



Volume 8. Occupation and the Emergence of Two States, 1945-1961
Basic Law of the Federal Republic of Germany (1949/ Amendments 1956)

The Basic Law of the Federal Republic of Germany was adopted by the Parliamentary Council on May 8, 1949, and ratified during the week of May 16-22, 1949, by the legislatures of more than two thirds of the participating German *Länder*. It comprised more than 140 articles, most of which laid out the operative framework of the political system and the rights and duties of individual organs. Given the experience of the recent past, the first nineteen articles of the Basic Law [*Grundgesetz*] were devoted to safeguarding basic rights. Likewise, Article 20 – which pronounces the “democratic” nature of the Federal Republic and asserts that “all state authority emanates from the people” – must also be read against the backdrop of German history. Because West Germans wanted to keep the door open for the eventual realization of national unity, they regarded this “Basic Law” as only provisional. As stated in the preamble, its purpose was “to give a new order to political life for a transitional period.” It was hoped that the Basic Law would be replaced one day by a pan-German constitution. On October 3, 1990, more than forty years after the Basic Law was promulgated, Germany finally achieved national unity and the Basic Law became the constitution for the whole nation.

[Please note: the official version of the Basic Law was written in German. The following English translation was approved by the Allied High Commission. Inconsistencies in style and spelling have not been corrected.]

Preamble

Conscious of its responsibility before God and Men, animated by the resolve to preserve its national and political unity and to serve the peace of the World as an equal partner in a united Europe, the German people, in the Länder Baden, Bavaria, Bremen, Hamburg, Hesse, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Schleswig-Holstein, Württemberg-Baden, and Württemberg-Hohenzollern, has enacted, by virtue of its constituent power, this Basic Law of the Federal Republic of Germany to give a new order to political life for a transitional period.

It has also acted on behalf of those Germans to whom participation was denied.

The entire German people is called on to achieve by free self-determination the unity and freedom of Germany.

I. Basic Rights

Article 1

- (1) The dignity of man is inviolable. To respect and protect it is the duty of all state authority.
- (2) The German people therefore acknowledge inviolable and inalienable human rights to be the basis of every community, of peace and of justice in the world.
- (3) The following basic rights bind the legislature, the executive, and the judiciary as immediately enforceable law.

Article 2

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

Article 3

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

Article 4

- (1) Freedom of faith and of conscience, and freedom of creed, religious and secular (weltanschaulich) are inviolable.
- (2) The undisturbed practice of religion is guaranteed.
- (3) No one may be compelled against his conscience to render military service as an armed combatant. Details will be regulated by a federal law.

Article 5

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

Article 6

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

Article 7

- (1) The entire system of schools is under the supervision of the state.
- (2) The persons entitled to bring up a child have the right to decide whether it shall receive religious instruction.
- (3) Religious instruction forms part of the ordinary curriculum in state and municipal schools, except in non-denominational schools. Without prejudice to the state's right of supervision, religious instruction is given in accordance with the tenets of the religious communities. No teacher may be obliged to give religious instruction against his will.
- (4) The right to establish private schools is guaranteed. Private schools, as a substitute to state or municipal schools, require the approval of the state and are subject to the laws of the Länder. This approval is to be given if the private schools are not inferior to the state or municipal schools in their educational aims, their facilities, and the professional training of their teaching staff, and if a segregation of the pupils according to the means of their parents is not promoted. This approval is to be withheld if the economic and legal position of the teaching staff is not sufficiently assured.
- (5) A private elementary school is to be approved only if the educational authority finds that it serves a special pedagogic interest, or if, on application of the persons entitled to bring up the children, it is to be established as an inter-denominational school or as a denominational or ideological (weltanschaulich) school and a state or municipal elementary school of this type does not exist in the Gemeinde.
- (6) Preparatory schools (Vorschulen) remain abolished.

Article 8

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

Article 9

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

Article 10

Secrecy of the mail and secrecy of postal services and of and telecommunications are inviolable. Restrictions may be ordered only pursuant to a law.

Article 11

- (1) All Germans enjoy freedom of movement throughout the federal territory.
- (2) This right may be restricted only by 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 the restriction is necessary for the protection of youth against neglect, for combating the danger of epidemics or for the prevention of crime.

