Editorial

This is not the first special issue of CritQ to focus on the protection of fundamental rights in Europe (Issue 1/2012), true to our concern for keeping a close eye on the judicial systems of Europeanized legal orders. The present issue takes on this topic and contains on the one hand contributions on the European Convention on Human Rights (ECHR), and on the other hand articles on the tension between the protection of basic rights in the European Union and its member states, for which the ECHR and its additional protocols provide the background.

Throughout the course of its now over six decades of history, the core guarantees of the ECHR have remained unchanged. Still, it is constantly evolving. The reasons for this lie in the continual enlargement of its membership – and soon even the European Union is to be counted among the members[1] –, its amendment by means of ever more protocols, the evolving interpretation of the Convention by the European Court of Human Rights (ECtHR), and in the never-ending attempts to reform the ECtHR's protective system via procedural law. This process runs parallel to the in part far-reaching changes that the application of the ECHR means for its members. For German law, the decisions made by the ECHR may have occasional consequences, although these are often not unimportant; one could think of the many decisions on the excessive duration of proceedings, the overturning of retroactive preventive detention, and the new regulations for visitation rights for parents living separately, but also of indirect consequences of the obligations arising from the ECHR such as the presumption of innocence being raised up to a guarantee equal with constitutional guarantees. This is what *Frank Saliger* looks at in his contribution. For some member states, in contrast, much more is at stake because they must repeatedly question entire parts of their legal systems. This is particularly true for the criminal justice system in Russia and Turkey, as the contributions by *Svetlana Paramonova* and *Osman Isfen* make clear.

The conclusion that the ECHR threatens to become a victim of its own success is unfortunately not just a platitude. The incredible number of appeals which it must deal with annually has brought it to the limits of its capacities and makes the question of how it is to manage its caseload in the future ever more urgent. In part, the Court has found its own answers in its decisions, in part they are sought in changing the procedural order and in further protocols to the ECHR. More personnel for the ECtHR is not planned because the member states are not willing to take on the costs. Instead, the options being discussed in order to confront this indisputable need for reform clearly reveal efforts to have the legal protection, and thus the individuals for whom the ECtHR exists, pay a part of the costs. At the same time, the debate is being used by some member-states to express their displeasure with some of the Court's unpopular decisions via "recommendations" addressed to it. The Brighton Conference was held thanks in large part to an initiative by Great Britain to limit the effects of ECHR jurisprudence, even though the concluding statement on 20 April 2012 does not express this motive in such harsh terms;

1 On this, see *Tulkens* and *von Arnim* in CritQ 1/2012.

Klaus Lörcher's analysis shows, however, that there are still reasons to be concerned. Long-range effects in less secure legal systems could occur which are difficult to foresee.

Even some constitutional courts obviously found that some ECtHR decisions went too far. The pointed remark by the German Federal Constitutional Court in its Görgülü Decision on an issue which had nothing to do with the case under consideration[2] reminded us that, in the relationship among jurisdictions, not everything is about the protection of basic rights, but also the defense of each court's own influence. This is true in particular for the German Federal Constitutional Court and the European Court of Justice. The most recent example of this continual factionalism can be seen in the ECJ's decision on the case of *Åkerberg Fransson* which is described in the last article in this issue.

Frankfurt am Main, May 2013 Stefan Kadelbach

2 BVerfGE 111, 307 (323 f., 327 f.), as a reaction to the decision of the ECtHR Number 59320/00, *Caroline von Hannover v. Germany*, EuGRZ 2004, 404, in which the ECtHR declared that the decision BVerfGE 101, 361 with a different weighting of freedom of the press and personal rights went against the ECHR.