34; 109, 279, 310). In other words,

> *not "principles as principles' from the start*
>
> *Touched 'when worn them generally account*
>
> *is (...)* " (so BVerfGE 30, 1, 24) .

This applies insonderheit also, as far as - as here from the

Constitutional complaint alleging - judicial independence in question

stands. Although it is a foundation of the justice granting entitlement

Partial element of the rule of law (see Jarass in. Ders./Pieroth,

Basic Law for the Federal Republic of Germany, 12th edition, Art. 20 para. 91

N. mw).

Consequently, the judicial independence is outflow of

Rule of law and

> *"Integral part of the constitutional obligation*
>
> *to the state judicial guarantees* "(paper, NJW 1990, 8, 9).

For a violation of the core content of the Art. 79 para. 3 GG but suffice

not been an interference with judicial independence. Rather, it must

be a serious intervention so that at the same time it

an input of the rule of law is located.

b) After this (strict) standards violated the EPGÜ or the one with the

Constitutional complaint challenged consent law is not the

fundamental rights same applicant's right to respect for

Constitution identity of Art. 38, para. 1, sentence 1 i. V. m. Art. 20, para. 1, 2 and 3

GG. In this case can be left open whether the procedures for appointing and

Dismissal of judges of the EPG certain constitutional and

democratic have shortcomings. Even if one this

took account of the breaches at least not weigh so heavy that it

a principal input of the democratic or law principle and thus a violation of the by Art. 79 para. 3 GG protected could be seen constitutional identity of the Basic Law. in the Specifically:

aa) Art. 17 EPGÜ guarantees the judges basically unconditionally their Independence. However, the term of office of the EPG judge is on limited six years with the possibility of reappointment, Art. 4 2 EPGÜ Statute abs.. This may not be the ideal image of the independent

Judge correct, because the latent risk that a judge is not reappointed because "unpleasant" decisions.

On the other hand, is to limit the tenure of judges in European and international level not uncommon. The judge the Court are appointed for a term of six years. Retiring judges may be reappointed. A Reappointment may require the services of the judge in his first year be made dependent. The European Court of Human Rights (ECHR), the judge for a period of appointed nine years. The same applies to the judge at the International Criminal Court (ICC). The Administrative Tribunal of the International Labor Organization (ILO), judges are appointed for three years. A re-appointment is possible, it can from past performances be made dependent. The International Tribunal (ITLOS) The judges are appointed for a term of nine years and may be re-elected. Past performance may in the decision flow re-appointment. When the Appellate Body World Trade Organization are the judges for a period of four appointed years and may be re-elected once. earlier Services may in the decision to reappoint incorporated.

bb) The constitutional complaint objected further that the Advisory Committee, a preliminary selection of candidates from the perspective fitness hits,

"In the field of patent law and patent litigation Relatives working of the legal profession with the highest recognized qualification "

So (patent) belonging to lawyers. This could so
argued the constitutional complaint, as counsel before
EPG occur and develop an interest on this basis, the
Court to be through a results-oriented selection

nominating judges in favor of the parties they represent
to influence.

This too is not convincing. Although like the participation of
Lawyers - considered in isolation - may have the potential
to influence the judge in his decision making.
On the other hand, is also on the national level a participation of
relevant members of the professions of judge for later
Process not unknown. So lawyers are allowed as an examiner at the
legal state exams to participate (§ 4 II No. 3 JAG NRW.).

Similar structures are found in the appointment of
Lay judges the law jurisdiction. The appointment of
Judges to the court prosecutor made by the Land Administration of Justice,
§ 94 para. 2 sentence 1 BRAO. According to § 94 para. 2 sentence 2 BRAO can
Only candidates be appointed as judge of the court lawyer who
of the Board of the Bar Association before in a
Proposed list were taken. This must include at least the
More than half the required number of lawyers included,
§ 94 para. 2 sentence 4 BRAO. Also as part of the law courts
however, there is a latent danger of not only to
Tangible reasons oriented decision when drawing up the
Suggestion list because the Bar Association by a
lawyer legal proceedings is always affected in their interests.
The process of selecting judges lawyer has been prepared by
Federal Constitutional Court expressly approved (see. BVerfGE 26,
186). The possibility of revision and subsequent supplements
the list of suggestions secure a sufficient effect of
Creation organ (on the composition of the court BVerfGE 26, 186,
197; abl. Ewer, AnwBl 2015, 290, 291 f. and Small-Cosack, AnwBl
1999 565, 566 f.).

