

Date Printed: 01/13/2009

JTS Box Number: IFES_27

Tab Number: 4

Document Title: THE BASIC LAW OF THE FEDERAL REPUBLIC OF
GERMANY

Document Date: 1983

Document Country: GERMANY

Document Language: ENG

IFES ID: CON00049



THE BASIC LAW OF THE FEDERAL REPUBLIC OF GERMANY

can/GER/1983/001/eng

**BASIC LAW
OF THE FEDERAL REPUBLIC
OF GERMANY**

**Return to Resource Center
International Foundation
for Electoral Systems
1620 I St. NW, Suite 611
Washington, D.C. 20006**

**PROMULGATED
BY THE PARLIAMENTARY COUNCIL
ON 23 MAY 1949
AS AMENDED UP TO AND INCLUDING
21 DECEMBER 1983**

Translation revised by the Federal Ministry of Justice and the Federal Ministry
of Finance and published by the Press and Information Office
of the Federal Government, Bonn

Return to Federal Ministry of Justice
International Law Section
for Electronic Data
1630 1 St. M. 1000 011
Washington D.C. 20540

PUBLIC DOCUMENT

Printed in the Federal Republic of Germany

by Roco-Druck GmbH, D-3340 Wolfenbüttel, 1989

CONTENTS*

Introduction*	3
Announcement by the Parliamentary Council	12
Preamble	13
I. Basic Rights	14
II. The Federation and the States (Laender)	23
III. The Federal Parliament (Bundestag)	30
IV. The Federal Council (Bundesrat)	35
IVa. The Joint Committee**	36
V. The Federal President	37
VI. The Federal Government	40
VII. Legislative Powers of the Federation	42
VIII. The Execution of Federal Statutes and the Federal Administration	52
VIIIa. Joint Tasks	58
IX. The Administration of Justice	60
X. Finance	66
Xa. State of Defence**	77
XI. Transitional and Concluding Provisions	83
Appendix: Articles 136–139 and 141 of the Weimar Constitution	94

* This Table of Contents and the Introduction are not part of the Basic Law.

** Inserted by federal statute of 24 June 1968 (Federal Law Gazette I p. 710/711).

INTRODUCTION

History

The surrender of the German armed forces on 8 May 1945 marked the end of National Socialist tyranny in Germany. France, the United Kingdom, the Soviet Union and the United States of America occupied the country and assumed supreme authority. One of their aims as occupying powers was to give the German people the opportunity to prepare for their return to democracy and peace.

Owing to the growing differences between the Allies, however, the joint administration of Germany, which had been divided into four occupation zones, became increasingly difficult and the occupying powers were not able to agree on the country's future.

On 1 July 1948, the three Western powers authorized the minister-presidents of the Laender (states) in their zones to convene a constituent assembly to draw up a democratic, federal constitution.

Adoption of the Basic Law

Following initial hesitation by some West German politicians who feared that the formation of the Western occupation zones into a state would deepen the division of Germany, a Parliamentary Council was convened on 1 September 1948.

This assembly, whose 65 members had been elected by the state parliaments, drafted in the following eight months a "Basic Law for the Federal Republic of Germany". They set about their difficult task with the determination to establish a constitutional basis for the integration of the Laender in the Western zones. In spite of the differences over fundamental issues, especially the question of federalism, the result proved acceptable to the political parties in Germany and did not conflict with the wishes of the Western powers.

They created a Basic Law which was an attempt to lay the foundations for a stable democracy and thus prevent the kind of situation from developing which in the thirties, following the decline of the Weimar Republic and hence of democracy, had opened the door to Nazi coercion. At the same time, it marked the new state's determination to preserve Germany's unity and to foster peace in a united Europe and throughout the world.

The Parliamentary Council adopted the Basic Law with a large majority on 8 May 1949. This constitutional instrument, after having been approved by the military governors, was endorsed by the parliaments of all the Laender except Bavaria and became effective after 23 May 1949, the day on which it was promulgated.

At first, the occupying powers retained substantial sovereign rights, but these were gradually transferred to the Federal Republic of Germany. The Allies are still responsible for Germany as a whole, however.

Basic elements of the constitution

The Basic Law covers all aspects of the political and social life of the Federal Republic of Germany. Its provisions are not confined to statements of principle regarding the structure and function of the body politic. Indeed, the Basic Law created a system of values within which protection of individual freedom and human dignity is the highest principle of law. However, it does not perceive the citizen as an individual apart from the rest but as a person living in the community and linked with it in many ways. In order to emphasize, therefore, that it is the duty of the state to serve the people, the basic rights were given pride of place in the Basic Law.

The basic rights, which, being a system of the Basic Law, protect the individual against encroachments by the state and ensure that he can play his proper role in the life of the community, include the classical freedoms such as the right to life and health, freedom of religion or creed, conscience and opinion, freedom of association and assembly, privacy of mail, freedom of movement, privacy of the home, and the right of ownership. Also guaranteed by the constitution, apart from the general

principle of non-discrimination and equal rights for men and women, are protection of marriage and the family, the freedom to choose an occupation, as well as the right to seek asylum and submit petitions.

The basic rights are directly applicable law, which means that the authorities are bound to observe the relevant constitutional provisions. The scope of some rights may be limited by law, but the inherent guarantee of protection must never be jeopardized. The Basic Law thus affords much greater protection for basic rights than previous constitutions.

