Landmark Decision on Foreign Deployments of the Bundeswehr (July 12, 1994)

Abstract

After the federal government approved foreign deployments of the Bundeswehr in Bosnia-Herzegovina and Somalia in 1993, the FDP, and later the SPD, filed complaints with the Federal Constitutional Court. In a landmark decision, the court rejected the SPD and FDP complaints, but criticized the federal government for acting on its own. Bundeswehr deployments outside of NATO territory were ruled compatible with the Basic Law, but Bundestag approval had to be obtained before troops could be deployed. Only in exceptional emergency situations could this happen after the fact.

Source

Decision by the German Federal Constitutional Court [BVerfGE 90, 286] on the Deployment of the Federal Armed Forces [Bundeswehr] in International Operations

1. The authorization granted in Article 24, Paragraph 2, of the Basic Law empowers the Federal Government [*Bund*] not only to enter into a system of mutual collective security and to agree to the resulting restrictions upon its sovereign powers. In addition, it also forms the constitutional basis for the acceptance of duties typically resulting from membership in such a system and thus also for the deployment of the Federal Armed Forces [*Bundeswehr*] for operations within the framework and according to the rules of that system.

2. Article 87a of the Basic Law does not run counter to the application of Article 24, Paragraph 2, of the Basic Law as the constitutional basis for the deployment of armed forces within the framework of a system of mutual collective security.

3. a) The Basic Law requires the Federal Government to obtain the (in principle) prior constitutive approval of the German Bundestag for any deployment of armed forces.

b) It is up to the legislature, beyond the minimum requirements presented in the judgment and the limits of parliamentary reservation with regard to the deployment of armed forces, to work out the form and extent of the parliamentary participation in greater detail.

4. For the preservation of peace, pursuant to Article 24, Paragraph 2, of the Basic Law, the Federal Republic of Germany may consent to a “restriction” of its sovereignty by declaring itself bound by decisions of an international organization without thereby transferring any sovereign powers to that organization in the sense of Article 24, Paragraph 1, of the Basic Law.

5. a) A system of mutual collective security in the sense of Article 24, Paragraph 2, of the Basic Law is characterized by its use of a set of rules for the preservation of peace and the establishment of its own organization to create for each of its members the status of being bound under public international law, of being reciprocally obliged to keep the peace and of being provided with security. It is irrelevant whether the system intends exclusively or primarily to guarantee peace among the Member States or to oblige them to render collective support in the case of foreign attacks.

b) Alliances of collective self-defense can also be systems of mutual collective security in the sense of Article 24, Paragraph 2, of the Basic Law, if and insofar as they are strictly confined to a peace-keeping

obligation.

6. Once the legislature has approved integration into a system of mutual collective security, this approval also covers the incorporation of armed forces into the integrated units of that system or the participation of soldiers in military operations carried out by the system under its own military command, to the extent that incorporation or participation have been previously envisaged by the founding treaty or charter upon which the consent is based. The inherent consent to a restriction on sovereignty also covers the participation of German soldiers in military operations based on cooperation between the security systems within their respective frameworks, provided that Germany had entered into these systems with legislative approval.

7. a) Acts of foreign policy that are not included under Art. 59, Paragraph 2, Sentence 1, of the Basic Law shall be assigned to the jurisdiction of the Government. It cannot be deduced from Art. 59, Paragraph 2, Sentence 1, of the Basic Law that whenever an international action of the federal government affects the political relations of the Federal Republic or touches upon matters within the legislative power of the Federation, the form of a treaty requiring legislative approval must be chosen. In this respect, an analogous or expanded application of this provision shall not be considered (following BVerfGE 68, 1 [84ff.]).

[…]

Source: Entscheidungen des Bundesverfassungsgerichts, July 12, 1994, vol. 90, p. 286 ff.

Translation: Translation based on the discussion of the ruling published in*International Law Reports*, vol. 106 (1997), pp. 320–52.

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