A similar procedure applies to the appointment of
Lay judges place in the labor and social jurisdiction.

Of different associations such. B. unions
make employers' associations and / or in the respective subject area

Authorities be set up suggestion lists, § 14 soc, § 20 para. 2
ArbGG. Lay judges are then based
these lists nominated by the respective regional authorities
§ 13 1, para. 1, sentence 1 SGG, § 20. Sentence 1 ArbGG. The
Constitutionality of the social court appointment procedure
The Federal Constitutional Court has also been expressly
Referring to the possibility of subsequent amendment or
Recast proposal lists confirmed (see. Federal Constitutional Court, decision. V.
December 9, 1985, Az .: 1 BvR 853/85, juris).

The above examples make it clear that participation alone
by members of the legal profession in the appointment procedure as
Such is not unconstitutional as long as the judicial
Independence is safeguarded by additional precautions. Still
less this way, the constitutional identity of the Art. 79 para 3. GG
questioned.

Also, the EPÜG contains sufficient safeguards to protect the
judicial independence.

(1) lawyers operate with only part of the Consultative Committee.

After diesseitigem understanding of EPÜG to limit the
Activities of the Advisory Committee only on the initial
Appointment of judges of the EP. For their reappointment this applies
however not.

On initial appointment but is impaired
Independence later appointed judges for that reason
excluded because they are not even working at the EP. The
Whereas they might want to later prove "grateful"
appears in contrast, far-fetched and constructed.

(2) The reappointment requires a renewed involvement

the Advisory Committee not because of Art. 16
EPGÜ only for the selection of "candidate" is responsible and

already once, namely with the first order for the suitability of the Judge has pronounced.

Judicial independence would be in the case of reappointment but also sufficiently safeguarded if one against the above ausginge interpretation that the Reappointment of judges, the same procedural rules apply as for the initial order of candidates (here: Alternatively opinion). In this case, would have to again appointing judges nominated by the Advisory Committee be, Art. 16 2 EPGÜ para..

(I) Also from such a referral to the Advisory Committee but still would not extraneous influence on the behavior of Judge from whose reappointment is pending. Because the Voters in the Advisory Committee carried by a majority; a recorded by this committee in the list candidate (In case of appointment on the basis of Alternatively opinion: Richter) has no way to determine, who voted in his favor. It can not therefore be assumed that in its Freedom of choice because of the Advisory Committee participating lawyer may be impaired.

In addition, the definitive decision on the (Re) appointment not by the Advisory Committee, but taken by the Administrative Committee, Art. 16 para. 2 EPGÜ. This is in accordance with Art. 12 para. 1 sentence 1 EPGÜ with representatives of Member States of the EPGÜ, in practice, members of the government, occupied. On this level of decision can the alleged not affect conflict of interest.

(Ii) It must also be noted that the selection list according to Art. 3, para. 2 clause 4 EPGÜ Statute always at least contain twice as many candidates as vacant positions got to. This has the consequence that a particular candidate

by the Advisory Committee is not due to

Vested interests can be "lifted" in the magistracy;

Rather, the Management Committee has always been Choice.

(Iii) Even in the unlikely event that the Advisory Committee established list not a sufficient number of exclusively on the basis of the performance principle selected candidates includes, would be the Administrative Committee but not forced on the to appoint list remaining candidates. While this is not expressly provided for in the constellation EPGÜ, but The same results from the general system of Appointment procedure, Art. 15 EPGÜ. The Management Committee 15 EPGÜ is by Art. Obliged his Selection decision based only on the to meet the performance principle. This provision prohibits the Administrative Committee to appoint a candidate if he must assume that the candidate in question due taken irrelevant considerations in the nomination list has been. For the purpose of the activities of the Advisory Committee shows that the management committee in this case, a reorganization or integration of may request nomination list. As from its Name follows the Advisory Committee has only support functions. For his work as part of the Appointment procedure it is also expressly provided in Art. 14 Section 1 a) EPGÜ resigned.:

> "*The Advisory Committee supports the Management Committee in the preparation of Appointment of judges of the Court* ".

