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Rivendell



part 4



BASIC LAW

for the Federal Republic of Germany

(Promulgated by the Parliamentary Council on 23 May 1949)
(as Amended by the Unification Treaty of 31 August 1990
and Federal Statute of 23 September 1990)

The following is a letter from President Richard von Weizsaecker concerning the Basic Law for the Federal Republic of Germany. It is not part of the Basic Law but is interesting reading:

Foreword by the Federal President

For more than forty years, the Basic Law has determined the development of the policy of the Federal Republic of Germany. In its area of application, it has bestowed on the citizens a life in liberty, democratic self-determination and personal responsibility, protected by law and justice. This political order is the freest the Germans have enjoyed in their history to date. For decades, the division of Germany prevented the entire German people from living in such freedom. On October 3, 1990, we accomplished the unity and liberty of Germany in free self-determination. Thus all Germans now live under a constitution which protects the dignity and basic rights of man, regulates public life and facilitates peaceful change. No constitution, of course, can endow us with the ability to achieve such things. We ourselves must give life to it. We are the ones who must recognize and address new challenges, not least when it comes to forging human links between east and west in a united land. For the first time in centuries, we Germans are no longer a source of strife on the agenda of Europe. Our unification was not forced on Europe; rather, it was achieved in peaceful agreement. It is part of a common historical development, one which assures nations their liberty and which can overcome the division of our continent. We Germans in particular want to contribute resolutely to this process and have a special obligation to do so. Our unity is dedicated to it. In doing so, we fulfill the mandate of our constitution together.

RICHARD VON WEIZSACKER

PREAMBLE

(amended by Unification Treaty, 31 August 1990 and federal statute of 23 September 1990, Federal Law Gazette II p. 885). Conscious of their responsibility before God and Men, Animated by the resolve to serve world peace as an equal partner in a united Europe, the German people have adopted, by virtue of their constituent power, this Basic Law. The Germans in the Laender of Baden-Wuerttemberg, Bavaria, Berlin, Brandenburg, Bremen, Hamburg, Hesse, Lower Saxony, Mecklenburg-Western Pomerania, North-Rhine-Weststphalia, Rhineland-Paltinate, Saarland, Saxony, Saxony-Anhalt, Schleswig-Holstein, and Thuringia have achieved the unity and freedom of Germany in free self-determination. This Basic Law is thus valid for the entire German People.

1. BASIC RIGHTS

Article 1 (Protection of human dignity). (1) The dignity of man inviolable. To respect and protect it is the duty of

all state authority. (2) The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world. (3) The following basic rights bind the legislature, the executive and the judiciary as directly enforceable law.

Article 2 (Rights of liberty). (1) Everyone has the right to the free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or the moral code. (2) Everyone has the right to life and to inviolability of his person. The freedom of the individual is inviolable. These rights may only be encroached upon pursuant to a law.

Article 3 (Equality before the law). (1) All persons are equal before the law. (2) Men and women have equal rights. (3) No one may be prejudiced or favored because of his sex, his parentage, his race, his language, his homeland and origin, his faith or his religious or political opinions.

Article 4 (Freedom of faith, of conscience and of creed). (1) Freedom of faith and of conscience, and freedom of creed religious or ideological, are inviolable. (2) The undisturbed practice of religion is guaranteed. (3) No one may be compelled against his conscience to render war service as an armed combatant. Details will be regulated by a Federal law.

Article 5 (Freedom of expression). (1) Everyone has the right freely to express and to disseminate his opinion by speech, writing and pictures and freely to inform himself from generally accessible sources. Freedom of the press and freedom of reporting by radio and motion pictures are guaranteed. There shall be no censorship. (2) These rights are limited by the provisions of the general laws, the provisions of law for the protection of youth and by the right to inviolability of personal honor. (3) Art and science, research and teaching are free. Freedom of teaching does not absolve from loyalty to the constitution.

