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ICL - Germany - Constitution Germany - Constitution

{ Adopted on: 23 May 1949 }

**Preamble**

Conscious of their responsibility before God and men, animated by the purpose to serve world peace as an equal part in a unified Europe, the German People have adopted, by virtue of their constituent power, this Constitution.

The Germans in the States of Baden-Wurttemberg, Bavaria, Berlin, Brandenburg, Bremen, Hamburg, Hesse, Lower Saxony, Mecklenburg-Western Pomerania, North Rhine-Westphalia, Rhineland-Palatinate, Saarland, Saxony, Saxony-Anhalt, Schleswig-Holstein and Thuringia have achieved the unity and freedom of Germany in free self-determination. This Constitution is thus valid for the entire German People.

**Chapter I Basic Rights**

**Article 1 [Human Dignity]**

- (1) Human dignity 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 as the basis of every human community, of peace, and of justice in the world.
- (3) The following basic rights are binding on legislature, executive, and judiciary as directly enforceable law.

**Article 2 [Liberty]**

- (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 against morality.
- (2) Everyone has the right to life and to physical integrity. The freedom of the person is inviolable. Intrusion on these rights may only be made pursuant to a statute.

**Article 3 [Equality]**

- (1) All humans are equal before the law.
- (2) Men and women are equal. The state supports the effective realization of equality of women and men and works towards abolishing present disadvantages.
- (3) No one may be disadvantaged or favored because of his sex, his parentage, his race, his language, his homeland and origin, his faith, or his religious or political opinions. No one may be disadvantaged because of his handicap.

**Article 4 [Freedom of faith, of conscience, and of creed]**

- (1) Freedom of creed, of conscience, and freedom to profess a religious or non-religious faith are 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 are regulated by a federal statute.

**Article 5 [Freedom of Expression]**

- (1) Everyone has the right to freely express and disseminate his opinion in speech, writing, and pictures and to freely inform himself from generally accessible sources. Freedom of the press and freedom of reporting by means of broadcasts and films are guaranteed. There will be no censorship.
- (2) These rights are subject to limitations in the provisions of general statutes, in statutory provisions for the protection of the youth, and in the right to personal honor.

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(3) Art and science, research and teaching are free. The freedom of teaching does not release from allegiance to the constitution.

**Article 6 [Marriage and family, illegitimate children]**

(1) Marriage and family are under the special protection of the state.

(2) Care and upbringing of children are the natural right of the parents and primarily their duty. The state supervises the exercise of the same.

(3) Against the will of the persons entitled to their upbringing, children may only be separated from the family, pursuant to a statute, where those so entitled failed or where, for other reasons, the children are endangered to become seriously neglected.

(4) Every mother is entitled to protection by and care of the community.

(5) Illegitimate children, by legislation, have to be provided with the same conditions for their physical and mental development and for their place in society as are legitimate children.

**Article 7 [Education]**

(1) The entire schooling system stands under the supervision of the state.

(2) The persons entitled to the upbringing of a child have the right to decide whether the child shall attend religion classes.

(3) Religion classes form part of the ordinary curriculum in state schools, except for secular 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 against his will to give religious instruction

(4) The right to establish private schools is guaranteed. Private schools, as a substitute for state schools, require the approval of the state and are subject to the statutes of the States. Such approval has to be given where private schools are not inferior to the state schools in their educational aims, their facilities, and the professional training of their teaching staff, and where segregation of pupils according to the means of their parents is not encouraged. Approval has to be withheld where the economic and legal position of the teaching staff is not sufficiently assured.

(5) A private elementary school has to be permitted only where the education authority finds that it serves a special pedagogic interest, or where, on the application of persons entitled to upbringing of children, it is to be established as an interdenominational school or as a school based on a particular religious or non-religious faith and only if a state elementary school of this type does not exist in the commune.

(6) Preliminary schools remain abolished.

**Article 8 [Freedom of assembly]**

(1) All Germans have the right, without prior notification or permission, to assemble peaceably and unarmed.

(2) With regard to open-air assemblies, this right may be restricted by or pursuant to a statute.

**Article 9 [Freedom of association]**

(1) All Germans have the right to form clubs and societies.

(2) Associations, the purposes or activities of which conflict with criminal statutes 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 for all professions.

Agreements which restrict or seek to impair this right are null and void, measures directed to this end are illegal. Measures taken pursuant to Articles 12a, 35 (2) & (3), 87a (4), or 91 may not be directed against industrial conflicts engaged in by associations to safeguard and improve working and economic conditions in the sense of the first sentence of this

paragraph.

Article 10 [Privacy of letters, posts and telecommunications]

(1) The privacy of letters as well as the secrecy of post and telecommunication is inviolable.

(2) Restrictions may only be ordered pursuant to a statute. Where a restriction serves the protection of the free democratic basic order or the existence or security of the Federation or a State, the statute may stipulate that the person affected shall not be informed and that recourse to the courts shall be replaced by a review of the case by bodies and auxiliary bodies appointed by Parliament.

Article 11 [Freedom of movement]

(1) All Germans enjoy freedom of movement throughout the federal territory.

(2) This right may be restricted only by or pursuant to a statute and only in cases in which an adequate basis for personal existence is lacking and special burdens would result therefrom for the community, 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 State, to combat the danger of epidemics, to deal with natural disasters or particularly grave accidents, to protect young people from neglect, or to prevent crime.

Article 12 [Right to choose an occupation, prohibition of forced labor]

(1) All Germans have the right to freely choose their occupation, their place of work, and their place of study or training. The practice of an occupation can be regulated by or pursuant to a statute.

(2) No person may be forced to perform work of a particular kind except within the framework of a traditional compulsory community service that applies generally and equally to all.

(3) Forced labor 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 can 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 can be required to render a substitute service. The duration of such substitute service may not exceed the duration of military service. Details are regulated by a statute which may not interfere with freedom to take a decision based on conscience and which 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) can, during a state of defence, be assigned by or pursuant to a statute to an employment involving civilian services for defence purposes, including the protection of the civilian population; assignments to employments subject to public law are only admissible 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. Employments according to the first sentence of this paragraph can also be established with the Armed Forces, in the area of their supply services, or with public administrative authorities; assignments to employment connected with supply services for the civilian population are only admissible to provide for their vital provisions or to guarantee their safety.

(4) Where, during a state of defence, civilian service requirements in the

civilian health system or in the stationary military hospital organization cannot be met on a voluntary basis, women between eighteen and fifty-five years of age can be assigned to such services by or pursuant to a statute. They may in no case render service involving the use of arms.

(5) Prior to the existence of a state of defence, assignments under Paragraph (3) may only be made where the requirements of Article 80a (1) are satisfied. To prepare services mentioned in Paragraph (3) for which special knowledge or skills are required, persons can be obliged by or pursuant to a statute to attend training courses. Insofar, the first sentence of this paragraph does not apply.

(6) Where, during a state of defence, staffing requirements for the purposes referred to in Paragraph (3) 1 cannot be met on a voluntary basis, the freedom of Germans to quit the pursuit of his occupation or quit his place of work may be restricted by or pursuant to a statute in order to meet these requirements. Paragraph (5) 1 applies *mutatis mutandis* prior to the existence of a state of defence.

#### Article 13 [Inviolability of the home]

(1) The home is inviolable.

(2) Searches may be ordered only by a judge or, in the event of danger resulting from any delay, by other organs legally specified, and they may be carried out only in the form prescribed by law.

(3) If specific facts lead to the assumption that someone has committed a very grave crime, technical means of eavesdropping in homes where that person probably stays may be ordered by court if the investigation by other means would be unproportionally obstructed or without chance of success. The measure has to be limited. The order is issued by a court of three justices. In the event of danger resulting from any delay, the order can be issued by a single judge.

(4) To avoid urgent danger to public safety, particularly general or mortal danger, technical means of eavesdropping in homes may only be used on the order of a judge. In the event of danger resulting from any delay, those actions may be ordered by other authorities empowered by law; the subsequent decision of a judge has to be arranged for without delay.

(5) In the case of technical means being exclusively ordered for the protection of investigators during their activity in homes, the measure can be ordered by those authorities empowered by law. Evidence from such investigation may be used for other purposes only to conduct criminal prosecution or avoid danger and only if the legality of the measure has been stated by court order; in the event of danger resulting from any delay, a subsequent court order has to be arranged for without delay.

(6) The Government provides yearly reports to the House of Representatives about those measures conducted according to Paragraph (3) as well as according to Paragraph (4) and, as far as court orders are necessary, Paragraph (5) in the domain of federal authority. A committee elected by the House of Representatives conducts parliamentary control on the basis of this report. The states provide for equivalent control.

(7) Intrusions and restrictions may otherwise only be made to avert a general danger or a mortal danger to individuals, or, pursuant to a statute, to prevent present danger to public safety and order, particularly to relieve a housing shortage, to combat the danger of epidemics, or to protect endangered juveniles.

#### Article 14 [Property, right of inheritance, taking of property]

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

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

(3) The taking of property is only permissible in the public weal. It may

be imposed only by or pursuant to a statute regulating the nature and extent of compensation. Such compensation has to be determined by establishing an equitable balance between the public interest and the interests of those affected. Regarding disputes about the amount of compensation, recourse to the courts of ordinary jurisdiction is available.

**Article 15 [Socialization]**

State, natural resources, and means of production can, for the purpose of socialization, be transferred to public ownership or other forms of collective enterprise by a statute regulating the nature and extent of compensation. Regarding such compensation, Article 14 (3) 3 & 4 applies *mutatis mutandis*.

**Article 16 [Deprivation of citizenship, extradition, right of asylum]**

(1) German citizenship may not be taken away. The loss of citizenship may only be imposed pursuant to a statute and against the will of the person affected only where such person does not become stateless as a result thereof.

(2) No German may be extradited to a foreign country.

**Article 16a**

(1) Persons persecuted on political grounds enjoy the right of asylum.

(2) The right of Paragraph (1) cannot claim who enters from a European Communities country or from another country where the application of the Convention on the Legal Status of Refugees and the Convention to Protect Human Rights and Civil Liberties is ensured. States outside of the European Communities for which the prerequisites of the first sentence hold true are determined by a statute requiring the consent of the Senate. In the cases of the first sentence, measures to end a stay can be effectuated independent of recourse to the course sought against these measures.

(3) By statute requiring the consent of the Senate, states can be determined in which on the basis of law, law application, or general political conditions it seems to be guaranteed that neither persecution on political grounds nor inhuman or derogatory punishment and treatment takes place. A foreigner from such a state is presumed to not being persecuted unless he asserts facts supporting that, contrary to this presumption, he is politically persecuted.

(4) The effectuation of measures to end a stay will, in the cases of Paragraph (3) and in other cases where the claim to stay is obviously unfounded or is regarded as obviously unfounded, only be suspended by court order if serious doubts arise concerning the legality of the measure; the scope of scrutiny can be limited and delayed assertions ignored. Details are regulated by a statute.

(5) Paragraphs (1) to (4) are not contrary to public law contracts of European Communities member states among each other and with other states which, honoring the obligations arising from the Convention on the Legal Status of Refugees and the Convention to Protect Human Rights and Civil Liberties the application of which has to be ensured in the contracting states, regulate responsibilities to examine claims of asylum including mutual acknowledgement of asylum decisions.

**Article 17 [Right of petition]**

Everyone has the right, individually or jointly with others, to address written requests or complaints to the competent agencies and to parliaments.

**Article 17a [Defence and Substitute Service]**

(1) Statutes concerning military service and substitute service can, by

provisions applying to members of the Armed Forces and of the substitute services during their period of military or substitute service, restrict the basic right to freely express and disseminate opinions in speech, writing, and pictures (first half-sentence of Article 5 (1)), the basic right of assembly (Article 8), and the right of petition (Article 17) insofar as this right permits the submission of requests or complaints jointly with others.