According to Article 20, four basic principles determine the political and social structure of the Federal Republic of Germany. It says that it is a democracy, a state based on the rule of law, a social state, and a federal state.

Under the democratic principle, sovereignty and hence all authority emanates from the people. The Basic Law has given effect to this principle in the form of a representative democracy in which state authority is exercised indirectly by elected representatives of the people. It provides for direct decisions by the people (referendums) only where parts of the federal territory are to be reapportioned or reorganized.

According to the rule-of-law principle, all state action is bound by law and justice. The functions of the state are exercised by separate legislative, executive and judicial authorities. All government measures may be reviewed by independent judges to determine whether they meet the requirements of the law.

The social-state principle was established mainly to protect weaker members of society. The state is required to ensure that every member of the community is free from want, can live in circumstances worthy of human dignity, and has a fair share of the country's general prosperity.

The federal system was chosen because of Germany's deep-rooted federalist tradition. This system makes it possible to develop regional characteristics and leaves scope for differentiated cultural and political competition. At the same time, the division of legislative, executive and judicial powers between the federation and the states prevents excessive concentrations and hence the possible abuse of power.

The states of the Federal Republic of Germany established by the Basic Law are Baden-Wuerttemberg, Bavaria, Berlin(West), Bremen, Hamburg, Hesse, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate,

the Saarland and Schleswig-Holstein. Although Berlin may not be governed by the federation on account of the fact that Allied rights still prevail in this city, the Quadripartite Agreement of 3 September 1971 endorsed the close ties between Berlin(West) and the Federal Republic of Germany.

Bundestag and Bundesrat

The German Bundestag is the supreme legislative authority. Its members are elected by the voting public (German citizens aged 18 and over) in general, direct, free, equal and secret elections for a four-year term. The electoral system is a combination of proportional representation and direct election of candidates. Half of the members are elected directly, the other half via the state lists of candidates nominated by their respective parties.

In the general election held on 25 January 1987, 519 members were elected to the Bundestag. Twenty-two of them come from Berlin (West) and have only limited voting rights on account of Allied reservations.

The Basic Law emphasizes the special role of the parties as representing the political will of the people. They usually nominate the candidates for the elections. In order to ensure that parliament and government can function properly, only parties which poll at least five percent of the votes or win three seats under the first-past-the-post system may be represented in the Bundestag. Eleven parties were represented in the first German Bundestag elected in 1949, but their number quickly fell to four. In March 1983 a fifth party, The Greens, made its debut in the Bundestag, joining the Christian Democratic Union/Christian Social Union (CDU/CSU), the Free Democratic Party (F.D.P.), and the Social Democratic Party of Germany (SPD). After the election on 6 March 1983, CDU/CSU and F.D.P. formed a coalition with a working majority. This coalition was renewed after the election of 25 January 1987.

Members of parliament are not bound by instructions and are answerable to their conscience only. Consequently, a member does not have to relinquish his seat even if he leaves his party. The parties form groups (parliamentary parties) in the Bundestag. The size of the groups determines the composition of the parliamentary committees. The German Bundestag has four main functions: it is the legislative body, it

elects the Federal Chancellor, it keeps check on the government, and it is the political representative of the German people.

Parliament's constitutional right to exercise control over the government also permits minority groups in the Bundestag to demand information from the government or request the appointment of a committee of investigation.

Bills may be introduced from the floor of the Bundestag, by the Bundesrat (the Federal Council representing the constituent states) or, as is usually the case, by the government. They are given three readings in the Bundestag and are thus often amended. The bulk of the legislative process takes place in the committees since the House does not have the time to deal with the many technical and other details. After the committee stage, the final vote is taken after the third reading during a plenary session. A bill has been adopted if it receives a majority of the votes cast. Bills proposing amendments to the constitution require a two-thirds majority. The Federal Council, the second legislative body, brings the federal element into the legislative process. It is composed of representatives of the state governments who, depending on the size of the state's population, have three, four or five votes.

Laws passed by the German Bundestag require the consent of the Bundesrat where certain matters affecting the states are concerned, which is now mostly the case. Even where its consent is not required, the Bundesrat has a right of objection, though it can be overruled by the Bundestag. Both Bundestag and Bundesrat may, in cases where they disagree, submit a bill to the Mediation Committee, which is composed of members of both Houses and usually works out a compromise.

The Bundesrat proposes amendments to federal laws, but although the interests of the two Houses are often not identical, and in spite of the party political composition of the Bundesrat, the number of cases when a bill is rejected by the Bundesrat are very few.

The Federal President

The Federal President is the head of state of the Federal Republic of Germany. He is elected for a five-year term by the Federal Convention and may be reelected once. The Federal Convention convenes for this purpose only. It consists of the members of the German Bundestag and an equal number of delegates nominated by the state parliaments.

The architects of the Basic Law, deliberately pruning the powers that had been exercised by the Reich President during the Weimar Republic, gave the Federal President a merely representative and integrative function. He is not without political influence, however.

The Federal President represents the Federal Republic of Germany in its relations with other countries. He signs treaties, accredits and receives envoys, and pays state visits to other countries as an ambassador of goodwill.

