

## Constitutional Court, Civil Court and Constitutional Review of Civil Law Based on the “Court-ordered Apology” Case

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### Abstract

The fundamental rights are still unfamiliar to the civil law system. However, the introduction of "constitutional review of court decisions" in the new era is likely to lead to a stronger influence of constitutional principles in private law. In this regard, this article uses the court-ordered apology case as an example to discuss whether both "legislators" and "judges" in civil matters are bound with the system of fundamental rights.

Many duties in civil law, which are derived from the law, can also be seen as interventions by the state in fundamental rights. Within this context, the notion of "third-party effect of fundamental rights" should not be relevant. The duty to apologize of a wrongdoer in the defamation case is an example, and thus should also be subject to the “direct” effect of fundamental rights.

Article 195(1) of the Civil Code authorized the court to discretize the legal consequence. Under this legislative model, the focus of the "constitutional review of legislative acts" is on whether the authorization is constitutional or not. In court-ordered apology cases, for instance, it is clear that the “apology printed on newspaper”, which is included in the legislative records, is a possible option to the civil court within the authorized framework. This Article as the legal basis for the "duty to apologize", should be subject to the review of the fundamental rights, especially the principle of proportionality.

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The civil courts should also make interpretations and judgments in accordance with the Constitution. When conducting proportionality reviews, the focus should not be limited to controlling the form and content of apology statements. Instead, it should consider the purpose of the norms, the trade-offs of various types of remedies, and the balancing of various interests in individual cases, among other factors.

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