

บรรณานุกรม



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ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย



ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

## PREAMBLE

The German People

in the Laender of Baden\*\*, Bavaria, Bremen, Hamburg, Hesse, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Schleswig-Holstein, Wuerttemberg-Baden\*\* and Wuerttemberg-Hohenzollern\*\*,

Conscious of their responsibility before God and men,

Animated by the resolve to preserve their national and political unity and to serve the peace of the world as an equal partner in a united Europe,

Desiring to give a new order to political life for a transitional period,

Have enacted, by virtue of their constituent power, this Basic Law for the Federal Republic of Germany.

They have also acted on behalf of those Germans to whom participation was denied.

The entire German people are called upon to achieve in free self-determination the unity and freedom of Germany.

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\* The above notice of publication appeared in the first of the Federal Law Gazette dated 23 May 1949.

\*\* See footnote\* to Article 23.

## I. BASIC RIGHTS

### Article 1 (Protection of human dignity)

- (1) The dignity of man shall be inviolable. To respect and protect it shall be 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 shall bind the legislature, the executive and the judiciary as directly enforceable law.

### Article 2 (Rights of liberty)

- (1) Everyone shall have the right to the free development of his personality in so far as he does not violate the rights of others or offend against the constitutional order or the moral code.
- (2) Everyone shall have the right to life and to inviolability of his person. The liberty of the individual shall be inviolable. These rights may only be encroached upon pursuant to a law.

### Article 3 (Equality before the law)

- (1) All persons shall be equal before the law.
- (2) Men and women shall have equal rights.

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\* As amended by federal law of 19 March 1956 (Federal Law Gazette I p. 111).

(3) No one may be prejudiced or favoured 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 and creed)

(1) Freedom of faith, of conscience, and freedom of creed, religious or ideological (weltanschaulich), shall be inviolable.

(2) The undisturbed practice of religion is guaranteed.

(3) No one may be compelled against his conscience to render war service involving the use of arms. Details shall be regulated by a federal law.

Article 5 (Freedom of expression)

(1) Everyone shall have the right freely to express and 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 means of broadcasts and films 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 honour.

(3) Art and science, research and teaching, shall be free. freedom of teaching shall not absolve from loyalty to the constitution.

#### Article 6 (Marriage, Family, Illegitimate children)

- (1) Marriage and family shall enjoy the special protection of the state.
- (2) The care and upbringing of children are a natural right of, and a duty primarily incumbent on, the parents. The national community shall watch over their endeavours in this respect.
- (3) Children may not be separated from their families against the will of the persons entitled to bring them up, except pursuant to a law, if those so entitled fail or the children are otherwise threatened with neglect.
- (4) Every mother shall be 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 place in society as are enjoyed by legitimate children.

#### Article 7 (Education)

- (1) The entire educational system shall be under the supervision of the state.
- (2) The persons entitled to bring up a child shall have the right to decide whether it shall receive religious instruction.
- (3) Religious instruction shall form part of the ordinary curriculum in state and municipal schools, except in secular (bekenntnisfrei) schools. Without prejudice to the state's right of

supervision, religious instruction shall be 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, shall require the approval of the state and shall be subject to the laws of the Laender. Such 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 segregation of pupils according to the means of the parents is not promoted thereby. 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 permitted only if the education 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 inter-denominational or denominational or ideological school and a state or municipal elementary school of this type does not exist in the commune (Gemeinde).

(6) Preparatory schools (Vorschulen) shall remain abolished.

#### Article 8 (Freedom of assembly)

(1) All Germans shall have the right to assemble peaceably 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 shall have the right to form associations and societies.

(2) Associations, the purposes or activities of which conflict with 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, occupations and professions. Agreements which restrict or seek to impair this right shall be null and void; measures directed to this end shall be illegal. Measures taken pursuant to Article 12a, to paragraphs (2) and (3) of Article 35, to paragraph (4) of Article 87a, or to Article 91, may not be directed against any industrial conflicts engaged in by associations within the meaning of the first sentence of this paragraph in order to safeguard and improve working and economic conditions\*.

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\* Last sentence inserted by federal law of 24 June 1968  
(Federal Law Gazett I p. 709).



Article 10\* (Privacy of posts and telecommunication)

(1) Privacy of posts and telecommunications shall be inviolable.

(2) This right may be restricted only pursuant to a law. Such law may lay down that the person affected shall not be informed of any such restriction if it serves to protect the free democratic basic order or the existence or security of the Federation or a Land, 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 shall enjoy freedom of movement throughout the federal territory.

(2)\* This right may be restricted only by or pursuant to a law and only in cases in which an adequate basis of existence is lacking and special burdens would arise to the community as a result thereof, or in which such 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.

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\* As amended by federal law of 24 June 1968 (Federal Law Gazette I p. 709).

Article 12\* (Right to choose trade, occupation or profession)

(1) All Germans shall have the right freely to choose their trade, occupation, or profession, their place of work and their place of training. The practice of trades, occupations, and professions may be regulated by or pursuant to a law.

(2) No specific occupation may be imposed on any person except within the framework of a traditional compulsory public service that applies generally and equally to all.

(3) Forced labour may be imposed only on persons deprived of their liberty by court sentence.

Article 12a\*\* (Liability to military and other service)

(1) Men who have attained the age of eighteen years may be required to serve in the Armed Forces, in the Federal Border Guard, or in a Civil Defence 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

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\*As amended by federal laws of 19 March 1956 (Federal Law Gazette I p.111) and 24 June 1968 (Federal Law Gazette I p. 709).

\*\* Inserted by federal law of 24 June 1968 (Federal Law Gazette I p. 710).

shall be regulated by a law which shall not interfere with the freedom of conscience and must 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, when a state of defence (Verteidigungsfall) exists, be assigned by or pursuant to a law to specific occupations involving civilian services for defence purposes, including the protection of the civilian population; it shall, however, not be permissible to assign persons to an occupation 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 occupation--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 occupations 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) If, while a state of defence exists, civilian service requirements in the civilian public health and medical 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 law.

They may on no account render service involving the use of arms.

(5) During the time prior to the existence of any such state of defence, assignments under paragraph (3) of this Article may be effected only if the requirements of paragraph (1) of Article 80a are satisfied. It shall be admissible to require persons by or pursuant to a law to attend training courses in order to prepare them for the performance of such services in accordance with paragraph (3) of this Article as presuppose special knowledge or skills. To this extent the first sentence of this paragraph shall not apply.

(6) If, while a state of defence exists, the labour 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 give up the practice of his trade or occupation of profession, or his place of work, may be restricted by or pursuant to a law 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 defence.

#### Article 13 (Inviolability of the home)

(1) The home shall be 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) In all other respects, this inviolability may not be encroached upon or restricted except to avert a common danger or a mortal danger to individuals, or, pursuant to a law, to prevent imminent danger to public safety 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, Expropriation)

(1) Property and the right of inheritance are guaranteed. Their content and limits shall be determined by the laws.

(2) Property imposes duties. Its use should also serve the public weal.

(3) Expropriation shall be permitted only in the public weal. It may be effected only by or pursuant to a law which shall provide for the nature and extent of the compensation. Such compensation shall be determined by establishing an equitable balance between the public interest and the interests of those 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 to public ownership or other forms of publicly controlled economy by a law which shall provide for the nature and extent of compensation. In respect of such compensation the third and fourth sentences of

paragraph (3) of Article 14 shall 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 only if such person does not thereby become stateless.

(2) No German may be extradited to a foreign country. Persons persecuted on political grounds shall enjoy the right of asylum.

Article 17 (Right of petition)

Everyone shall have the right individually or jointly with others to address written requests or complaints to the appropriate agencies and to parliamentary bodies.

Article 17a\* (Restriction of basic rights for members of the Armed Forces etc.)

(1) Laws concerning military service and substitute service may, by provisions applying to members of the Armed Forces and of substitute services during their period of military or substitute service, restrict the basic right freely to express and to disseminate opinions by speech, writing and pictures (first

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\* Inserted by federal law of 19 March 1956 (Federal Law Gazette 1p. 111).

half-sentence of paragraph (1) of Article 5), the basic right of assembly (Article 8), and the right of petition (Article 17) in so far as this right permits the submission of requests or complaints jointly with others.

(2) Laws for defence 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 expression of opinion, in particular freedom of the press (paragraph (1) of Article 5), freedom of teaching paragraph (3) of Article 5, freedom of assembly (Article 8), freedom of association (Article 9), privacy of posts and telecommunication (Article 10), property (Article 14), or the right of asylum (paragraph (2) of Article 16) in order to combat the free democratic basic order, shall forfeit these basic rights. Such forfeiture and the extent thereof shall be pronounced by the Federal Constitutional Court.

#### Article 19 (Restriction of basic rights)

(1) In so far as a basic right may, under this Basic Law, be restricted by or pursuant to a law, such law must apply generally and not solely to an individual case. Furthermore, such law must name the basic right, indicating the Article concerned.

(2) In no case may the essential content of a basic right be encroached upon.

(3) The basic rights shall apply also to domestic juristic persons 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 jurisdiction is not specified, recourse shall be to the ordinary courts. The second sentence of paragraph\*.

## II. THE FEDERATION AND THE CONSTITUENT STATES (LAENDER)

Article 20 (Basic principles of the Constitution--Right of resist)

(1) The Federal Republic of Germany is a democratic and social federal state.

(2) All state authority emanates from the people. It shall be exercised by the people by means of elections and voting and by specific legislative, executive, and judicial organs.

(3) Legislation shall be subject to the constitutional order; the executive and the judiciary shall be bound by law and justice.

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\* Last sentence inserted by federal law of 24 June 1968  
(Federal Law Gazette 1 p. 710).



(4)\* All Germans shall have the right to resist any person or persons seeking to abolish that constitutional order, should no other remedy be possible.

#### Article 21 (Political parties)

(1) The political parties shall participate in the forming of the political will of the people. They may be freely established. Their internal organization must conform to democratic principles. They must publicly account for the sources of their funds.

(2) Parties which, by reason of their aims or the behaviour of their adherents, seek to impair or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany, shall be unconstitutional. The Federal Constitutional Court shall decide on the question of unconstitutionality.

(3) Details shall be regulated by federal laws.

#### Article 22 (Federal flag)

The federal flag shall be black-red-gold.

#### Article 23 (Jurisdiction of the Basic Law)

For the time being, this Basic Law shall apply in the territory

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\* Inserted by federal law of 24 June 1968 (Federal Law Gazette I p. 710).

of the Laender of Baden\*, Bavaria, Bremen, Greater Berlin, Hamburg, Hesse, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Schleswig-Holstein, Wuerttemberg-Baden\*, and Wuerttemberg-Hohenzollern\*. In other parts of Germany it shall be put into force on their accession\*\*.

Article 24 (Entry into a collective security system)

(1) The Federation may by legislation transfer sovereign powers to inter-governmental institutions.

(2) For the maintenance of peace, the Federation may enter a system of mutual collective security; in doing so it will consent to such limitations upon its rights of sovereignty as will bring about and secure a peaceful and lasting order in Europe and among the nations of the world.

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\* By federal law of 4 May 1951 (Federal Law Gazette I p. 284) the Land of Baden-Wuerttemberg was created out of the former Laender of Baden, Wuerttemberg-Baden and Wuerttemberg-Hohenzollern.

\*\* This Basic Law became effective in the Saarland by virtue of paragraph (1) of Section 1 of the federal law of 23 December 1956 (Federal Law Gazette I p. 1011).

(3) For the settlement of disputes between states, the Federation will accede to agreements concerning international arbitration of a general, comprehensive and obligatory nature.

Article 25 (International law integral part of federal law)

The general rules of public international law shall be an integral part of federal law. They shall take precedence over the laws and shall directly create rights and duties for the inhabitants of the federal territory.

Article 26 (Ban on war of aggression)

(1) Acts tending to and undertaken with the intent to disturb the peaceful relations between nations, especially to prepare for aggressive war, shall be unconstitutional. They shall be made a punishable offence.

(2) Weapons designed for warfare may not be manufactured, transported or marketed except with the permission of the Federal Government. Details shall be regulated by a federal law.

Article 27 (Merchant fleet)

All German merchant vessels shall form one merchant fleet.

Article 28 (Federal Guarantee of Laender constitutions)

(1) The constitutional order in the Laender must conform to the principles of republican, democratic and social government based on the rule of law, within the meaning of this Basic Law. In each of the Laender, counties (Kreise), and communes (Gemeinden),

the people must be represented by a body chosen in general, direct, free, equal, and secret elections. In the communes the assembly of the commune may take the place of an elected body.

(2) The communes must be guaranteed the right to regulate on their own responsibility all the affairs of the local community within the limits set by law. The associations of communes (Gemeindeverbaende) shall also have the right of self-government in accordance with the law and within the limits of the functions assigned to them by law.

(3) The Federation shall ensure that the constitutional order of the Laender conforms to the basic rights and to the provisions of paragraphs (1) and (2) of this Article.

#### Article 29 (Reorganization of the federal territory)

(1) The federal territory shall be reorganized by federal legislation with due regard to regional ties, historical and cultural connections, economic expediency and social structure. Such reorganization should create Laender which by their size and capacity are able effectively to fulfil the functions incumbent upon them.

(2)\*In areas which became, upon the reorganization of the Laender after 8 May 1945, part of another Land without the holding of a

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\*As amended by federal law of 19 August 1969 (Federal Law Gazette I p. 1241).

plebiscite, a definite change of the decision regarding such incorporation may be demanded by popular initiative within one year of the coming into force of this Basic Law. Such popular initiative shall require the assent of one tenth of the people entitled to vote in Land diet (Landtag) elections.

(3)\* If a popular initiative has received the assent required under paragraph (2) of this Article, a referendum shall be held in the area concerned not later than 31 March 1975, or in the Baden area of the Land of Baden-Wuerttemberg not later than 30 June 1970, on whether or not the proposed transfer shall be made. If the transfer is approved by a majority comprising at least one quarter of the people entitled to vote in Land diet elections, the territorial position of the area concerned shall be regulated by a federal law within one year after the referendum has been held. Where several areas within the same Land demand to be transferred to another Land, the necessary regulations shall be consolidated in one law.