(2) Statutes serving defence purposes including the protection of the civilian population can 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 (Article 5 (1)), freedom of teaching (Article 5 (3)), freedom of assembly (Article 8), freedom of association (Article 9), privacy of letters and secrecy of post and telecommunication (Article 10), property (Article 14), or the right to asylum (Article 16a) in order to combat the free democratic basic order forfeit these basic rights. Such forfeiture and the extent thereof is determined by the Federal Constitutional Court.

#### Article 19 [Restriction of basic rights]

(1) Insofar as a basic right may, under this Constitution, be restricted by or pursuant to a statute, such statute must apply generally and not solely to an individual case. Furthermore, such statute must name the basic right, indicating the relevant Article.

(2) In no case may the essence of a basic right be infringed.

(3) Basic rights also apply to domestic legal persons to the extent that the nature of such rights permits.

(4) Should any person's rights be violated by public authority, recourse to the court is open to him. Insofar as no other jurisdiction has been established, recourse is available to the courts of ordinary jurisdiction.

Article 10 (2) 2 is not affected by the provisions of this paragraph.

### Chapter II The Federation and the States

#### Article 20 [Basic principles of state order, right to resist]

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

(2) All state authority emanates from the people. It is being exercised by the people through elections and voting and by specific organs of the legislature, the executive power, and the judiciary.

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

(4) All Germans have the right to resist any person seeking to abolish this constitutional order, should no other remedy be possible.

#### Article 20a [Protection of Natural Resources]

The state, also in its responsibility for future generations, protects the natural foundations of life in the framework of the constitutional order, by legislation and, according to law and justice, by executive and judiciary.

#### Article 21 [Political parties]

(1) The political parties 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 have to publicly account for the sources and use of their funds and for their assets.

(2) Parties which, by reason of their aims or the behavior of their adherents, seek to impair or abolish 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 are regulated by federal statutes.

Article 22 [Federal flag]

The federal flag is black, red, and gold.

Article 23 [European Union]

(1) To realize a ~~united~~ Europe, Germany participates in the development of the European Union which is bound to democratic, rule of law, social, and federal principles as well as the principle of subsidiarity and provides a protection of fundamental rights essentially equivalent to that of this Constitution. The federation can, for this purpose and with the consent of the Senate, delegate sovereign powers. Article 79 (2) & (3) is applicable for the foundation of the European Union as well as for changes in its contractual bases and comparable regulations by which the content of this Constitution is changed or amended or by which such changes or amendments are authorized.

(2) The House of Representatives and the States, by their representation in the Senate, participate in matters of the European Union. The Government has to thoroughly inform House of Representatives and Senate at the earliest possible time.

(3) The Government allows for statements of the House of Representatives before it takes part in drafting European Union laws. The Government considers statements of the House of Representatives during deliberations. Detail are regulated by federal statute.

(4) The Senate has to be included in the deliberations of the House of Representatives insofar as it would have to participate in a domestic measure or insofar as the States would be accountable domestically.

(5) Insofar as, in the area of exclusive legislative competence of the Federation, the interests of the States are affected or insofar as, in all other cases, the Federation has legislative competence, the Government considers the statement of the Senate. If legislative competencies of the States, the installation of their agencies, or their procedures are centrally affected, the opinion of the Senate has to be considered as decisive for the Federation's deliberation; the responsibility of the Federation for the whole state has to be maintained in the process. The consent of the Government is necessary in matters possibly resulting in higher expenses or lower revenues for the Federation.

(6) The Federation shall delegate the exercise of rights of the Federal Republic of Germany as a member of the European Union to a representative of the States nominated by the Senate if exclusive legislative competencies of the States are centrally affected. These rights are exercised with participation of and in coordination with the Government; the responsibility of the Federation for the whole state has to be maintained in the process.

(7) Details of Paragraphs (4) to (6) are regulated by a statute requiring the consent of the Senate.

Article 24 [Entry into a collective security system]

(1) The Federation may by legislation transfer sovereign powers to intergovernmental institutions.

(1a) Insofar as the States are responsible for the exercise of state rights and the discharge of state duties, they can, with consent of the Government, delegate sovereign powers to institutions for neighborhood at state borders.

(2) For the maintenance of peace, the Federation may join a system of mutual collective security; in doing so it will consent to such limitations upon its rights of sovereignty as will bring about and secure



a peaceful and lasting order in Europe and among the nations of the world.

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

Article 25 [Public international law and federal law]

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

Article 26 [Ban on preparing a war of aggression]

(1) Acts tending to and undertaken with intent to disturb the peaceful relations between nations, especially to prepare war or aggression, are unconstitutional. They have to be made a criminal offence.

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

Article 27 [Merchant fleet]

All German merchant vessels form one merchant fleet.

Article 28 [Guarantee of self-government]

(1) The constitutional order in the States must conform to the principles of the republican, democratic, and social state under the rule of law, within the meaning of this Constitution. In each of the States, counties, and communes, the people has to be represented by a body chosen in general, direct, free, equal, and secret elections. During elections in counties and communes, persons who possess the citizenship of a European Community country are eligible to vote and being elected according to the laws of the European Community. In communes, the communal assembly can 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 statute. Within the framework of their statutory functions, the associations of communes have such right to self-government as may be provided by statute. The right to self-government also encompasses the foundations of financial accountability; part of this foundation is the communes' right to raise their tax shares according to local economic performance.

(3) The Federation ensures that the constitutional order of the States conforms to the basic rights and to the provisions of Paragraphs (1) &

(2).

Article 29 [New delimitation of States boundaries]

(1) A new delimitation of federal territory may be made to ensure that the States by their size and capacity are able effectively to fulfill their functions. Due regard has to be given to regional, historical, and cultural ties, economic expediency, and the requirements of regional policy and planning.

(2) Measures for a new delimitation of federal territory are effected by federal statutes requiring confirmation by referendum. The States thus affected have to be consulted.

(3) A referendum is held in the States from whose territories or partial territories a new State or a State with redefined boundaries is to be formed (affected States). The referendum is held on the question whether the affected States are to remain within their existing boundaries or whether the new State or State with redefined boundaries should be formed. The referendum is deemed to be in favor of the formation of a new State or of a State with redefined boundaries where approval is given to the change by a majority in the future territory of such State and by a majority in all the territories or partial territories of an affected State whose

assignment to a State is to be changed in the same sense. The referendum is deemed not to be in favor where in the territory of one of the affected States a majority reject the change; such rejection is, however, of no consequence where in one part of the territory whose assignment to the affected State is to be changed a majority of two-thirds approve of the change, unless in the entire territory of the affected State a majority of two-thirds reject the change.

(4) Where in a clearly definable area of interconnected population and economic settlement, the parts of which lie in several States and which has a population of at least one million, one tenth of those of its population entitled to vote in House of Representatives elections petition by popular initiative for the assignment of that area to one State, provision is made within two years in a federal statute determining whether the delimitation of the affected States is changed pursuant to Paragraph (2) or determining that a plebiscite is held in the affected States.

(5) The plebiscite establishes whether approval is given to a change of States delimitation to be proposed in the statute. The statute may put forward different proposals, not exceeding two in number, for the plebiscite. Where approval is given by a majority to a proposed change of States delimitation, provision is made within two years in a federal statute determining whether the delimitation of the States concerned is changed pursuant to Paragraph (2). Where approval is given, in accordance with Paragraph (3) 3 & 4, to a proposal put forward for the plebiscite, a federal statute providing for the formation of the proposed State is enacted within two years of the plebiscite and no longer requires confirmation by referendum.

(6) A majority in a referendum or in a plebiscite consists of a majority of the votes cast, provided that they amount to at least one quarter of the population entitled to vote in House of Representatives elections. Other detailed provisions concerning referendums, popular petitions, and plebiscites is made in a federal statute; such statute may also provide that popular petitions may not be repeated within a period of five years. (7) Other changes concerning the territory of the States may be effected by state agreements between the States concerned or by a federal statute with the approval of the Senate where the territory which is to be the subject of a new delimitation does not have more than 50,000 inhabitants. Detailed provision are made in a federal statute requiring the approval of the Senate and the majority of the members of the House of Representatives. It shall make provision for the affected communes and districts to be consulted.

(8) The States can change the delimitation of their territory or parts thereof deviating from the provisions in Paragraphs (2) to (7) by state contract. Affected communes and counties have to be consulted. The state contract needs to be confirmed by public referendum in each participating State. If a state contract affects only parts of the territory of a State, the public referendum can be limited to these parts; Sentence 5 Half-Sentence 2 is not applicable. The public referendum requires a majority of votes cast if such majority contains at least one fourth of the votes of all persons eligible for elections of the House of Representatives; details are regulated by a federal statute. The state contract requires the consent of the House of Representatives.

#### Article 30 [Competencies of Federation and States]

Except as otherwise provided or permitted by this Constitution, the exercise of governmental powers and the discharge of governmental functions is incumbent on the States.

Article 31 [Precedence of federal law]

Federal law takes precedence over State law.

Article 32 [Foreign relations]

- (1) Relations with foreign states are a responsibility of the Federation.
- (2) Before the conclusion of a treaty affecting the special circumstances of a State, that State has to be consulted in time.
- (3) Insofar as the States have power to legislate, they may, with the consent of the Government conclude treaties with foreign states.

Article 33 [Equal political status of all Germans]

- (1) Every German has in every State the same political rights and duties.
- (2) Every German is 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 are independent of religious denomination. No one may suffer any disadvantage by reason of his adherence or non-adherence to a denomination or to a philosophical persuasion.
- (4) The exercise of state authority as a permanent function is, as a rule, entrusted to members of the public service whose status, service and loyalty are governed by public law.
- (5) The law of the public service is regulated with due regard to the traditional principles of the professional civil service.

Article 34 [Liability in the event of a breach of official duty]

Where any person, in the exercise of a public office entrusted to him, violates his official obligations to a third party, liability rests 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 against the holder of a public office is reserved. In respect of the claim for compensation or the right of recourse, the jurisdiction of the ordinary courts may not be excluded.

Article 35 [Legal, administrative, emergency assistance]

- (1) All federal and State authorities render each other legal and administrative assistance.
- (2) In order to maintain or to restore public security or order, a State may, in cases of particular importance, call upon forces and facilities of the Federal Border Guard to assist its police where 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 State may request the assistance of the police forces of other States or of forces and facilities of other administrative authorities or of the Federal Border Guard or the Armed Forces.
- (3) Where the natural disaster or the accident endangers a region larger than a State, the Government may, insofar as this is necessary to effectively deal with such danger, instruct the State governments to place their police forces at the disposal of other States, and may use units of the Federal Border Guard or the Armed Forces to support the police forces. Measures taken by the Government pursuant to the first sentence of this paragraph have to be revoked at any time at the demand of the Senate, and otherwise immediately upon removal of the danger.

Article 36 [Personnel of the federal authorities]

- (1) Civil servants employed in the highest federal authorities are drawn from all States in appropriate proportion. Persons employed in other federal authorities should, as a rule, be drawn from the State in which they serve.
- (2) Military laws also have to take into account the division of the Federation into States and the regional ties of their populations.

#### Article 37 [Federal coercion]

- (1) Where a State fails to comply with its obligations of a federal character imposed by this Constitution or another federal statute, the Government may, with the consent of the Senate, take the necessary measures to enforce such compliance by the State by way of federal coercion.
- (2) For the purpose of exercising federal coercion, the Government or its commissioner has the right to give binding instructions to all States and their authorities.

### Chapter III The House of Representatives

#### Article 38 [Elections]

- (1) The deputies to the German House of Representatives are elected in general, direct, free, equal, and secret elections. They are representatives of the whole people, not bound by orders and instructions, and subject only to their conscience.
- (2) Anyone who has attained the age of eighteen years is entitled to vote; anyone who has attained majority is eligible for election.
- (3) Details are regulated by a federal statute.