It therefore is not an equal creation organ. "Lord of Appointment procedure "is solely the

Management committee, therefore by the Advisory Committee a reorganization or integration of may request nomination list.

(Iv) Finally, containing EPGÜ protective measures to avoid

the realization of the above outlined latent
Conflict of interest in the form of preventing a (re-

) Appointment of a candidate because of special interests.

Thus, the Advisory Committee by the EPGÜ to

committed to its selection decision based solely on

to meet the performance principle:

> "*The Advisory Committee established in accordance*
>
> *with the statute a list of candidates*
>
> *are best suited to the judges*
> *To be appointed court* " (as Art. 16 para. 1
>
> EPGÜ; Emphasis added) here.

Art. 15 EPGÜ that as a general rule for the entire

Appointment procedure and thus for the activities of the

Advisory Board is also secures to Stadium

drawing up the list of nominations, a selection decision

based on the starting performance principle.

The primacy of the performance principle is further achieved by

Procedural measures in the occupation of

Advisory Committee and the mode of candidate lists

hedged. The advisory committee includes the

Legal practitioners and patent judges. These

have no interest in an oriented to the party interests

Selection of the nominating judges.

The preparation of the list of nominations by the Advisory

Committee takes place - unlike the appointment decision

Management Committee - just not necessarily

by mutual agreement, cf. Art. 16 1 EPGÜ para.. Accordingly, it is

an optionally passed through extraneous interests

Committee member not possible, the nomination and the

(Re) appointment of a particular judge by his veto

to prevent. Rather, this process scheme will

fair committee members the opportunity to compliance

effectively enforce and on merit appropriate

Candidates against the will of individual committee members

to nominate.

Conclusion: Because of the controlled from EPGÜ in the context

Appointment procedure a supplement or recast

Suggestion list may be required by the Administrative Committee, satisfies the controlled in EPGÜ appointment procedure to Requirements under the Federal Constitutional Court the Viewpoint of ensuring the independence of judges at a nomination procedure with suggestion list provides. A fortiori, in the regulated in EPGÜ (re-) appointment procedure no Abandonment of the constitutional identity be seen.

cc) under constitutional aspects it seems at first glance not be acceptable that the EPGÜ itself to any remedy provides, with a abberufener judge against Dismissal decision, an act of sovereign (service) Violence EPG can proceed. However, no injury is even here the fundamental rights of equal rights of the complainant under Art. 38 para. 1 Set 1 i. V. m. Art. 20 para. 1, 2 and 3 GG to behold.

(1) Even in so far is not any inadequacy in the context of Legal protection with an abandonment of the principle equated effective legal protection. The Rule of law does not require a system of legal protection against sovereign Act of governmental organizations, which in Scope and effectiveness of the German legal system is equal to. Rather, the constitutional identity is already then observed if the essential requirements for a maintained effective remedies are (see FIG. BVerfGE 58, 1, 41).

(2) satisfies the EPGÜ these requirements. It is the Management Committee without corresponding regulation in EPGÜ possible an effective remedy against a ensure dismissal decision. For service law Disputes relating to international Organizations such as the EPG is the Administrative Tribunal of International Labor Organization (ILO Administrative english Tribunal, ILOAT; French Administrative Court, l'OIT, TAOIT) are available. For the opening of the legal process to this dish, a simple scheme in the employment law regulations of the EPG in Combination with an undertaking to the Director General of the Administrative Tribunal of the International

Labor Organization (see. Art. II, para. 5 of the Statute of ILOAT). In the jurisprudence of the Federal Constitutional Court has clarified a method that before the administration of the court International Labor Organization to rule of law Minimum requirements of the Basic Law is sufficient (see. BVerfGE 59, 63, 91 et seq .; confirmed Dispute in Connection with the EPC by the Federal Constitutional Court, decision. V. 3rd of July 2006 Az .: 2 BvR 1458/03, juris).

(3) In addition, provide the provisions of the Statute for EPGÜ Dismissal of a judge increased liability for a lawful Dismissal decision. therefore, they are able, if necessary, a to a German (business) court less effective Legal protection by the Administrative Tribunal of the International Labor Organization (cf. Pignatelli / Irmscher, in:. Benkard, European Patent Convention, 2nd edition, § 13 para. 15 et seq.) to compensate.