(4)\* Such federal law shall be based upon the result of the referendum from which it may depart only to the extent necessary to achieve the purposes of reorganization as specified in paragraph (1) of this Article. Such law shall require the assent

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\* As amended by federal law of 19 August 1969 (Federal Law Gazette I p. 1241).

of a majority of Bundestag members. If it provides for a transfer, not demanded by a referendum, of an area from one Land to another, the law shall require approval by referendum in the entire area to be transferred; this shall not apply if in the event of the separation of areas from an existing Land the remaining areas are to continue as a Land in themselves.

(5)\* Following the adoption of a federal law on the reorganization of the federal territory by a procedure other than that laid down in paragraphs (2) to (4) of this Article, a referendum shall be held in every area to be transferred from one Land to another, on those provisions of the law which concern that area. If such provisions are rejected in at least one of the areas concerned, the law must be reintroduced in the Bundestag. Should it be enacted again, the relevant provisions shall require approval by referendum throughout the federal territory.

(6)\* A referendum shall be decided by the majority of votes cast; this shall, however, not affect paragraph (3) of this Article. The pertinent procedure shall be laid down by a federal law. Should reorganization become necessary as a result of the accession of another part of Germany, such reorganization should

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\* As amended by federal law of 19 August 1969 (Federal Law Gazette I p. 1241).

be concluded within two years of such accession.

(7) The procedure regarding any other change in Land boundaries shall be established by a federal law requiring the consent of the Bundesrat and of the majority of the members of the Bundestag.

#### Article 30 (Functions of the Laender)

The exercise of governmental powers and the discharge of governmental functions shall be incumbent on the Laender in so far as this Basic Law does not otherwise prescribe or permit.

#### Article 31 (Priority of federal law)

Federal law shall override Land law.

#### Article 32 (Foreign relations)

(1) Relations with foreign states shall be conducted by the Federation.

(2) Before the conclusion of a treaty affecting the special circumstances of a Land, that Land must be consulted in sufficient time.

(3) In so far as the Laender have power to legislate, they may, with the consent of the Federal Government, conclude treaties with foreign states.

#### Article 33 (All Germans have equal political status)

(1) Every German shall have in every Land the same political (staatsbuergerlich) rights and duties.

(2) Every German shall be equally eligible for any public office according to his aptitude, qualifications, and professional achievements.

(3) Enjoyment of civil and political rights, eligibility for public office, and rights acquired in the public service shall be independent of religious denomination. No one may suffer any disadvantage by reason of his adherence or non-adherence to a denomination or ideology.

(4) The exercise of state authority as a permanent function shall as a rule be entrusted to members of the public service whose status, service and loyalty are governed by public law.

(5) The law of the public service shall be regulated with due regard to the traditional principles of the professional civil service.

#### Article 34 (Liability in the event of malfeasance)

If any person, in the exercise of a public office entrusted to him, violates his official obligations to a third party, liability shall rest in principle on the state or the public body which employs him. In the event of wilful intent or gross negligence the right of recourse shall be reserved. In respect of the claim for compensation or the right of recourse, the jurisdiction of the ordinary courts must not be excluded.



Article 35\* (Legal, administrative and police assistance)

(1) All federal and Land authorities shall render each other legal and administrative assistance.

(2) In order to maintain or to restore public security or order, a Land may, in cases of particular importance, call upon forces and facilities of the Federal Border Guard to assist its police if, without this assistance, the police could not, or only with considerable difficulty, fulfil a task. In order to deal with a natural disaster or an especially grave accident, a Land may request the assistance of the police forces of other Laender or of forces and facilities of other administrative authorities or of the Federal Border Guard or the Armed Forces\*\*.

(3) If the natural disaster or the accident endangers a region larger than a Land, the Federal Government may, in so far as this is necessary effectively to deal with such danger, instruct the Land governments to place their police forces at the disposal of other Laender, and may commit units of the Federal Border Guard or the Armed Forces to support the police forces. Measures taken by the Federal Government pursuant to the first

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\* As amended by federal law of 24 June 1968 (Federal Law Gazette I p. 710).

\*\* As amended by federal law of 28 July 1972 (Federal Law Gazette I p. 1305).

sentence of this paragraph must be revoked at any time upon the request of the Bundesrat, and in any case without delay upon removal of the danger.

Article 36 (Personnel of the federal authorities)

(1) Civil servants employed in the highest federal authorities shall be drawn from all Laender in appropriate proportion.

Persons employed in other federal authorities should, as a rule, be drawn from the Land in which they serve.

(2)\* Military laws shall, inter alia, take into account both the division of the Federation into Laender and the regional ties of their populations.

Article 37 (Federal enforcement)

(1) If a Land fails to comply with its obligations of a federal character imposed by this Basic Law or another federal law, the Federal Government may, with the consent of the Bundesrat, take the necessary measures to enforce such compliance by the Land by way of federal enforcement.

(2) To carry out such federal enforcement the Federal Government or its commissioner shall have the right to give instructions to all Laender and their authorities.

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\* Inserted by federal law of 19 March 1956 (Federal Law Gazette I p. 111).

### III. THE FEDERAL PARLIAMENT (BUNDESTAG)

#### Article 38 (Elections)

- (1) The deputies to 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 and instructions, and shall be subject only to their conscience.
- (2) Anyone who has attained the age of eighteen years shall be entitled to vote; anyone who has attained full legal age shall be eligible for election.
- (3) Details shall be regulated by a federal law.

#### Article 39 (Assembly and legislative term)

- (1) The Bundestag shall be elected for a four-year term. Its legislative term shall end four years after its first meeting or on its dissolution. The new election shall be held during the last three months of the term or within days after dissolution.
- (2) The Bundestag shall assemble within thirty days after the election, but not before the end of the term of the previous Bundestag.
- (3) The Bundestag shall determine the termination and resumption of its meetings. The President of the Bundestag may convene it at an earlier date. He must do so if one third of its members or the Federal President or the Federal Chancellor so demand.

Article 40 (President, Rules of procedure)

(1) The Bundestag shall elect its President, vice-presidents, and secretaries. It shall draw up its rules of procedure.

(2) The President shall exercise the proprietary and police powers in the Bundestag building. No search or seizure may take place in the premises of the Bundestag without his permission.

Article 41 (Scrutiny of elections)

(1) The scrutiny of elections shall be the responsibility of the Bundestag. It shall also decide whether a deputy has lost his seat in the Bundestag.

(2) Complaints against such decisions of the Bundestag may be lodged with the Federal Constitutional Court.

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

Article 42 (Proceedings, Voting)

(1) The meetings of the Bundestag shall be public. Upon a motion of one tenth of its members, or upon a motion of the Federal Government, the public may be excluded by a two-thirds majority. The decision on the motion shall be taken at a meeting not open to the public.

(2) Decisions of the Bundestag shall require a majority of the votes cast unless this Basic Law provides otherwise. The rules of procedure may provide exceptions for elections to be made by the Bundestag.

(3) True and accurate reports on the public meetings of the Bundestag and of its committees shall not give rise to any liability.

Article 43 (Presence of the Federal Government)

(1) The Bundestag and its committees may demand the presence of any member of the Federal Government.

(2) The members of the Bundesrat or of the Federal Government as well as persons commissioned by them shall have access to all meetings of the Bundestag and its committees. They must be heard at any time.

Article 44 (Committees of investigation)

(1) The Bundestag shall have the right, and upon the motion of one fourth of its members the duty, to set up a committee of investigation which shall take the requisite evidence at public hearings. The public may be excluded.

(2) The rules of criminal procedure shall apply mutatis mutandis to the taking of evidence. The privacy of posts and telecommunications shall remain unaffected.

(3) Courts and administrative authorities shall be bound to render legal and administrative assistance.

(4) The decisions of committees of investigation shall not be subject to judicial consideration. The courts shall be free to evaluate and judge the facts on which the investigation is based.

Article 45 (Standing Committee)

(1) The Bundestag shall appoint a Standing Committee which shall safeguard the rights of the Bundestag as against the Federal Government in the intervals between any two legislative terms. The Standing Committee shall also have the rights of a committee of investigation.

(2) Wider powers, such as the right to legislate, to elect the Federal Chancellor, or to impeach the Federal President, shall not be within the competence of the Standing Committee.

Article 45a\* (Committees on Foreign Affairs and Defence)

(1) The Bundestag shall appoint a Committee on Foreign Affairs and a Committee on Defence. Both committees shall function also in the intervals between any two legislative terms.

(2) The Committee on Defence shall also have the rights of a committee of investigation. Upon the motion of one fourth of its members it shall have the duty to make a specific matter the subject of investigation.

(3) Paragraph (1) of Article 44 shall not be applied in matters of defence.

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\* Inserted by federal law of 19 March 1956 (Federal Law Gazette I p. 111).

Article 45b\* (Defence Commissioner of the Bundestag)

A Defence Commissioner of the Bundestag shall be appointed to safeguard the basic rights and to assist the Bundestag in exercising parliamentary control. Details shall be regulated by a federal law.

Article 46 (Indemnity and immunity of deputies)

(1) A deputy may not at any time be prosecuted in the courts or subjected to disciplinary action or otherwise called to account outside the Bundestag for a vote cast or a statement made by him in the Bundestag or any of its committees. This shall not apply to defamatory insults.

(2) A deputy may not be called to account or arrested for a punishable offence except by permission of the Bundestag, unless he is apprehended in the commission of the offence or in the course of the following day.

(3) The permission of the Bundestag shall also be necessary for any other restriction of the personal liberty of a deputy or for the initiation of proceedings against a deputy under Article 18.

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\* Inserted by federal law of 19 March 1956 (Federal Law Gazette I p. 111).

(4) Any criminal proceedings or any proceedings under Article 18 against a deputy, any detention or any other restriction of his personal liberty shall be suspended upon the request of the Bundestag.

Article 47 (Right of deputies to refuse to give evidence)

Deputies may refuse to give evidence concerning persons who have confided facts to them in their capacity as deputies, or to whom they have confided facts in such capacity, as well as concerning these facts themselves. To the extent that this right to refuse to give evidence exists, no seizure of documents shall be permissible.

Article 48 (Entitlements of deputies)

(1) Any candidate for election to the Bundestag shall be entitled to the leave necessary for his election campaign.

(2) No one may be prevented from accepting and exercising the office of deputy. He may not be given notice of dismissal nor dismissed from employment on this ground.

(3) Deputies shall be entitled to a remuneration adequate to ensure their independence. They shall be entitled to the free use of all state-owned means of transport. Details shall be regulated by a federal law.



Article 49\* (Interim between legislative terms)

In respect of the members of the Presidency, the Standing Committee, the Committee on Foreign Affairs, and the Committee on Defence, as well as their principal substitutes, Articles 46, 47, and paragraphs (2) and (3) of Article 48, shall apply also in the intervals between any two legislative terms.

IV. THE COUNCIL OF CONSTITUENT STATES (BUNDES RAT)

Article 50 (Function)

The Laender shall participate through the Bundesrat in the legislation and administration of the Federation.

Article 51 (Composition)

(1) The Bundesrat shall consist of members of the Land governments which appoint and recall them. Other members of such governments may act as substitutes.

(2) Each Land shall have at least three votes; Laender with more than two million inhabitants shall have four, Laender with more than six million inhabitants five votes.

(3) Each Land May delegate as many members as it has votes. The votes of each Land may be cast only as a block vote and only by members present or their substitutes.

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\* As amended by federal law of 19 March 1956 (Federal law Gazette ' p. 111).

Article 52 (President, Rules of procedure)

- (1) The Bundesrat shall elect its President for one year.
- (2) The President shall convene the Bundesrat. He must convene it if the members for at least two Laender or the Federal Government so demand.
- (3) The Bundesrat shall take its decisions with at least the majority of its votes. It shall draw up its rules of procedure. Its meetings shall be public. The public may be excluded.
- (4) Other members of, or persons commissioned by, Land governments may serve on the committees of the Bundesrat.

Article 53 (Participation of the Federal Government)

The members of the Federal Government shall have the right, and on demand the duty, to attend the meetings of the Bundesrat and of its committees. They must be heard at any time. The Bundesrat must be currently kept informed by the Federal Government of the conduct of affairs.

IVa.\* THE JOINT COMMITTEE

Article 53a

- (1) Two thirds of the members of the Joint Committee shall be

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\*Inserted by federal law of 24 June 1968 (Federal Law Gazette I p. 710).

deputies of the Bundestag and one third shall be members of the Bundesrat. The Bundestag shall delegate its deputies in proportion to the sizes of its parliamentary groups; such deputies must not be members of the Federal Government. Each Land shall be represented by a Bundesrat member of its choice; these members shall not be bound by instructions. The establishment of the Joint Committee and its procedures shall be regulated by rules of procedure to be adopted by the Bundestag and requiring the consent of the Bundesrat.

(2) The Federal Government must inform the Joint Committee about its plans in respect of a state of defence. The rights of the Bundestag and its committees under paragraph (1) of Article 43 shall not be affected by the provision of this paragraph.

#### V. THE FEDERAL PRESIDENT

##### Article 54 (Election by the Federal Convention)

(1) The Federal President shall be elected, without debate, by the Federal Convention (Bundesversammlung). Every German shall be eligible who is entitled to vote for Bundestag candidates and has attained the age of forty years.

(2) The term of office of the Federal President shall be five years. Re-election for a consecutive term shall be permitted only once.

(3) The Federal Convention shall consist of the members of the

Bundestag and an equal number of members elected by the diets of the Laender according to the principles of proportional representation.

(4) The Federal Convention shall meet not later than thirty days before the expiration of the term of office of the Federal President or, in the case of premature termination, not later than thirty days after that date. It shall be convened by the President of the Bundestag.

(5) After the expiration of a legislative term, the period specified in the first sentence of paragraph (4) of this Article shall begin with the first meeting of the Bundestag.