#### Article 39 [Assembly and legislative term]

- (1) The House of Representatives is elected, except for the following provisions, for a four-year term. Its legislative term ends with the assembly of a new House of Representatives. The new election are held forty-six months at the earliest, and forty-eight months at the latest after the beginning of the legislative term. Where the House of Representatives is dissolved, the new election is held within sixty days.
- (2) The House of Representatives assembles, at the latest, on the thirtieth day after the election.
- (3) The House of Representatives determines the termination and resumption of its meetings. The President of the House of Representatives may convene it at an earlier date. He does so where one third of its members or the President or the Chancellor so demand.

#### Article 40 [President, rules of procedure]

- (1) The House of Representatives elects its President, vice presidents, and secretaries. It draws up its rules of procedure.
- (2) The President exercises proprietary and police powers in the House of Representatives building. No search or seizure may take place on the premises of the House of Representatives without his permission.

#### Article 41 [Scrutiny of elections]

- (1) The scrutiny of elections is the responsibility of the House of Representatives. It also decides whether a deputy has lost his seat in the House of Representatives.
- (2) Complaints against such decisions of the House of Representatives may be lodged with the Federal Constitutional Court.
- (3) Details are regulated by a federal statute.

#### Article 42 [Proceedings, voting]

- (1) The debates of the House of Representatives are public. Upon a motion of one tenth of its members, or upon a motion of the Government, the public may be excluded by a two-thirds majority. The decision on the motion is taken at a meeting not open to the public.
- (2) Decisions of the House of Representatives require a majority of the votes cast unless this Constitution provides otherwise. The rules of procedure may provide for exceptions in respect of elections to be conducted by the House of Representatives.
- (3) True and accurate reports on the public meetings of the House of Representatives and of its committees does not give rise to any liability.

**Article 43 [Presence of members of Government and Senate]**

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

(2) The members of the Senate and of the Government as well as persons commissioned by them have access to all meetings of the House of Representatives and its committees. They are heard at any time.

**Article 44 [Committees of investigation]**

(1) The House of Representatives has the right, and upon the motion of one quarter of its members the duty, to set up a committee of investigation, which takes the requisite evidence at public hearings. The public may be excluded.

(2) The rules of criminal procedure applies mutatis mutandis to the taking of evidence. The privacy of letters and the secrecy of post and telecommunication remain unaffected.

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

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

**Article 45 [Committee 'European Union']**

The House of Representatives establishes a committee for European Union matters. It can empower the committee to exercise the rights of the House of Representatives under Article 23 in its contact with the Government.

**Article 45a [Committees on Foreign Affairs and Defence]**

(1) The House of Representatives appoints a Committee on Foreign Affairs and Committee on Defence.

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

(3) Article 44 (1) does not apply to defence matters.

**Article 45b [Defence Commissioner of the House of Representatives]**

A Defence Commissioner of the House of Representatives is appointed to safeguard the basic rights and to assist the House of Representatives in exercising parliamentary control. Details are regulated by a federal statute.

**Article 45c [Petitions Committee]**

(1) The House of Representatives appoints a Petitions Committee to deal with requests and complaints addressed to the House of Representatives pursuant to Article 17.

(2) The powers of the Committee to consider complaints is regulated by a federal statute.

**Article 46 [Indemnity and immunity of deputies]**

(1) A deputy may not at any time be subjected to court proceedings or disciplinary action or otherwise called to account outside the House of Representatives for a vote cast or a statement made by him in the House of Representatives or in any of its committees. This does 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 House of Representatives, unless he is apprehended during commission of the offence or in the course of the following day.

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

(4) Any criminal proceedings or any proceedings under Article 18 against a

deputy, any detention or any other restriction of his personal liberty is suspended at the demand of the House of Representatives.

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 evidence concerning these facts themselves. To the extent that this right of refusal to give evidence exists, no seizure of documents is permissible.

Article 48 [Entitlements of deputies]

(1) Any candidate for election to the House of Representatives is 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 are entitled to adequate remuneration ensuring their independence. They are entitled to the free use of all state-owned means of transport. Details are regulated by a federal statute.

Article 49 {...}

Chapter IV The Senate

Article 50 [Functions]

The States participate through the Senate in the legislation and administration of the Federation and in European Union matters.

Article 51 [Composition]

(1) The Senate consists of members of the State governments which appoint and recall them. Other members of such governments may act as substitutes.

(2) Each State has at least three votes; States with more than two million inhabitants have four, States with more than six million inhabitants five, and States with more than seven million inhabitants six votes.

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

Article 52 [President, rules of procedure]

(1) The Senate elects its President for one year.

(2) The President convenes the Senate. He convenes the Senate where delegates from at least two States or the Government so demand.

(3) The Senate takes its decisions with at least the majority of its votes. It draws up its rules of procedure. Its meetings are public. The public may be excluded.

(3a) For European Union matters, the Senate can establish a European Chamber whose decisions are considered decisions of the Senate; Article 51 (2) & (3) 2 is applicable mutatis mutandis.

(4) Other members of or persons commissioned by State governments may serve on the committees of the Senate.

Article 53 [Presence of members of the Government]

The members of the Government have the right, and on demand the duty, to attend the meetings of the Senate and of its committees. They have the right to be heard at any time. The Senate is being kept informed by the Government as regards the conduct of affairs.

Chapter IVa The Joint Committee

Article 53a [Composition, rules of procedure, right to information]

(1) Two thirds of the members of the Joint Committee are deputies of the House of Representatives and one third are members of the Senate. The

House of Representatives delegates its deputies in proportion to the relative strength of its parliamentary groups; deputies may not be members of the Government. Each State is represented by a Senate member of its choice; these members are not bound by instructions. The establishment of the Joint Committee and its procedures are regulated by rules of procedure to be adopted by the House of Representatives and requiring the consent of the Senate.

(2) The Government informs the Joint Committee about its plans in respect of a state of defence. The rights of the House of Representatives and its committees under Article 43 (1) remain unaffected by the provision of this paragraph.

## Chapter V The President

### Article 54 [Election]

(1) The President is elected, without debate, by the Federal Convention. Every German who is entitled to vote in House of Representatives elections and has attained the age of forty years is eligible for election.

(2) The term of office of the President is five years. Reelection for a consecutive term is permitted only once.

(3) The Federal Convention consists of the members of the House of Representatives and an equal number of members elected by the parliaments of the States according to the principles of proportional representation.

(4) The Federal Convention meets no later than thirty days before the expiration of the term of office of the President or, in the case of premature termination, not later than thirty days after that date. It is convened by the President of the House of Representatives.

(5) After the expiration of a legislative term, the period specified in Paragraph (4) 1 begins with the first meeting of the House of Representatives.

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

(7) Details are regulated by a federal statute.

### Article 55 [Incompatibilities]

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

(2) The President may not hold any other salaried office, nor engage in an occupation, 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 President takes the following oath before the assembled members of the House of Representatives and the Senate:

"I swear that I will dedicate my efforts to the well-being of the German people, enhance their benefits, avert harm from them, uphold and defend the Constitution and the statutes 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]

Where the President is prevented from acting, or where his office falls prematurely vacant, his powers are exercised by the President of the Senate.

### Article 58 [Countersignature]

Orders and directions of the President require, for their validity, the countersignature of the Chancellor or the appropriate Minister. This does not apply to the appointment and dismissal of the Chancellor, the

dissolution of the House of Representatives under Article 63 and a request made under Article 69 (3).

Article 59 [Representation in International Relations]

(1) The President represents the Federation in its international relations. He concludes treaties with foreign states on behalf of the Federation. He accredits and receive envoys.

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

Article 59a {...}

Article 60 [Federal Judges, Civil Servants, Soldiers; Right of Pardon]

(1) The President appoints and dismisses the federal judges, the federal civil servants, the officers and non-commissioned officers, except as may otherwise be provided for by statute.

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

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

(4) Article 46 (2) to (4) apply mutatis mutandis to the President.

Article 61 [Impeachment before the Federal Constitutional Court]

(1) The House of Representatives or the Senate may impeach the President before the Federal Constitutional Court for wilful violation of this Constitution or any other federal statute. The motion of impeachment is filed by at least one quarter of the members of the House of Representatives or one quarter of the votes of the Senate. A decision to impeach requires a majority of two thirds of the members of the House of Representatives or of two thirds of the votes of the Senate. The impeachment is pleaded by a person commissioned by the impeaching body.

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

Chapter VI The Government

Article 62 [Composition]

The Government consists of the Chancellor and the Ministers.

Article 63 [Election and appointment of the Chancellor]

(1) The Chancellor is elected, without debate, by the House of Representatives upon the proposal of the President.

(2) The person obtaining the votes of the majority of the members of the House of Representatives are elected. The person elected is appointed by the President.

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

(4) Where no candidate has been elected within this period, a new ballot takes place without delay in which the person obtaining the largest number of votes is elected. Where the person elected has obtained the votes of the majority of the members of the House of Representatives, the President appoints him within seven days of the election. Where the person elected



did not obtain such a majority, the President, within seven days, either appoints him or dissolves the House of Representatives.

Article 64 [Appointment of Ministers]

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

(2) The Chancellor and the Ministers, on assuming office, take before the House of Representatives the oath provided for in Article 56.

Article 65 [Powers exercised in the Government]

The Chancellor determines and is responsible for the general policy guidelines. Within the limits set by these guidelines, each Minister conducts the affairs of his department independently and on his own responsibility. The Government decides on differences of opinion between Ministers. The Chancellor conducts the affairs of the Government in accordance with rules of procedure adopted by it and approved by the President.

Article 65a [Power of command over the Armed Forces]

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

Article 66 [Incompatibilities]

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

Article 67 [Constructive vote of no confidence]

(1) The House of Representatives can express its lack of confidence in the Chancellor only by electing a successor with the majority of its members and by requesting the President to dismiss the Chancellor. The President complies with the request and appoints the person elected.

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

Article 68 [Vote of confidence, dissolution of the House of Representatives]

(1) Where a motion of the Chancellor for a vote of confidence is not carried by the majority of the members of the House of Representatives, the President may, upon the proposal of the Chancellor, dissolve the House of Representatives within twenty-one days. The right of dissolution shall lapse as soon as the House of Representatives elects another Chancellor with the majority of its members.

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

Article 69 [Members of the Government]

(1) The Chancellor appoints a Minister as his deputy.

(2) The tenure of office of the Chancellor or a Minister end in any event on the assembly of a new House of Representatives; the tenure of office of a Minister also end on any other termination of the Chancellor's tenure of office.

(3) At the request of the President, the Chancellor - or at the request of the Chancellor or of the President, a Minister - is bound to continue managing the affairs of his office until the appointment of a successor.

Chapter VII Federal Legislative Powers

Article 70 [Legislation of the Federation and the States]

(1) The States have the right to legislate insofar as this Constitution does not confer legislative power on the Federation.

(2) The division of competence between the Federation and the States are determined by the provisions of this Constitution concerning exclusive and concurrent legislative powers.

Article 71 [Exclusive legislative power of the Federation]

In matters within the exclusive legislative power of the Federation, the States have power to legislate only where and to the extent that they are given such explicit authorization by a federal statute.

Article 72 [Concurrent legislative power of the Federation]

(1) In the field of concurrent legislative power, the States have power to legislate as long as and to the extent that the Federation does not exercise its right to legislate by statute.

(2) In this field, the Federation has legislation if and insofar as the establishment of equal living conditions in the federal territory or the preservation of legal and economic unity necessitates, in the interest of the state at large, a federal regulation.

(3) A federal statute can stipulate that a federal regulation for which the conditions of Paragraph (2) no longer hold true is replaced by law of the States.

