

German Constitutional Court on a Judge's Duty to Take the European Evidence Regulation and the Hague Evidence Convention into Account

In a recent order of 14 September 2015 – 1 BvR 1321/13, the German Federal Constitutional Court (*Bundesverfassungsgericht*) has held that the right to effective judicial protection (Article 2(1) in conjunction with Article 20(3) of the German constitution) is violated if, in a cross-border case, a court fails to investigate the facts of the case by using possibilities that have good prospects of success, in particular if it does not take into account specific institutionalised facilities and measures of judicial assistance, such as those offered by the European Evidence Regulation, the Hague Evidence Convention and the European Judicial Network in Civil and Commercial Matters. In the case before the Court, a Romanian national had sued a widow of Romanian nationality for a share of the inheritance of her deceased husband based on the assertion that the couple had adopted him. Although it remained controversial whether such an adoption had actually taken place in Romania, the Municipal Court (*Amtsgericht*) did not request the Romanian adoption files for consultation by way of judicial cooperation. According to the Constitutional Court, the *Amtsgericht* ought to have considered whether the EU Evidence Regulation or the Hague Evidence Convention permit a German court to request the original case files from another Member State. An English abstract of the decision is available [here](#).