

Patricia Sarah Stöbener, LL.M. (King's College London)

Walter Hallstein-Institut für Europäisches Verfassungsrecht, Humboldt-Universität zu Berlin
Email: Patricia.Stoebener@rewi.hu-berlin.de

THEMIS Summer School in Law 2009

22 September 2009

Harmonious Interpretation of National Civil Law According to EU Directives

I. Introduction

II. The limited direct effect of directives

1. The functioning of the directive
2. Direct effect in European law
3. Direct effect of directives
4. The limits: no horizontal effect
5. The criticism
6. The extension

III. The principle of harmonious interpretation: indirect effect of directives

1. The doctrine
2. The limit of the wording
3. Creation of obligations
3. The criticism

IV. The interpretation of national civil law by the German Federal Court

1. The Quelle-Case
 - a) The decision of the ECJ
 - b) The decision of the German Federal Court
2. Other cases

V. Summary

VI. Conclusion

Summary

1. The direct effect of directives is restricted to vertical relationships. Individuals may rely on provisions of a directive only against the Member State which has failed to implement it correctly within the time limit. This requires that the rule in question is clear, precise and unconditional. An individual can in principle not rely on a directive against another private person.

2. The ECJ requires national law to be interpreted by national courts and administrative authorities in the light of European directives. They do not have to interpret the national law *contra legem* but have to consider the whole national system and not merely the national implementing law in order to achieve an outcome consistent with the directive.

3. German law allows a harmonious interpretation beyond the expressive wording of the national law. This is possible by a dynamic interpretation reducing the scope of the German rule teleologically, at least where the legislator had the intention to implement a directive.