Article 73 [Exclusive legislative power]

The Federation has exclusive power to legislate in the following matters:

1. foreign affairs and 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;
5. the unity of the customs and trading area, treaties on commerce and on navigation, the freedom of movement of goods, and the exchange of goods and payments with foreign countries, including customs and other frontier protection;
6. air transport;
- 6a. the traffic of railroads owned completely or mainly by the Federation (railroads of the Federation), the construction, maintenance, and operation of railway tracks and railroads of the Federation as well as the charging for the use of these railways;
7. postal affairs and telecommunication;
8. the legal status of persons employed by the Federation and by federal corporate bodies under public law;
9. industrial property rights, copyrights and publishing law;
10. cooperation between the Federation and the States concerning
  - a) criminal police,
  - b) protection of the free democratic basic order, of the existence and the security of the Federation or of a State (protection of the constitution) and
  - c) protection against activities in the federal territory which, through 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;
11. statistics for federal purposes.

Article 74 [Concurrent legislation]

(1) Concurrent legislative powers cover 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;
2. registration of births, deaths and marriages;
3. the law of association and assembly;
4. the law relating to residence and settlement of aliens;
- 4a. the law relating to weapons and explosives;
5. {...}

6. refugee and expellee matters;
  7. public welfare;
  8. {...}
  9. war damage and reparations;
  10. benefits to war-disabled persons and to dependents of those killed in the war as well as assistance to former prisoners of war;
  - 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. Labor 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;
  14. the law regarding expropriation, to the extent that matters enumerated in Articles 73 and 74 are concerned;
  15. transfer of land, natural resources and means of production to public ownership or other forms of collective enterprise for the public benefit;
  16. prevention of the abuse of economic power;
  17. promotion of agricultural production and forestry, securing the supply of food, the importation and exportation of agricultural and forestry products, deep-sea and coastal fishing, and preservation of the coasts;
  18. real estate transactions, land law (excluding the law of charges for development) and matters concerning agricultural leases, as well as housing, settlement and homestead matters;
  19. measures against human and animal diseases that are communicable or otherwise endanger public health, admission to the medical profession and to other medical 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;
  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 sea marks, 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. railroads which are not railroads of the Federation, except mountain railroads;
  24. {...};
  25. state liability;
  26. artificial insemination of humans, research on manipulations of genes, and regulations for transplantation of organs and living matter.
- (2) The consent of the Senate is necessary for statutes according to Paragraph (1) number 25.

**Article 74a [Concurrent legislative power of the Federation]**

(1) Concurrent legislative power further extend to the remuneration and pensions of members of the public service whose service and loyalty are governed by public law, insofar as the Federation does not have exclusive power to legislate pursuant to Article 73 Number 8.

(2) Federal statutes enacted pursuant to Paragraph (1) require the consent of the Senate.

(3) Federal statutes enacted pursuant to Article 73 Number 8 likewise require the consent of the Senate, insofar as for the structure and assessment of remuneration and pensions, including the rating of posts, provision is made for criteria or minimum or maximum rates other than those provided for in federal statutes enacted pursuant to Paragraph (1).

(4) Paragraphs (1) and (2) apply mutatis mutandis to the remuneration and pensions of judges in the States. Paragraph (3) applies mutatis mutandis to statutes enacted pursuant to Article 98 (1).

**Article 75 [Power to pass framework legislation]**

(1) Subject to the conditions laid down in Article 72, the Federation has the right to enact framework legislation for the legislation of the States concerning:

1. the legal status of persons in the public service of the States, communes or other corporate bodies under public law, insofar as Article 74a does not provide otherwise;

1a. the general principles governing higher education;

2. the general legal status of the press;

3. hunting, nature conservation and landscape management;

4. State distribution, regional planning and the management of water resources;

5. matters relating to the registration of residence or domicile and to identity cards;

6. protection against transfer of items of German culture to foreign countries.

Article 72 (3) applies mutatis mutandis.

(2) Framework legislation may contain detailed or directly applicable provisions only in exceptional cases.

(3) If the Federation adopts framework legislation, the States are bound to adopt the necessary State statutes within an adequate time frame stipulated by the legislation.

**Article 76 [Bills]**

(1) Bills are introduced in the House of Representatives by the Government or by members of the House of Representatives or by the Senate.

(2) Bills of the Government first have to be submitted to the Senate. The Senate is entitled to state its position on such bills within six weeks.

If, for important reasons and particularly with regard to the volume of the bill, the Senate asks for deferral, the period is nine weeks. A bill which, on submission to the Senate, is exceptionally specified by the Government to be particularly urgent may be submitted by the latter to the House of Representatives three weeks later, or, if the Senate asked for deferral according to sentence 3, six weeks later, even though the Government may not yet have received the statement of the Senate's position; upon receipt, such statement has to be transmitted to the House of Representatives by the Government without delay. The time limit for statements to bills changing this Constitution or delegating sovereign powers according to Article 23 or 24 is nine weeks; sentence 4 is not applied.

(3) Bills of the Senate have to be submitted to the House of Representatives by the Government within six weeks. In doing so, the

Government states its own view. If, for important reasons and particularly with regard to the volume of the bill, the Government asks for deferral, the period is nine weeks. The time limit for a bill which is exceptionally specified by the Senate to be particularly urgent is three weeks or, if the Government asked for deferral according to sentence 3, six weeks. The time limit for statements to bills changing this Constitution or delegating sovereign powers according to Article 23 or 24 is nine weeks; sentence 4 is not applied. The House of Representatives has to debate about bills within adequate time and reach a decision.

Article 77 [Legislative procedure]

(1) Federal statutes are enacted by the House of Representatives. Upon their adoption they have to be transmitted, without delay, to the Senate by the President of the House of Representatives.

(2) The Senate 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 House of Representatives and members of the Senate, be convened. The composition and the procedure of this committee is regulated by rules of procedure to be adopted by the House of Representatives and requiring the consent of the Senate. The members of the Senate on this committee are not bound by instructions. Where the consent of the Senate is required for a bill to become a statute, the House of Representatives and the Government may also demand that the committee be convened. Should the committee propose any amendment to the adopted bill, the House of Representatives again votes on the bill.

(2a) Insofar as a statute requires the consent of the Senate, the Senate, if no demand according to Paragraph (2) 1 was issued or if the committee for joint consideration has concluded its procedures without suggesting changes, has to debate about its consent within adequate time and reach a decision.

(3) Insofar as the consent of the Senate is not required for a bill to become a statute, the Senate may, when the proceedings under Paragraph (2) are completed, enter an objection within two weeks against a bill adopted by the House of Representatives. The period for entering an objection begins, in the case of the last sentence of Paragraph (2), on the receipt of the bill as readopted by the House of Representatives, and in all other cases on the receipt of a communication from the chairman of the committee provided for in Paragraph (2) to the effect that the committee's proceedings have been concluded.

(4) Where the objection was adopted with the majority of the votes of the Senate, it can be rejected by a decision of the majority of the members of the House of Representatives. Where the Senate adopted the objection with a majority of at least two thirds of its votes, its rejection by the House of Representatives requires a majority of two thirds, including at least the majority of the members of the House of Representatives.

Article 78 [Passage of federal statutes]

A bill adopted by the House of Representatives becomes a statute where the Senate consents to it, or fails to make a demand pursuant to Article 77 (2), or fails to enter an objection within the period stipulated in Article 77 (3), or withdraws such objection, or where the objection is overridden by the House of Representatives.

Article 79 [Amendment of the Constitution]

(1) This Constitution can be amended only by statutes 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 phasing out of an occupation regime, or which are intended to serve the defence of the Federal Republic, it is sufficient,

for the purpose of clarifying that the provisions of this Constitution do not preclude the conclusion and entry into force of such treaties, to effect a supplementation of the text of this Constitution confined to such clarification.

(2) Any such statute requires the consent of two thirds of the members of the House of Representatives and two thirds of the votes of the Senate.

(3) Amendments of this Constitution affecting the division of the Federation into States, the participation on principle of the States in legislation, or the basic principles laid down in Articles 1 and 20 are inadmissible.

#### Article 80 [Issue of ordinances]

(1) The Government, a Minister or the State governments may be authorized by statute to issue ordinances. The content, purpose, and scope of the authorization so conferred must be laid down in the statute concerned.

This legal basis has to be stated in the ordinance. Where a statute provides that such authorization may be delegated, such delegation requires another ordinance.

(2) The consent of the Senate is required, unless otherwise provided by federal legislation, for ordinances of the Government or a Minister concerning basic rules or charges for the use of facilities of postal affairs and telecommunication, concerning the basic rules for charges and use of facilities of railroads of the Federation, or concerning the construction and operation of railroads, as well as for ordinances issued pursuant to federal statutes that require the consent of the Senate or that are executed by the States as agents of the Federation or as matters of their own concern.

(3) The Senate can submit such bills for ordinances to the Government that require its consent.

(4) Insofar as, by or on the basis of federal statutes, Governments of the States are empowered to adopt ordinances, the States are also allowed to regulate the matter by statute.

#### Article 80a [Application of legal provisions in a state of tension]

(1) Where this Constitution or a federal statute on defence, including the protection of the civilian population, stipulates that legal provisions may only be applied in accordance with this Article, their application is, except in a state of defence, admissible only after the House of Representatives has determined that a state of tension exists or where it has specifically approved such application. In respect of the cases mentioned in Article 12a (5) 1 & (6) 2, such determination of a state of tension and such specific approval requires a two-thirds majority of the votes cast.

(2) Any measures taken by virtue of legal provisions enacted under Paragraph (1) have to be revoked whenever the House of Representatives so demands.

(3) In derogation of Paragraph (1), the application of such legal provisions is also admissible by virtue of and in accordance with a decision taken with the consent of the Government by an international body within the framework of a treaty of alliance. Any measures taken pursuant to this paragraph have to be revoked whenever the House of Representatives so demands with the majority of its members.

#### Article 81 [State of legislative emergency]

(1) Should, in the circumstances of Article 68, the House of Representatives not be dissolved, the President may, at the request of the Government and with the consent of the Senate, declare a state of legislative emergency with respect to a bill, where the House of

Representatives rejects the bill although the Government has declared it to be urgent. The same applies where a bill has been rejected although the Chancellor had combined with it the motion under Article 68.

(2) Where, after a state of legislative emergency has been declared, the House of Representatives again rejects the bill or adopts it in a version stated to be unacceptable to the Government, the bill is deemed to have become a statute to the extent that the Senate consents to it. The same applies where the bill is not passed by the House of Representatives within four weeks of its reintroduction

(3) During the term of office of a Chancellor, any other bill rejected by the House of Representatives may become a statute in accordance with Paragraphs (1) and (2) 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 is inadmissible during the term of office of the same Chancellor.

(4) This Constitution may not be amended nor repealed nor suspended in whole or in part by a statute enacted pursuant to Paragraph (2).

Article 82 [Promulgation and effective date of legal provisions]

(1) Statutes enacted in accordance with the provisions of this Constitution are, after countersignature, signed by the President and promulgated in the Federal Law Gazette. Ordinances are signed by the agency which issues them and, unless otherwise provided by statute, are promulgated in the Federal Law Gazette.

(2) Every statute or every ordinance should specify its effective date. In the absence of such a provision, it takes effect on the fourteenth day after the end of the day on which the Federal Law Gazette containing it was published.

#### Chapter VIII Execution of Statutes and Federal Administration

Article 83 [Competencies of Federation and States]

The States execute federal statutes as matters of their own concern insofar as this Constitution does not otherwise provide or permit.

Article 84 [State execution and Government supervision]

(1) Where the States execute federal statutes as matters of their own concern, they provide for the establishment of the requisite authorities and the regulation of administrative procedures insofar as federal statutes consented to by the Senate do not otherwise provide.

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

(3) The Government exercises supervision to ensure that the States execute the federal statutes in accordance with applicable law. For this purpose the Government may send commissioners to the highest State authorities and, with their consent or, where such consent is refused, with the consent of the Senate, also to subordinate authorities.