When a government is formed it is his task to nominate a candidate for the office of Federal Chancellor. He also appoints and dismisses federal ministers on the proposal of the Chancellor. In certain cases, that is to say, if a candidate for the chancellorship fails to win a majority in the Bundestag or if parliament carries a motion of no confidence in the Chancellor, the Federal President can dissolve the Bundestag. This was the case in 1972 and 1983, when the Chancellor failed to win a vote of confidence and the President, on the Chancellor's proposal, dissolved the Bundestag. In each case new elections had to be held.

The Federal President examines legislation in the making to ensure that it is in conformity with the constitution and finally promulgates laws in the Federal Law Gazette. He also appoints and dismisses federal judges, federal civil servants, and officers and non-commissioned officers of the Federal Armed Forces. He exercises the right of clemency on behalf of the federation and he confers the Order of Merit on persons who have served the Federal Republic of Germany with distinction.

The current and sixth Federal President is Richard von Weizsäcker. He assumed office on 1 July 1984 and his predecessors were Theodor Heuss (1949–59), Heinrich Lübke (1959–69), Gustav Heinemann (1969–74), Walter Scheel (1974–79), and Karl Carstens (1979–84).

The Federal Government

The Federal Government is the supreme executive authority. It consists of the Federal Chancellor and the federal ministers, who are appointed by the Federal President on his proposal. The Federal Chancellor is elected by the Bundestag.

The Basic Law accords the Federal Chancellor considerable powers to ensure the proper functioning of government. It is therefore not without good reason that the Federal Republic's system of government is referred to as a "Chancellor democracy". The Chancellor lays down government policy guidelines, within which the federal ministers head their departments on their own responsibility.

The government has to account to parliament for its actions. It is also possible for the Bundestag to replace the government by means of a vote of no confidence. Such a motion may only be directed against the Chancellor, not against ministers. In order to prevent parliament from ousting the cabinet without being able to produce a majority in support of a new government, the Basic Law gave the no-confidence motion a constructive role, that is to say, the Bundestag can only remove a Chancellor (and with him his cabinet) if at the same time a majority of members vote a new Federal Chancellor into office. Two attempts have been made to overthrow the Chancellor by means of a constructive vote of no confidence. Only once has this succeeded, in 1982.

To date, the Federal Republic of Germany has had 14 governments and six Federal Chancellors: Konrad Adenauer (1949–63), Ludwig Erhard (1963–66), Kurt Georg Kiesinger (1966–69), Willy Brandt (1969–74), Helmut Schmidt (1974–82), and the present incumbent, Helmut Kohl, who was elected Chancellor in 1982 on a constructive vote of no confidence and returned to office after the 1983 and 1987 elections.

The federal courts

Administration of justice in the Federal Republic of Germany is divided between the federation and the states. Judicial power is exercised by independent judges. The system affords complete legal protection through

the independent branches of the judiciary. Apart from the ordinary courts of civil and penal law, there are also administrative, labour, social and finance courts. At the head of each branch is a federal court, the lower courts being courts of the federal states. The main responsibility of the supreme federal courts is to ensure uniform interpretation of the law.

The Federal Constitutional Court is a constitutional organ which has no identical historical precedent. It reviews legislation to determine whether it is compatible with the Basic Law and settles disputes between the federation and the states or individual federal agencies. It reviews federal and state statutes on application as to their conformity with the Basic Law and may declare such legislation null and void. Any person may claim before the Federal Constitutional Court that his basic rights have been violated by a government agency.

Half of the judges of the Federal Constitutional Court are elected by the Bundestag and half by the Bundesrat. They serve for a period of 12 years.

In over 50,000 proceedings (more than 90 percent of them constitutional complaints) since its inception as the "guardian of the constitution", the Federal Constitutional Court has ensured that basic rights are observed and has handed down decisions that have had far-reaching political, legal, economic and financial consequences.

The Laender

The Laender of the Federal Republic of Germany have their own sovereignty which is not derived from the federation. They are public entities with their own authority, not merely provinces or subordinate administrative agencies. Unless authority has been vested in the federation by the Basic Law, it is the Laender which are responsible for legislation, government and administration of justice. Although the most important areas of legislation are today the domain of the federation, the Laender, too, have considerable jurisdiction, especially in the fields of culture, education and public safety.

Generally speaking, the Laender implement all statutes, including those enacted by the federation. Under the Basic Law, the federation has only narrowly defined administrative powers.

The advantage of this decentralization of public authority lies in the fact that decisions are usually taken where their effects can best be judged. In this way, greater consideration is given to local and regional conditions and to each particular situation.

Each Land has an elected parliament, a government elected by parliament, its own administrative authorities, and an independent judiciary.

The communes have a special status within the Laender. Under the Basic Law they are allowed to regulate all local matters on their own responsibility within the scope of the law. They have enjoyed this right of self-government since the beginning of the 19th century. It is exercised primarily by the elected town council. The main responsibilities of the communes are town planning, cultural and educational affairs, public welfare, public transport, as well as water and energy supply. Their revenue takes the form of rates and allocations from the states. Districts or counties comprising several communes also have their own elected parliaments and rights of self-government. Like the communes, they are at the same time the lowest tier of government administration.

A stable political system

The Basic Law of the Federal Republic of Germany has proved to be a solid basis for the development of a stable democratic society and a well-functioning political system.

