

## Federal Court of Justice Celebrates 50th Anniversary.

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[1] On October 1st, the Federal Court of Justice (FCJ) sitting in Karlsruhe and Leipzig celebrated its 50th anniversary. The FCJ is the court of last resort for all civil and criminal matters with 12 civil senates and 5 criminal senates (the Fifth Criminal Senate, which previously sat in West Berlin, moved to Leipzig after German reunification). The FCJ's jurisdiction differs from that of the Federal Constitutional Court, which, among its unique jurisdiction, presides over constitutional questions and disputes raised between branches of the government. Unlike the FCJ, the FCC sits outside the ordinary chain of the appellate process.

[2] The FCJ's history is much longer than the 50 years celebrated this month. It began its service as the Reichsgericht (Court of the German Empire) in 1879 (also on October 1st) building a widely respected body of jurisprudence. The Reichsgericht, along with all other state entities was co-opted by and enlisted into the service of the Nazi regime. The Reichsgericht receives justified criticism for the ease, even willingness, with which it made this transition. Certainly, the Reichsgericht provided the highest level of legal justification for the atrocities of the Nazi era, although it was Hitler's Volksgericht (Peoples' Court) that were conceived exclusively for the purpose of "legally" supporting Nazi state terror and the Holocaust. The role of the Reichsgericht in the Nazi regime would later be inflamed as its successor, the FCJ, would fail to uphold on appeal a single conviction of a German judge for Nazi crimes. The British supported the reorganization of a high court in their Occupation Zone in the time immediately after the war. This court later served as the Deutsches Obergericht fuer das Vereinigte Wirtschaftsgebiet (German High Court for the Unified Economic Region [the Occupation Zones of Britain, France and the United States]). The FCJ was reorganized as the Bundesgerichtshof (known by the initials BGH) and restarted its service as West Germany's highest court in 1950. The FCJ assumed this role over the new eastern states after German reunification in 1990.

[3] Since its reorganization in 1950, the FCJ has resumed the tradition of the pre-war Reichsgericht of developing a complex and respected body of jurisprudence that is now a fundamental part of the structure and function of modern German democracy. Representative of this tradition in its civil jurisdiction are its decisions permitting first law suits (*Letter to the Editor Case*, 13 BGHZ 334 (1954)) and then monetary damages (*Male Rider Case*, 26 BGHZ 349 (1958); *Ginseng Case*, 35 BGHZ 363 (1961)) for violations of the constitutionally guaranteed right to freely develop one's personality.

[4] Setting the standards for litigation of risks emerging from commercial interaction, the FCJ in a series of cases developed a line of principles that cut through the jungle of so-called "con-torts." In 66 BGHZ 51 (1976), the Court held a shop owner liable in contract (with third party effect) for damages incurred by a minor accompanying her mother when shopping after slipping on a salad leaf in the store. This line was pursued into a most intriguing series of decisions that may be understood as erecting a rule of Professional liability grounded in contracts (see, e.g., 133 BGHZ 168 (1996) and 138 BGHZ 257 (1998)).

[5] In another famous case decided by the FCJ, and regularly cited for its farsighted establishment of a contractual liability where none was explicitly discussed, the court held that with respect to the speaker and the addressees the speaker may have been understood to be entering a contract and would therefore be held liable. See, 91 BGHZ 324 (1984). Closely connected, and equally controversial, is 97 BGHZ 372 (1986), where the Court excluded an agreement over the use of contraceptive devices from the contractual realm between a non-marital relationship thereby, consequently, excluding such relationships from contractual governance.

[6] In the legendary *Honda Case* (99 BGHZ 167 (1986)) the Court held the motorcycle manufacturer responsible for failing to survey the market for additional devices produced by *other* firms for use with the respective cycle. Thus, the FCJ established far-reaching tort liability for negligently failing to survey the market for equipment for use with its own goods.

[7] A famous line of cases handed down by the Criminal senates of the FCJ concern the administration of industrial risks through criminal law. In 37 BGHSt 106 (1990), the Court found a manufacturer of leather spray (for shoes) guilty for infliction of serious health damage. Heavily disputed remain the ways by which to establish proof of the manufacturer committing the act. A stunning continuation of this jurisprudence has taken place in recent cases involving members of the executive branches of the former East German government (German Democratic Republic) in connection with shootings at the Berlin wall and elsewhere along the heavily guarded border with West Germany (Federal Republic of Germany). In a highly debated case the FCJ held government members responsible for not having attempted to stand against the practice of enforcing and supporting the use of guns at the wall. (40 BGHSt 218 (1994)).

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**For More Information:**

The official web page of the FCJ (BGH):

<http://www.uni-karlsruhe.de/~bgh/>">www.uni-karlsruhe.de/~bgh/

The Ginseng Case on the web and in English at the German Law Archive web page. Select

“Judgments” and “Federal Court of Justice”:

<http://iuscomp.org/gla>"><http://iuscomp.org/gla>