(4) Should any shortcomings which the Government has found to exist in the execution of federal statutes in the States not be corrected, the Senate decides, at the request of the Government or the State concerned, whether such State has violated the law. The decision of the Senate may be challenged in the Federal Constitutional Court.

(5) With a view to the execution of federal statutes, the Government may be authorized by a federal statute requiring the consent of the Senate to issue individual instructions for particular cases. They are addressed to the highest State authorities unless the Government considers the matter urgent.

Article 85 [Execution by the States as agents of the Federation]

(1) Where the States execute federal statutes as agents of the Federation,

the establishment of the requisite authorities remains the concern of the States, except insofar as federal statutes consented to by the Senate otherwise provide.

(2) The Government may, with the consent of the Senate, issue general administrative rules. It may regulate the uniform training of civil servants and other salaried public employees. The heads of authorities at the intermediate level are appointed with its agreement.

(3) The State authorities are subject to the instructions of the competent highest federal authorities. Such instructions are addressed to the highest State authorities unless the Government considers the matter urgent. Execution of the instructions is ensured by the highest State authorities.

(4) Federal supervision covers the lawfulness and appropriateness of execution. The 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 statutes by means of direct federal administration or by federal corporate bodies or institutions under public law, the Government issues, insofar as the statute concerned contains no special provision, pertinent general administrative rules. The Government provides for the establishment of the requisite authorities insofar as the statute concerned does not otherwise provide.

#### Article 87 [Matters for direct federal administration]

(1) The foreign service, the federal finance administration and, in accordance with the provisions of Article 89, the administration of federal waterways and of shipping is conducted as matters of direct federal administration with their own administrative substructures. Federal legislation may be enacted to establish Federal Border Guard authorities and 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 of protection against activities on federal territory which, through the use of force or acts preparatory to the use of force, endanger the foreign interests of the Federal Republic of Germany.

(2) Social insurance institutions whose sphere of competence extends beyond the territory of one State are administered as direct federal corporate bodies under public law. Social insurance institutions whose sphere of competence extends beyond the territory of one State, but not beyond that of more than three States, are administered, differing from the first sentence, as direct State corporate bodies under public law if the supervising State is determined by the States involved.

(3) In addition, independent federal higher authorities as well as new federal corporate bodies and institutions under public law may be established by federal legislation for matters on which the Federation has the power to legislate. Where new functions arise for the Federation in matters on 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 Senate and of the majority of the members of the House of Representatives.

#### Article 87a [Establishment and powers of the Armed Forces]

(1) The Federation establishes Armed Forces for defence purposes. Their numerical strength and general organizational structure must be shown in the budget.

(2) Apart from defence, the Armed Forces may only be used insofar as explicitly permitted by this Constitution.

(3) While a state of defence or a state of tension exists, the Armed



Forces have the power to protect civilian property and discharge functions of traffic control insofar 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 also in support of police measures; in this event the Armed Forces cooperate with the competent authorities.

(4) In order to avert any imminent danger to the existence or to the free democratic basic order of the Federation or a State, the Government may, should conditions as envisaged in Article 91 (2) 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 the Armed Forces has to stop whenever the House of Representatives or the Senate so demands.

Article 87b [Administration of the Federal Armed Forces]

(1) The Federal Armed Forces Administration is conducted as a direct federal administration with its own administrative substructure. Its function are to administer personnel matters and directly to meet the material requirements of the Armed Forces. Tasks connected with benefits to disabled persons or with construction work are not assigned to the Federal Armed Forces Administration except by federal legislation requiring the consent of the Senate. Such consent is also required for any statutes to the extent that they empower the Federal Armed Forces Administration to interfere with rights of third parties; this does not apply, however, in the case of statutes concerning personnel matters.

(2) Moreover, federal statutes concerning defence, including recruitment for military service and protection of the civilian population, may, with the consent of the Senate, provide that they are executed, wholly or in part, either by means of direct federal administration having its own administrative substructure or by the States acting as agents of the Federation. Where such statutes are executed by the States acting as agents of the Federation, they may, with the consent of the Senate, provide that the powers vested in the Government or appropriate highest federal authorities by virtue of Article 85 are transferred wholly or in part to higher federal authorities; in such an event it may be enacted that these authorities do not require the consent of the Senate in issuing general administrative rules as referred to in Article 85 (2) 1.

Article 87c [Administration in the field of nuclear energy]

Statutes enacted under Article 74 Number 11a may, with the consent of the Senate, provide that they are executed by the States acting as agents of the Federation.

Article 87d [Aviation administration]

(1) Aviation administration is conducted as a direct federal administration. Federal law decides about public law and private law forms of organization.

(2) Through federal legislation requiring the consent of the Senate, functions of aviation administration may be transferred to the States acting as agents of the Federation.

Article 87e [Railroads]

(1) The administration for traffic of railroads of the Federation is conducted as a direct federal administration. By federal statute, tasks of the administration for traffic of railroads can be delegated to the States as their own tasks.

(2) The Federation undertakes the tasks to administer traffic of railroads of the Federation as are assigned to it by federal statute.

(3) Railroads of the Federation are managed in the form of private law

businesses. They are owned by the Federation as far as the activities of the business encompass construction, maintenance, or operation of railways. The sale of shares of the Federation in the businesses mentioned in the second sentence is regulated on the basis of a statute; the Federation retains a majority of shares in those businesses. Details are regulated by a federal statute.

(4) The Federation guarantees that the public weal, particularly the interest in traffic, in the development and preservation of the railway network of railways of the Federation as far as it is used for local railway transport of persons is considered. Details are regulated by a federal statute.

(5) Statutes based on Paragraphs (1) to (4) need the consent of the Senate. Furthermore, the consent of the Senate is necessary for statutes that dissolve, merge, or split railroads of the Federation, convey railways of railroads of the Federation to third parties as well as discontinue railways of railroads of the Federation, or affect the local railway transport of persons.

Article 87f [Postal Affairs and Telecommunication]

(1) Regulated by a federal statute requiring the consent of the Senate, the Federation guarantees a comprehensive and adequate coverage with services in the area of postal affairs and telecommunication.

(2) Services in the sense of Paragraph (1) are organized as private law activities by those businesses originating in the special property Deutsche Bundespost. Sovereign tasks in the area of postal affairs and telecommunication are organized as direct federal administration.

(3) Notwithstanding Paragraph (2) 2, the Federation, in the public law form of a direct federal agency, discharges certain duties regarding businesses originating in the special property Deutsche Bundespost, as are assigned to it by federal statutes.

Article 88 [Bundesbank]

The Federation establishes a note-issuing and currency bank as the Bundesbank. Its tasks and powers can, in the context of the European Union, be transferred to the European Central Bank which is independent and primarily bound by the purpose of securing stability of prices.

Article 89 [Federal waterways]

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

(2) The Federation administers the federal waterways through its own authorities. It exercises those governmental functions relating to inland shipping which extend beyond the territory of one State, and those governmental functions relating to maritime shipping which are conferred on it by statute. Upon request, the Federation may transfer the administration of federal waterways, insofar as they lie within the territory of one State, to that State as its agent. Where a waterway touches the territories of several States, the Federation may delegate one State to be its agent where so requested by the States concerned.

(3) In the administration, development, and new construction of waterways, the needs of land improvement and of water economy are safeguarded in agreement with the States.

Article 90 [Federal highways]

(1) The Federation is the owner of the former Reich streets and Reich highways.

(2) The States, or such self-governing corporate bodies as are competent under State law, administer as agents of the Federation the federal streets and other federal highways used for long-distance traffic.

(3) At the request of a State, the Federation may place federal streets and other federal highways used for long-distance traffic under direct

federal administration insofar as they lie within the territory of that State.

Article 91 [Internal emergency]

(1) In order to avert any imminent danger to the existence or to the democratic basic order of the Federation or a State, a State may request the services of the police forces of other States, or of the forces and facilities of other administrative authorities and of the Federal Border Guard.

(2) If the State where such danger is imminent is not itself willing or able to combat the danger, the Government may place the police in that State and the police forces of other States under its own instructions and use units of the Federal Border Guard. The order for this has to be revoked after the removal of the danger or else at any time at the demand of the Senate. Where the danger extends to a region larger than a State, the Government may, insofar as is necessary for effectively combatting such danger, issue instructions to the State governments; the first and second sentences of this paragraph are not affected by this provision.

Chapter VIII Joint Tasks

Article 91a [Participation of the Federation]

(1) The Federation participates, in the following sectors, in the discharge of responsibilities of the States, 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. extension 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 are defined in detail by a federal statute requiring the consent of the Senate. Such legislation should include general principles governing the discharge of joint tasks.

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

(4) In cases to which Paragraph (1) Number 1 and 2 applies, the Federation pays for one half of the expenditure in each State. In cases to which Paragraph (1) Number 3 applies, the Federation pays for at least one half of the expenditure, and such proportion is the same for all the States. Details are regulated by statute. Provision of funds are subject to appropriation in the budgets of the Federation and the States.

(5) The Government and the Senate are informed about the execution of joint tasks, should they so demand.

Article 91b [Cooperation of Federation and States]

The Federation and the States may, pursuant to agreements, cooperate in educational planning and in the promotion of institutions and projects of scientific research of supra-regional importance. The apportionment of costs is regulated in the relevant agreements.

Chapter IX The Administration of Justice

Article 92 [Court organization]

Judicial power is vested in the judges; it is exercised by the Federal Constitutional Court, by the federal courts provided for in this Constitution, and by the courts of the States.

Article 93 [Federal Constitutional Court]

(1) The Federal Constitutional Court decides:

1. on the interpretation of this Constitution in the event of disputes concerning the extent of the rights and duties of a highest federal body or of other parties concerned who have been vested with rights of their own by this Constitution or by rules of procedure of a highest federal body;

2. in case of differences of opinion or doubts on the formal and material compatibility of federal law or State law with this Constitution, or on the compatibility of State law with other federal law, at the request of the Government, of a State government, or of one third of the House of Representatives members;

2a. in case of differences of opinion on the compatibility of federal law with Article 72 (2), at the request of the Senate, of a State government, or of a State Parliament;

3. in case of differences of opinion on the rights and duties of the Federation and the States, particularly in the execution of federal law by the States and in the exercise of federal supervision;

4. on other disputes involving public law, between the Federation and the States, between different States or within a State, unless recourse to another court exists;

4a. on complaints of unconstitutionality, being filed by any person claiming that one of his basic rights or one of his rights under Article 20 (4) or under Article 33, 38, 101, 103 or 104 has been violated by public authority;

4b. on complaints of unconstitutionality filed by communes or associations of communes on the ground that their right to self-government under Article 28 has been violated by a statute other than a State statute open to complaint to the respective State constitutional court;

5. in the other cases provided for in this Constitution.

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

Article 94 [Composition of the Federal Constitutional Court]

(1) The Federal Constitutional Court consists of federal judges and other members. Half of the members of the Federal Constitutional Court are elected by the House of Representatives and half by the Senate. They may not be members of the House of Representatives, the Senate, the Government, nor of any of the corresponding bodies of a State.

(2) The constitution and procedure of the Federal Constitutional Court are regulated by a federal statute which specifies in what cases its decisions have the force of law. Such statute may require that all other legal remedies must have been exhausted before a 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, labor, and social jurisdiction, the Federation establishes as highest courts of justice the Federal Court of Justice, the Federal Administrative Court, the Federal Finance Court, the Federal Labor Court, and the Federal Social Court.

(2) The judges of each of these courts are selected jointly by the competent Minister and a committee for the selection of judges consisting of the competent State ministers and an equal number of members elected by the House of Representatives.

(3) In order to preserve uniformity of decisions, a Joint Panel of the courts specified in Paragraph (1) is set up. Details are regulated by a

federal statute.