Article 6 (Freedom of expression). (1) Marriage and family enjoy the special protection of the state. (2) Care and upbringing of children are the natural right of the parents and a duty primarily incumbent on them. The state watches over the performance of this duty. (3) Separation of children from the family against the will of the persons entitled to bring them up may take place only pursuant to a law, if those so entitled fail in their duty or if the children are otherwise threatened with neglect. (4) Every mother is entitled to the protection and care of the community. (5) Illegitimate children shall be provided by legislation with the same opportunities for their physical and spiritual development and their position in society as are enjoyed by legitimate children.

Article 7 (Education). (1) The entire education system is under the supervision of the state. (2) The persons entitled to bring up a child have the right to decide whether they shall receive religious instruction. (3) Religious instruction forms part of the ordinary curriculum in state and municipal schools, excepting secular schools. Without prejudice to the state's right of supervision, reli-

gious instruction is given in accordance with the tenets of the religious communities. No teacher may be obliged against his will to give religious instruction. (4) The right to establish private schools is guaranteed. Private schools as a substitute for state or municipal schools, require the approval of the state and are subject to the laws of the Laender. This approval must be given if private schools are not inferior to the state or municipal schools in their educational aims, their facilities and the professional training of their teaching staff, and if a segregation of the pupils according to the means of the parents is not promoted. This approval must be withheld if the economic and legal position of the teaching staff is not sufficiently assured. (5) A private elementary school shall be admitted only if the educational authority finds that it serves a special pedagogic interest or if, on the application of persons entitled to bring up children, it is to be established as an interdenominational or denominational or ideological school and a state or municipal elementary school of this type does not exist in the community (6) Preparatory schools remain abolished.

Article 8 (Freedom of assembly). (1) All Germans have the right to assemble peacefully and unarmed without prior notification or permission. (2) With regard to open-air meetings this right may be restricted by or pursuant to a law.

Article 9 (Freedom of association). (1) All Germans have the right to form associations and societies. (2) Associations, the objects or activities of which conflict with the criminal laws or which are directed against the constitutional order or the concept of international understanding, are prohibited. (3) The right to form associations to safeguard and improve working and economic conditions is guaranteed to everyone and to all trades and professions. Agreements which restrict or seek to hinder this right are null and void; measures directed to this end are illegal.

Article 10 (Privacy of letters, posts, and telecommunications). (amended 24 June 1968) (1) Privacy of letters, posts, and telecommunications shall be inviolable. (2) Restrictions may only be ordered pursuant to a statute. Where a restriction serves to protect the free democratic basic order or the existence or security of the Federation, the statute may stipulate that the person affected shall not be informed of such restriction and that recourse to the courts shall be replaced by a review of the case by bodies and auxiliary bodies appointed by Parliament.

Article 11 (Freedom of movement). (1) All Germans enjoy freedom of movement throughout the Federal territory. (2) This right may be restricted only by or pursuant to a statute, and only in cases in which an adequate basis of existence is lacking and special burdens would arise to the community, or in which the restriction is necessary to avert an imminent danger to the existence or the free democratic basic order of the Federation or a Land, to combat the danger of epidemics, to deal with natural disasters or particularly grave accidents, to protect young people from neglect or to prevent crime.

Article 12 (Right to choose an occupation, prohibition of

forced). As amended March 19. 1956. (1) All Germans have the right freely to choose their trade or profession their place of work and their place of training. The practice of trades and professions may be regulated by law. (2) No one may be compelled to perform a particular work except within the framework of a traditional compulsory public service which applies generally and equally to all. Anyone who refuses on conscientious grounds to render war service involving the use of arms may be required to render an alternative service. The duration of this alternative service shall not exceed the duration of military service. Details shall be regulated by a law which shall not prejudice freedom of conscience and shall provide also for the possibility of an alternative service having no connection with any unit of the Armed Forces. (3) Women shall not be required by law to render service in any unit of the Armed Forces. On no account shall they be employed in any service involving the use of arms. (4) Forced labor may be imposed only in the event that a person is deprived of his freedom by the sentence of a court.