With this system the Federal Republic of Germany has resumed Germany's democratic tradition following the years of National Socialist tyranny. The Federal Republic's state symbols indicate this continuity: the colours of the federal standard – black, red and gold – have since the 19th century stood for Germany's freedom, democracy and unity. The same aims are also linked with the national anthem and the federal coat of arms with displayed eagle, which was introduced at the time of the Weimar Republic.

ANNOUNCEMENT BY THE PARLIAMENTARY COUNCIL

The Parliamentary Council, meeting in public session at Bonn am Rhein on 23 May 1949, confirmed the fact that the Basic Law for the Federal Republic of Germany, which was adopted by the Parliamentary Council on 8 May 1949, was ratified in the week of 16 to 22 May 1949 by the parliaments of more than two thirds of the participating constituent states (Laender).

By virtue of this fact the Parliamentary Council, represented by its Presidents, has signed and promulgated the Basic Law.

The Basic Law is hereby published in the Federal Law Gazette pursuant to paragraph (3) of Article 145*.

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

PREAMBLE

The German People

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

Conscious of their responsibility before God and men,

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

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

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

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

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

* See footnote ** to Article 23.

1. BASIC RIGHTS

Article 1 (Protection of human dignity)

(1) The dignity of man shall be inviolable. To respect and protect it shall be the duty of all state authority.

(2) The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world.

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

Article 2 (Rights of liberty)

(1) Everyone shall have the right to the free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or against morality.

(2) Everyone shall have the right to life and to physical integrity. The liberty of the individual shall be inviolable. Intrusion on these rights may only be made pursuant to a statute.

Article 3 (Equality before the law)

(1) All persons shall be equal before the law.

(2) Men and women shall have equal rights.

(3) No one may be disadvantaged or favoured because of his sex, his parentage, his race, his language, his homeland and origin, his faith, or his religious or political opinions.

Article 4 (Freedom of faith, of conscience and of creed)

(1) Freedom of faith, of conscience, and freedom to profess a religion or a particular philosophy (*Weltanschauung*) shall be inviolable.

(2) The undisturbed practice of religion shall be guaranteed.

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

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

Article 5 (Freedom of expression)

(1) Everyone shall have the right freely to express and disseminate his opinion in speech, writing and pictures and freely to inform himself from generally accessible sources. Freedom of the press and freedom of reporting by means of broadcasts and films shall be guaranteed. There shall be no censorship.

(2) These rights are subject to limitations in the provisions of general statutes, in statutory provisions for the protection of youth, and in the right to respect for personal honour.

(3) Art and science, research and teaching shall be free. Freedom of teaching shall not release anybody from his allegiance to the constitution.

Article 6 (Marriage and family, illegitimate children)

(1) Marriage and family shall enjoy the special protection of the state.

(2) The care and upbringing of children shall be a natural right of and a duty primarily incumbent on the parents. The state shall watch over their endeavours in this respect.

(3) Children may not be separated from their families against the will of the persons entitled to bring them up, except, pursuant to a statute, where those so entitled fail in their duties or the children are otherwise threatened with serious neglect.

(4) Every mother shall be entitled to the protection and care of the community.

(5) Illegitimate children shall be provided by legislation with the same opportunities for their physical and mental development and for their place in society as are enjoyed by legitimate children.

Article 7 (Education)

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

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

(3) Religion classes shall form part of the ordinary curriculum in state schools, except in secular (bekenntnisfrei) schools. Without prejudice to the state's right of supervision, religious instruction shall be given in accordance with the tenets of the religious communities. No teacher may be obliged against his will to give religious instruction.

(4) The right to establish private schools shall be guaranteed. Private schools, as a substitute for state schools, shall require the approval of the state and shall be subject to the statutes of the Laender. Such approval shall 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 the parents is not encouraged thereby. Approval shall be withheld where the economic and legal position of the teaching staff is not sufficiently assured.

(5) A private elementary school shall be permitted only where the education authority finds that it serves a special pedagogic interest, or where, on the application of persons entitled to bring up children, it is to be established as an interdenominational school or as a denominational school or as a school based on a particular philosophical persuasion (Weltanschauungsschule) and a state elementary school of this type does not exist in the commune (Gemeinde).

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

Article 8 (Freedom of assembly)

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

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

Article 9 (Freedom of association)

(1) All Germans shall have the right to form associations, partnerships and corporations.

(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, shall be prohibited.

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

Article 10 (Privacy of letters, posts and telecommunications)**

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

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

Article 11 (Freedom of movement)

(1) All Germans shall 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 Land, to combat the danger of epidemics, to deal with natural disasters or particularly grave accidents, to protect young people from neglect or to prevent crime.

* Last sentence inserted by federal statute of 24 June 1968 (Federal Law Gazette I p. 709).

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

Article 12* (Right to choose an occupation, prohibition of forced labour)

(1) All Germans shall have the right freely to choose their occupation, their place of work and their place of study or training. The practice of an occupation may 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 labour may be imposed only on persons deprived of their liberty by court sentence.

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

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

(2) A person who refuses, on grounds of conscience, to render war service involving the use of arms may be required to render a substitute service. The duration of such substitute service shall not exceed the duration of military service. Details shall be regulated by a statute which shall not interfere with freedom to take a decision based on conscience and shall also provide for the possibility of a substitute service not connected with units of the Armed Forces or of the Federal Border Guard.

