

Basic Principles of German Constitutional Law

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Lectures at SLS 2014

Historical Context

- **Constitution of the German Empire 1849**
(“*Paulskirchenverfassung*”)
- **Constitution of the first Republic 1918**
(*Weimarer Reichsverfassung*)
- **Nazi-fascist dictatorship 1933-45**
(came into power by constitutional means)
- **Basic Law/Constitution of 1949 (*Grundgesetz*)**
- **“Confirmed” after German reunification in 1990 without major reforms as requested by democratic movement that overthrew East German government in “peaceful revolution”**

Overview (I)

- I. Fundamental Rights**
- II. Federation and States (*Bund and Länder*)**
- III. Parliament (*Bundestag*)**
- IV. State Chamber (*Bundesrat*)**
- IVa. Special Provisions in Case of War/Emergency**
- V. President of the Federation (*Bundespräsident*)**
- VI. Federal Government (*Bundesregierung*)**
- VII. Federal Legislation**
- VIII. Execution of Federal Laws by the States and Federal Administration**
- VIIIa. Joint Tasks of Federation and States**

Overview (II)

- IX. Judiciary**
- X. Finance**
- Xa. State of Defence**
- XI. Transitional and Concluding Provisions**

Germany vs. India: Selected Topics

Fundamental Rights

1 – 19, 33, 102 – 104 GG ./ 12 – 35 IC

but see, e.g.;

4 GG ./ 25 – 28 IC (Freedom of Faith)

Cultural and Educational Rights

7 GG ./ 21a, 29 – 31 IC

Directive Principles of State Policy

20, 20a, 24, 25 GG ./ 36 – 51

Germany vs. India: Selected Topics

Parliament

38 – 48 GG ./ 79 – 122, 123, 168 – 212, 213, 324 - 342 IC

GG: No regulations on state parliaments because each state has own constitution

Legislation

70 – 82 GG ./ 107 – 117, 168 - 207 IC

GG: No regulations on state legislature because each state has own constitution

Judiciary

92 – 104 GG ./ 124 – 147, 214 - 237 IC

Germany vs. India: Selected Topics

Municipalities and other Bodies

GG 28 ./. 243, 234-A – 243-ZG IC

Federalism

GG 28, 30, 31, 50 – 53, 71 – 74 ./. 245 – 263 IC

Constitutions of the 16 States (*Länder*)

Art. 28 (1) and (3) Grundgesetz

- (1) *The constitutional order in the Länder must conform to the principles of a republican, democratic and social state governed by the rule of law, within the meaning of this Basic Law.*

- (3) *The Federation shall guarantee that the constitutional order of the Länder conforms to the basic rights and to the provisions of paragraphs (1) and (2) of this Article.*

Supremacy of Federal Law

Art. 31 Grundgesetz

Federal law shall take precedence over Land law.

[But see Art. 70 – 74 GG on legislative powers]

Division of Powers Between Federation and States (Länder)

Art. 70 Grundgesetz

- (1) *The Länder shall have the right to legislate insofar as this Basic Law does not confer legislative power on the Federation.*
- (2) *The division of authority between the Federation and the Länder shall be governed by the provisions of this Basic Law concerning exclusive and concurrent legislative powers.*

Elections

Art. 38 Grundgesetz

(1) Members of the German Bundestag shall be elected in general, direct, free, equal and secret elections. They shall be representatives of the whole people, not bound by orders or instructions, and responsible only to their conscience.

(2) Any person who has attained the age of eighteen shall be entitled to vote; any person who has attained the age of majority may be elected.

(3) Details shall be regulated by a federal law.

**> Bundeswahlgesetz: Proportional System
 No voting machines
 5 % threshold**

Germany vs. India: Final Remarks

- **Both Constitutions were drafted under historically „difficult“ circumstances, e.g.: end of British rule / facism; deficits in public and democratic participation; no full self-determination in Germany**
- **Both Constitutions share a lot of common principles**
- **Lots of differences exist, however, e.g.:**
 - **GG very abstract**
 - **Loss of abstract concept often by amendments**
 - **Details usually „delegated“ to statutory law**
 - **16 States have own Constitutions**

Fundamental Right to Informational Self-Determination

- **Not explicitly mentioned in Constitution**
- **Construed by Constitutional Court under Art. 2(1) and 1(1):**

Art. 2 Personal Freedoms

(1) Every person shall have the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or the moral law.

Art 1 Human Dignity

(1) Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.

Slides and Link

<http://www.hwr-berlin.de/prof/clemens-arzt/lehre/>

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„Lectures at Symbiosis Law School“

German Constitution in English:

www.gesetze-im-internet.de/englisch_gg/index.html