(6) The person receiving the votes of the majority of the members of the Federal Convention shall be elected. If such majority is not obtained by any candidate in two ballots, the candidate who receives the largest number of votes in the next ballot shall be elected.

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

#### Article 55 (No secondary occupation)

(1) The Federal President may not be a member of the government nor of a legislative body of the Federation or of a Land.

(2) The Federal President may not hold any other salaried office, nor engage in a trade or occupation, nor practise a profession, nor belong to the management or the board of directors of an enterprise carried on for profit.

#### Article 56 (Oath of office)

On assuming his office the Federal President shall take the following oath before the assembled members of the Bundestag and the Bundesrat:

"I swear that I will dedicate my efforts to the well-being of the German people, enhance its benefits, ward harm from it, uphold and defend the Basic Law and the laws of the Federation, fulfil my duties conscientiously, and do justice to all. So help me God."

The oath may also be taken without religious affirmation.

#### Article 57 (Representation)

If the Federal President is prevented from acting, or if his office falls prematurely vacant, his powers shall be exercised by the President of the Bundesrat.

#### Article 58 (Countersignature)

Orders and decrees of the Federal President shall require for their validity the countersignature of the Federal Chancellor or the appropriate Federal Minister. This shall not apply to the appointment and dismissal of the Federal Chancellor, the dissolution of the Bundestag under Article 63 and the request under paragraph (3) of Article 69.

Article 59 (Authority to represent Federation in international relations)

(1) The Federal President shall represent the Federation in its international relations. He shall conclude treaties with foreign states on behalf of the Federation. He shall accredit and receive envoys.

(2) Treaties which regulate the political relations of the Federation or relate to matters of federal legislation shall require the consent or participation, in the form of a federal law, of the bodies competent in any specific case for such federal legislation. As regards administrative agreements, the provisions concerning the federal administration shall apply *mutatis mutandis*.

Article 59a\* (Repealed)

Article 60 (Appointment of federal civil servants and officers)

(1)\*\* The Federal President shall appoint and dismiss the federal judges, the federal civil servants, the officers and non-commissioned officers, unless otherwise provided for by law.

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\* Inserted by federal law of 19 March 1956 (Federal Law Gazette I p. 111) and repealed by federal law of 24 June 1968 (Federal Law Gazette I p. 011).

\*\* As amended by federal law of 19 March 1956 (Federal Law Gazette I p. 111).

(2) He shall exercise the right of pardon in individual cases on behalf of the Federation.

(3) He may delegate these powers to other authorities.

(4) Paragraphs (2) to (4) of Article 46 shall apply mutatis mutandis to the Federal President.

#### Article 61 (Impeachment before the Federal Constitutional Court)

(1) The Bundestag or the Bundesrat may impeach the Federal President before the Federal Constitutional Court for wilful violation of this Basic Law or any other federal law. The motion for impeachment must be brought forward by at least one fourth of the members of the Bundestag or one fourth of the votes of the Bundesrat. The decision to impeach shall require a majority of two thirds of the members of the Bundestag or of two thirds of the votes of the Bundesrat. The impeachment shall be substantiated by a person commissioned by the impeaching body.

(2) If the Federal Constitutional Court finds the Federal President guilty of a wilful violation of this Basic Law or of another federal law, it may declare him to have forfeited his office. After impeachment, it may issue an interim order preventing the Federal President from exercising his functions.

#### VI. THE FEDERAL GOVERNMENT

##### Article 62 (Composition)

The Federal Government shall consist of the Federal Chancellor and the Federal Ministers.

Article 63 (Election of the Federal Chancellor--Dissolution of the Bundestag)

(1) The Federal Chancellor shall be elected, without debate, by the Bundestag upon the proposal of the Federal President.

(2) The person obtaining the votes of the majority of the members of the Bundestag shall be elected. The person elected must be appointed by the Federal President.

(3) If the person proposed is not elected, the Bundestag may elect within fourteen days of the ballot a Federal Chancellor by more than one half of its members.

(4) If no candidate has been elected within this period, a new ballot shall take place without delay, in which the person obtaining the largest number of votes shall be elected. If the person elected has obtained the votes of the majority of the members of the Bundestag, the Federal President must appoint him within seven days of the election. If the person elected did not obtain such a majority, the Federal President must within seven days either appoint him or dissolve the Bundestag.

Article 64 (Appointment of Federal Ministers)

(1) The Federal Ministers shall be appointed and dismissed by the Federal President upon the proposal of the Federal Chancellor.

(2) The Federal Chancellor and the Federal Ministers, on assuming office, shall take before the Bundestag the oath provided for in Article 56.



Article 65 (Distribution of responsibility)

The Federal Chancellor shall determine, and be responsible for, the general policy guidelines. Within the limits set by these guidelines, each Federal Minister shall conduct the affairs of his department autonomously and on his own responsibility. The Federal Government shall decide on differences of opinion between Federal Ministers. The Federal Chancellor shall conduct the affairs of the Federal Government in accordance with rules of procedure adopted by it and approved by the Federal President.

Article 65a\* (Power of command over Armed Forces)

Power of command in respect of the Armed Forces shall be vested in the Federal Minister of Defence.

Article 66 (No secondary occupation)

The Federal Chancellor and the Federal Ministers may not hold any other salaried office, nor engage in a trade or occupation, nor practise a profession, nor belong to the management or, without the consent of the Bundestag, to the board of directors of an enterprise carried on for profit.

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\* Inserted by federal law of 19 March 1956 (Federal Law Gazette I p. 111) and amended by federal law of 24 June 1968 (Federal Law Gazette I p. 711).

Article 67 (Vote of no-confidence)

(1) The Bundestag can express its lack of confidence in the Federal Chancellor only by electing a successor with the majority of its members and by requesting the Federal President to dismiss the Federal Chancellor. The Federal President must comply with the request and appoint the person elected.

(2) Forty-eight hours must elapse between the motion and the election.

Article 68 (Vote of confidence--Dissolution of the Bundestag)

(1) If a motion of the Federal Chancellor for a vote of confidence is not assented to by the majority of the members of the Bundestag, the Federal President may, upon the proposal of the Federal Chancellor, dissolve the Bundestag within twenty-one days. The right to dissolve shall lapse as soon as the Bundestag with the majority of its members elects another Federal Chancellor.

(2) Forty-eight hours must elapse between the motion and the vote thereon.

Article 69 (Deputy of the Federal Chancellor)

(1) The Federal Chancellor shall appoint a Federal Minister as his deputy.

(2) The tenure of office of the Federal Chancellor or a Federal Minister shall end in any event on the first meeting of a new Bundestag; the tenure of office of a Federal Minister shall also

end on any other termination of the tenure of office of the Federal Chancellor.

(3) At the request of the Federal President the Federal Chancellor, or at the request of the Federal Chancellor or of the Federal President a Federal Minister, shall be bound to continue to transact the affairs of his office until the appointment of a successor.

## VII. LEGISLATIVE POWERS OF THE FEDERATION

### Article 70 (Legislation of the Federation and the Laender)

(1) The Laender shall have the right to legislate in so far as this Basic Law does not confer legislative power on the Federation.

(2) The division of competence between the Federation and the Laender shall be determined by the provisions of this Basic Law concerning exclusive and concurrent legislative powers.

### Article 71 (Exclusive legislation of the Federation, definition)

In matters within the exclusive legislative power of the Federation the Laender shall have power to legislate only if, and to the extent that, a federal law explicitly so authorizes them.

### Article 72 (Concurrent legislation of the Federation, definition)

(1) In matters within concurrent legislative powers the Laender shall have power to legislate as long as, and to the extent that, the Federation does not exercise its right to legislate.

(2) The Federation shall have the right to legislate in these matters to the extent that a need for regulation by federal legislation exists because:

1. a matter cannot be effectively regulated by the legislation of individual Laender, or
2. the regulation of a matter by a Land law might prejudice the interests of other Laender or of the people as a whole, or
3. the maintenance of legal or economic unity, especially the maintenance of uniformity of living conditions beyond the territory of any one Land, necessitates such regulation.

Article 73 (Exclusive legislation, catalogue)

The Federation shall have exclusive power to legislate in the following matters:

- 1.\* foreign affairs as well as defence including the protection of the civilian population;
2. citizenship in the Federation;
3. freedom of movement, passport matters immigration, emigration, and extradition;
4. currency, money and coinage, weights and measures, as well as the determination of standards of time;

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\* As amended by federal laws of 26 March 1954 (Federal Law Gazette I p. 45) and 24 June 1968 (Federal Law Gazette I p. 711).

5. the unity of the customs and commercial territory, treaties on commerce and on navigation, the freedom of movement of goods, and the exchanges of goods and payments with foreign countries, including customs and other frontier protection;
6. federal railroads and air transport;
7. postal and telecommunication services;
8. the legal status of persons employed by the Federation and by federal corporate bodies under public law;
9. industrial property rights, copyrights and publishers' rights;
- 10.\* co-operation of the Federation and the Laender in matters of

(a) criminal police,

(b) protection of the free democratic basic order, of the existence and the security of the Federation or of a Land (protection of the constitution) and

(c) protection against efforts in the federal territory which, by the use of force or actions in preparation for the use of force, endanger the foreign interests of the Federal Republic of Germany,

as well as the establishment of a Federal Criminal Police Office and the international control of crime.

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\* As amended by federal law of 28 July 1972 (Federal Law Gazette I p. 1305).

11. statistics for federal purposes.

Article 74 (Concurrent legislation, catalogue)

Concurrent legislative powers shall extend to the following matters:

1. civil law, criminal law and execution of sentences, the organization and procedure of courts, the legal profession, notaries, and legal advice (Rechtsberatung);
2. registration of births, deaths, and marriages;
3. the law of association and assembly;
4. the law relating to residence and establishment of aliens;
- 4a.\* the law relating to weapons;
5. the protection of German cultural treasures against removal abroad;
6. refugee and expellee matters;
7. public welfare;
8. citizenship in the Laender;
9. war damage and reparations;
- 10.\*\*benefits to war-disabled persons and to dependants of those killed in the war as well as assistance to former prisoners of war;

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\* As amended by federal law of 28 July 1972 (Federal Law Gazette I p. 1305).

\*\* As amended by federal law of 16 June 1965 (Federal Law Gazette I p. 513).

- 10a.\* war graves of soldiers, graves of other victims of war and of victims of despotism;
11. the law relating to economic matters (mining, industry, supply of power, crafts, trades, commerce, banking, stock exchanges, and private insurance);
- 11a.\*\*the production and utilization of nuclear energy for peaceful purposes, the construction and operation of installations serving such purposes, protection against hazards arising from the release of nuclear energy or from ionizing radiation, and the disposal of radioactive substances;
12. labour law, including the legal organization of enterprises, protection of workers, employment exchanges and agencies, as well as social insurance, including unemployment insurance;
- 13.\*\*\*the regulation of educational and training grants and the promotion of scientific research;

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\* Inserted by federal law of 16 June 1965 (Federal Law Gazette I p. 513).

\*\* Inserted by federal law of 23 December 1959 (Federal Law Gazette I p. 813).

\*\*\* As amended by federal law of 12 May 1969 (Federal Law Gazette I p. 363).

14. the law regarding expropriation, to the extent that matters enumerated in Article 73 and 74 are concerned;
15. transfer of land, natural resources and means of production to public ownership or other forms of publicly controlled economy;
16. prevention of the abuse of economic power;
17. promotion of agricultural and forest production, safeguarding of the supply of food, the importation and exportation of agricultural and forest products, deep sea and coastal fishing, and preservation of the coasts;
18. real estate transactions, land law and matters concerning agricultural leases, as well as housing, settlement and home-stead matters;
19. measures against human and animal diseases that are communicable or otherwise endanger public health, admission to the medical profession and to other health occupations or practices, as well as trade in medicines, curatives, narcotics, and poisons;
- 19a.\*the economic viability of hospitals and the regulation of hospitalization fees;

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\* Inserted by federal law of 12 May 1969 (Federal Law Gazette I p. 363).



- 20.\* protection regarding the marketing of food, drink and tobacco, of necessities of life, fodder, agricultural and forest seeds and seedlings, and protection of plants against diseases and pests, as well as the protection of animals;
21. ocean and coastal shipping as well as aids to navigation, inland navigation, meteorological services, sea routes, and inland waterways used for general traffic;
- 22.\*\* road traffic, motor transport, construction and maintenance of long-distance highways as well as the collection of charges for the use of public highways by vehicles and the allocation of revenue therefrom;
23. non-federal railroads, except mountain railroads;
- 24.\*\*\* disposal of waste, keeping the air pure, and combatting noise.

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\* As amended by federal law of 18 March 1971 (Federal Law Gazette I p. 207).

\*\* As amended by federal law of 12 May 1969 (Federal Law Gazette I p. 363).

\*\*\* As amended by federal law of 14 April 1972 (Federal Law Gazette I p. 593).

Article 74a<sup>+</sup> (Wider competence of Federation for pay scales)

(1) Concurrent legislation shall further extend to the pay scales and pensions of members of the public service whose service and loyalty are governed by public law, in so far as the Federation does not have exclusive power to legislate pursuant to item 8 of Article 73.

(2) Federal laws enacted pursuant to paragraph (1) of this Article shall require the consent of the Bundesrat.

(3) Federal laws enacted pursuant to item 8 of Article 73 shall likewise require the consent of the Bundesrat, in so far as they prescribe for the structure and computation of pay scales and pensions, including the appraisal of posts, criteria or minimum or maximum rates other than those provided for in federal laws enacted pursuant to paragraph (1) of this Article.

(4) Paragraphs (1) and (2) of this Article shall apply mutatis mutandis to the pay scales and pensions for judges in the Laender. Paragraph (3) of this Article shall apply mutatis mutandis to laws enacted pursuant to paragraph (1) of Article 98.

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<sup>+</sup>As inserted by federal law of 18 March 1971 (Federal Law Gazett I p. 206).