(4) for controlled release in The Art. 10, para. 1 EPGÜ Statute of Judge from office is also in exclusive criteria bound, namely that it the necessary conditions no longer met or arising from his office

no longer meets obligations. The decision is by the Bureau, a free transfer, with judges pluralistic Occupied committee met. Under the scheme, the Composition in Art. 15 para. 1 EPGÜ Statute is the Bureau of the President of the Appeal Court, the President of the Court of First Instance, two judges of the Appeal Court which the judges of the Appeal Court from among their Middle chose, and three full-time judges of First Instance, the the members of the General Court elected from among their to have. The Bureau shall be valid only if all members present or duly represented, art. 15, para. 5 sentence 1 EPGÜ Statute. Decisions shall be by majority vote Focus, Art. 15, para. 5 sentence 2 EPGÜ Statute. Through this Regulations is in advance of a possible dispute ensure that objective and in accordance with legal requirements is decided on the dismissal.

F. In the alternative: Breach of Union law

In the event that within the present constitutional complaint against the represented above legal opinion of a test on its EPGÜ Compatibility with the current European Union legislation, as well as its compatibility with Art. 23, para. 1, sentence 3 i. V. m. should be considered Art. 79 para. 2 GG necessary, the Committee Property of the German Bar Association as a precaution to the following:

I. No union legal prohibition of an international patent jurisdiction

The constitutional complaint raises essentially the European legal complaints that have been brought against an initial draft of the EPGÜ. The EPGÜ in However, its present form is the result of a review by the Opinion of the Court of 8 March 2011, Ref .: C-1 / 09th The Court had in this Reports a first draft of EPGÜ as with European Union law incompatible designated. The relevant passages are as follows:

"85th It follows that the national courts and are Court each assigned tasks essential to the Respecting the nature of the created by the Treaties law.

86. The Court has held that the principle, that a Member State to make good damage is obliged to attributable to the individual by the Member State violations arising from EU law, for any breach of this Law and independently applies of which institution of that State has whose act or omission the violation, a principle which, under certain special Applies requirements for food. " (See., To that effect of 30 September 2003, Köbler, C-224/01, ECR. 2003, I-10239, Paragraph 31 and 33 to 36, June 13, 2006, Traghetti del Mediterraneo, C-173/03, ECR. 2006, I-5177, paragraphs. 30 et seq., As well as of 12 November 2009, Commission / Spain, C-154/08, paragraph. 125).

"87th It should be added that in case of breaches of EU law by a national judgment according to Art. 258 TFEU to 260 TFEU the Court may be called to such a breach against the Member State concerned notice to leave. "

(See. Judgment of 9 December 2003, Commission / Italy, C-129/00, Coll. 2003, I-14637, paragraphs. 29, 30 and 32).

"88th It is noted, however, that an EU law infringing decision of the PG neither the subject of Infringement proceedings have yet to be any pecuniary liability of one or more Member States could result.

89. Consequently, would the agreement envisaged by a outside the institutional and judicial framework of the Union standing international court has exclusive jurisdiction to decide on a significant number of complaints

Individual in connection with the Community patent and for Interpretation and application of Union law in this area would be transmitted, the courts of the Member States of its Responsibilities for the design and application of Union law and the Court has jurisdiction to which of these respond courts for a preliminary ruling submitted, take and thus distort the responsibilities, contracts Assign the Union institutions and the Member States and for to preserving nature of European Union law are essential. " (ECJ, Opinion v. March 8th 2011, Ref .: C-1/09, juris; Highlights only here).

These statements can not be inferred that under European Union law generally is unacceptable that EU MS an international court powers of its transmitted national courts, a court in the now instead of the national decides courts (in their place). So the ECJ in the cited report run:

"74th In terms of an international agreement, the creation of the one entrusted with the interpretation of its provisions Court provides that the Court has already held that such a Agreement is not fundamentally incompatible with European Union law. The Union's competence in the field of international Relationships and their ability to conclude international Agreements necessary includes namely the ability to Decisions of a created or by such agreements

the imposition of specific court what the interpretation and As for application of its provisions. " (Sun ECJ, opinion v. March 8th 2011, Ref .: C-1/09, juris; Emphasis added) here.