(3) Persons liable to military service who are not required to render service pursuant to paragraph (1) or (2) of this Article may, during a state of defence (Verteidigungsfall), be assigned by or pursuant to a statute to an employment involving civilian services for defence purposes, including the protection of the civilian population; it shall, however, not be permissible to assign persons to an employment subject to public law except for the purpose of discharging police functions or such other functions of public administration as can only be discharged by persons

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

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

employed under public law. Persons may be assigned to an employment – as referred to in the first sentence of this paragraph – with the Armed Forces, including the supplying and servicing of the latter, or with public administrative authorities; assignments to employment connected with supplying and servicing the civilian population shall not be permissible except in order to meet their vital requirements or to guarantee their safety.

(4) Where, during a state of 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 may be assigned to such services by or pursuant to a statute. They may on no account render service involving the use of arms.

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

(6) Where, during a state of defence, staffing requirements for the purposes referred to in the second sentence of paragraph (3) of this Article cannot be met on a voluntary basis, the right of a German to quit the pursuit of his occupation or quit his place of work may be restricted by or pursuant to a statute in order to meet these requirements. The first sentence of paragraph (5) of this Article shall apply *mutatis mutandis* prior to the existence of a state of defence.

Article 13 (Inviolability of the home)

(1) The home shall be inviolable.

(2) Searches may be ordered only by a judge or, in the event of danger resulting in any delay in taking action, by other organs as provided by statute and may be carried out only in the form prescribed by law.

(3) Intrusions and restrictions may otherwise only be made to avert a public danger or a mortal danger to individuals, or, pursuant to a statute, to prevent substantial danger to public safety and order, in particular to relieve a housing shortage, to combat the danger of epidemics or to protect juveniles who are exposed to a moral danger.

Article 14 (Property, right of inheritance, taking of property)

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

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

(3) The taking of property shall only be permissible in the public weal. It may be effected only by or pursuant to a statute regulating the nature and extent of compensation. Such compensation shall be determined by establishing an equitable balance between the public interest and the interests of those affected. In case of dispute regarding the amount of compensation, recourse may be had to the courts of ordinary jurisdiction.

Article 15 (Socialization)

Land, natural resources and means of production may for the purpose of socialization be transferred to public ownership or other forms of collective enterprise for the public benefit by a statute regulating the nature and extent of compensation. In respect of such compensation the third and fourth sentences of paragraph (3) of Article 14 shall apply *mutatis mutandis*.

Article 16 (Deprivation of citizenship, extradition, right of asylum)

(1) No one may be deprived of his German citizenship. Citizenship may be lost only pursuant to a statute, and it may be lost 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. Persons persecuted on political grounds shall enjoy the right of asylum.

Article 17 (Right of petition)

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

Article 17a* (Restriction of individual basic rights through legislation enacted for defence purposes and concerning substitute service)

(1) Statutes concerning military service and substitute service may, 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 freely to express and to disseminate opinions in speech, writing and pictures (first half-sentence of paragraph (1) of Article 5), 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 may provide for the restriction of the basic rights of freedom of movement (Article 11) and inviolability of the home (Article 13).

Article 18 (Forfeiture of basic rights)

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

Article 19 (Restriction of basic rights)

(1) Insofar as a basic right may, under this Basic Law, be restricted by or pursuant to a statute, such statute shall apply generally and not solely

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

to an individual case. Furthermore, such statute shall name the basic right, indicating the Article concerned.

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

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

(4) Should any person's rights be violated by public authority, recourse to the court shall be open to him. Insofar as no other jurisdiction has been established, recourse shall be to the courts of ordinary jurisdiction. The second sentence of paragraph (2) of Article 10 shall not be affected by the provisions of this paragraph*.

* Last sentence inserted by federal statute of 24 June 1968 (Federal Law Gazette I p. 710).

II. THE FEDERATION AND THE STATES (LAENDER)

Article 20 (Basic principles of state order, right to resist)

- (1) The Federal Republic of Germany shall be a democratic and social federal state.
- (2) All state authority shall emanate from the people. It shall be exercised by the people through elections and voting and by specific legislative, executive and judicial organs.
- (3) Legislation shall be subject to the constitutional order; the executive and the judiciary shall be bound by law and justice.
- (4)* All Germans shall have the right to resist any person or persons seeking to abolish that constitutional order, should no other remedy be possible.

Article 21 (Political parties)**

- (1) The political parties shall participate in the forming of the political will of the people. They may be freely established. Their internal organization shall conform to democratic principles. They shall publicly account for the sources and use of their funds and for their assets.
- (2) Parties which, by reason of their aims or the behaviour of their adherents, seek to impair or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany shall be unconstitutional. The Federal Constitutional Court shall decide on the question of unconstitutionality.
- (3) Details shall be regulated by federal statutes.

Article 22 (Federal flag)

The federal flag shall be black, red and gold.

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

** As amended by federal statute of 21 December 1983.

Article 23 (Jurisdiction of the Basic Law)

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

Article 24 (Entry into a collective security system)

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

(2) For the maintenance of peace, the Federation may enter a system of mutual collective security; in doing so it shall 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 shall 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 shall be an integral part of federal law. They shall take precedence over statutes and shall 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 for war of aggression, shall be unconstitutional. They shall be made a criminal offence.

* Cf. Introduction, p. 4.

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

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

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

Article 27 (Merchant fleet)

All German merchant vessels shall form one merchant fleet.