Article 75\* (General provisions of the Federation, catalogue)

Subject to the conditions laid down in Article 72 the Federation shall have the right to enact skeleton provision concerning:

- 1.\*\* the legal status of persons in the public service of the Laender, communes, or other corporate bodies under public law, in so far as Article 74a does not provide otherwise;
- 1a.\*\*\* the general principles governing higher education;
2. the general legal status of the press and the film industry;
3. hunting, protection of nature, and care of the countryside;
4. land distribution, regional planning, and water management;
5. matters relating to the registration of changes of residence or domicile (Meldewesen) and to identity cards.

Article 76 (Bills)

(1) Bills shall be introduced in the Bundestag by the Federal Government or by members of the Bundestag or by the Bundesrat.

(2)<sup>+</sup> Bills of the Federal Government shall be submitted first to

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\* As amended by federal law of 12 May 1969 (Federal Law Gazette I p. 363).

\*\* As amended by federal law of 18 March 1971 (Federal Law Gazette I p. 206).

\*\*\* Inserted by federal law of 12 May 1969 (Federal Law Gazette I p. 1177).

<sup>+</sup> As amended by federal law of 15 November 1969 (Federal Law Gazette I p. 1177).

the Bundesrat. The Bundesrat shall be entitled to state its position on such bills within six weeks. A bill exceptionally submitted to the Bundesrat as being particularly urgent by the Federal Government may be submitted by the latter to the Bundestag three weeks later, even though the Federal Government may not yet have received the statement of the Bundesrat's position; such statement shall be transmitted to the Bundestag by the Federal Government without delay upon its receipt.

(3)\*Bills of the Bundesrat shall be submitted to the Bundestag by the Federal Government within three months. In doing so, the Federal Government must state its own view.

Article 77 (Procedure concerning adopted bills--Objection of the Bundesrat)

(1) Bills intended to become federal laws shall require adoption by the Bundestag. Upon their adoption they shall, without delay, be transmitted to the Bundesrat by the President of the Bundestag.

(2)\*\* The Bundesrat may, within three weeks of the receipt of the adopted bill, demand that a committee for joint consideration of bills, composed of members of the Bundestag and members of

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\* As amended by federal law of 17 July 1969 (Federal Law Gazette I p. 817).

\*\* As amended by federal law of 15 November 1968 (Federal Law Gazette I p. 1177).

the Bundesrat, be convened. The composition and the procedure of this committee shall be regulated by rules of procedure to be adopted by the Bundestag and requiring the consent of the Bundesrat. The members of the Bundesrat on this committee shall not be bound by instructions. If the consent of the Bundesrat is required for a bill to become a law, the convening of this committee may also be demanded by the Bundestag or the Federal Government. Should the committee propose any amendment to the adopted bill, the Bundestag must again vote on the bill.

(3)\* In so far as the consent of the Bundesrat is not required for a bill to become a law, the Bundesrat may, when the proceedings under paragraph (2) of this Article are completed, enter an objection within two weeks against a bill adopted by the Bundestag. This period shall begin, in the case of the last sentence of paragraph (2) of this Article, on the receipt of the bill as readopted by the Bundestag, and in all other cases on the receipt of a communication from the chairman of the committee provided for in paragraph (2) of this Article, to the effect that the committee's proceedings have been concluded.

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\* As amended by federal law of 15 November 1969 (Federal Law Gazette I p. 1177).

(4) If the objection was adopted with the majority of the votes of the Bundesrat, it can be rejected by a decision of the majority of the members of the Bundestag. If the Bundesrat adopted the objection with a majority of at least two thirds of its votes, its rejection by the Bundestag shall require a majority of two thirds, including at least the majority of the members of the Bundestag.

#### Article 78 (Conditions for passing of federal laws)

A bill adopted by the Bundestag shall become a law if the Bundesrat consents to it, or fails to make a demand pursuant to paragraph (2) of Article 77, or fails to enter an objection within the period stipulated in paragraph (3) of Article 77, or withdraws such objection, or if the objection is overridden by the Bundestag.

#### Article 79 (Amendment of the Basic Law)

(1) This Basic Law can be amended only by laws which expressly amend or supplement the text thereof. In respect of international treaties the subject of which is a peace settlement, the preparation of a peace settlement, or the abolition of an occupation regime, or which are designed to serve the defence of the Federal Republic, it shall be sufficient, for the purpose of clarifying that the provisions of this Basic Law do not preclude the conclusion and entry into force of such treaties, to effect a

supplementation of the text of this Basic Law confined to such clarification\*.

(2) Any such law shall require the affirmative vote of two thirds of the members of the Bundestag and two thirds of the votes of the Bundesrat.

(3) Amendments of this Basic Law affecting the division of the Federation into Laender, the participation on principle of the Laender in legislation, or the basic principles laid down in Articles 1 and 20, shall be inadmissible.

Article 80 (Issue of ordinances having force of law)

(1) The Federal Government, a Federal Minister or the Land governments may be authorized by a law to issue ordinances having the force of law (Rechtsverordnungen). The content, purpose, and scope of the authorization so conferred must be set forth in such law. This legal basis must be stated in the ordinance. If a law provides that such authorization may be delegated, such delegation shall require another ordinance having the force of law.

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\* Second sentence inserted by federal law of 26 March 1954 (Federal Law Gazette I p. 45).

(2) The consent of the Bundesrat shall be required, unless otherwise provided by federal legislation, for ordinances having the force of law issued by the Federal Government or a Federal Minister concerning basic rules for the use of facilities of the federal railroads and of postal and telecommunication services, or charges therefor, or concerning the construction and operation of railroads, as well as for ordinances having the force of law issued pursuant to federal laws that require the consent of the Bundesrat or that are executed by the Laender as agents of the Federation or as matters of their own concern.

Article 80a\* (State of tension)

(1) Where this Basic Law or a federal law on defence, including the protection of the civilian population, stipulates that legal provisions may only be applied in accordance with this Article, their application shall, except when a state of defence exists, be admissible only after the Bundestag has determined that a state of tension (Spannungsfall) exists or if it has specifically approved such application. In respect of the cases mentioned in the first sentence of paragraph (5) and the second sentence

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\* Inserted by federal law of 24 June 1968 (Federal Law Gazette I p. 711).



of paragraph (6) of Article 12a, such determination of a state of tension and such specific approval shall require a two-thirds majority of the votes cast.

(2) Any measures taken by virtue of legal provisions enacted under paragraph (1) of this Article shall be revoked whenever the Bundestag so requests.

(3) In derogation of paragraph (1) of this Article, the application of such legal provisions shall also be admissible by virtue of, and in accordance with, a decision taken with the consent of the Federal Government by an international organ within the framework of a treaty of alliance. Any measures taken pursuant to this paragraph shall be revoked whenever the Bundestag so requests with the majority of its members.

#### Article 81 (State of legislative emergency)

(1) Should, in the circumstances of Article 68, the Bundestag not be dissolved, the Federal President may, at the request of the Federal Government and with the consent of the Bundesrat, declare a state of legislative emergency with respect to a bill, if the Bundestag rejects the bill although the Federal Government has declared it to be urgent. The same shall apply if a bill has been rejected although the Federal Chancellor had combined with it the motion under Article 68.

(2) If, after a state of legislative emergency has been declared, the Bundestag again rejects the bill or adopts it in a version

stated to be unacceptable to the Federal Government the bill shall be deemed to have become a law to the extent that the Bundesrat consents to it. The same shall apply if the bill is not passed by the Bundestag within four weeks of its reintroduction.

(3) During the term of office of a Federal Chancellor, any other bill rejected by the Bundestag may become a law in accordance with paragraphs (1) and (2) of this Article within a period of six months after the first declaration of a state of legislative emergency. After the expiration of this period, a further declaration of a state of legislative emergency shall be inadmissible during the term of office of the same Federal Chancellor.

(4) This Basic Law may not be amended nor repealed nor suspended in whole or in part by a law enacted pursuant to paragraph (2) of this Article.

#### Article 82. (Promulgation and effective date of laws)

(1) Laws enacted in accordance with the provisions of this Basic Law shall, after countersignature, be signed by the Federal President and promulgated in the Federal Law Gazette. Ordinances having the force of law shall be signed by the agency which issues them, and, unless otherwise provided by law, shall be promulgated in the Federal Law Gazette.

(2) Every law or every ordinance having the force of law should specify its effective date. In the absence of such a provision,

it shall become effective on the fourteenth day after the end of the day on which the Federal Law Gazette containing it was published.

## VII. THE EXECUTION OF FEDERAL LAWS AND THE FEDERAL ADMINISTRATION.

### Article 83 (Execution of federal laws by the Laender)

The Laender shall execute federal laws as matters of their own concern in so far as this Basic Law does not otherwise provide or permit.

### Article 84 (Land administration and Federal Government supervision)

(1) Where the Laender execute federal laws as matters of their own concern, they shall provide for the establishment of the requisite authorities and the regulation of administrative procedures in so far as federal laws consented to by the Bundesrat to not otherwise provide.

(2) The Federal Government may, with the consent of the Bundesrat, issue pertinent general administrative rules.

(3) The Federal Government shall exercise supervision to ensure that the Laender execute the federal laws in accordance with applicable law. For this purpose the Federal Government may send commissioners to the highest Land authorities and with their consent or, if such consent is refused, with the consent of the

Bundesrat, also to subordinate authorities.

(4) Should any shortcomings which the Federal Government has found to exist in the execution of federal laws in the Laender not be corrected, the Bundesrat shall decide, on the application of the Federal Government or the Land concerned, whether such Land has violated applicable law. The decision of the Bundesrat may be challenged in the Federal Constitutional Court.

(5) With a view to the execution of federal laws, the Federal Government may be authorized by a federal law requiring the consent of the Bundesrat to issue individual instructions for particular cases. They shall be addressed to the highest Land authorities unless the Federal Government considers the matter urgent.

#### Article 85 (Execution by Laender as agents of the Federation)

(1) Where the Laender execute federal laws as agents of the Federation, the establishment of the requisite authorities shall remain the concern of the Laender except in so far as federal laws consented to by the Bundesrat otherwise provide.

(2) The Federal Government may, with the consent of the Bundesrat, issue pertinent general administrative rules. It may regulate the uniform training of civil servants (Beamte) and other salaried public employees (Angestellte). The heads of authorities at the intermediate level shall be appointed with its agreement.

(3) The Land authorities shall be subject to the instructions of the appropriate highest federal authorities. Such instructions shall be addressed to the highest Land authorities unless the Federal Government considers the matter urgent. Execution of the instructions shall be ensured by the highest Land authorities.

(4) Federal supervision shall extend to conformity with law and appropriateness of execution. The Federal Government may, for this purpose, require the submission of reports and documents and send commissioners to all authorities.

#### Article 86 (Direct Federal administration)

Where the Federation executes laws by means of direct federal administration or by federal corporate bodies or institutions under public law, the Federal Government shall, in so far as the law concerned contains no special provision, issue pertinent general administrative rules. The Federal Government shall provide for the establishment of the requisite authorities in so far as the law concerned does not otherwise provide.

#### Article 87\* (Matters of direct federal administration)

(1) The foreign services, the federal finance administration,

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\* Inserted by federal law of 19 March 1956 (Federal Law Gazette I p. 111) and amended by federal law of 24 June 1968 (Federal Law Gazette I p. 711).

the federal railroads, the federal postal service, and, in accordance with the provisions of Article 89, the administration of federal waterways and of shipping shall be conducted as matters of direct federal administration with their own administrative substructures.

\*Federal frontier protection authorities, central offices for police information and communications, for the criminal police and for the compilation of data for the purposes of protection of the constitution and protection against efforts in the Federal territory which, by the use of force or actions in preparation for the use of force, endanger the foreign interests of the Federal Republic of Germany may be established by federal legislation.

(2) Social insurance institutions whose sphere of competence extends beyond the territory of one Land shall be administered as federal corporate bodies under public law.

(3) In addition, autonomous federal higher authorities as well as federal corporate bodies and institutions under public law may be established by federal legislation for matters in which the Federation has the power to legislate. If new functions arise for the Federation in matters in which it has the power

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\*As amended by federal law of 28 July 1972 (Federal Law Gazette I p. 1305).

to legislate. If new functions arise for the Federation in matters in which it has the power to legislate, federal authorities at the intermediate and lower levels may be established, in case of urgent need, with the consent of the Bundesrat and of the majority of the members of the Bundestag.

Article 87a\* (Build-up, strength, use and functions of the Armed Forces)

- (1) The Federation shall build up Armed Forces for defence purposes. Their numerical strength and general organizational structure shall be shown in the budget.
- (2) Apart from defence, the Armed Forces may only be used to the extent explicitly permitted by this Basic Law.
- (3) While a state of defence or a state of tension exists, the Armed Forces shall have the power to protect civilian property and discharge functions of traffic control in so far as this is necessary for the performance of their defence mission. Moreover, the Armed Forces may, when a state of defence or a state of tension exists, be entrusted with the protection of civilian property in support of police measures; in this event the Armed Forces shall co-operate with the competent authorities.

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\* Inserted by federal law of 19 March 1956 (Federal Law Gazette I p. 111).

(4) In order to avert any imminent danger to the existence or to the free democratic basic order of the Federation or a Land, the Federal Government may, should conditions as envisaged in paragraph (2) of Article 91 obtain and the police forces and the Federal Border Guard be inadequate, use the Armed Forces to support the police and the Federal Border Guard in the protection of civilian property and in combatting organized and militarily armed insurgents. Any such use of Armed Forces must be discontinued whenever the Bundestag or the Bundesrat so requests.

Article 87b\* (Administration of the Armed Forces)

(1) The Federal Armed Forces Administration shall be conducted as a direct federal administration with its own administrative substructure. Its function shall be to administer personnel matters and directly to meet the material requirements of the Armed Forces. Tasks connected with benefits to injured persons or with construction work shall not be assigned to the Federal Armed Forces Administration except by federal legislation requiring the consent of the Bundesrat. Such consent shall also be required for any laws to the extent that they empower the Federal Armed Forces Administration to interfere with rights of third

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\* Inserted by federal law of 19 March 1956 (Federal Law Gazette I p. 111).



parties; this shall, however, not apply in the case of laws concerning personnel.