The ECJ further pointed out that the possibilities of the Union law establishing a specialized court for Intellectual Property (Art. 262 TFEU) the creation of an international court for European patents not conflict, since the possibilities of European Union law called "no constitute a monopoly, "he has stated.:

"61st What kind. As for 262 TFEU, it can provide the not preclude PG. While it is true that, according to this article some of the powers to be transmitted to the PG, can be transferred to the Court, but is in this Article-called road to creating a uniform Patent litigation is not the only conceivable.

62. Art. 262 TFEU provides namely the possibility of the Competences of the Union courts to disputes Relating to the application of Union acts to Creating European title to the intellectual property expand. Consequently, he does not create a monopoly of the Court on this field and does not prejudge the choice of court Frame for litigation between individuals in Connection with legal titles of intellectual property could be established. " (Sun ECJ, opinion v. March 8th 2011, Ref .: C-1/09, juris; Highlighting) only here.

Therefore, the complaint of the ECJ aimed once on the participation of non-EU-MS (s. Court opinion C-2/13 Rn. 78 ff.), On the other hand the two concrete shortcomings found in the design of the first draft of the terms EPGÜ the original procedure. The conclusion (complaint) in Rn. 89 of the cited Report follows immediately after the complaint (see, ECJ, opinion v. March 8th 2011, Ref .: C-1/09, juris Rn. 88), that the first draft foresaw no possibility at a to make incorrect application of Union law compensation claims and nor the opportunity against a Member State, the European Union law (albeit not applying correctly only by its courts), an infringement procedure initiate.

It is these two specific defects, which - in addition to the participation of non-EU MS - bear the final complaint. The grounds on which the Court of Justice in

his subsequent decision *Paul Miles, among others / European Schools* (ECJ,. v. 14,.
June 2011, Ref .: C-196/09, juris) the original authorization of the local
denied Appeal, namely the lack of anchoring
Boards of Appeal in the judicial system of the EU MS (cf.. ECJ,. V. June 14th 2011,

Ref .: C-196/09, juris Rn. 41 et seq.), Is not transferable to the EPG. Because the
Parties to the EPGÜ (hereinafter EPGÜ-VS) have a portion of the EPG
transfer jurisdiction of their national courts and so one of the
derived, that is anchored in this, justice court system of EU MS
created.

II. The revision of EPGÜ acknowledges the concerns expressed by the ECJ

The EPGÜ is now limited to EU MS. The two substantive concerns
The ECJ has expressed in the cited report, are in the current version of the
EPGÜ been cleared. Both the liability of EPGÜ-VS and
the responsibility of the EPGÜ-VS for a infringements in Art. 22
and 23 EPGÜ explicitly controlled. In addition, the statements were
further completes the reference from the EPG; in this
Context is expressly permitted by Art. 21 EPGÜ the primacy of art. 267 TFEU
been stressed.

The current version of EPGÜ has not limited thereto. She also has all
significant other complaints of Advocates of the method Ref .: C-
9.1 dispelled, although the Court did not base his opinion on this. To
call is in particular the primacy of Union law in the broad sense
(Primary and secondary Union law together with law practice of ECJ) as
he in Art. 20 EPGÜ is clearly established in the current version of EPGÜ.

No other reservation had Advocates-General in the process Ref .: C-1/09 terms
a possible disadvantage of the defendant as a result of determination of the
made dish language in the claims EPGÜ (Anl VB 2, Rn 121;.. page 108 et seq.
Constitutional appeal).

This concerns the revision of EPGÜ also contributes bill. At the
Jurisdiction of the defendant (Art. 33, para. 1 literally. EPGÜ b corresponds to Art. 4 Brussels
Ia-VO) according to Art. 49, para. 1 EPGÜ the official language local Court language,
his native language. In the charge of infringement suits local chamber or
Regional chamber (Art. 33 paragraph 1 literally. A. EPGÜ corresponds to Art. 7 no. 2 Brussels Ia-VO)
According to Art. 49 para. 1 EPGÜ to use the local official language, to which the
Defendant must therefore get involved because he there by the sales of the infringing

Products has become business. With a referral from the
Injury chamber to the central division and immediate actions before the
Central chamber according to Art. 49 6 EPGÜ Abs., The relevant official language of
to use the European Patent Office, to which the defendant already in
Grant procedure (opposition procedure) had to stop and also to the
most common languages in Europe are (in the majority is the official language
the European Patent Office for EP applications English).