Article 28 (Federal guarantee of Laender constitutions, guarantee of self-government for local authorities)

(1) The constitutional order in the Laender shall conform to the principles of republican, democratic and social government based on the rule of law, within the meaning of this Basic Law. In each of the Laender, counties (Kreise), and communes (Gemeinden), the people shall be represented by a body chosen in general, direct, free, equal and secret elections. In the communes the communal assembly may take the place of an elected body.

(2) The communes shall 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 (Gemeindeverbaende) shall also have such right of self-government as may be provided by statute.

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

Article 29* (New delimitation of Laender boundaries)

(1) A new delimitation of federal territory may be made to ensure that the Laender by their size and capacity are able effectively to fulfil the functions incumbent upon them. Due regard shall be given to regional, historical and cultural ties, economic expediency, regional policy, and the requirements of town and country planning.

* As amended by federal statutes of 19 August 1969 (Federal Law Gazette I p. 1241) and of 23 August 1976 (Federal Law Gazette I p. 2381).

(2) Measures for a new delimitation of federal territory shall be effected by federal statutes which shall require confirmation by referendum. The Laender thus affected shall be consulted.

(3) A referendum shall be held in the Laender from whose territories or partial territories a new Land or a Land with redefined boundaries is to be formed (affected Laender). The referendum shall be held on the question whether the affected Laender are to remain within their existing boundaries or whether the new Land or Land with redefined boundaries should be formed. The referendum shall be deemed to be in favour of the formation of a new Land or of a Land with redefined boundaries where approval is given to the change by a majority in the future territory of such Land and by a majority in all the territories or partial territories of an affected Land whose assignment to a Land is to be changed in the same sense. The referendum shall be deemed not to be in favour where in the territory of one of the affected Laender a majority reject the change; such rejection shall, however, be of no consequence where in one part of the territory whose assignment to the affected Land is to be changed a majority of two-thirds approve of the change, unless in the entire territory of the affected Land 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 Laender and which has a population of at least one million, one tenth of those of its population entitled to vote in Bundestag elections petition by popular initiative for the assignment of that area to one Land, provision shall be made within two years in a federal statute determining whether the delimitation of the affected Laender shall be changed pursuant to paragraph (2) of this Article or determining that a plebiscite shall be held in the affected Laender.

(5) The plebiscite shall establish whether approval is given to a change of Laender 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 Laender delimitation, provision shall be made within two years in a federal statute determining whether the delimitation of the Laender concerned shall be changed pursuant to paragraph (2) of this Article. Where approval is given, in accordance with the third and fourth sentences of paragraph (3) of this Article, to a proposal put forward for the plebiscite, a federal statute providing for the formation of the proposed Land shall

be enacted within two years of the plebiscite and shall no longer require confirmation by referendum.

(6) A majority in a referendum or in a plebiscite shall consist of a majority of the votes cast, provided that they amount to at least one quarter of the population entitled to vote in Bundestag elections. Other detailed provisions concerning referendums, popular petitions and plebiscites (Volksentscheide, Volksbegehren, Volksbefragungen) shall be 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 Laender may be effected by state agreements between the Laender concerned or by a federal statute with the approval of the Bundesrat where the territory which is to be the subject of a new delimitation does not have more than 10,000 inhabitants. Detailed provision shall be made in a federal statute requiring the approval of the Bundesrat and the majority of the members of the Bundestag. It shall make provision for the affected communes and districts to be heard.

Article 30 (Distribution of competence between the Federation and the Laender)

Except as otherwise provided or permitted by this Basic Law, the exercise of governmental powers and the discharge of governmental functions shall be incumbent on the Laender.

Article 31 (Precedence of federal law)

Federal law shall take precedence over Land law.

Article 32 (Foreign relations)

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

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

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

Article 33 (Equal political status of all Germans, professional civil service)

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

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

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

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

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

Article 34 (Liability in the event of 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 shall rest in principle on the state or the public body which employs him. In the event of wilful intent or gross negligence, the right of recourse against the holder of a public office shall be reserved. In respect of the claim for compensation or the right of recourse, the jurisdiction of the ordinary courts shall not be excluded.

Article 35* (Legal and administrative assistance, assistance during disasters)

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

(2) In order to maintain or to restore public security or order, a Land may, in cases of particular importance, call upon forces and facilities of the Federal Border Guard to assist its police where without this assistance the police could not, or only with considerable difficulty, fulfil a task. In

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

order to deal with a natural disaster or an especially grave accident, a Land may request the assistance of the police forces of other Laender or of forces and facilities of other administrative authorities or of the Federal Border Guard or the Armed Forces*.

(3) Where the natural disaster or the accident endangers a region larger than a Land, the Federal Government may, insofar as this is necessary to effectively deal with such danger, instruct the Land governments to place their police forces at the disposal of other Laender, and may use units of the Federal Border Guard or the Armed Forces to support the police forces. Measures taken by the Federal Government pursuant to the first sentence of this paragraph shall be revoked at any time at the demand of the Bundesrat, and otherwise immediately upon removal of the danger.

Article 36 (Personnel of the federal authorities)

(1) Civil servants employed in the highest federal authorities shall be drawn from all Laender in appropriate proportion. Persons employed in other federal authorities should, as a rule, be drawn from the Land in which they serve.