(2) Moreover, federal laws concerning defence including recruitment for military service and protection of the civilian population may, with the consent of the Bundesrat, provide that shall be carried out, wholly or in part, either by means of direct federal administration having its own administrative substructure or by the Laender acting as agents of the Federation. If such laws are executed by the Laender acting as agents of the Federation, they may, with the consent of the Bundesrat, provide that the powers vested in the Federal Government or appropriate highest federal authorities by virtue of Article 85 shall be transferred wholly or in part to higher federal authorities; in such an event it may be enacted that these authorities shall not require the consent of the Bundesrat in issuing general administrative rules as referred to in the first sentence of paragraph (2) of Article 85.

Article 87c\* (Production and utilization of nuclear energy)

Laws enacted under item 11 a of Article 74 may, with the consent of the Bundesrat, provide that they shall be executed by the Laender acting as agents of the Federation.

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\* Inserted by federal law of 23 December 1959 (Federal Law Gazette ' p. 813).

Article 87d\* (Aviation Administration)

(1) The Aviation Administration shall be conducted as a direct federal administration.

(2) By means of federal legislation requiring the consent of the Bundesrat, functions of the Aviation Administration may be delegated to the Laender acting as agents of the Federation.

Article 88 (Federal Bank)

The Federation shall establish a note-issuing and currency bank as the Federal Bank.

Article 89 (Federal waterways)

(1) The Federation shall be the owner of the former Reich waterways.

(2) The Federation shall administer the federal waterways through its own authorities. It shall exercise those governmental functions relating to inland shipping which extend beyond the territory of one Land, and those governmental functions relating to maritime shipping which are conferred on it by law. Upon request, the Federation may transfer the administration of federal waterways, in so far as they lie within the territory of one Land, to that

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\* Inserted by federal law of 6 February 1961 (Federal Law Gazette I p. 65).

Land, to that Land as its agent. If a waterway touches the territories of several Laender, the Federation may designate one Land as its agent if so requested by the Laender concerned.

(3) In the administration, development, and new construction of waterways the needs of soil cultivation and of water management shall be safeguarded in agreement with the Laender.

#### Article 90 (Federal highways)

- (1) The Federation shall be the owner of the former Reich motorways (Reichsautobahnen) and Reich highways.
- (2) The Laender, or such self-governing corporate bodies as are competent under Land law, shall administer as agents of the Federation the federal motorways and other federal highways used for long-distance traffic.
- (3) At the request of a Land, the Federation may take under direct federal administration federal motorways and other federal highways used for long-distance traffic, in so far as they lie within the territory of that Land.

#### Article 91\* (Aversion of dangers to the existence of the Federation or of a Land)

- (1) In order to avert any imminent danger to the existence or

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\* As amended by federal law of 24 June 1968 (Federal Law Gazette I p. 711).

to the free democratic basic order of the Federation or a Land, a Land may request the services of the police forces of other Laender, or of the forces\* and facilities of other administrative authorities and of the Federal Border Guard.

(2) If the Land where such danger is imminent is not itself willing or able to combat the danger, the Federal Government may place the police in that Land and the police forces of other Laender under its own instructions and commit units of the Federal Border Guard. The order for this shall be rescinded after the removal of the danger or else at any time upon the request of the Bundesrat. If the danger extends to a region larger than a Land, the Federal Government may, in so far as is necessary for effectively combatting such danger, issue instructions to the Land governments; the first and second sentences of this paragraph shall not be affected by this provision.

#### VIIIa. JOINT TASKS\*\*

Article 91a\*\* (Definition of joint tasks)

(1) The Federation shall participate in the discharge of the

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\* e.g., civil defence corps, emergency civil engineering corps, fire brigades, etc.

\*\* Inserted by federal law of 12 May 1969 (Federal Law Gazette I p. 359).

following responsibilities of the Laender, provided that such responsibilities are important to society as a whole and that federal participation is necessary for the improvement of living conditions (joint tasks):

1. expansion and construction of institutions of higher education including university clinics;
2. improvement of regional economic structures;
3. improvement of the agrarian structure and of coast preservation.

(2) Joint tasks shall be defined in detail by federal legislation requiring the consent of the Bundesrat. Such legislation should include general principles governing the discharge of joint tasks.

(3) Such legislation shall provide for the procedure and the institutions required for joint overall planning. The inclusion of a project in the overall planning shall require the consent of the Land in which it is to be carried out.

(4) In cases to which items 1 and 2 of paragraph (1) of this Article apply, the Federation shall meet one half of the expenditure in each Land. In cases to which item 3 of paragraph (1) of this Article applies, the Federation shall meet at least one half of the expenditure, and such proportion shall be the same for all the Laender. Details shall be regulated by legislation. Provision of funds shall be subject to appropriation in the

budgets of the Federation and the Laender.

(5) The Federal Government and the Bundesrat shall be informed about the execution of joint tasks, should they so demand.

Article 91b\* (Co-operation of Federation and Laender in educational planning and in research)

The Federation and the Laender may pursuant to agreements cooperate in educational planning and in the promotion of institutions and projects of scientific research of supraregional importance. The apportionment of costs shall be regulated in the pertinent agreements.

#### IX. THE ADMINISTRATION OF JUSTICE

Article 92\*\* (Court organization)

Judicial power shall be vested in the judges; it shall be exercised by the Federal Constitutional Court, by the federal courts provided for in this Basic Law, and by the courts of the Laender.

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\* Inserted by federal law of 12 May 1969 (Federal Law Gazette I p. 359).

\*\* As amended by federal law of 18 June 1968 (Federal Law Gazette I p. 97).

Article 93 (Federal Constitutional Court, competency)

(1) The Federal Constitutional Court shall decide:

1. on the interpretation of this Basic Law in the event of disputes concerning the extent of the rights and duties of a highest federal organ or of other parties concerned who have been vested with rights of their own by this Basic Law or by rules of procedure of a highest federal organ;
2. in case of differences of opinion or doubts on the formal and material compatibility of federal law or Land law with this Basic Law, or on the compatibility of Land law with other federal law, at the request of the Federal Government, of a Land government, or of one third of the Bundestag members;
3. in case of differences of opinion on the rights and duties of the Federation and the Laender, particularly in the execution of federal law by the Laender and in the exercise of federal supervision;
4. on other disputes involving public law, between the Federation and the Laender, between different Laender or within a Land, unless recourse to another court exists;
- 4a.\* on complaints of unconstitutionality, which may be entered by any person who claims that one of his basic rights or one

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\* Inserted by federal law of 29 January 1969 (Federal Law Gazette I p. 97).

of his rights under paragraph (4) of Article 20, under Article 33, 38, 101, 103, or 104 has been violated by public authority;

4b.\* on complaints of unconstitutionality, entered by communes or associations of communes on the ground that their right to self-government under Article 28 has been violated by a law other than a Land law open to complaint to the respective Land constitutional court;

5. in the other cases provided for in this Basic Law.

(2) The Federal Constitutional Court shall also act in such other cases as are assigned to it by federal legislation.

Article 94 (Federal Constitutional Court, composition)

(1) The Federal Constitutional Court shall consist of federal judges and other members. Half of the members of the Federal Constitutional Court shall be elected by the Bundestag and half by the Bundesrat. They may not be members of the Bundestag, the Bundesrat, the Federal Government, nor of any of the corresponding organs of a Land.

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\* Inserted by federal law of 29 January 1969 (Federal Law Gazette I p. 97).



(2) The constitution and procedure of the Federal Constitutional Court shall be regulated by a federal law which shall specify in what cases its decisions shall have the force of law\*. Such law may require that all other legal remedies must have been exhausted before any such complaint of unconstitutionality can be entered, and may make provision for a special procedure as to admissibility.

Article 95\*\* (Highest courts of justice of the Federation--Joint Panel)

(1) For the purposes of ordinary, administrative, fiscal, labour, and social jurisdiction, the Federation shall establish as highest courts of justice the Federal Court of Justice, the Federal Administrative Court, the Federal Fiscal Court, the Federal Labour Court, and the Federal Social Court.

(2) The judges of each of these courts shall be selected jointly by the competent Federal Minister and a committee for the selection of judges consisting of the competent Land Ministers and an equal number of members elected by the Bundestag.

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\* Inserted by federal law of 29 January 1969 (Federal Law Gazette I p. 97).

\*\* As amended by federal Law of 18 June 1968 (Federal Law Gazette I p. 657).

(3) In order to preserve uniformity of jurisdiction, a Joint Panel (Senat) of the courts specified in paragraph (1) of this Article shall be set up. Details shall be regulated by a federal law.

Article 96\* (Federal courts)

(1) The Federation may establish a Federal Court of matters concerning industrial property rights.

(2) The Federation may establish military criminal courts for the Armed Forces as federal courts. They shall exercise criminal jurisdiction while a state of defence exists, and otherwise only over members of the Armed Forces serving abroad or on board warships. Details shall be regulated by a federal law. These courts shall be within the competence of the Federal Minister of Justice. Their full-time judges must be persons qualified to exercise the functions of a judge.

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\* The original Article 96 was repealed by federal law of 18 June 1968 (Federal Law Gazette I p. 658). The present Article 96 is the former Article 96 a as inserted by federal law of 19 March 1956 (Federal Law Gazette I p. 111) and amended by federal laws of 6 March 1961 (Federal Law Gazette I p. 141), 18 June 1968 (Federal Law Gazette I p. 658), 12 May 1969 (Federal Law Gazette I p. 363), and 26 August 1969 (Federal Law Gazette I p. 1357).

(3) The highest court of justice for appeals from the courts mentioned in paragraphs (1) and (2) of this Article shall be the Federal Court of Justice.

(4)\* The Federation may establish federal courts for disciplinary proceedings against, and for proceedings in pursuance of complaints by, persons in the federal public service.

(5)\*\* In respect of criminal proceedings under paragraph (1) of Article 26 or involving the protection of the State, a federal law requiring the consent of the Bundesrat may provide that Land courts shall exercise federal jurisdiction.

Article 96a\*\*\*

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\* As amended by federal law of 12 May 1969 (Federal Law Gazette I p. 363).

\*\* Inserted by federal law of 26 August 1969 (Federal Law Gazette I p. 1357).

\*\*\* The original Article 96 was repealed by federal law of 18 June 1968 (Federal Law Gazette I p. 658). The present Article 96 is the former Article 96 a as inserted by federal law of 19 March 1956 (Federal Law Gazette I p. 111) and amended by federal laws of 6 March 1961 (Federal Law Gazette I p. 141), 18 June 1968 (Federal Law Gazette I p. 658), 12 May 1969 (Federal Law Gazette I p. 363), and 26 August 1969 (Federal Law Gazette I p. 1357).

Article 97 (Independence of the judges)

(1) The judges shall be independent and subject only to the law.

(2) Judges appointed permanently on a full-time basis in established positions cannot against their will be dismissed or permanently or temporarily suspended from office or given a different function or retired before the expiration of their term of office except by virtue of a judicial decision and only on the grounds and in the form provided for by law. Legislation may set age limits for the retirement of judges appointed for life. In the event of changes in the structure of courts or in districts of jurisdiction, judges may be transferred to another court or removed from office, provided they retain their full salary.

Article 98\* (Legal status of judges)

(1) The legal status of the federal judges shall be regulated by a special federal law.

(2) If a federal judge, in his official capacity or unofficially, infringes the principle of this Basic Law or the constitutional order of a Land, the Federal Constitutional Court may decide by a two-thirds majority, upon the request of the Bundestag, that the judge be given a different function or retired. In a case

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\* As amended by federal law of 18 March 1971 (Federal Law Gazette I p. 206).

of intentional infringement, his dismissal may be ordered.

(3)\* The legal status of the judges in the Laender shall be regulated by special Land laws. The Federation may enact general provisions, in so far as paragraph (4) of Article 74a does not provide otherwise.

(4) Laender may provide that the Land Minister of Justice together with a committee for the selection of judges shall decide on the appointment of judges in the Laender.

(5) The Laender may, in respect of Land judges, enact provisions corresponding to those of paragraph (2) of this Article. Existing Land constitutional law shall remain unaffected. The decision on a case of impeachment of a judge shall rest with the Federal Constitutional Court.

Article 99\*\* (Assignment of competencies to Federal Constitutional Court and highest federal courts in matters involving Land law)  
The decision of constitutional disputes within a Land may be assigned by Land legislation to the Federal Constitutional Court, and the decision of last instance in matters involving the application of Land law, to the highest courts of justice referred to

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\* As amended by federal law of 18 March 1971 (Federal Law Gazette I p. 206).

\*\* As amended by federal law of 18 June 1968 (Federal Law Gazette I p. 658).

in paragraph (1) of Article 95.

Article 100 (Compatibility of statutory law with Basic Law)

(1) If a court considers unconstitutional a law the validity of which is relevant to its decision, the proceedings shall be stayed, and a decision shall be obtained from the Land court competent for constitutional disputes if the constitution of a Land is held to be violated, or from the Federal Constitutional Court if this Basic Law is held to be violated. This shall also apply if this Basic Law is held to be violated by Land law or if a Land law is held to be incompatible with a federal law.

(2) If, in the course of litigation, doubt exists whether a rule of public international law is an integral part of federal law and whether such rule directly creates rights and duties for the individual (Article 25), the court shall obtain a decision from the Federal Constitutional Court.

(3)\* If the constitutional court of a Land, in interpreting this Basic Law, intends to deviate from a decision of the Federal Constitutional Court or of the constitutional court of another Land, it must obtain a decision from the Federal Constitutional Court.

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\* As amended by federal law of 18 June 1968 (Federal Law Gazette I p. 658).

Article 101 (Ban on extraordinary courts)

(1) Extraordinary courts shall be inadmissible. No one may be removed from the jurisdiction of his lawful judge.

(2) Courts for special fields may be established only by legislation.

Article 102 (Abolition of capital punishment)

Capital punishment shall be abolished.

Article 103 (Basic rights in the courts)

(1) In the courts everyone shall be entitled to a hearing in accordance with the law.

