

Development of the German Legal System since 1949, especially of the Constitutional Structure.

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I. Historical Basis

1. The history of the German State is more than thousand years old. The 1st German State was erected in 843 (or 911 or 919). In 962 the German King became Emperor. After 1648 the territories of the Empire gained the status of more or less sovereign states. The Empire collapsed in 1806.

In 1815 the German Confederacy was founded. Chairman of the Confederacy's main organ was the Emperor of Austria. This Confederacy was disbanded after a war between its largest member states, Austria and Prussia in 1866.

Direct predecessors of the Federal Republic of Germany were the North German Federation and the German Reich. The North German Federation was founded in 1867 by uniting the northern German States under the leadership of the King of Prussia, The German Reich was founded in 1871 when the North German Federation and the States of southern Germany set up a union. The King of Prussia became German Emperor. The Constitutional position of the member states of the German Reich was extremely powerful. Nevertheless the Reich was able to unify the legal systems of the member states. In 1871 the penal law was codified, in 1878 the procedural law and the organization of courts, and, 1. January 1900, the codification of the civil law entered into force. Administrative law remained an affair of the states.

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2. After World War I a new constitution (Weimar Constitution) was adopted. The German Reich became a republic. The position of the member states was substantially weaker than during the period of the Empire. Very important for the administrative development of the republic was the unification of the financial and tax laws, 1920.

With the seizure of power of the National-Socialists in 1933 the Weimar Constitution partially ceased to be in force or was no more applied. A one-party-régime with the dictatorship of *Hitler* superceded the Weimar Constitution. The states were abolished in 1934. During this period the unification of the municipal law and the law of the public service took place. The Prussian police law was assumed in other territories.

3. After the capitulation of the German armed forces in 1945 all members of the German government were taken prisoners of war. The Military Governors became the highest authorities in the four zones of occupation (American, British, French and Soviet). One fourth of the German territory was placed under Polish (and partially Soviet) administration. But soon states were reestablished: In the American zone the states of Bavaria (Bayern), Württemberg-Baden, Hessen and the enclave of Bremen; in the British zone the states of Schleswig-Holstein, Hamburg, Lower Saxony (Niedersachsen) and North Rhine-Westfalia (Nordrhein-Westfalen); and in the French zone the states of Rhineland-Palatinate (Rheinland-Pfalz), Baden and Württemberg-Hohenzollern, while the Saarland was separated from the French zone. In the Soviet zone 5 states were erected. Berlin was governed by an Allied Kommendantura which was composed by the American, British, French and Soviet commanders. 8 districts of Berlin including the central district, were part of the Soviet sector, 6 of the American sector, 4 of the British and 2 of the French sector. In the three western zones the municipalities recovered the right of administration and self-government. All matters concerning Germany as a whole remains under the competence of an Allied Control Council. Since 1948 the Allied Control Council was not

in action.

In 1947 a bi-zonal German administration was established under the authority of the American and British Military Governors. A new currency was introduced in 1948 in the three western zones. This was the beginning of a totally separate economic development of the western zones and the Soviet zone.

II. Situation in 1949

1. The Federal Republic of Germany was founded in 1949 by a union of the states of the three western zones of occupation. The Basic Law was passed by the Parliamentary Council the members of which were elected by the parliaments of the states and not directly by the people. The Basic Law entered into force at the end of May 23rd, 1949, and established a republican, federal, democratic and social government based on the rule of law. The legislative and executive constitutional organs of the Federal Republic were established in 1949, and until 1951 all constitutional organs were set up.

The western powers remained competent as far as Germany as a whole was concerned and in respect of disarmament and certain foreign relations. Since 5. May 1955, the Federal Republic owns unrestricted sovereignty. The Saarland was incorporated in the Federal Republic on 1. January 1957.

Already in 1952 the states of Baden, Württemberg-Baden and Württemberg-Hohenzollern were united to the new state of Baden-Württemberg. This was the only reorganization of the states territories. All other attempts to diminish the number of states failed.

Regarding the Basic Law the Federal Republic of Germany is identical with the German Reich in respect of the territory of the Federal Republic. Law originating from the time of the Empire, the Weimar Republic and the allied occupation remained in force in so far as it does not conflict with the Basic Law. There is only one German citizenship based on a law

of 1913. Germans with residence in the German Democratic Republic are treated as Germans living in the Federal Republic, when they are coming to the west. The consequence of this opinion is that Germans from the G.D.R. cannot be given asylum, because asylum can only be given to foreigners. These people are allowed to live in the Federal Republic without special permission, and living in the Federal Republic are obtaining all civil and political rights.