Article 96 [Other federal courts]

- (1) The Federation may establish a federal court for matters concerning industrial property rights.
  - (2) The Federation may establish military criminal courts for the Armed Forces as federal courts. They may only 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 are regulated by a federal statute. These courts are within the competence of the Minister of Justice. Their full-time judges are persons qualified to hold judicial office.
  - (3) The highest court of justice for appeals from the courts mentioned in Paragraphs (1) and (2) is 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 Article 26 (1) or involving the protection of the State, a federal statute requiring the consent of the Senate may provide that State courts exercise federal jurisdiction.
- Article 96a {...}

Article 97 [Independence of the judges]

- (1) The judges are 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 posting 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 statute. 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 their districts, judges may be transferred to another court or removed from office, provided they retain their full salary.

Article 98 [Legal status of judges in the Federation and the States]

- (1) The legal status of the federal judges is regulated by a special federal statute.
- (2) Where a federal judge, in his official capacity or unofficially, infringes the principles of this Constitution or the constitutional order of a State, the Federal Constitutional Court may decide by a two-thirds majority, upon the request of the House of Representatives, that the judge be given a different office or retired. In a case of intentional infringement, his dismissal may be ordered.
- (3) The legal status of the judges in the States is regulated by special State statutes. The Federation may enact outline provisions, insofar as Article 74a (4) does not provide otherwise.
- (4) The States may provide that the State Minister of Justice together with a committee for the selection of judges decides on the appointment of judges in the States.
- (5) The States may, in respect of State judges, enact provisions corresponding to those of Paragraph (2). Existing State constitutional law remains unaffected. The decision in a case of impeachment of a judge rests with the Federal Constitutional Court.

Article 99 [Disputes Concerning State Law]

The decision on constitutional disputes within a State may be assigned by State legislation to the Federal Constitutional Court, and the decision at last instance in matters involving the application of State law to the

highest courts of justice referred to in Article 95 (1).

Article 100 [Compatibility of statutory law with the Constitution]

(1) Where a court considers that a statute on whose validity the court's decision depends is unconstitutional, the proceedings have to be stayed, and a decision has to be obtained from the State court with jurisdiction over constitutional disputes where the constitution of a State is held to be violated, or from the Federal Constitutional Court where this Constitution is held to be violated. This also applies where this Constitution is held to be violated by State law or where a State statute is held to be incompatible with a federal statute.

(2) Where, 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 obtains a decision from the Federal Constitutional Court.

(3) Where the constitutional court of a State, in interpreting this Constitution, intends to deviate from a decision of the Federal Constitutional Court or of the constitutional court of another State, it obtains a decision from the Federal Constitutional Court.

Article 101 [Ban on extraordinary courts]

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

(2) Courts for special fields of law may be established only by Legislation.

Article 102 [Abolishment of capital punishment]

Capital punishment is abolished.

Article 103 [Due Process]

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

(2) An act can be punished only where it constituted a criminal offence under the law before the act was committed.

(3) No one may be punished for the same act more than once under general criminal 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 statute and only in compliance with the forms prescribed therein. Detained persons may not be subjected to mental or 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 has to be obtained 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 are regulated by legislation.

(3) Any person provisionally detained on suspicion of having committed an offence has to be brought, not later than the day following the day of apprehension, before a judge who has to inform him of the reasons for the detention, examine him, and give him an opportunity to raise objections. The judge, without delay, has to 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 has to be notified without delay of any judicial decision imposing or ordering the continuation of his deprivation of liberty.

Chapter X Finance

**Article 104a [Apportionment of expenditure]**

(1) The Federation and the States separately meet the expenditure resulting from the discharge of their respective tasks insofar as this Constitution does not provide otherwise.

(2) Where the States act as agents of the Federation, the Federation meets the resulting expenditure.

(3) Federal statutes to be executed by the States and granting money payments may make provision for such payments to be met wholly or in part by the Federation. Where any such statute provides that the Federation meets one half of the expenditure or more, it is implemented by the States as agents of the Federation. Where any such statute provides that the States meet one quarter of the expenditure or more, it requires the consent of the Senate.

(4) The Federation may grant the States financial assistance for particularly important investments by the States 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, are regulated by a federal statute requiring the consent of the Senate or by administrative arrangements under the federal budget law.

(5) The Federation and the States meet the administrative expenditure incurred by their respective authorities and are responsible to each other for ensuring proper administration. Details are regulated by a federal statute requiring the consent of the Senate.

**Article 105 [Legislative powers]**

(1) The Federation has exclusive power to legislate on customs duties and fiscal monopolies.

(2) The Federation has 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 Article 72 (2) apply.

(2a) The States have power to legislate on local excise taxes as long and insofar 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 States or communes or associations of communes require the consent of the Senate.

**Article 106 [Apportionment of tax revenue]**

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

1. customs duties;
2. excise taxes insofar as they do not accrue to the States pursuant to Paragraph (2), or jointly to the Federation and the States in accordance with Paragraph (3), or to the communes in accordance with Paragraph (6);
3. road freight tax;
4. capital transaction taxes, the insurance tax, and the bill of exchange tax;
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 belong to the States:

1. wealth tax;
2. inheritance tax;

3. motor vehicle tax;
4. such taxes on transactions as do not accrue to the Federation pursuant to Paragraph (1) or jointly to the Federation and the States pursuant to Paragraph (3);
5. beer tax;
6. gaming casinos levy.

(3) Revenues from income taxes, corporation taxes, and turnover taxes belong jointly to the Federation and the States (joint taxes) to the extent that the revenue from the income tax and turnover tax is not allocated to the communes pursuant to Paragraphs (5) and (5a) respectively. The Federation and the States equally share the revenues from income taxes and corporation taxes. The respective shares of the Federation and the States in the revenue from the turnover tax are determined by a federal statute requiring the consent of the Senate. Such determination is based on the following principles:

1. The Federation and the States have an equal claim to coverage from current revenues of their respective necessary expenditures. The extent of such expenditures is determined giving due consideration to financial planning for several years ahead.
2. The coverage requirements of the Federation and of the States are coordinated in such a way that a fair balance is struck, any overburdening of taxpayers precluded, and uniformity of living conditions in the federal territory ensured.

In addition, for the apportionment of the value added tax to Federation and States it will be taken into account that after 1 Jan 1996 the States' income tax revenues will be reduced due to child benefits. Details are regulated by a federal statute according to Sentence 3.

(4) The respective shares of the Federation and the States to the revenue from the turnover tax are newly apportioned whenever the relation of revenues to expenditures in the Federation develops substantially differently from that of the States; this does not apply to reduced tax revenues which are included into the calculation of the apportionment of value added tax according to Paragraph (3) Sentence 5. Where federal legislation imposes additional expenditures on or withdraws revenue from the States, the additional burden may be compensated for by allocation of federal grants under a federal statute requiring the consent of the Senate, provided such additional burden is limited to a short period of time. Such statute lays down the principles for calculating such grants and distributing them among the States.

(5) A share of the revenue from the income tax belongs to the communes, to be passed on by the States to their communes on the basis of income taxes paid by the inhabitants of the latter. Details are regulated by a federal statute requiring the consent of the Senate. Such statute may provide that communes assess the rate which is applicable to this communal share.

(5a) From 1 Jan 1998, a share of the revenue from the turnover tax belongs to the communes. This share is to be passed on by the States to their communes on the basis of an index about locality and economic power. Details are regulated by a federal statute requiring the consent of the Senate.

(6) Revenue from taxes on real estate and on local industry and trade belongs to the communes; revenue from local excise taxes belongs to the communes or, as may be provided for by State legislation, to associations of communes. Communes are authorized to assess, within the framework of the relevant statutes, the rates at which the taxes on real estate and on local industry and trade are levied locally. Where there are no communes in a State, revenue from taxes on real estate and on local industry and



trade as well as from local excise taxes belongs to the State. The Federation and the States may participate, by virtue of an apportionment, in the revenue from the tax on local industry and trade. Details regarding such apportionment are regulated by a federal statute requiring the consent of the Senate. In accordance with State legislation, taxes on real estate and on local industry and trade as well as the communes' share of revenue from the income tax may be taken as a basis for calculating the amount of apportionment.

(7) An overall percentage, to be determined by State legislation, of the State share of total revenue from joint taxes belongs to the communes or associations of communes. In all other respects State legislation determines whether and to what extent revenue from State taxes belong to communes or associations of communes.

(8) Where in individual States or communes or associations of communes the Federation causes special facilities to be provided which directly result in an increase of expenditure or a loss of revenue (special burden) to these States or communes or associations of communes, the Federation grants the necessary compensation where and insofar as such States or communes or associations of communes cannot reasonably be expected to bear such special burden. In granting such compensation, due account is being taken of third-party indemnities and financial benefits accruing to the States or communes or associations of communes concerned as a result of provision for such facilities.

(9) For the purpose of this Article, revenues and expenditures of communes or associations of communes are deemed to be State revenues and expenditures.

#### Article 106a [Railroads]

Starting 1 Jan., 1996, the States can claim a sum out of federal tax revenues for public local transport of persons. Details are regulated by federal statute requiring the consent of the Senate. The sum mentioned in the first sentence is not included in the calculation of financial strength according to Article 107 (2).

#### Article 107 [Financial equalization]

(1) Revenue from State taxes and the State share of revenue from income and corporation taxes belongs to the individual States to the extent that such taxes are collected by revenue authorities within their respective territories (local revenue). A federal statute requiring the consent of the Senate may provide in detail for the delimitation as well as the manner and scope of allotment of local revenue from corporation and wage taxes. Such statute may also provide for the delimitation and allotment of local revenue from other taxes. The State share of revenue from the turnover tax belongs to the individual States on a per capita basis; a federal statute requiring the consent of the Senate may provide for supplementary shares not exceeding one quarter of a State share to be granted to States whose per capita revenue from State taxes and from the income and corporation taxes is below the average of all the States combined.

(2) It has to be ensured by statute, that a reasonable equalization between financially strong and financially weak States is achieved; due consideration being given to financial capacity and financial requirements of communes or associations of communes. Such statute has to specify the conditions governing equalization claims of States entitled to equalization payments and equalization liabilities of States owing equalization payments as well as the criteria for determining the amounts of equalization payments. Such statute may also provide for grants to be made by the Federation from federal funds to financially weak States in

order to complement the coverage of their general financial requirements (supplementary grants).

Article 108 [Revenue administration]

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

(2) All other taxes are administered by State revenue authorities. The organization of these authorities and the uniform training of their civil servants may be regulated by a federal statute requiring the consent of the Senate. The heads of authorities at the intermediate level are appointed in agreement with the Government.

(3) To the extent that taxes accruing wholly or in part to the Federation are administered by State revenue authorities, those authorities act as agents of the Federation. Article 85 (3) & (4) applies with the Minister of Finance being substituted for the Government.

(4) In respect of the administration of taxes, a federal statute requiring the consent of the Senate may provide for collaboration between federal and State revenue authorities, or in the case of taxes under Paragraph (1) for their administration by State revenue authorities, or in the case of other taxes for their administration by federal revenue authorities, where and to the extent that the execution of revenue statutes 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 the States from the appropriate State revenue authorities to communes or associations of communes.

(5) The procedure to be applied by federal revenue authorities is laid down by federal legislation. The procedure to be applied by State revenue authorities or, as envisaged in Paragraph (4) 2, by communes or associations of communes may be laid down by a federal statute requiring the consent of the Senate.

(6) The jurisdiction of revenue courts is uniformly regulated by federal legislation.

(7) The Government may issue appropriate general administrative rules which, to the extent that administration is entrusted to State revenue authorities or communes or associations of communes, require the consent of the Senate.

Article 109 [Budget management in the Federation and the States]

(1) The Federation and the States are autonomous and independent of each other in their budget management.

(2) The Federation and the States give due regard in their budget management to the requirements of overall economic equilibrium.

(3) Through federal legislation requiring the consent of the Senate principles applicable to both the Federation and the States may be established governing budgetary law, responsiveness of budget management 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 Senate may be enacted providing for:

1. maximum amounts, terms and timing of loans to be raised by territorial entities or special purpose associations, and

2. an obligation on the part of the Federation and the States to maintain interest-free deposits at the Bundesbank (reserves for counterbalancing

economic trends).