(2) An act can be punished only if it was an offence against the law before the act was committed.

(3) No one may be punished for the same act more than once under general penal legislation.

Article 104 (Legal guarantees in the event of deprivation of liberty)

(1) The liberty of the individual may be restricted only by virtue of a formal law and only with due regard to the forms prescribed therein. Detained persons may not be subjected to mental nor to physical ill-treatment.

(2) Only judges may decide on the admissibility or continuation of any deprivation of liberty. Where such deprivation is not based on the order of a judge, a judicial decision must be ob-

tained without delay. The police may hold no one on their own authority in their own custody longer than the end of the day after the day of apprehension. Details shall be regulated by legislation.

(3) Any person provisionally detained on suspicion of having committed an offence must be brought before a judge not later than the day following the day of apprehension; the judge shall inform him of the reasons for the detention, examine him, and give him an opportunity to raise objections. The judge must, without delay, either issue a warrant of arrest setting forth the reasons therefor or order his release from detention.

(4) A relative or a person enjoying the confidence of the person detained must be notified without delay of any judicial decision ordering or continuing his deprivation of liberty.

#### X. FINANCE

Article 104a\* (Apportionment of expenditure, Financial assistance)

(1) The Federation and the Laender shall meet separately the expenditure resulting from the discharge of their respective tasks in so far as this Basis Law does not provide otherwise.

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\* Inserted by federal law of 12 May 1969 (Federal Law Gazette I p. 359).



(2) Where the Laender act as agents of the Federation, the Federation shall meet the resulting expenditure.

(3) Federal law to be executed by the Laender and involving the disbursement of funds may provide that such funds shall be contributed wholly or in part by the Federation. Where any such law provides that the Federation shall meet one half of the expenditure or more, the Laender shall execute it as agents of the Federation. Where any such law provides that the Laender shall meet one quarter of the expenditure or more, it shall require the consent of the Bundesrat.

(4) The Federation may grant the Laender financial assistance for particularly important investments by the Laender or communes or associations of communes, provided that such investments are necessary to avert a disturbance of the overall economic equilibrium or to equalize differences of economic capacities within the federal territory or to promote economic growth. Details, especially concerning the kinds of investments to be promoted, shall be regulated by federal legislation requiring the consent of the Bundesrat, or by administrative arrangements based on the federal budget.

(5) The Federation and the Laender shall meet the administrative expenditure incurred by their respective authorities and shall be responsible to each other for ensuring proper administration. Details shall be regulated by a federal law requiring the consent of the Bundesrat.

Article 105 (Customs duties, Monopolies, Taxes--legislation)

(1) The Federation shall have exclusive power to legislate on customs matters and fiscal monopolies.

(2)\* The Federation shall have concurrent power to legislate on all other taxes the revenue from which accrues to it wholly or in part or where the conditions provided for in paragraph (2) of Article 72 apply.

(2a)\*\* The Laender shall have power to legislate on local excise taxes as long and in so far as they are not identical with taxes imposed by federal legislation.

(3) Federal laws relating to taxes the receipts from which accrue wholly or in part to the Laender or communes or associations of communes shall require the consent of the Bundesrat.

Article 106\*\*\* (Apportionment of tax revenue)

(1) The yield of fiscal monopolies and the revenue from the following taxes shall accrue to the Federation:

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\* As amended by federal law of 12 May 1969 (Federal Law Gazette I p. 359)

\*\* Inserted by federal law of 12 May 1969 (Federal Law Gazette I p. 359).

\*\*\* As amended by federal laws of 23 December 1955 (Federal Law Gazette I p. 817), of 24 December 1956 (Federal Law Gazette I p. 1077), and of 12 May 1969 (Federal Law Gazette I p. 359).

1. customs duties,
  2. excise taxes in so far as they do not accrue to the Laender pursuant to paragraph (2) of this Article, or jointly to the Federation and the Laender in accordance with paragraph (3) of this Article, or to the communes in accordance with paragraph (6) of this Article,
  3. the road freight tax,
  4. the capital transfer taxes, the insurance tax and the tax on drafts and bills of exchange,
  5. non-recurrent levies on property, and contributions imposed for the purpose of implementing the equalization of burdens legislation\*,
  6. income and corporation surtaxes,
  7. charges imposed within the framework of the European Communities.
- (2) Revenue from the following taxes shall accrue to the Laender:
1. property (net worth) tax,
  2. inheritance tax,
  3. motor-vehicle tax,
  4. such taxes on transactions as do not accrue to the Federation

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\* i.e., contributions imposed on persons having suffered no war damage and used to indemnify persons having suffered such damage.

pursuant to paragraph (1) of this Article or jointly to the Federation and the Laender pursuant to paragraph (3) of this Article,

5. beer tax,

6. taxes on gambling establishments.

(3) Revenue from income taxes, corporation taxes and turnover taxes shall accrue jointly to the Federation and the Laender (joint taxes) to the extent that the revenue from income tax is not allocated to the communes pursuant to paragraph (5) of this Article. The Federation and the Laender shall share equally the revenues from income taxes and corporation taxes. The respective shares of the Federation and the Laender in the revenue from turnover tax shall be determined by federal legislation requiring the consent of the Bundesrat. Such determination shall be based on the following principles:

1. The Federation and the Laender shall have an equal claim to coverage from current revenues of their respective necessary expenditures. The extent of such expenditures shall be determined within a system of pluri-annual financial planning;
2. the coverage requirements of the Federation and of the Laender shall be co-ordinated in such a way that a fair balance is struck, any overburdening of taxpayers precluded, and uniformity of living standards in the federal territory ensured.

(4) The respective shares of the Federation and the Laender in the revenue from the turnover tax shall be apportioned anew

whenever the relation of revenues to expenditures in the Federation develops substantially differently from that of the Laender. Where federal legislation imposes additional expenditures on, or withdraws revenue from, the Laender, the additional burden may be compensated by federal grants under federal laws requiring the consent of the Bundesrat, provided such additional burden is limited to a short period. Such laws shall lay down the principles for calculating such grants and distributing them among the Laender.

(5) A share of the revenue from income tax shall accrue to the communes, to be passed on by the Laender to their communes on the basis of income taxes paid by the inhabitants of the latter. Details shall be regulated by a federal law requiring the consent of the Bundesrat. Such law may provide that communes shall assess communal percentages of the communal share.

(6) Revenue from taxes on real property and businesses shall accrue to the communes; revenue from local excise taxes shall accrue to the communes or, as may be provided for by Land legislation, to associations of communes. Communes shall be authorized to assess the communal percentages of taxes on on real property and businesses within the framework of existing laws. Where there are no communes in a Land, revenue from taxes on real property and businesses as well as from local excise taxes shall accrue to the Land. The Federation and the Laender may

participate, by assessing an impost, in the revenue from the trade tax. Details regarding such impost shall be regulated by a federal law requiring the consent of the Bundesrat. Within the framework of Land legislation, taxes on real property and businesses as well as the communes' share of revenue from income tax may be taken as a basis for calculating the amount of such impost.

(7) An overall percentage, to be determined by Land legislation, of the Land share of total revenue from joint taxes shall accrue to the communes and associations of communes. In all other respects Land legislation shall determine whether and to what extent revenue from Land taxes shall accrue to communes and associations of communes.

(8) If in individual Laender or communes or associations of communes the Federation causes special facilities to be established which directly result in an increase of expenditure or a loss of revenue (special burden) to these Laender or communes or associations of communes, the Federation shall grant the necessary compensation, if and in so far as such Laender or communes or associations of communes cannot reasonably be expected to bear such special burden. In granting such compensation, due account shall be taken of third-party indemnities and financial benefits accruing to the Laender or communes or associations of communes concerned as a result of the institution of such facilities.

(9) For the purpose of this Article, revenues and expenditures of communes and associations of communes shall be deemed to be Land revenues and expenditures.

Article 107\* (Financial equalization)

(1) Revenue from Land taxes and the Land share of revenue from income and corporation taxes shall accrue to the individual Laender to the extent that such taxes are collected by revenue authorities within their respective territories (local revenue). Federal legislation requiring the consent of the Bundesrat may provide in detail for the delimitation as well as the manner and scope of allotment of local revenue from corporation and wage taxes. Legislation may also provide for the delimitation and allotment of local revenue from other taxes. The Land share of revenue from the turnover tax shall accrue to the individual Laender on a per-capita basis; federal legislation requiring the consent of the Bundesrat may provide for supplemental shares not exceeding one quarter of a Land share to be granted to Laender whose per-capita revenue from Land taxes and from the income and corporation taxes is below the average of all the Laender combined.

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\* As amended by federal laws of 23 December 1955 (Federal Law Gazette I p. 817) and of 12 May 1969 (Federal Law Gazette I p. 359).

(2) Federal legislation shall ensure a reasonable equalization between financially strong and financially weak Laender, due account being taken of the financial capacity and financial requirements of communes and associations of communes. Such legislation shall specify the conditions governing equalization claims of Laender entitled to equalization payments and equalization liabilities of Laender owing equalization payments as well as the criteria for determining the amounts of equalization payments. Such legislation may also provide for grants to be made by the Federation from federal funds to financially weak Laender in order to complement the coverage of their general financial requirements (complemental grants).

Article 108\* (Fiscal administration)

(1) Customs duties, fiscal monopolies, excise taxes subject to federal legislation, including the excise tax on imports, and charges imposed within the framework of the European Communities, shall be administered by federal revenue authorities. The organization of these authorities shall be regulated by federal legislation. The heads of authorities at the intermediate level shall be appointed in consultation with the respective Land governments.

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\* As amended by federal law of 12 May 1969 (Federal Law Gazette I p. 359).



(2) All other taxes shall be administered by Land revenue authorities. The organization of these authorities and the uniform training of their civil servants may be regulated by federal legislation requiring the consent of the Bundesrat. The heads of authorities at the intermediate level shall be appointed in agreement with the Federal Government.

(3) To the extent that taxes accruing wholly or in part to the Federation are administered by Land revenue authorities, those authorities shall act as agents of the Federation. Paragraphs (3) and (4) of Article 85 shall apply, the Federal Minister of Finance being, however, substituted for the Federal Government.

(4) In respect of the administration of taxes, federal legislation requiring the consent of the Bundesrat may provide for collaboration between federal and Land revenue authorities, or in the case of taxes under paragraph (1) of this Article for their administration by Land revenue authorities, or in the case of other taxes for their administration by federal revenue authorities, if and to the extent that the execution of tax laws is substantially improved or facilitated thereby. As regards taxes the revenue from which accrues exclusively to communes or associations of communes their administration may wholly or in part be transferred by by Laender from the appropriate Land revenue authorities to communes or associations of communes.

(5) The procedure to be applied by federal revenue authorities shall be laid down by federal legislation. The procedure to be applied by Land revenue authorities or, as envisaged in the second sentence of paragraph (4) of this Article, by communes or associations of communes, may be laid down by federal legislation requiring the consent of the Bundesrat.

(6) The jurisdiction of fiscal courts shall be uniformly regulated by federal legislation.

(7) The Federal Government may issue pertinent general administrative rules which, to the extent that administration is incumbent upon Land revenue authorities or communes or associations of communes, shall require the consent of the Bundesrat.

Article 109\* (Separate budgets for Federation and Laender)

(1) The Federation and the Laender shall be autonomous and independent of each other in their fiscal administration.

(2) The Federation and the Laender shall take due account in their fiscal administration of the requirements of overall economic equilibrium.

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\*As amended by federal law of 8 June 1967 (Federal Law Gazette I p. 581).

(3)\* By means of federal legislation requiring the consent of the Bundesrat, principles applicable to both the Federation and the Laender may be established governing budgetary law, responsiveness of the fiscal administration to economic trends, and financial planning to cover several years ahead.

(4) With a view to averting disturbances of the overall economic equilibrium, federal legislation requiring the consent of the Bundesrat may be enacted providing for:

1. maximum amounts, terms and timing of loans to be raised by public administrative entities, whether territorial (Gebietskoerperschaften) or functional (Zweckverbaende), and
2. an obligation on the part of the Federation and the Laender to maintain interest-free deposits in the German Federal Bank (reserves for counterbalancing economic trends).

Authorizations to enact pertinent ordinances having the force of law may be issued only to the Federal Government. Such ordinances shall require the consent of the Bundesrat. They shall be repealed in so far as the Bundestag may demand; details shall be regulated by federal legislation.

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\* As amended by federal law of 12 May 1969 (Federal Law Gazette I p. 357).

Article 110\* (Budget of the Federation)

(1) All revenues and expenditures of the Federation shall be included in the budget; in respect to federal enterprises and special funds, only allocations to or remittances from them need be included. The budget must be balanced as regards revenue and expenditure.

(2) The budget shall be established by means of a law covering one year or several fiscal years separately before the beginning of the first of those fiscal years. Provision may be made for parts of the budget to apply to periods of different duration, but divided into fiscal years.

(3) Bills within the meaning of the first sentence of paragraph (2) of this Article as well as bills to amend the budget law and the budget shall be submitted simultaneously to the Bundesrat and to the Bundestag; the Bundesrat shall be entitled to state its position on such bills within six weeks or, in the case of amending bills, within three weeks.

(4) The budget law may contain only such provisions as apply to revenues and expenditures of the Federation and to the period for which the budget law is being enacted. The budget law may

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\*As amended by federal law of 12 May 1969 (Federal Law Gazette I p. 357).

stipulate that certain provisions shall cease to apply only upon the promulgation of the next budget law or, in the even of an authorization pursuant to Article 115, at a later date.

Article 111 (Payments before approval of the budget)

(1) If, by the end of a fiscal year, the budget for the following year has not been established by law, the Federal Government may, until such law comes into force, make all payments which are necessary:

- (a) to maintain institutions existing by law and to carry out measures authorized by law;
- (b) to meet the Federation's statutory, contractual, and treaty obligations;
- (c) to continue building projects, procurements, and other services, or to continue to grant subsidies for these purposes, provided that pertinent amounts have already been appropriated in the budget of a previous year.