Article 12a (Liability to military and other service) (added 24 June 1968) (1) Men who have attained the age of 18 years may be required to serve in the Armed Forces, in the Federal Border Guard, or in a civil defense organization. (2) A person who refuses, on grounds of conscience, to render war service involving the use of arms may be required to render a substitute service. The duration of such substitute service shall not exceed the duration of military service. Details shall be regulated by a statute which shall not interfere with freedom to take a decision based on conscience and shall also provide for the possibility of a substitute service not connected with units of the Armed Forces or of the Federal Border Guard. (3) Persons liable to military service who are not required to render service pursuant to paragraph (1) or (2) of this Article may, during a state of defense (Verteidigungsfall), be assigned by or pursuant to a statute to an employment involving civilian services for defense purposes, including the protection of the civilian population; it shall, however, not be permissible to assign persons to an employment subject to public law except for the purpose of discharging police functions or such other functions of public administration as can only be discharged by persons employed under public law. Persons may be assigned to an employment -as referred to in the first sentence of this paragraph- with the Armed forces, including the supplying and servicing of the latter, or with public administrative authorities; assignments to employment connected with supplying and servicing the civilian population shall not be permissible except in order to meet their vital requirements or to guarantee their safety. (4) Where, during a state of defense, civilian service requirements in the civilian health system or in the stationary military hospital organization cannot be met on a voluntary basis, women between eighteen and fifty-five years of age may be assigned to such services by or pursuant to a statute. They may on no account render service involving the use of arms. (5) Prior to the existence of a state of defense, assignments, under paragraph 3 of this Article may only be made where the requirements of paragraph 1 of Article 80a are satisfied. It shall be admissible to require

persons by or pursuant to a statute to attend training courses in order to prepare them for the performance of such services in accordance with paragraph 3 of this Article as require special knowledge or skills. To this extent, the first sentence of this paragraph shall not apply. (6) Where, during a state of defense, staffing requirements for the purposes referred to in the second sentence of paragraph 3 of this Article cannot be met on a voluntary basis, the right of a German to quit the pursuit of his occupation or quit his place of work may be restricted by or pursuant to a statute in order to meet these requirements. The first sentence of paragraph 5 of this Article shall apply mutatis mutandis prior to the existence of a state of defense.

Article 13 (Inviolability of the home). (1) The home is inviolable. (2) Searches may be ordered only by a judge or, in the event of danger in delay, by other organs as provided by law and may be carried out only in the form prescribed by law. (3) Otherwise, this inviolability may be encroached upon or restricted only to avert a common danger or a mortal danger to individuals, or, pursuant to a law, to prevent imminent danger to public security and order, especially to alleviate the housing shortage, to combat the danger of epidemics or to protect endangered juveniles.

Article 14 (Property, right of inheritance, taking of property) (1) Property and the rights of inheritance are guaranteed. Their content and limits are determined by the laws. (2) Property imposes duties. Its use should also serve the public weal. (3) Expropriation is permitted only in the public weal. It may take place only by or pursuant to law which provides for kind and extent of the compensation. The compensation shall be determined upon just consideration of the public interest and of the interests of the persons affected. In case of dispute regarding the amount of compensation, recourse may be had to the ordinary courts.

Article 15 (Socialization). Land, natural resources and means of production may for the purpose of socialization be transferred into public ownership or other forms of publicly controlled economy by a law which provides for kind and extent of the compensation. With respect to such compensation Article 14, para. 3, sentences 3 and 4, apply mutatis mutandis.

Article 16 (Deprivation of citizenship, extradition, right of asylum). (1) No one may be deprived of his German citizenship. Loss of citizenship may arise only pursuant to a law, and against the will of the person affected it may arise only if such person does not thereby become stateless. (2) No German may be extradited to a foreign country. Persons persecuted for political reasons enjoy the right of asylum

Article 17 (Right of petition). Everyone has the right individually or jointly with others to address written requests or complaints to the competent authorities and to the representative assemblies.

Article 17a (Restriction of individual basic rights through legislation enacted for defense purposes and concerning

substitute service). As amended March 19 1956. (1) Laws concerning military services and alternative service may by provisions applying to members of the Armed Forces and of alternative services during their period of military or alternative service, restrict the basic right freely to express and to disseminate opinions by speech, writing, and pictures (Article 5, paragraph (1) first half-sentence), the basic right of assembly (Article 9), and the right of petition (Article 17) insofar as it permits to address requests or complaints jointly with others. (2) Laws for defense purposes, including the protection of the civilian population may provide for the restriction of the basic rights of freedom of movement (Article 11) and inviolability of the home (Article 13).