2. In the territory of the Soviet zone of occupation the D.D.R. was founded in 1947. The states of the G.D.R. were abolished in 1951. Since then the G.D.R. has a centralized government and administration under the leadership of the United Socialist Party (SED). At the end of the sixties a new citizenship of the G.D.R. was established. The G.D.R. does not recognize the regulation of the German citizenship as it is in force in the Federal Republic. A new constitution was set up consolidating the hegemony of the United Socialist Party and the dependence on the USSR.

3. The former German capital Berlin was divided in 1948 after the city's administration was forced by communist riots to move from the central district to the American sector of the town. A new communist administration was established in the central district for the Soviet sector. East Berlin is the capital of the G.D.R. with a special legal status. West Berlin is a member state of the Federal Republic of Germany with a more special status. There are existing several provisions in virtue of some allied reservations. According to international law Berlin is still an occupied area. Citizens of West-Berlin abroad obtain diplomatic protection by the Federal Republic of Germany.

III. Organs of the Constitution

1. The Federal Republic of Germany is a democratic republic. All State authority emanates from the people which elects the *Federal Parliament* (Bundestag) for a 4-year-term. The deputies shall be elected in general, direct,

free, equal and secret elections. One half of the deputies shall be elected in constituencies where the candidate is elected who gains most of the votes. The other half shall be elected in accordance with the principle of proportional representation by lists of the political parties. The total number of deputies is 496 without the Berlin deputies who are elected by the Berlin Parliament. The Berlin deputies are not permitted to vote in plenary sessions in all cases of legislation and elections of organs.

With the exception of the 7th legislature (1971-1976) when the Social Democratic Party (SPD) was the largest, the Christian Democratic Union (CDU) together with the Bavarian Christian Social Union (CSU) was the largest parliamentary group, during the 3rd legislature (1957-1961) had an absolute majority.

The main problem of Parliament is that it gets drowned by legislating so many details. The delegation of matters to be regulated by governmental ordinance is limited.

In the states all legislative power is vested in the resp. State Parliament (Landtag).

2. The *Council of Constituent States* (Bundesrat) participates in the legislation and administration of the federation. The Council consists of members of the state *governments*. Each state shall have at least three votes (Bremen, Hamburg, Saarland); states with more than 2 mill. inhabitants shall have four (Berlin, Hessen, Rheinland-Pfalz, Schleswig-Holstein), and states with more than 6 mill. inhabitants five votes (Baden-Württemberg, Bayern, Niedersachsen, Nordrhein-Westfalen). The votes of Berlin are not counted in plenary sessions in all cases of legislation.

At present among the 41 West-German votes there are 26 led by Christian Democratic chief ministers and 15 led by Social Democrats. Nevertheless in the vast majority of questions the representatives in the Council of Constituent States vote according to the special interests of their respective state and not on party policy reasons. So it may happen that even

states governed by the Social Democratic Party are opposing decisions of the social-liberal majority in the Federal Parliament. The Council of Constituent States has a veto against legislative acts of Parliament. In most cases this veto can be overruled by absolute majority in Parliament. But there are the so-called "federal acts" where the approval of the Council of Constituent States is indispensable. Insofar the Council has an absolute veto.

3. The *Federal President* (Bundespräsident) shall be elected by the Federal Convention (Bundesversammlung) for a 5-year-term. The Federal Convention is composed of all members of the Federal Parliament and an equal number of members elected by the parliaments of the states. The legal status of the Berlin members in the Convention is equal to that of the others. The President represents the Federation in its Federal Ministers, the Federal Judges, the federal civil servants and the officers and non-commissioned officers. He shall exercise the right of pardon in individual cases. Orders and decrees of the President shall require for the validity the counter-signature of the Federal Chancellor or the appropriate Federal Minister. The result of this is that the President is dependent on the Federal Government.

The 1st President was Prof. Heuss (Liberal), who was reelected, as the 2nd President was Mr. Lübke (Christian Democrat) The 3rd President, Dr. Heinemann was a Social Democrat. Mr. Scheel (Liberal). is the 4th President. The next presidential election will be in 1979. At the moment the Christian Democrats have an absolute majority in the Federal Convention.