(2) To the extent that revenues provided by specific legislation and derived from taxes or duties or any other charges or sources, or the working capital reserves, do not cover the expenditures referred to in paragraph (1) of this Article, the Federal Government may borrow the funds necessary for the conduct of current operations up to a maximum of one quarter of the total amount of the previous budget.

Article 112\* (Expenditure in excess of budgetary estimates)

Expenditures in excess of budgetary appropriations and extra-budgetary expenditures shall require the consent of the Federal Minister of Finance. Such consent may be given only in the case of an unforeseen and compelling necessity. Details may be regulated by federal legislation.

Article 113\* (Increases in expenditure)

(1) Laws increasing the budget expenditures proposed by the Federal Government or involving, or likely in future to cause, new expenditures shall require the consent of the Federal Government. This shall also apply to laws involving, or likely in future to cause, decreases in revenue. The Federal Government may require the Bundestag to postpone its vote on such bills. In this case the Federal Government shall state its position to the Bundestag within six weeks.

(2) Within four weeks after the Bundestag has adopted such a bill, the Federal Government may require it to vote on that bill again.

(3) If the bill has become a law pursuant to Article 78, the Federal Government may withhold its consent only within six weeks

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\* As amended federal law of 12 May 1969 (Federal Law Gazette I p. 357).

and only after having initiated the procedure provided for in the third and fourth sentences of paragraph (1) or in paragraph (2) of the present Article. Upon the expiry of this period such consent shall be deemed to have been given.

Article 114\* (Rendering of accounts, Audit Office)

(1) The Federal Minister of Finance shall, on behalf of the Federal Government, submit annually to the Bundestag and to the Bundesrat for their approval an account, covering the preceding fiscal year, of all revenues and expenditures as well as of property and debt.

(2) The Federal Audit Office, the members of which shall enjoy judicial independence, shall audit the account and examine the management of the budget and the conduct of business as to economy and correctness. The Federal Audit Office shall submit an annual report directly to the Federal Government as well as to the Bundestag and to the Bundesrat. In all other respects the powers of the Federal Audit Office shall be regulated by federal legislation.

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\* As amended by federal law of 12 May 1969 (Federal Law Gazette I p. 357).

Article 115\* (Procurement of credit)

(1) The borrowing of funds and the assumption of pledges, guarantees or other commitments, as a result of which expenditure may be incurred in future fiscal years, shall require federal legislative authorization indicating, or permitting computation of, the maximum amounts involved. Revenue obtained by borrowing shall not exceed the total of expenditures for investments provided for in the budget; exceptions shall be permissible only to avert a disturbance of the overall economic equilibrium. Details shall be regulated by federal legislation.

(2) In respect of special funds of the Federation, exceptions from the provisions of paragraph (1) of this Article may be authorized by federal legislation.

Xa.\*\* STATE OF DEFENCE

Article 115a (Determination of a state of defence)

(1) The determination that the federal territory is being attacked by armed force or that such an attack is directly imminent (state of defence) shall be made by the Bundestag with

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\* As amended by federal law of 12 May 1969 (Federal Law Gazette I p. 357).

\*\* Entire section Xa inserted by federal law of 24 June 1968 (Federal Law Gazette I p. 711).



the consent of the Bundesrat. Such determination shall be made at the request of the Federal Government and shall require a two-thirds majority of the votes cast, which shall include at least the majority of the members of the Bundestag.

(2) If the situation imperatively calls for immediate action and if insurmountable obstacles prevent the timely meeting of the Bundestag, or if there is no quorum in the Bundestag, the Joint Committee shall make this determination with a two-thirds majority of the votes cast, which shall include at least the majority of its members.

(3) The determination shall be promulgated in the Federal Law Gazette by the Federal President pursuant to Article 82. If this cannot be done in time, the promulgation shall be effected in another manner; it shall subsequently be printed in the Federal Law Gazette as soon as circumstances permit.

(4) If the Federal territory is being attacked by armed force and if the competent organs of the Federation are not in a position at once to make the determination provided for in the first sentence of paragraph (1) of this Article, such determination shall be deemed to have been made and promulgated at the time the attack began. The Federal President shall announce such time as soon as circumstances permit.

(5) When the determination of the existence of a state of defence has been promulgated and if the federal territory is being

attacked by armed force, the Federal President may, with the consent of the Bundestag, issue internationally valid declarations regarding the existence of such state of defence. Subject to the conditions mentioned in paragraph (2) of this Article, the Joint Committee shall thereupon deputize for the Bundestag.

Article 115b (Power of command during state of defence)

Upon the promulgation of a state of defence, the power of command over the Armed Forces shall pass to the Federal Chancellor.

Article 115c (Legislative competence of the Federation during state of defence)

(1) The Federation shall have the right to exercise concurrent legislation even in matters belonging to the legislative competence of the Laender by enacting laws to be applicable upon the occurrence of a state of defence. Such laws shall require the consent of the Bundesrat.

(2) Federal legislation to be applicable upon the occurrence of a state of defence to the extent required by conditions obtaining while such state of defence exists, may make provision for:

1. preliminary compensation to be made in the event of expropriations, thus diverging from the second sentence of paragraph (3) of Article 14;
2. deprivations of liberty for a period not exceeding four days, if no judge has been able to act within the period applying

in normal times, thus diverging from the third sentence of paragraph (2) and the first sentence of paragraph (3) of Article 104.

(3)\* Federal legislation to be applicable upon the occurrence of a state of defence to the extent required for averting an existing or directly imminent attack, may, subject to the consent of the Bundesrat, regulate the administration and the fiscal system of the Federation and the Laender in divergence from Sections VIII, VIIIa and X, provided that the viability of the Laender, communes and associations of communes is safeguarded, particularly in fiscal matters.

(4) Federal laws enacted pursuant to paragraph (1) or subparagraph (1) of paragraph (2) of this Article may, for the purpose of preparing for their execution, be applied even prior to the occurrence of a state of defence.

Article 115d (Shortened procedure in the case of urgent bills during state of defence)

(1) While a state of defence exists, the provisions of paragraphs (2) and (3) of this Article shall apply in respect of federal legislation notwithstanding the provisions of paragraph (2)

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\* As amended by federal law of 12 May 1969 (Federal Law Gazette I p. 359).

of Article 76, the second sentence of paragraph (1) and paragraphs (2) to (4) of Article 77, Article 78, and paragraph (1) of Article 82.

(2) Bills submitted as urgent by the Federal Government shall be forwarded to the Bundesrat at the same time as they are submitted to the Bundestag. The Bundestag and the Bundesrat shall debate such bills in common without delay. In so far as the consent of the Bundesrat is necessary, the majority of its votes shall be required for any such bill to become a law. Details shall be regulated by rules of procedure adopted by the Bundestag and requiring the consent of the Bundesrat.

(3) The second sentence of paragraph (3) of Article 115a shall apply *mutatis mutandis* in respect of the promulgation of such laws.

#### Article 115e (Status and functions of the Joint Committee)

(1) If, while a state of defence exists, the Joint Committee determines with a two-thirds majority of the votes cast, which shall include at least the majority of its members, that insurmountable obstacles prevent the timely meeting of the Bundestag, or that there is no quorum in the Bundestag, the Joint Committee shall have the status of both the Bundestag and the Bundesrat and shall exercise their rights as one body.

(2) The Joint Committee may not enact any law to amend this Basic Law or to deprive it of effect or application either in

whole or in part. The Joint Committee shall not be authorized to enact laws pursuant to paragraph (1) of Article 24 or to Article 29.

Article 115f (Extraordinary powers of the Federation during state of defence)

(1) While a state of defence exists, the Federal Government may to the extent necessitated by circumstances:

1. commit the Federal Border Guard throughout the federal territory;
2. issue instructions not only to federal administrative authorities but also to Land governments and, if it deems the matter urgent, to Land authorities, and may delegate this power to members of Land governments to be designated by it.

(2) The Bundestag, the Bundesrat, and the Joint Committee, shall be informed without delay of the measures taken in accordance with paragraph (1) of this Article.

Article 115g (Status and functions of the Federal Constitutional Court during state of defence)

The constitutional status and the exercise of the constitutional functions of the Federal Constitutional Court and its judges must not be impaired. The Law on the Federal Constitutional Court may not be amended by a law enacted by the Joint Committee except in so far as such amendment is required, also in the

opinion of the Federal Constitutional Court, to maintain the capability of the Court to function. Pending the enactment of such a law, the Federal Constitutional Court may take such measures as are necessary to maintain the capability of the Court to carry out its work. Any decisions by the Federal Constitutional Court in pursuance of the second and third sentences of this Article shall require a two-thirds majority of the judges present.

Article 115h (Legislative terms and terms of office during state of defence)

(1) Any legislative terms of the Bundestag or of Land diets due to expire while a state of defence exists shall end six months after the termination of such state of defence. A term of office of the Federal President due to expire while a state of defence exists, and the exercise of his functions by the President of the Bundesrat in case of the premature vacancy of the Federal President's office, shall end nine months after the termination of such state of defence. The term of office of a member of the Federal Constitutional Court due to expire while a state of defence exists shall end six months after the termination of such state of defence.

(2) Should the necessity arise for the Joint Committee to elect a new Federal Chancellor, the Committee shall do so with the majority of its members; the Federal President shall propose a

candidate to the Joint Committee. The Joint Committee can express its lack of confidence in the Federal Chancellor only by electing a successor with a two-third majority of its members.

(3) The Bundestag shall not be dissolved while a state of defence exists.

Article 115i (Extraordinary power of the Land governments)

(1) If the competent federal organs are incapable of taking the measures necessary to avert the danger, and if the situation imperatively calls for immediate independent action in individual parts of the federal territory, the Land governments or the authorities or commissioners designated by them shall be authorized to take, within their respective spheres of competence, the measures provided for in paragraph (1) of Article 115f.

(2) Any measures taken in accordance with paragraph (1) of the present Article may be revoked at any time by the Federal Government, or in the case of Land authorities and subordinate federal authorities, by Land Prime Ministers.

Article 115k (Grade and duration of validity of extraordinary laws and ordinances having the force of law)

(1) Law enacted in accordance with Articles 115c, 115e, and 115g, as well as ordinances having the force of law issued by virtue of such laws, shall, for the duration of their applicability, suspend legislation contrary to such laws or ordinances.

This shall not apply to earlier legislation enacted by virtue of Articles 115c, 115e, or 115g.

(2) Laws adopted by the Joint Committee, and ordinances having the force of law issued by virtue of such laws, shall cease to have effect not later than six months after the termination of a state of defence.

(3)\* Laws containing provisions that diverge from Articles 91a, 91b, 104a, 106 and 107, shall apply no longer than the end of the second fiscal year following upon the termination of the state of defence. After such termination they may, with the consent of the Bundesrat, be amended by federal legislation so as to lead up to the settlement provided for in Sections VIIIa and X.

Article 115l (Repealing of extraordinary laws, Termination of state of defence, Conclusion of peace)

(1) The Bundestag, with the consent of the Bundesrat, may at any time repeal laws enacted by the Joint Committee. The Bundesrat may request the Bundestag to make a decision in any such matter. Any measures taken by the Joint Committee or the Federal

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\*As amended by federal law of 12 May 1969 (Federal Law Gazette I p. 359).



Government to avert a danger shall be revoked if the Bundestag and the Bundesrat so decide.

(2) The Bundestag, with the consent of the Bundesrat, may at any time declare the state of defence terminated by a decision to be promulgated by the Federal President. The Bundesrat may request the Bundestag to make a decision in any such matter. The state of defence must be declared terminated without delay when the prerequisites for the determination thereof no longer exist.

(3) The conclusion of peace shall be the subject of a federal law.

#### XI. TRANSITIONAL AND CONCLUDING PROVISIONS

Article 116 (Definition of "German", Regranting of citizenship)

(1) Unless otherwise provided by law, a German within the meaning of this Basic Law is a person who possesses German citizenship or who has been admitted to the territory of the German Reich within the frontiers of 31 December 1937 as a refugee or expellee of German stock (Volkszugehoerigkeit) or as the spouse or descendant of such person.

(2) Former German citizens who, between 30 January 1933 and 8 May 1945, were deprived of their citizenship on political, racial, or religious grounds, and their descendants, shall be regranted German citizenship on application. They shall be considered as not having been deprived of their German citizenship if they have

established their domicile (Wohnsitz) in Germany after 8 May 1945 and have not expressed a contrary intention.

Article 117 (Temporary ruling for Article 3 and Article 11)

(1) Law which conflicts with paragraph (2) of Article 3 shall remain in force until adapted to that provision of this Basic Law, but not beyond 31 March 1953.

(2) Laws which restrict the right of freedom of movement in view of the present housing shortage shall remain in force until repealed by federal legislation.

Article 118 (Reorganization of the Laender of Baden, Wuerttemberg-Baden and Wuerttemberg-Hohenzollern)

The reorganization of the territory comprising the Laender of Baden, Wuerttemberg-Baden, and Wuerttemberg-Hohenzollern may be effected notwithstanding the provision of Article 29, by agreement between the Laender concerned. If no agreement is reached, the reorganization shall be effected by federal legislation which must provide for a referendum\*.

Article 119 (Refugees and expellees)

In matters relating to refugees and expellees, in particular as

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\* See footnot \* to Article 23.

regards their distribution among the Laender, the Federal Government may, with the consent of the Bundesrat, issue regulations having the force of law, pending the settlement of the matter by federal legislation. The Federal Government may in this matter be authorized to issue individual instructions for particular cases. Except where there is danger in delay, such instructions shall be addressed to the highest Land authorities.

Article 120\* (Occupation costs and burdens as consequence of the war)

(1)\*\* The Federation shall meet the expenditure for occupation costs and the other internal and external burdens caused as a consequence of the war, as provided for in detail by federal legislation. To the extent that these costs and other burdens have been provided for by federal legislation on or before 1 October 1969, the Federation and the Laender shall meet such expenditure between them in accordance with such federal legislation. In so far as expenditures for such of these costs and burdens as neither have been nor will be provided for by federal legislation have been met on or before 1 October 1965 by Laender,

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\* As amended by federal laws of 30 July 1965 (Federal Law Gazette I p. 649) and of 28 July 1969 (Federal Law Gazette I p. 985).