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

Article 37 (Federal coercion)

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

(2) For the purpose of exercising such federal coercion, the Federal Government or its commissioner shall have the right to give instructions to all Laender and their authorities.

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

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

III. THE FEDERAL PARLIAMENT (BUNDESTAG)

Article 38 (Elections)

(1) The deputies to the German Bundestag shall be elected in general, direct, free, equal and secret elections. They shall be representatives of the whole people, not bound by orders and instructions, and shall be subject only to their conscience.

(2)* Anyone who has attained the age of eighteen years shall be entitled to vote; anyone who has attained majority shall be eligible for election.

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

Article 39 (Assembly and legislative term)

(1)** The Bundestag shall be elected for a four-year term. Its legislative term shall end with the assembly of a new Bundestag. The new election shall be held forty-five months at the earliest, and forty-seven months at the latest after the beginning of the legislative term. Where the Bundestag is dissolved, the new election shall be held within sixty days.

(2)** The Bundestag shall assemble, at the latest, on the thirtieth day after the election.

(3) The Bundestag shall determine the termination and resumption of its meetings. The President of the Bundestag may convene it at an earlier date. He shall do so where one third of its members or the Federal President or the Federal Chancellor so demand.

Article 40 (President, rules of procedure)

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

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

* As amended by federal statute of 31 July 1970 (Federal Law Gazette I p. 1161).

** As amended by federal statute of 23 August 1976 (Federal Law Gazette I p. 2381).

Article 41 (Scrutiny of elections)

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

Article 42 (Proceedings, voting)

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

Article 43 (Presence of members of the Federal Government and of the Bundesrat)

- (1) The Bundestag and its committees may demand the presence of any member of the Federal Government.
- (2) The members of the Bundesrat and of the Federal Government as well as persons commissioned by them shall have access to all meetings of the Bundestag and its committees. They shall have the right to be heard at any time.

Article 44 (Committees of investigation)

- (1) The Bundestag shall have the right, and upon the motion of one quarter of its members the duty, to set up a committee of investigation, which shall take the requisite evidence at public hearings. The public may be excluded.
- (2) The rules of criminal procedure shall apply *mutatis mutandis* to the taking of evidence. The privacy of letters, posts and telecommunications shall remain unaffected.

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

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

Article 45* (Repealed)

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

(1)*** The Bundestag shall appoint a Committee on Foreign Affairs and a Committee on Defence.

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

(3) Paragraph (1) of Article 44 shall not apply to defence matters.

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

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

Article 45c** (Petitions Committee)**

(1) The Bundestag shall appoint a Petitions Committee to deal with requests and complaints addressed to the Bundestag pursuant to Article 17.

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

* Repealed by federal statute of 23 August 1976 (Federal Law Gazette I p. 2381).

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

*** Second sentence deleted by federal statute of 23 August 1976 (Federal Law Gazette I p. 2381).

**** Inserted by federal statute of 15 July 1975 (Federal Law Gazette I p. 1901).

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 Bundestag for a vote cast or a statement made by him in the Bundestag or in any of its committees. This shall not apply to defamatory insults.

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

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

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

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

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

Article 48 (Entitlements of deputies)

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

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

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

Article 49* (Repealed)

* Amended by federal statute of 19 March 1956 (Federal Law Gazette I p. 111); repealed by federal statute of 23 August 1976 (Federal Law Gazette I p. 2381).

IV. THE FEDERAL COUNCIL (BUNDESRAT)

Article 50 (Functions)

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

Article 51 (Composition)

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

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

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

Article 52 (President, rules of procedure)

(1) The Bundesrat shall elect its President for one year.

(2) The President shall convene the Bundesrat. He shall convene the Bundesrat where delegates from at least two Laender or the Federal Government so demand.

(3) The Bundesrat shall take its decisions with at least the majority of its votes. It shall draw up its rules of procedure. Its meetings shall be public. The public may be excluded.

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

Article 53 (Presence of members of the Federal Government)

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

IVa.* THE JOINT COMMITTEE

Article 53a (Composition, rules of procedure, right to information)

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

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

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

V. THE FEDERAL PRESIDENT

Article 54 (Election)

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

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

(3) The Federal Convention shall consist of the members of the Bundestag and an equal number of members elected by the parliaments of the Laender according to the principles of proportional representation.

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

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

(6) The person receiving the votes of the majority of the members of the Federal Convention shall be elected. 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 shall be elected.

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

Article 55 (Incompatibilities)

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

(2) The Federal President may not hold any other salaried office, nor engage in 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 Federal President shall take the following oath before the assembled members of the Bundestag and the Bundesrat:

“I swear that I will dedicate my efforts to the well-being of the German people, enhance their benefits, avert harm from them, uphold and defend the Basic Law 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 Federal President is prevented from acting, or where his office falls prematurely vacant, his powers shall be exercised by the President of the Bundesrat.

Article 58 (Countersignature)

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

Article 59 (Authority to represent the Federation in its international relations)

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

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

Article 59a* (Repealed)

Article 60 (Appointment and dismissal of federal judges, federal civil servants and soldiers; right of pardon)

- (1)** The Federal President shall appoint and dismiss the federal judges, the federal civil servants, the officers and non-commissioned officers, except as may otherwise be provided for by statute.
- (2) He shall exercise the right of pardon in individual cases on behalf of the Federation.
- (3) He may delegate these powers to other authorities.
- (4) Paragraphs (2) to (4) of Article 46 shall apply *mutatis mutandis* to the Federal President.