Authorizations to issue the relevant ordinances may be conferred on the Government only. Such ordinances require the consent of the Senate. They have to be repealed insofar as the House of Representatives so demands; details are regulated by federal legislation.

**Article 110 [Budget and budget law of the Federation]**

(1) All revenues and expenditures of the Federation are included in the budget; in respect of federal enterprises and special assets, only allocations thereto or remittances therefrom need be included. The budget has to be balanced as regards revenue and expenditure.

(2) The budget is laid down in a statute 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 Paragraph (2) 1 as well as bills to amend the budget statute and the budget are submitted simultaneously to the Senate and to the House of Representatives; the Senate is entitled to state its position on such bills within six weeks or, in the case of amending bills, within three weeks.

(4) The budget statute may contain only such provisions as apply to revenues and expenditures of the Federation and to the period for which the budget statute is being enacted. The budget statute may stipulate that these provisions cease to apply only upon the promulgation of the next budget statute or, in the event of an authorization pursuant to Article 115, at a later date.

**Article 111 [Interim budget management]**

(1) Where, by the end of a fiscal year, the budget for the following year has not been laid down by statute, the Government may, until such statute comes into force, make all payments which are necessary:

- (a) to maintain statutory institutions and to carry out measures authorized by statute;
- (b) to meet the Federation's legal obligations;
- (c) to continue building projects, procurements, and other services, or to continue to grant subsidies for these purposes, provided that 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 sources, or the working capital reserves, do not cover the expenditures referred to in Paragraph (1), the 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 [Expenditures in excess of budgetary estimates]**

Expenditures in excess of budgetary appropriations and extra budgetary expenditures require the consent of the 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 [Consent to change expenditures / revenues]**

(1) Statutes increasing the budget expenditures proposed by the Government or involving or likely in future to cause new expenditures requires the consent of the Government. This also applies to statutes involving or likely in future to cause decreases in revenue. The Government may demand that the House of Representatives postpone its vote on such bills. In this case the Government states its position to the House of Representatives within six weeks.

(2) Within four weeks after the House of Representatives has adopted such a bill, the Government may demand that it votes on that bill again.

(3) Where the bill has become a statute pursuant to Article 78, the Government may withhold its consent only within six weeks and only after having initiated the procedure provided for Paragraph (1) 3 & 4 or in Paragraph (2). Upon the expiry of this period such consent is deemed to have been given.

**Article 114 [Rendering and auditing of accounts]**

(1) The Minister of Finance on behalf of the Government has to submit annually to the House of Representatives and to the Senate 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 enjoy judicial independence, audits the account and examines the management of the budget and the conduct of business as to economy and correctness. The Federal Audit Office submits an annual report directly to the Government as well as to the House of Representatives and to the Senate. In all other respects the powers of the Federal Audit Office are regulated by federal legislation.

**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, requires federal legislative authorization indicating, or permitting computation of, the maximum amounts involved. Revenue obtained by borrowing may not exceed the total of expenditures for investments provided for in the budget; exceptions are permissible only to avert a disturbance of the overall economic equilibrium. Details are regulated by federal legislation.

(2) In respect of special assets of the Federation, exceptions to the provisions of Paragraph (1) may be authorized by federal legislation.

**Chapter Xa State of Defence**

**Article 115a [Concept and determination of a state of defence]**

(1) The determination that federal territory is being attacked by armed force or that such an attack is directly imminent (state of defence) are made by the House of Representatives with the consent of the Senate. Such determination are made at the request of the Government and require a two-thirds majority of the votes cast, which include at least the majority of the members of the House of Representatives.

(2) Where the situation imperatively calls for immediate action and where insurmountable obstacles prevent the timely assembly of the House of Representatives, or where there is no quorum in the House of Representatives, the Joint Committee makes this determination with a two-thirds majority of the votes cast, which includes at least the majority of its members.

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

(4) Where the federal territory is being attacked by armed force and where the competent bodies of the Federation are not in a position at once to make the determination provided for in Paragraph (1) 1, such determination is deemed to have been made and promulgated at the time the attack began. The President announces such time as soon as circumstances permit.

(5) Where the determination of the existence of a state of defence has been promulgated and where the federal territory is being attacked by armed force, the President may, with the consent of the House of Representatives, issue declarations under international law regarding the

existence of such state of defence. Where the conditions mentioned in Paragraph (2) apply, the Joint Committee acts in substitution for the House of Representatives.

Article 115b [Transfer of command to the Chancellor]

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

Article 115c [Extension of legislative powers of the Federation]

(1) The Federation has the right to legislate concurrently in respect of a state of defence even on matters within the legislative powers of the States. Such statutes require the consent of the Senate.

(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:

1. preliminary provision for compensation to be made in the event of property being taken, in derogation of Article 14 (3) 2;

2. provision for a time-limit other than that referred to in Article 104 (2) 3 & (3) 1 in respect of deprivations of liberty, but not exceeding four days at the most, in a case where no judge has been able to act within the time limit applying in normal times.

(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 Senate, regulate the administration and the financial system of the Federation and the States in derogation of Sections VIII, VIIIa and X, provided that the viability of the States, communes and associations of communes is safeguarded, particularly in financial matters.

(4) Federal statutes enacted pursuant to Paragraph (1) or subparagraph 1 of Paragraph (2) may, for the purpose of preparing for their enforcement, be applied even prior to the occurrence of a state of defence.

Article 115d [Legislative process in the case of urgent bills]

(1) While a state of defence exists, the provisions of Paragraphs (2) and (3) apply in respect of federal legislation, in derogation of the provisions of Articles 76 (2), 77 (1) 2 & (2) to (4), 78, and 82 (1).

(2) Bills submitted as urgent by the Government are forwarded to the Senate at the same time as they are submitted to the House of Representatives. The House of Representatives and the Senate debate such bills together without delay. Insofar as the consent of the Senate is necessary, the majority of its votes is required for any such bill to become a statute. Details are regulated by rules of procedure adopted by the House of Representatives and requiring the consent of the Senate.

(3) Article 115a (3) 2 applies mutatis mutandis in respect of the promulgation of such statutes.

Article 115e [Powers of the Joint Committee]

(1) Where, in a state of defence, the Joint Committee determines with a two-thirds majority of the votes cast, which includes at least the majority of its members, that insurmountable obstacles prevent the timely assembly of the House of Representatives or that there is no quorum in the House of Representatives, the Joint Committee has the status of both the House of Representatives and the Senate and exercises their rights as one body.

(2) The Joint Committee may not enact any statute to amend this Constitution or to deprive it of effect or application either in whole or in part. The Joint Committee is not authorized to enact statutes pursuant to Articles 23 (1) 2, 24 (1), or 29.

Article 115f [Powers of the Government]

(1) In a state of defence, the Government may, to the extent necessitated

by circumstances:

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

(2) The House of Representatives, the Senate and the Joint Committee is informed without delay of the measures taken in accordance with Paragraph

(1).

Article 115g [Status and functions of the Federal Constitutional Court]

The constitutional status and the performance of the constitutional functions of the Federal Constitutional Court and its judges may not be impaired. The Federal Constitutional Court Act may not be amended by a statute enacted by the Joint Committee except insofar 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 statute, 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 sentence of this Article requires a two-thirds majority of the judges present.

Article 115h [Functioning capability of constitutional organs]

(1) Any legislative terms of the House of Representatives or of State parliaments due to end while a state of defence exists end six months after the termination of such state of defence. A term of office of the President due to expire while a state of defence exists, and the exercise of his functions by the President of the Senate in case of the premature vacancy of the President's office, ends 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 ends six months after the termination of such state of defence.

(2) Should the necessity arise for the Joint Committee to elect a new Chancellor, the Committee does so with the majority of its members; the President proposes a candidate to the Joint Committee. The Joint Committee can express its lack of confidence in the Chancellor only by electing a successor with a two-thirds majority of its members.

(3) The dissolution of the House of Representatives is impossible during a state of defence.

Article 115i [Powers of the State governments]

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

(2) Any measures taken in accordance with Paragraph (1) of the present Article may be revoked at any time by the Government, or, in relation to State authorities and subordinate federal authorities, by State minister-presidents.

Article 115k [Duration of validity of extraordinary legal provisions]

(1) Statutes enacted in accordance with Articles 115c, 115e, and 115g, as well as ordinances issued by virtue of such statutes, shall, for the duration of their applicability, suspend law which is inconsistent with such statutes or ordinances. This provision does not apply to earlier

legislation enacted by virtue of Articles 115c, 115e or 115g.

(2) Statutes adopted by the Joint Committee, as well as ordinances issued by virtue of such statutes, cease to have effect not later than six months after the termination of a state of defence.

(3) Statutes containing provisions that diverge from Articles 91a, 91b, 104a, 106 and 107 apply no longer than the end of the second fiscal year following upon the termination of a state of defence. After such termination they may, with the consent of the Senate, be amended by federal legislation so as to return to the provisions made in Sections VIIIa and X.

Article 115I [Repeal of extraordinary statutes and measures]

(1) The House of Representatives, with the consent of the Senate, may at any time repeal statutes enacted by the Joint Committee. The Senate may demand that the House of Representatives make a decision on such matter. Any measures taken by the Joint Committee or the Government to avert a danger has to be revoked where the House of Representatives and the Senate so decide.

(2) The House of Representatives, with the consent of the Senate, may at any time declare a state of defence terminated by a decision to be promulgated by the President. The Senate may demand that the House of Representatives make a decision on such matter. The state of defence has to be declared terminated without delay where the prerequisites for its declaration no longer exist.

(3) The conclusion of peace is subject to federal statute.

Chapter XI Transnational and Concluding Provisions

Article 116 [Definition of "a German," re-granting of citizenship]

(1) Unless otherwise provided by statute, a German within the meaning of this Constitution 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 ethnic origin or as the spouse or descendant of such a 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, are re-granted German citizenship on application. They are considered as not having been deprived of their German citizenship where they have established their residence in Germany after 8 May 1945 and have not expressed a contrary intention.

Article 117 [Temporary ruling for Article 3 (2) and Article 11]

(1) Law which is inconsistent with Article 3 (2) remain in force until adapted to that provision of this Constitution, but not beyond 31 March, 1953.

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

Article 118 [Baden, Wuertemberg-Baden and Wuertemberg-Hohenzollern]

A new delimitation of the territory comprising the States of Baden, Wuertemberg-Baden and Wuertemberg-Hohenzollern may be effected, in derogation of the provisions of Article 29, by agreement between the States concerned. Where no agreement is reached, the reorganization is effected by federal legislation which provides for a plebiscite.

Article 118a [Berlin and Brandenburg]

The new delimitation of boundaries between Berlin and Brandenburg can,

differing from the provisions of Article 29, be constituted by agreement between both States under participation of their electorate.

**Article 119 [Ordinances about refugees and expellees]**

In matters relating to refugees and expellees, in particular as regards their distribution among the States, the Government may, with the consent of the Senate, issue ordinances having statutory effect, pending the settlement of the matter by federal legislation. The Government may in this matter be authorized to issue individual instructions for particular cases. Except where there is danger resulting in any delay in taking action, such instructions are addressed to the highest State authorities.

**Article 120 [Occupation costs and burdens resulting from the war]**

(1) The Federation meets the expenditure for occupation costs and the other internal and external burdens caused by the war, as regulated in detail by federal legislation. To the extent that these costs and other burdens have been regulated by federal legislation on or before 1 Oct., 1969, the Federation and the States meet such expenditure between them in accordance with such federal legislation. Insofar as expenditures for such of these costs and burdens as neither have been nor will be regulated by federal legislation have been met on or before 1 October 1965 by States, communes, associations of communes or other entities performing functions of the States or the communes, the Federation is not obliged to meet expenditure of that nature even where it arises after that date. The Federation pays 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 States of costs and other burdens caused by the war, as regulated in this paragraph, shall not affect any statutory regulation of claims for indemnification in respect of the consequences of the war.