\*\* As amended by federal law of 28 July 1969 (Federal Law Gazette I p. 985).

communes, associations of communes or other entities performing functions of Laender or communes, the Federation shall not be obliged to meet expenditure of that nature even if arising after that date. The Federation shall pay the subsidies towards the burdens of social insurance institutions, including unemployment insurance and public assistance to the unemployed. The distribution between the Federation and the Laender of costs and other burdens caused as a consequence of the war, as provided for in this paragraph, shall not affect any legislative settlement of claims for indemnification in respect of consequences of the war.

(2) The corresponding revenue shall pass to the Federation at the same time as the latter assumes responsibility for the expenditure referred to in this Article.

Article 120a\* (Implementation of equalization of burdens legislation)

(1) Laws concerning the implementation of the equalization of burdens legislation may, with the consent of the Bundesrat, stipulate that they shall be executed, as regards equalization benefits, partly by the Federation and partly by the Laender acting as agents of the Federation, and that the relevant powers

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\* Inserted by federal law of 14 August 1952 (Federal Law Gazette I p. 445).

vested in the Federal Government and the competent highest federal authorities by virtue of Article 85, shall be wholly or partly delegated to the Federal Equalization Office. In exercising these powers, the Federal Equalization Office shall not require the consent of the Bundesrat; with the exception of urgent cases, its instructions shall be given to the highest Land authorities (Land Equalization Offices).

(2) The provisions of the second sentence of paragraph (3) of Article 87 shall not be affected hereby.

#### Article 121 (Definition of "majority")

Within the meaning of this Basic Law, a majority of the members of the Bundestag and a majority of the members of the Federal Convention (Bundesversammlung) shall be the majority of the respective statutory number of their members.

#### Article 122 (Legislative competencies hitherto existing)

(1) From the date of the first meeting of the Bundestag, laws shall be enacted exclusively by the legislative organs recognized in this Basic Law.

(2) Legislative bodies and bodies participating in legislation in an advisory capacity, whose competence ends by virtue of paragraph (1) of this Article, are herewith dissolved with effect from that date.

Article 123 (Continued validity of old law and old treaties)

(1) Law in force before the first meeting of the Bundestag shall remain in force in so far as it does not conflict with this Basic Law.

(2) Subject to all rights and objections of the interested parties, the treaties concluded by the German Reich concerning matters which, under this Basic Law, shall be within the competence of Land legislation, shall remain in force, if they are and continue to be valid in accordance with general principles of law, until new treaties are concluded by the agencies competent under this Basic Law, or until they are in any other way terminated pursuant to their provisions.

Article 124 (Old law affecting matters subject to exclusive legislation)

Law, wherever applicable\*, affecting matters subject to the exclusive legislative power of the Federation, shall become federal law.

Article 125 (Old law affecting matters subject to concurrent legislation)

Law, wherever applicable\*, affecting matters subject to the concurrent legislative power of the Federation, shall become federal law:

1. in so far as it applies uniformly within one or more zones of occupation;

2. in so far as it is law by which former Reich law has been amended after 8 May 1945.

Article 126 (Disputes regarding continued validity of old law)  
Disputes regarding the continuance of law as federal law shall be decided by the Federal Constitutional Court.

Article 127 (Legislation of the Bizonal Economic Administration)  
Within one year of the promulgation of this Basic Law the Federal Government may, with the consent of the governments of the Laender concerned, extend to the Laender of Baden, Greater Berlin, Rhineland-Palatinate and Wuerttemberg-Hohenzollern any legislation of the Bizonal Economic Administration, in so far as it continues to be in force as federal law under Article 124 or 125.

Article 128 (Continuance of powers to give instructions)  
In so far as law continuing in force provides for powers to give instructions within the meaning of paragraph (5) of Article 84, these powers shall remain in existence until otherwise provided by law.

Article 129 (Continued validity of authorizations)

(1) In so far as legal provisions which continue in force as federal law contain authorizations to issue ordinances having the force of law or to issue general administrative rules or to perform administrative acts, such authorizations shall pass to

the agencies henceforth competent in the matter. In cases of doubt, the Federal Government shall decide in agreement with the Bundesrat; such decisions must be published.

(2) In so far as legal provisions which continue in force as Land law contain such authorizations, they shall be exercised by the agencies competent under Land law.

(3) In so far as legal provisions within the meaning of paragraph (1) and (2) of this Article authorize their amendment or supplementation or the issue of legal provisions instead of laws, such authorizations have expired.

(4) The provisions of paragraphs (1) and (2) of this Article shall apply mutatis mutandis where legal provisions refer to regulations no longer valid or to institutions no longer in existence.

#### Article 130 (Corporate bodies under public law)

(1) Administrative agencies and other institutions which serve the public administration or the administration of justice and are not based on Land law or treaties between Laender, as well as the Association of Management of South West German Railroads and the Administrative Council for the Postal Services and Telecommunications of the French Zone of Occupation, shall be placed under the Federal Government. The Federal Government shall provide, with the consent of the Bundesrat, for their transfer, dissolution, or liquidation.



(2) The highest disciplinary superior of the personnel of these administrations and institutions shall be the appropriate Federal Minister.

(3) Corporate bodies and institutions under public law not directly under a Land nor based on treaties between Laender shall be under the supervision of the appropriate highest federal authority.

Article 131 (Persons formerly employed in the public service)

Federal legislation shall regulate the legal position of persons, including refugees and expellees, who, on 8 May 1945, were employed in the public service, have left the service for reasons other than those arising from civil service regulations or collective agreement rules, and have not until now been reinstated or are employed in a position not corresponding to their former one. The same shall apply mutatis mutandis to persons, including refugees and expellees, who, on 8 May 1945, were entitled to a pension and who no longer receive any such pension or any commensurate pension for reasons other than those arising from civil service regulations or collective agreement rules. Until the pertinent federal law comes into force, no legal claims can be made, unless otherwise provided by Land legislation.

Article 132 (Temporary revocation of rights of civil servants)

(1) Civil servants and judges who, when this Basic Law comes into force, are appointed for life, may, within six months after

the first meeting of the Bundestag, be placed on the retired list or waiting list or be given a different function with lower remuneration if they lack the personal or professional aptitude for their present function. This provision shall apply mutatis mutandis also to salaried public employees, other than civil servants or judges, whose service cannot be terminated by notice. If, however, such service can be terminated by notice, periods of notice in excess of the periods fixed by collective agreement rules may be cancelled within the six months referred to above.

(2) The preceding provision shall not apply to members of the public service who are not affected by the provisions regarding the Liberation from National Socialism and Militarism or who are recognized victims of National Socialism, except on important grounds in respect of their personality.

(3) Those affected may have recourse to the courts in accordance with paragraph (4) of Article 19.

(4) Details shall be specified by a regulation of the Federal Government requiring the consent of the Bundesrat.

Article 133 (Bizonal Economic Administration, succession to rights)

The Federation shall succeed to the rights and obligations of the Bizonal Economic Administration.

Article 134 (Reich property to become federal property)

(1) Reich property shall on principle become federal property.

(2) In so far as such property was originally intended to be used predominantly for administrative tasks which, under this Basic Law, are not administrative tasks of the Federation, it shall be transferred without compensation to the agencies now charged with such tasks, and to the Laender in so far as it is being used at present, and not merely temporarily, for administrative tasks which under this Basic Law are now within the administrative competence of the Laender. The Federation may also transfer other property to the Laender.

(3) Property which was placed at the disposal of the Reich by Laender or communes or associations of communes without compensation, shall again become the property of such Laender or communes or associations of communes, in so far as it is not required by the Federation for its own administrative tasks.

(4) Details shall be regulated by a federal law requiring the consent of the Bundesrat. ③

#### Article 135 (Property in the event of territorial changes)

(1) If after 8 May 1945 and before the coming into force of this Basic Law an area has passed from one Land to another, the Land to which the area now belongs shall be entitled to the property located therein of the Land to which it belonged.

(2) Property of Laender or corporate bodies or institutions under public law which no longer exist shall pass, in so far as it was originally intended to be used predominantly for administrative

tasks or is being used at present, and not merely temporarily, predominantly for administrative tasks, to the Land or the corporate body or institution under public law which now discharges these tasks.

(3) Real estate of Laender which no longer exist, including appurtenances, shall pass to the Land within which it is located, in so far as it is not included among property within the meaning of paragraph (1) of this Article.

(4) If an overriding interest of the Federation or the particular interest of an area so requires, a settlement in divergence from paragraphs (1) to (3) of the this Article may be effected by federal legislation.

(5) In all other respects, the succession in title and the settlement of the property, in so far as it has not been effected before 1 January 1952 by agreement between the Laender or corporate bodies or institutions under public law concerned, shall be regulated by federal legislation requiring the consent of the Bundesrat.

(6) Interests of the former Land of Prussia in enterprises under private law shall pass to the Federation. A federal law, which may also be in divergence from this provision, shall regulate details.

(7) In so far as property which on the coming into force of this Basic Law would devolve upon a Land or a corporate body or institution under public law pursuant to paragraphs (1) to (3) of

this Article, has been disposed of through or by virtue of a Land law or in any other manner by the party thus entitled, the transfer of the property shall be deemed to have taken place before such disposition.

Article 135a\* (Discharging, wholly or partially, of certain liabilities of, inter alia, the Reich and the former Land of Prussia)

The legislation reserved to the Federation in paragraph (4) of Article 134 and in paragraph (5) of Article 135 may also stipulate that the following liabilities shall not be discharged, or not to their full extent:

1. liabilities of the Reich or liabilities of the former Land of Prussia or liabilities of such corporate, bodies and institutions under public law as no longer exist;
2. such liabilities of the Federation or corporate bodies and institutions under public law as are connected with the transfer of properties pursuant to Article 89, 90, 134 or 135, and such liabilities of these entities as arise from measures taken by the entities mentioned under item 1;

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\* Inserted by federal law of 22 October 1957 (Federal Law Gazette I p. 1745).

3. such liabilities of Laender or communes or associations of communes as have arisen from measures taken by these entities before 1 August 1945 within the framework of administrative functions incumbent upon, or delegated by, the Reich to comply with regulations of occupying Powers or to remove a state of emergency due to the war.

Article 136 (First assembly of the Bundesrat)

- (1) The Bundesrat shall assemble for the first time on the day of the first meeting of the Bundestag.
- (2) Until the election of the first Federal President his powers shall be exercised by the President of the Bundesrat. He shall not have the right to dissolve the Bundestag.

Article 137 (Right of civil servants to stand for election)

- (1)\* The right of civil servants, of other salaried public employees, of professional soldiers, of temporary volunteer soldiers, or of judges, to stand for election in the Federation in the Laender, or in the communes, may be restricted by legislation.
- (2) The electoral law to be adopted by the Parliamentary Council shall apply to the election of the first Bundestag, of the first

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\* As amended by federal law of 19 March 1956 (Federal Law Gazette I p. 111).

Federal Convention, and of the first Federal President of the Federal Republic.

(3) The function of the Federal Constitutional Court pursuant to paragraph (2) of Article 41 shall, pending its establishment, be exercised by the German High Court for the Combined be exercised by the German High Court for the Combined Economic Area, which shall decide in accordance with its rules of procedure.

#### Article 138 (Notaries)

Changes in the rules relating to notaries as they now exist in the Laender of Baden\*, Bavaria, Wuerttemberg-Baden\*, and Wuerttemberg-Hohenzollern\*, shall require the consent of the governments of these Laender.

#### Article 139 (Liberation Law)

The legislation enacted for the Liberation of the German People from National Socialism and Militarism shall not be affected by the provisions of this Basic Law.

#### Article 140 (Validity of Articles of the Weimar Constitution)

The provisions of Articles 136, 137, 138, 139, and 141 of the

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\* See footnote\*to Article 23.

German Constitution of 11 August 1919 shall be an integral part of this Basic Law\*.

Article 141 ("Bremen Clause")

The first sentence of paragraph (3) of Article 7 shall not be applied in any Land in which different provisions of Land law were in force on 1 January 1949.

Article 142 (Basic rights in Land constitutions)

Notwithstanding the provision of Article 31, such provisions of Land constitutions shall also remain in force as guarantee basic rights in conformity with Articles 1 to 18 of this Basic Law.

Article 142a\*\* (Repealed)

Article 143\*\*\* (Repealed)

Article 144 (Ratification of the Basic Law--Berlin representatives in the Bundestag and Bundesrat)

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\* See Appendix.

\*\* Inserted by federal law of 26 March 1954 (Federal Law Gazette I p. 45) and repealed by federal law of 24 June 1968 (Federal Law Gazette I p. 714).

\*\*\* Amended by federal law of 19 March 1956 (Federal Law Gazette I p. 111) and repealed by federal law of 24 June 1968 (Federal Law Gazette I p. 714).



(1) This Basic Law shall require ratification by the representative assemblies of two thirds of the German Laender in which it is for the time being to apply.

(2) In so far as the application of this Basic Law is subject to restrictions in any Land listed in Article 23 or in any part thereof, such Land or part thereof shall have the right to send representatives to the Bundestag in accordance with Article 38 and to the Bundesrat in accordance with Article 50.

#### Article 145 (Promulgation of the Basic Law)

(1) The Parliamentary Council shall confirm in public session, with the participation of the deputies of Greater Berlin, the fact of ratification of this Basic Law and shall sign and promulgate it.

(2) This Basic Law shall come into force at the end of the day of promulgation.

(3) It shall be published in the Federal Law Gazette.

#### Article 146 (Duration of validity of the Basic Law)

This Basic Law shall cease to be in force on the day on which a constitution adopted by a free decision of the German people comes into force.



ประวัติการศึกษา

ชื่อ

นางสาว รุจิรา เฑชางกูร

วุฒิการศึกษา

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ตำแหน่งหน้าที่การงาน

อาจารย์โท คณะรัฐศาสตร์ มหาวิทยาลัยรามคำแหง



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