The Federal President's constitutional position is extremely weak. All attempts to get more political influence failed. In the legal discussion it is controversial whether the President is entitled to refuse the signature and promulgation of an act of Parliament in case of a violation of the Basic Law. There is only common opinion that the President is entitled to refuse if there is a mistake in the procedure of legislation. The political practice is that the President is not refusing even if he may have doubts regarding

the act as being in accordance with the constitution. Nevertheless the reputation of the President as a neutral and “moral” power is very high.

4. The *Federal Government* (Bundesregierung) is composed by the Federal Chancellor and the Federal Ministers. The *Federal Chancellor* (Bundeskanzler) shall be elected by the Federal Parliament. If a person is elected by Parliament the Federal President is obliged to appoint him and the President cannot refuse the appointment. The Chancellor determines and is responsible for the general policy guide lines. The *Federal Ministers* (Bundesminister) are appointed and dismissed by the President upon the proposal of the Federal Chancellor. Parliament cannot require to dismiss a minister. It is only possible to overthrow the chancellor together with the whole government. The number of ministers is not fixed by the constitution, the Basic Law only mentions the Ministers of Defense, Finances and Justice. The actual number of ministers is 15.

In the states the Chief Ministers (Ministerpräsidenten) are elected by the State Parliaments. Contrary to the Federal Government where the Chancellor at present is member of the Social Democratic Party, only 4 of the 10 West German states and Berlin are governed by Social Democratic Chief Ministers. Actually 6 Chief Ministers are Christian Democrats. The number of state ministers is different in the several states.

5. The *Federal Constitutional Court* (Bundesverfassungsgericht) is composed by two senates, each with 8 justices who are elected by the Federal Parliament or the Council of Constituent States for a period of 8 years and are appointed by the Federal President.

IV. Rule of Law, especially Fundamental Rights

1. The Federal Republic is a social state on the rule of law. Legislation is subject to the constitutional order; the executive and the judiciary are bound by law and justice. The seriously discussed amendment of several clauses to regulate the state of emergency if Parliament would not be able to meet, actually did not influence the constitutional system because

these clauses have never been applied.

Since the establishment of the Federal Republic the question is discussed whether administration is permitted to act in favour of a citizen without any legal delegation. Some authors argue that there are no legal restrictions for administration to act in favor of a person. A minority of authors is expressing the opinion that even in favor of a person administration is not entitled to act without delegation by a special act of Parliament. The majority believes the budgetary act sufficient for permitting administration to give subsidies, not claiming a special act.

Art. 1 Para. 3 of the Basic Law reads that the fundamental rights are binding on the executive as immediately valid law. However, the executive power of a state can be exercised in the most diverse forms. We distinguish between executive power "*jure imperii*" in which the citizen is subordinated to the state, and executive power "*jure gestionis*" which is no real power because the citizen and the state are coordinated.

There is no doubt that the state acting under "*jure imperii*" is always tied to the fundamental rights. Whether a state acting under "*jure gestionis*" is, is disputed. The question of whether the fundamental rights also apply to the private enterprise activities of the state is not without practical consequences. This applies to the principle of equality, in particular.

One can answer this question either by negating the subjection of "*jure gestionis*" administration to the fundamental rights, because the administrative bodies are on the same level as the citizen. The administration cannot compel the citizens by means of issuing orders, but it is on the same level with them. Logically, this hypothesis is probably correct, but sociologically and economically, it is not realistic. For the state acting on the principles of private economy has, not legally, but in fact, an advantage over the citizen, because it is always the latter's superior economically. If, e. g., a road is to be built, the state can freely choose the contractor for this order, if it is not tied by the fundamental right of equality. If it is, it is not

allowed to give preference to one firm, but must place the order with that firm which has submitted the best tender. This is the common solution of the question.

2. After the terrible events of the National Socialist era, of the war and its results, the originators of the Basic Law and the states constitutions regarded the guarantee of fundamental rights as the most important factor of a new order in Germany. This is why the fundamental rights were listed at the beginning of the Basic Law. In addition, Art. 79 Para. 3 of the Basic Law provides for the immutability of the human rights laid down in Art. 1. They cannot even be changed by the revision of the constitution.

Art. 1 Para. 1 says that the dignity of man is unimpeachable. This wording implies that this is not a norm, a clause defining what should be done, but a factual statement. The dignity of man is unimpeachable. All the forces of pluralistic society in Germany irrespective of whether they adhered to Christian, Socialist or Liberal conception of the state, were able to agree on this principle. The dignity of man was made the foremost value of a liberal democracy. It is the duty of all state powers to respect and protect it. The state itself must not ignore the dignity of man; and in legislation, executive and jurisdiction, it must make provision for protecting the dignity of man against the interference of third persons. Jurisdiction has shown that this constitutional obligation is taken very seriously.