The jurisdiction of the central chamber for annulment is necessary because Art. 24
Para. 4 Brussels Ia VO (jurisdiction of the courts in all states protection of the patent)
not by the local chambers or regional chambers of a unified patent court
can be mapped. Not all EPGÜ-VS have a local chamber or
are involved in a regional chamber. In addition, it makes sense, the responsibility for
independent nullity and invalidity claims referred to referral
to concentrate in a central chamber because judges needed for such procedures
will that have a similar expertise as the European
Patent Office is present (comparison of the prior art with the object of
Patent from the points of novelty and inventive step).
Judge with such knowledge and experience are limited in number
available.

Thus it should be noted that the current version of the EPGÜ all complaints
the ECJ and the Advocates-General in the process contributes Ref .: C-1/09 bill.

III. No union concerns from the point of view of
Independence of judges

The concerns also raised by the constitutional complaint against the EPGÜ
because of judicial independence, in view of the detailed rules in
EU law clearly Art. 17 EPGÜ and in Art. 6 and 7 EPGÜ Statute
unfounded. The judges objection of partiality is expressly in Art. 7 para.
4 EPGÜ Statute regulated. The demands on the members of the Advisory
Committee, Art. 14 para. 2 and 7 EPGÜ guarantee the best possible choice
independent and more capable candidates. The term limit in accordance with Art. 4
2 EPGÜ Statute abs., Wherein re-elected, corresponds to the control in

ECJ and does not interfere with judicial independence. For this purpose, in addition
to the comments above E. VI. 1 et seq. Herein by reference.

IV. No union concerns raised by the simplified revision

The alleged by the constitutional complaint simplified revision of the
looks Convention by the Management Committee in accordance with Art. 87 para. 1 EPGÜ
also exposed to union concerns. It is limited to
the aspects of operation, efficiency and cost-effectiveness and confidence in the
Quality of decisions, ie aspects of the functioning of the court. The
simplified revision under Art. 87 para. 2 EPGÜ applies only if the EPGÜ-VS anyway
already by an international treaty or by EU law in the same way
are required. Model for this scheme is Art. 33, para. 1 (b) EPC. amendments
according to Art. 87, para. 1 and 2 EPGÜ in character. 87, para. 3 EPGÜ under the
Unless an objection, the national authorities responsible for ratification instances.

**V. None of the proposed questions is the reference to the ECJ
offered by European Union law**

The proposed by the complainant questions in the request for I have because it
to interpretative going to correct it as follows:

> *a) Are Art. 19, para 4, para. 3, paragraph 1 and Art.. 1 EC Regulation and
> Art. 267 TFEU in the light of the principle of the autonomy of
> Union law and the principle of the system is complete
> be interpreted in relation to remedies to a Member State
> prohibit a part in an international Convention on
> to participate unified patent court, which separated from the
> national courts of its Contracting States, the EU Member States
> , these are replaced in the scope of its jurisdiction and with the
> entrusted direct application of European Union law if, in the
> secured Convention the absolute primacy of Union law
> is the court's obligation to submit pursuant to Art. 267 TFEU
> the liability of the participating Member States is imposed on
> Damages in the case of an incorrect application of the
> Union law fixed and the responsibility of the*

> *participating Member States in the event of such a breach
> the Court in the context of an infringement procedure*

is regulated?

b) How is subject to the conditions to be a. Art. 3 para. 2 TFEU
interpreted, if the European Union is not a party to the
is the Convention?

c) What are the conditions for a. Art. 2 sentence 1 TFEU, Article.
47 para. 2 and Art. 48 para. 2 of the EU Charter of Fundamental Rights with a view
on the rule of law and the right of
interpreted defendant to an effective defense if the
Convention provisions of the applicable
Language provides as

-.. In Article 33, paragraph 3 S. 2 letter b), Article 49, paragraph 6 EPGÜ,...