(2) Revenues 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) Statutes serving to implement the equalization of burdens may, with the consent of the Senate, stipulate that they are executed, as regards equalization benefits, partly by the Federation and partly by the States acting as agents of the Federation, and that the relevant powers vested in the Government and the competent highest federal authorities by virtue of Article 85 are wholly or partly delegated to the Federal Equalization Office. In exercising these powers, the Federal Equalization Office does not require the consent of the Senate; with the exception of urgent cases, its instructions has to be given to the highest State authorities (State Equalization Offices).

(2) The provisions of Article 87 (3) 2 are not affected hereby.

**Article 121 [Definition of "majority of the members"]**

Within the meaning of this Constitution, a majority of the members of the House of Representatives and a majority of the members of the Federal Convention are the majority of the respective statutory number of their members.

**Article 122 [Transfer of legislative powers hitherto existing]**

(1) From the date of the assembly of the House of Representatives, statutes are enacted exclusively by the legislative bodies recognized in this Constitution.

(2) Legislative bodies as well as those bodies participating in legislation in an advisory capacity, whose competence ends by virtue of Paragraph (1), are dissolved with effect from that date.



Article 123 [Continued validity of old law and previous treaties]

(1) Law in force before the first assembly of the House of Representatives remains in force insofar as it does not conflict with this Constitution.

(2) Subject to all rights and objections of the interested parties, the treaties concluded by the German Reich concerning matters which, under this Constitution, are within the legislative competence of the States, remain in force, provided 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 Constitution, or until they are in any other way terminated pursuant to their provisions.

Article 124 [Sphere of exclusive legislative power]

Law affecting matters subject to the exclusive legislative power of the Federation becomes federal law in the area in which it applies.

Article 125 ["Inherited" Federal law]

Law affecting matters subject to the concurrent legislative power of the Federation becomes federal law in the area in which it applies:

1. insofar as it applies uniformly within one or more zones of occupation;
2. insofar as it is law by which former Reich law has been amended after 8 May 1945.

Article 125a [Old Federal Law as State Law]

(1) Law adopted as federal law which, because of changes in Article 74 (1) or 75 (1), could no longer be adopted as federal law continues to be federal law. It can be replaced by State law.

(2) Law adopted on the basis of Article 72 (2) in the version valid until 15 Nov., 1994 continues to be federal law. Federal statutes can stipulate its replaceability by State law. This provision applies mutatis mutandis for federal law adopted on the basis of Article 75 (2) which could longer be adopted.

Article 126 [Differences about applicability of law as federal law]

Differences of opinion regarding the applicability of law as federal law are settled by the Federal Constitutional Court.

Article 127 [Legislation of the Bi-zonal Economic Administration]

Within one year of the promulgation of this Constitution the Government may, with the consent of the governments of the States concerned, extend to the States of Baden, Greater Berlin, Rhineland-Palatinate and Wuertemberg-Hohenzollern any legislation of the Bi-zonal Economic Administration, insofar as it continues to be in force as federal law under Article 124 or 125.

Article 128 [Continuance of powers to give instructions]

Insofar as law continuing in force provides for powers to give instructions within the meaning of Article 84 (5), these powers remain in existence until otherwise provided by statute.

Article 129 [Applicability of authorizations]

(1) Insofar as legal provisions which continue in force as federal law contain authorizations to issue ordinances or to issue general administrative rules or to perform administrative acts, such authorizations pass to the agencies henceforth competent in the matter. In cases of doubt, the Government decides in agreement with the Senate; such decisions are published.

(2) Insofar as legal provisions which continue in force as State law contain such authorizations, they are exercised by the agencies competent under State law.

(3) Insofar as legal provisions within the meaning of Paragraphs (1) and

(2) authorize their amendment or supplementation or the issue of legal instead of statutory provisions, such authorizations are deemed to have expired.

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

**Article 130 [Control over existing institutions]**

(1) Administrative agencies and other institutions which serve the public administration or the administration of justice and are not based on State law or treaties between States, as well as the Administrative Union of South West German Railroads and the Administrative Council for the Postal Services and Telecommunications of the French Zone of Occupation, are placed under the control of the Government. The Government provides, with the consent of the Senate, for their transfer, dissolution, or

liquidation.

(2) The highest disciplinary superior of the personnel of these administrative bodies and institutions is the appropriate Minister.

(3) Corporate bodies and institutions under public law not directly subordinate to a State nor based on treaties between States are under the supervision of the competent highest federal authority.

**Article 131 [Former Public Service Personnel]**

Federal legislation is passed to 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 applies 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 statute comes into force, no legal claims can be made, unless otherwise provided by State legislation.

**Article 132 [Temporary revocation public service rights]**

(1) Civil servants and judges who, when this Constitution comes into force are appointed for life, may, within six months after the first assembly of the House of Representatives, be retired or temporarily retired or be given a different office with lower remuneration where they lack the personal or professional aptitude for their present office. This provision applies mutatis mutandis also to salaried public employees, other than civil servants or judges, whose service cannot be terminated by notice. Where, 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 does 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 relating to themselves as individuals.

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

(4) Details are specified by an ordinance of the Government requiring the consent of the Senate.

**Article 133 [Bi-zonal Economic Administration]**

The Federation succeeds to the rights and obligations of the Bi-zonal Economic Administration.

Article 134 [Reich Property to become federal Property]

(1) Reich property on principle becomes federal property.

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

(3) Property which was placed at the disposal of the Reich by States or communes or associations of communes without compensation again becomes the property of such States or communes or associations of communes, insofar as it is not required by the Federation for its own administrative tasks.

(4) Details are regulated by a federal statute requiring the consent of the Senate.

Article 135 [Succession to property of old States and corporate bodies]

(1) Where after 8 May 1945 and before the coming into force of this Constitution an area has passed from one State to another, the State to which the area now belongs is entitled to the property located therein of the State to which it belonged.

(2) Property of States or corporate bodies or institutions under public law which no longer exist passes, insofar 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 State or the corporate body or institution under public law which now discharges these tasks.

(3) Real estate of States which no longer exist, including appurtenances, passes to the State within which it is located, insofar as it is not included among property within the meaning of Paragraph (1).

(4) Where an overriding interest of the Federation or the particular interest of an area so requires, a settlement other than in Paragraphs (1) to (3) may be effected by federal legislation.

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

(6) Interests of the former State of Prussia in enterprises under private law passes to the Federation. A federal statute, which may also diverge from this provision, regulates the details.

(7) Insofar as property which on the coming into force of this Constitution would devolve upon a State or a corporate body or institution under public law pursuant to Paragraphs (1) to (3) has been disposed of through or by virtue of a State law or in any other manner by the party thus entitled, the transfer of the property is deemed to have taken place before such disposition.

Article 135a [Old Liabilities]

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

1. Liabilities of the Reich or liabilities of the former State 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 Articles 89, 90, 134 or 135, and such liabilities of these entities as arise from measures taken by the entities mentioned under number 1;

3. such liabilities of States or communes or associations of communes as have arisen from measures taken by these legal 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 put an end to a state of emergency due to the war.

(2) Paragraph (1) above applies mutatis mutandis to liabilities of the German Democratic Republic or its legal entities as well as to liabilities of the Federation or other corporate bodies and institutions under public law which are connected with the transfer of properties of the German Democratic Republic to the Federation, States and communes, and to liabilities arising from measures taken by the German Democratic Republic or its legal entities.

Article 136 [First assembly of the Senate]

(1) The Senate assembles for the first time on the day of the first assembly of the House of Representatives.

(2) Until the election of the first President, his powers are exercised by the President of the Senate. He does not have the right to dissolve the House of Representatives.

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 States or in the communes may be restricted by legislation.

(2) The electoral statute to be adopted by the Parliamentary Council applies to the election of the first House of Representatives, of the first Federal Convention and of the first President of the Federal Republic.

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

Article 138 [Southern German notaries]

Changes in notarial institutions as presently existing in the States of Baden, Bavaria, Wuerttemberg-Baden and Wuerttemberg-Hohenzollern require the consent of the governments of these States.

Article 139 [Continued validity of denazification provisions]

The legislation enacted for the "Liberation of the German People from National Socialism and Militarism" is not affected by the provisions of this Constitution.

Article 140 [Law of religious bodies]

The provisions of Articles 136, 137, 138, 139 and 141 of the German Constitution of 11 August 1919 are integral parts of this Constitution.

Article 141 ["Bremen Clause"]

Article 7 (3) 1 does not be applied in any State in which different provisions of State law were in force on 1 Jan., 1949.

Article 142 [Basic rights in State constitutions]

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

Article 142a {...}

Article 143 [Limitation of Deviations]

(1) Law in the territory specified in Article 3 of the Unification Treaty may deviate from provisions of this Constitution for a period not extending beyond 31 December 1992 in so far as and as long as no complete adjustment to the order of the Constitution can be achieved as a consequence of the different conditions. Deviations must not violate Article 19 (2) and must be compatible with the principles set out in Article 79 (3).

(2) Deviations from sections II, VIII, VIIIa, IX, X and XI are permissible for a period not extending beyond 31 December 1995.

(3) Notwithstanding Paragraphs (1) & (2) above, Article 41 of the Unification Treaty and the rules for its implementation remain valid in so far as they provide for the irreversibility of intrusion on property in the territory specified in Article 3 of the said Treaty.

Article 143a [Changes of Railroad Administration]

(1) The Federation has exclusive legislation in all matters arising from the transformation of railroads of the Federation from direct federal administration to businesses. Article 87e (5) is applicable mutatis mutandis. Officials of railroads of the Federation can, by statute preserving their legal position and the responsibility of their former employer, be assigned to work at railroads of the Federation organized under private law.

(2) Statutes according to Paragraph (2) are administered by the Federation.

(3) The discharge of all duties in the area of local railway transport of persons by former railroads of the Federation is a responsibility of the Federation until 31 Dec., 1995. This provision applies mutatis mutandis for tasks of railway traffic administration. Details are regulated by federal statute requiring the consent of the Senate.

Article 143b [Businesses of the Former Deutsche Bundespost]

(1) The special property Deutsche Bundespost will be transformed into private law businesses according to a federal statute. The Federation has exclusive legislation over all related matters.

(2) Exclusive rights of the Federation prior to the transformation can be delegated preliminarily to businesses originating in the Deutsche Bundespost POSTDIENST and Deutsche Bundespost TELEKOM. The Federation may sell the majority of shares in the business originating in the Deutsche Bundespost POSTDIENST no earlier than five years after enacting the statute. For this measure, a federal statute with consent of the Senate is required.

(3) Federal officers of the Deutsche Bundespost are being employed by the businesses preserving their legal position and the responsibility of their former employer. These businesses exercise the rights of the former employer. Details are regulated by federal statute.

Article 144 [Ratification of the Constitution]

(1) This Constitution requires ratification by the parliaments of two thirds of the German States in which it is for the time being to apply.

(2) Insofar as the applications of this Constitution is subject to restrictions in any State listed in Article 23 or in any part thereof, such State or part thereof has the right to send representatives to the House of Representatives in accordance with Article 38 and to the Senate in accordance with Article 50.

Article 145 [Promulgation of the Constitution]

(1) The Parliamentary Council confirms in public session, with the participation of the deputies of Greater Berlin, the fact of ratification of this Constitution and signs and promulgates it.

(2) This Constitution comes into force at the end of the day of

promulgation.

(3) It is published in the Federal Law Gazette.

Article 146 [Duration of validity of the Constitution]

This Constitution, which is valid for the entire German people following the achievement of the unity and freedom of Germany, ceases to be in force on the day on which a constitution adopted by a free decision of the German people comes into force.

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