Under the Basic Law the pre- and supra-state character of a number of fundamental rights positively laid down in the first section of the constitution is recognized by the majority of lawyers. The Federal Constitutional Court, too, accepted the existence of supra-positive rights and has even considered itself competent for controlling the existing laws under that heading. In fact, this court has repeatedly investigated offences against supra-positive rights, without, however, ever having established one such case. The fundamental rights laid down in the constitution have even been called materialized human rights by the court. Other German courts have

made similar pronouncements.

As regards the terminology, in Germany one regards fundamental rights as rights to which German subjects may lay claims. However, the fundamental rights generally apply to all human beings, unless they are specially reserved for Germans only.

3. It is disputed whether the fundamental rights are only effective in the citizen's relation to the state, or also in the citizen's relations among one another. Historically, the fundamental rights are the citizen's rights of resistance to the state. They delineate the sphere of society, that from the power of the state. In this sphere of the individual state has no room. The Basic Law, however, provides for an extension of the scope of the fundamental laws. Thus Art. 9 Para. 3 reads that the right of preserving and improving economic conditions, as well as that of forming associations, are guaranteed for everybody for every profession. Any agreements trying to restrict or obstruct these rights are void, any steps taken to these ends are illegal. This provision thus ensures the right of forming trade unions and employer's associations. Neither the state nor the individual citizen is permitted to infringe upon this right. Thus it would be an offence against this law, if employers were to forbid trade unions in their firms. We thus have the so-called "tertiary effect" of the fundamental rights of coalition in the private social sphere.

Nowadays it is recognized in Germany that the fundamental rights are not only the citizen's rights of resistance to the state, but that, in its section dealing with fundamental rights, the constitution has established an objective order of values and that this, in particular, represents a basic strengthening of the validity of the fundamental rights.

According to the Federal Constitutional Court, the highest value is that of a free, human personality. Being the natural rights of man, which are, moreover, understood as part of this objective order of values of this community, the fundamental rights should really apply not only in the sphere

of the state but also in the social sphere, i. e. in private law. As a matter of fact, the view prevailing in Germany tends towards applying the fundamental rights—if not immediately, yet indirectly—to the social sphere by means of the general clauses of private law in order to protect man against the execution of private economic and social power.

Each basic right must be examined individually as to whether it is included in the general clauses of private law or not. The principle of equality, e. g. only applies to a limited extent in the right of inheritance. The testator need not consider all his heirs equally, because that would be contrary to his right of free testation; the principle of equality would there conflict with that of liberty. In the European history of human rights liberty always has been more stressed than equality. On the other hand, the principle of equality is respected in German private law in that each heir can rightly claim a legitimate portion so that gross inequalities are compensated again.

4. It is questioned whether the state itself can refer to the fundamental rights. The question is not grotesque, because the state is not a perfect unit. In Germany we have a strong federalism and very extensive rights for local communities. In addition, there are bodies not controlled by state administration except a legal control, in the form of corporations, like, e. g. the universities, the chambers of industry and commerce and the broadcasting corporations.

A look at the realities soon shows that some fundamental rights would be obsolete, if it were not for such self-administrating corporations, which refer to these fundamental rights. If, e. g. Art. 5 Para. 1 of the Basic Law guarantees the freedom of reporting over wireless, while the broadcasting system is organized everywhere as a state corporation, it is self-evident that these broadcasting corporations, too, can refer to this fundamental right. The Federal Constitutional Court, e. g. has, moreover, decided that the fundamental right of freedom of research and teaching covers not only the

individual intension to work or carry occupation in this field, but also the universities and faculties as corporations. Statal institutions may refer to the fundamental rights in those fields in which they are dependent on the state. This is why a local community, too, can invoke its constitutional rights of self-administration against the state. Moreover, there is largely agreement on the view that self-governing bodies separated from the state refer to the fundamental rights whenever they represent the individual interests of individual persons. In this respect, the local saving bank is on the same level as a private bank, because both represent the interests of their customers.