-. In Article 33, Section 1 of the first subparagraph.. 1 literally. B) EPGÜ,

-. In Article 33, Section 1 of the first subparagraph.. 4 and EPGÜ

-. 3 EPGÜ in Article 51 para.

each i. V. m. the 1 regulations on translations (Art. 51 para.
EPGÜ) and interpretation (Art. 41 para. 2 EPGÜ) are included?

d) What are the conditions for a. Art. 2 S. 1 and Art. 19
Para. 1 sentence 3 TFEU and art. 47 par. 1 of the EU Charter of Fundamental Rights
with regard to the rule of law and the
Principles of autonomy, of the unit and the primacy of
Union law to be interpreted where the Convention does not
Jurisdiction of the court against decisions of the European
Patent Office provides, in particular with respect to the rejection of a
Request for grant of a European patent?

1. From the foregoing it follows that the four issues
Constitutional complaint have been resolved or are to be answered completely clear, so that,
The Federal Constitutional Court should enter a European law exam,
(According to the acte clair doctrine or acte-éclairé doctrine cf. Karpenstein., In:
Grabitz / Help / Nettesheim, The Law of the European Union, as of April 61. EL
2017, para. 55 et seq.) No requirement to carry out an

. Preliminary ruling under Article 267 TFEU is:

a) The first question of the compatibility of the EPGÜ with Art. 267 TFEU from
ECJ in the already answered (acte éclairé), because by the ECJ
specifically raised objections to the first version of the EPGÜ are
amended eliminated.

b) The second question of the legality of the conclusion of EPGÜ without
EU participation adds nothing to the first question
Significant added. The expertise of the participating EU MS is from
clarified reports Ref .: C-1/09, so Art. 262 TFEU creates a monopoly (see.
top side 31) .

c) The third question of discrimination by rules on the
Court language is unique (acte claire) answer to that
from the application of these rules is a breach of European Union law does not
results. The interests of the defendant bill is sufficiently worn
(see. above page 33).

d) The fourth question concerning the alleged lack of legal protection in
EPA grant procedure has already been clarified by the ECJ (acte éclairé): The
EPGÜ has nothing to do with the grant procedure (see. ECJ,. V.
5 May 2015, Ref .: C-146/13, juris Rn. 31st f).

2. The contested by the constitutional complaint law is not due
a violation of the requirement of a constitution-amending majority
according to Art. 23, para. 1, sentence 3 i. V. m. Art. 79 para. 2 GG unconstitutional. The
This transfer of sovereignty could the Bundestag by a simple
decide majority on the basis of Art. 24 para. 1 GG, because it is

If the EPGÜ not an element "of the development of the European
Union "i. S. d. Art. 23 para. 1 GG.

a) According to the jurisprudence of the Constitutional Court are among the
EU matters even international treaties when they are in
a supplementary or other special close relationship with the law
offers the Union (see. BVerGE 131, 152 ff.). Whether such a close relationship
there, all the circumstances on a case must be decided under evaluation
become. from the constitutional complaint in this regard
But enumerated circumstances are not sufficient by far for adoption

a close ratio of EPGÜ to EU law. Advance is made to the
protruding portion C.

Reference is made in this opinion.

b) Although the preparatory work for EPGÜ are parallel to the preliminary work on the
EPatVO been operated, but on strictly separate levels. The
Preparations for EPGÜ are within the scope of the participating EPGÜ-VS
been negotiated. The preparatory work for EPatVO are after a proposal from the
Commission has been operated by the Council by the European Parliament and.
From the parallelism of the timing can be for an alleged
Nearby ratio of EPGÜ on the right of EU derive nothing.

c) That the effect of the EPatVO the entry into force of the EPGÜ
is turned off (Art. 18 EPatVO), the result is that the over the EPGÜ
to decide infringement and the validity of EPeW.

d) The limitation of the participating States at the EU MS was in response to
the report C-1/09 and served to ensure cooperation
the participating EU MS to the ECJ after the entry into force of the
EPGÜ. The commitment of the EU MS, the effect of Art. 267
ensure TFEU results from the general European Union law,
does not constitute a special close relationship of EPGÜ to Union law.

e) That the participating EPGÜ-VS for their international law
belonging negotiations on the EPGÜ and the protocol
concerning privileges and immunities of the EU premises in Brussels

have used, also does not establish a close relation of the EPGÜ
the Union law.

f) That the EPG after the EPGÜ the commitments of the participating EU
must perceive MS under European Union law, resulting from the
Commitment of EU MS to comply with European Union law, and justified
also no special close relationship of EPGÜ to Union law.