Article 18 (Forfeiture of basic rights). Whoever abuses freedom of opinion, in particular freedom of the press (Article 5, paragraph 1) freedom of teaching (Article 5, paragraph 3), freedom of assembly (Article 8), freedom of association (Article 9), the secrecy of mail posts and telecommunications (Article 10), property (Article 14), or the right of asylum (Article 16, paragraph 2) in order to attack the free democratic basic order, forfeits these basic rights. The forfeiture and its extent are pronounced by the Federal Constitutional Court.

Article 19 (Restriction of Basic Rights). (1) Insofar as under this Basic Law a basic right may be restricted by or pursuant to a law, the law must apply generally and not solely to an individual case. Furthermore the law must name the basic right, indicating the Article. (2) In no case may a basic right be infringed upon in its essential content. (3) The basic rights apply also to corporations established under German Public law to the extent that the nature of such rights permits. (4) Should any person's right be violated by public authority, recourse to the court shall be open to him. If no other court has jurisdiction, recourse shall be to the ordinary courts. II THE FEDERATION AND THE LAENDER

Article 20 (Basic principles of state order, right to resist). (1) The Federal Republic of Germany is a democratic and social Federal state. (2) All state authority emanates from the people. It is exercised by the people by means of elections and voting and by separate legislative, executive and judicial organs. (3) Legislation is subject to the constitutional order; the executive and the judiciary are bound by the law. (4) All Germans shall have the right to resist any person seeking to abolish this constitutional order, should no other remedy be possible. (inserted 24 June 1968)

Article 21 (Political Parties). (amended 21 December 1983) (1) The political parties participate in the forming of the political will of the people. They may be freely established. Their internal organization shall conform to democratic principles. They shall publicly account for the sources of their funds and for their assets. (2) Parties which, by reason of their aims or the behavior of their adherents, seek or impair or destroy the free democratic basic order or to endanger the existence of the Federal Republic of Germany shall be unconstitutional. The Federal Constitutional Court decides on the question of unconstitutionality. (3) Details will be regulated by

Federal legislation.

Article 22. The Federal flag is black-red-gold.

Article 23 (Repealed 31 August 1990, Unification Treaty and federal statute of 23 September 1990).

Article 24 (Entry into a collective security system) (1) The Federation may, by legislation, transfer sovereign powers to international institutions. (2) For the maintenance of peace, the Federation may join a system of mutual collective security; in doing so it will consent to such limitations upon its sovereign powers as will bring about and secure a peaceful and lasting order in Europe and among the nations of the world. (3) For the settlement of disputes between nations, the Federation will accede to agreements concerning a general, comprehensive and obligatory system of international arbitration. **Article 25** (Public international law and federal law) The general rules of public international law form part of the Federal law. They take precedence over the laws and directly create rights and duties for the inhabitants of the Federal territory.

Article 26 (Ban on preparing a war of aggression) (1) Activities tending and undertaken with the intent to disturb peaceful relations between nations, especially to prepare for aggressive war, are unconstitutional. They shall be made a punishable offense. (2) Weapons designed for warfare may be manufactured, transported or marketed only with the permission of the Federal Government. Details will be regulated by a Federal Law.

Article 27 (Merchant fleet) All German merchant vessels form one merchant fleet.

Oh dear. The German Government.

This constitution talks of 'illegitimate children' (article6), it leaves the 'detail' to 'Federal Law' (article4) and says 'Germans have the right to assemble *unarmed* (i.e. conditionally) and if the gathering is in the open air 'this right may be restricted....by law' (article8).

They have'nt got it right at all. The right to assemble is an ABSOLUTE right; that's what RIGHTS are all about. It's pointless having a constitution where rights are diluted and then given the status of privileges in the same breath. Fuck Off.

Military Service (slavery), arbitrary house searches, state theft of property (article18) FORFEITURE of rights.....

Shame Shame Shame on you. *Again.*

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Issue 4

Thanks to all contributors.

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