Article 12

- (1) All Germans have the right to choose their trade or profession, their place of work and their place of training. The practice of trades or professions may be regulated by law.
- (2) No one may be compelled to perform a particular work except within the framework of a customary public duty to render services which applies generally and equally to all.
- (3) Forced labor may be imposed only in the event that a person is deprived of his freedom by the sentence of a court.

Article 13

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

Article 14

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

Article 15

Land, natural resources, and means of production may for the purpose of socialisation be transferred into public ownership or other forms of publicly controlled economy by a law which provides for kind and extent of the compensation. In respect of such compensation Article 14, paragraph (3), sentences 3 and 4 apply accordingly.

Article 16

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

Article 17

Everyone has the right individually or jointly with others to address written requests or complaints to the competent authorities and to the representative assemblies.

Article 18

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

Article 19

(1) Whenever under this Basic Law a basic right may be restricted by or pursuant to a law, the law must apply generally and not solely to an individual case. Furthermore, the law must name the basic right and refer to the Article which protects it.

(2) In no case may a basic right be infringed upon in its essential content.

(3) The basic rights also apply to domestic juristic persons to the extent that their nature permits.

(4) Should any person's right be violated by public authority, recourse to the court shall be open to him. If no other court has jurisdiction, recourse shall be to the ordinary courts.

II. The Federation and the Länder

Article 20

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

(2) All state authority emanates from the people. It is exercised by the people by means of elections and plebiscites and by separate legislative, executive, and judicial agencies.

(3) Legislation is subject to the constitutional order; the executive and the judiciary are bound by law.

Article 21

(1) The political parties participate in the forming of the political will of the people. They can be freely formed. Their internal organisation 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 behavior of their members, seek to impair or destroy the free democratic basic order or to endanger the existence of the Federal Republic of Germany are unconstitutional. The Federal Constitutional Court decides on the question of unconstitutionality.

(3) Details will be regulated by federal legislation.

Article 22

The federal flag is black-red-gold.

Article 23

For the time being, this Basic Law applies in the territory of the Länder Baden, Bavaria, Bremen, Greater Berlin, Hamburg, Hesse, Lower-Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Schleswig-Holstein, Württemberg-Baden and Württemberg-Hohenzollern. In other parts of Germany it is to be put into force on their accession.

[. . .]

XI. Transitional and Concluding Provisions

[. . .]

Article 131

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

[. . .]

Article 146

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

Bonn am Rhein
on May 23, 1949

Dr. Adenauer, President of the Parliamentary Council
Shönfelder, First Vice-President
Dr. Schäfer, Second Vice-President

Amendments to Art. 1, 12, 17 effected by the Law to Supplement the Basic Law of March 19, 1956:

1. Article 1 paragraph (3) shall read as follows:

(3) The following basic rights bind the legislature, the executive and the judiciary as directly enforceable law.

2. Article 12 shall read as follows:

Article 12

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

(2) No one may be compelled to perform a particular work except within the framework of a traditional compulsory public service which applies generally and equally to all. Anyone who refuses on conscientious grounds to render war service involving the use of arms may be required to render an alternative service. The duration of this alternative service shall not exceed the duration of military service. Details shall be regulated by a law which shall not prejudice freedom of conscience and shall provide also for the possibility of an alternative service having no connection with any unit of the Armed Forces.

(3) Women shall not be required by law to render service in any unit of the Armed Forces. On no account shall they be employed in any service involving the use of arms.

(4) Forced labour may be imposed only in the event that a person is deprived of his freedom by the sentence of a court.

3. The following Article 17a shall be inserted after Article 17:

Article 17a

(1) Laws concerning military service and alternative service may by provisions applying to members of the Armed Forces and of alternative Services during their period of military or alternative service, restrict the basic right freely to express and to disseminate opinions by speech, writing and pictures (Article 5 paragraph [1] first half-sentence), the basic right of assembly (Article 8), and the right of petition (Article 17) insofar as it permits to address 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).

[. . .]

Source: The Basic Law of the Federal Republic of Germany, reprinted in John F. Golay, *The Founding of the Federal Republic of Germany*. Chicago, 1958, pp. 217-23, 250, 254, 258-59.