5. Much attention has been devoted to the protection of the fundamental rights. Art. 19 of the Basic Law provides for four safeguards for the purpose of their protection. Firstly, a fundamental right can be only restricted by an act of Parliament, if the constitution has expressly made provision for this. The restrictive law must be of general validity, and not only for a specific single case. Secondly the law must mention the fundamental right affected, quoting the respective article. Thirdly, no fundamental right may be touched in its essence. Fourthly, the right to appealing to courts in the event of a violation of the constitution or any legal act is guaranteed. The judges are independent and subject only to the law.

Art. 19, Para. 4 of the Basic Law reads that everybody is entitled to institute legal proceedings, if he is infringed upon in his fundamental right. There is an extensive system of administrative jurisdiction in order to examine in court any violation of the law by the executive. Altogether, there are three branches of administrative jurisdiction: General administrative law courts, which control acts of the administration; social law courts, whose competence is that of controlling acts in the field of social insurance and social security; and the finance courts which can be appealed to in the case of decrees issued by the tax and customs authorities.

In addition to these branches of administrative jurisdiction there is the control of the legislative bodies, of the administration and of jurisdiction

itself by the Federal Constitutional Court. The organs participating in legislation are always in a position to have laws examined for their constitutional legality. In the same way every law court can suspend a trial and appeal to the Federal Constitutional Court for decision, if it is of the opinion that a law is not in keeping with the constitution. In addition there is a legal procedure before the Federal Constitutional Court specially designed to effect protection of the fundamental rights. Every citizen can institute these proceedings, if he has failed to obtain fulfilment of his claims before the other courts. Those who consider their fundamental rights violated can appeal to the Federal Constitutional Court by filing a constitutional complaint, even against acts of parliament (Art. 93 Para. 1 No. 4 a). Every administrative case can be transformed into a constitutional complaint because in every case the claimant may argue that the administrative act violated the free display and development of his personality.

The right of filing a constitutional complaint cannot be abolished, even not by an act of Parliament. Therefore also a seized terrorist may file a constitutional complaint, as it happened several times.

If one considers that there are altogether more than 100 law-courts at the citizen's disposal for the exclusive control of the administration, one will realize that such a strong legal protection of the citizen against the state has been developed in Germany, that one cannot only speak of a perfect rule of law, but why Germany has already been called a state governed by law courts. There has even been some talk of a rule of judges in Germany because there is hardly any execution of state power which cannot be controlled in court. Only 30 years ago, nobody would have expected the administration to be able to function at all in view of all this legal protection. As a matter of fact, there are some decisions of the Federal Constitutional Court for reaching of legal interpretation but offering political solutions, which parliaments and administration were not able to find. The decision on the rights of co-determination in the universities was an exa-

mple for this development.

This far-reaching system of legal protection in Germany has brought about the development of an extensive judicature for the interpretation of fundamental rights. The series of Federal Constitutional Court decisions alone fills 44 volumes so far. In these, the decisions on the interpretation of the human rights account for the largest part. The Federal Constitutional Court and the Highest Federal Courts have worked out basic interpretation standards for some fundamental rights. These apply, above all, to the freedom of choice and pursuit of profession and for the social limits of property.

V. Social State

1. Everyone has the right to the free development of his personality. This right exists also in respect of economic activities. But there exist limits because of the principle of social government. Content and limits of property shall be determined by the laws. Property imposes duties and its use should also serve the public weal.

Among the fundamental rights laid down in the Basic Law, the fundamental social rights only account for a very small proportion. But the principle of a social rule of law is one of the guiding principles of the German constitutional order. This principle is binding on legislation, administration and jurisdiction. Parliament, executive and court jurisdiction clearly show a tendency towards enabling the citizen to achieve a social status, which alone enables him fully to use his fundamental political rights.

2. The shaping of the principle of a social rule of law essentially is the obligation of the legislature. But interpreting the law administration and jurisdiction too are obliged to consider this principle. Proportioning the account of payments of the state to citizens the principle of a social rule of law shall justify a distinction up to the certain degree of social need of the receiver.

Because of the principle of social rule of law the Federation and the states are obliged to protect and especially to aid indigent people by means of different social insurances and public relief. Administration accomplishes to a great extent tasks of social policy. More than one quarter of the budget is spent for social purposes.

VI. Federal State

1. The Federal Republic of Germany is a federal state which is consisting of 10 states in western Germany and of Berlin(West).

The member states of the federation are very different relating to the number of inhabitants, the area and the productive power. They are real states which are competent to legislation, administration and jurisdiction without interference of the federation. Moreover the states participate in the legislation and administration of the federation through the Council of Constituent States. The Basis Law prohibits amendments affecting the division of the federation into states, and the participation on principle of the states in legislation.

The idea of federalism is fully accepted in the three states with a millennial history: Bavaria, Bremen and Hamburg. Except Baden-Württemberg all other states are the result of the division into zones of occupation by the allied powers after the war.

2. In the field of *legislation* the stress lies with the federation. Above all the federation is competent for laws relating to economic matters. The federation did not hesitate to exhaust this competence and has passed laws regulating all matters of economic interest. This competence is now limited by a transfer of sovereign rights to the European Communities.

Regarding legislation there are matters within the *exclusive* power of the federation as e. g. foreign affairs or national defense. For other matters the federation and the states have a *concurrent* legislation as e. g. civil and penal law, procedural law and economic matters. In almost all matters of

a federal legislative competence the federation acted in the meantime. The last important acts were a Code of Administrative Procedure, which entered into force 1. January 1977, a law regulating general terms of business, and a reform of matrimonial law against which several constitutional complaints have been filed. In other cases the federation has the right to enact *general* provisions, and the states shall regulate the *detail*. The federation issued such general laws, e. g., regarding the civil service, water law, environmental protection and the universities.

The states are competent to legislate in so far as the Basic Law does not confer legislative power on the federation. Main subjects of statal legislature are municipal law, police law, law of construction except planning, all matters of education and culture, radio and television except technological matters of telecommunication, and the statal administrative structure and organization.

3. *Administration* is divided between the federation and the states. The stress of administration lies with the states. Federal administrations are established, e. g., for the foreign service, the postal service, federal railways, boundary police, customs administration, military administration, aviation control, labor administration and several insurance corporations. The main fields of statal administration are police, education and research, tax-administration and the general administration of the interior.

The *municipalities* have their own administration independent of the state, which executes municipal, statal and federal laws. Municipalities and counties must be guaranteed the right to regulate on their own responsibility all affairs of the local community within the limits set by law. The state is supervising the municipalities. As far as self-government affairs are concerned the state only has the right of supervising the legality, not the expediency or reasonableness of acts of the autonomous municipal entities. There don't exist administrative legal relations between the federation and the municipalities. The municipalities are mediatized by the states.

A large number of autonomous corporations and authorities is competent for the administration of educational, economic and social matters.

In respect of certain affairs of administration co-operation between the federation and the states is committed (*co-operative federalism*). Moreover, there is an extensive cooperation between the states which even have set up interfederative organizations. The number of administrative agreements between states is, probably, more than 400, not included recommendation of the Permanent Conference of the Educational Ministers.

4. The *budgets* of the federation, the states and the municipalities are separated. After a compensation of financial means between the federation and the states, the states among themselves, and the states and the municipalities, 49% of the available amount of all budgets of the federation, the states and the municipalities is spent by the federation, 34% by the states, 14% by the municipalities, 2.5% by the European Communities, and 0.5% by a special fund of Compensation for refugees.

5. *Jurisdiction* is mainly executed by the courts of the states. The Federal Courts only are competent in last resort. There exist five branches of jurisdiction: Civil and penal jurisdiction; litigations between workers and employers; administrative jurisdiction; social jurisdiction; and financial jurisdiction.

VIII. International Relations

1. The general rules of international law are part of the internal German legal order and the prevailing all German laws. It is an open question whether the general rules of international law are also prevailing the Basic Law. The question should be answered in the negative. Actually this problem is not urgent because the number of general rules of international law applicable in internal law seems to be extremely small.

Treaties of international law regulating politically decisive foreign relations of the Federal Republic of Germany or regulating a matter which only

is to be regulated by an act of parliament must be given the consent of the legislative bodies. Insofar an act of parliament is obligatory. Internal law may even derogate international treaty law, but normally it shall be interpreted in accordance with international treaty law.

As far as the states are competent for legislation they are entitled to conclude treaties with foreign states with the approval of the Federal Government. There are some state treaties with neighbouring states and a development agreement between Ghana and Hamburg.

2. The Federal Republic is member of the European Communities and has definitely delegated several competences to the European Authorities in Brussels. The consequence of this delegation is that a large number of rules and regulations regarding economic and agricultural affairs have been issued by the organs of the European Communities. If a matter has been regulated by the European Communities those concerned are subordinated directly to the European law. Nevertheless German courts don't apply European norms which are contradictory to rules of the Basic Law, especially to fundamental rights. The German attitude insofar is different from the opinion of the Supreme Court of Italy which stated that European law is prevailing at any rate.