Article 61 (Impeachment before the Federal Constitutional Court)

- (1) The Bundestag or the Bundesrat may impeach the Federal President before the Federal Constitutional Court for wilful violation of this Basic Law or any other federal statute. The motion of impeachment shall be tabled by at least one quarter of the members of the Bundestag or one quarter of the votes of the Bundesrat. A decision to impeach shall require a majority of two thirds of the members of the Bundestag or of two thirds of the votes of the Bundesrat. The impeachment shall be pleaded by a person commissioned by the impeaching body.
- (2) Where the Federal Constitutional Court finds the Federal President guilty of a wilful violation of this Basic Law or of another federal statute, it may declare him to have forfeited his office. After impeachment, it may issue an interim order preventing the Federal President from exercising his functions.

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

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

VI. THE FEDERAL GOVERNMENT

Article 62 (Composition)

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

Article 63 (Election and appointment of the Federal Chancellor)

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

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

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

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

Article 64 (Appointment of Federal Ministers)

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

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

Article 65 (Powers exercised in the Federal Government)

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

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

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

Article 66 (Incompatibilities)

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

Article 67 (Constructive vote of no confidence)

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

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

Article 68 (Vote of confidence, dissolution of the Bundestag)

(1) Where a motion of the Federal Chancellor for a vote of confidence is not carried by the majority of the members of the Bundestag, the Federal President may, upon the proposal of the Federal Chancellor, dissolve the

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

Bundestag within twenty-one days. The right of dissolution shall lapse as soon as the Bundestag elects another Federal Chancellor with the majority of its members.

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

Article 69 (Deputy Federal Chancellor, tenure of office of members of the Federal Government)

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

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

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

VII. LEGISLATIVE POWERS OF THE FEDERATION

Article 70 (Legislation of the Federation and the Laender)

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

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

Article 71 (Exclusive legislative power of the Federation, definition)

In matters within the exclusive legislative power of the Federation, the Laender shall 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, definition)

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

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

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

Article 73 (Exclusive legislative power, catalogue)

The Federation shall have 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. federal railroads and air transport;

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

7. postal and telecommunication services;
8. the legal status of persons employed by the Federation and by federal corporate bodies under public law;
9. industrial property rights, copyrights and publishing law;
- 10.* cooperation between the Federation and the Laender concerning
 - (a) criminal police,
 - (b) protection of the free democratic basic order, of the existence and the security of the Federation or of a Land (protection of the constitution) and
 - (c) protection against 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, catalogue)

Concurrent legislative powers shall 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 (Rechtsberatung);
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. the protection of German cultural assets against migration abroad;
6. refugee and expellee matters;
7. public welfare;
8. citizenship in the Laender;

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

** Inserted by federal statute of 28 July 1972 (Federal Law Gazette I p. 1305) and amended by federal statute of 23 August 1976 (Federal Law Gazette I p. 2383).

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. labour law, including the legal organization of enterprises, protection of workers, employment exchanges and agencies, as well as social insurance, including unemployment insurance;
- 13.**** the regulation of educational and training grants and the promotion of scientific research;
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 and matters concerning agricultural leases, as well as housing, settlement and homestead matters;

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

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

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

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

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. non-federal railroads, except mountain railroads;
- 24.**** waste disposal, air purification and noise abatement.

Article 74a⁺ (Concurrent legislative power of the Federation, remuneration and pensions of members of the public service)

- (1) Concurrent legislative power shall 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 item 8 of Article 73.
- (2) Federal statutes enacted pursuant to paragraph (1) of this Article shall require the consent of the Bundesrat.
- (3) Federal statutes enacted pursuant to item 8 of Article 73 shall likewise

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

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

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

**** As amended by federal statute of 12 April 1972 (Federal Law Gazette I p. 593).

⁺ Inserted by federal statute of 18 March 1971 (Federal Law Gazette I p. 206).

require the consent of the Bundesrat, 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) of this Article.

(4) Paragraphs (1) and (2) of this Article shall apply *mutatis mutandis* to the remuneration and pensions of judges in the Laender. Paragraph (3) of this Article shall apply *mutatis mutandis* to statutes enacted pursuant to paragraph (1) of Article 98.

Article 75* (Power of the Federation to pass outlining legislation, catalogue)

Subject to the conditions laid down in Article 72, the Federation shall have the right to enact outline provisions concerning:

- 1.** the legal status of persons in the public service of the Laender, 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 and the film industry;
3. hunting, nature conservation and landscape management;
4. land distribution, regional planning and the management of water resources;
5. matters relating to the registration of residence or domicile (*Melwesen*) and to identity cards.

Article 76 (Bills)

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

(2)⁺ Bills of the Federal Government shall first be submitted to the Bundesrat. The Bundesrat shall be entitled to state its position on such bills within six weeks. A bill which, on submission to the Bundesrat, is

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

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

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

⁺ As amended by federal statute of 15 November 1968 (Federal Law Gazette I p. 1177).

exceptionally specified by the Federal Government to be particularly urgent may be submitted by the latter to the Bundestag three weeks later, even though the Federal Government may not yet have received the statement of the Bundesrat's position; upon receipt, such statement shall be transmitted to the Bundestag by the Federal Government without delay.

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

Article 77 (Legislative procedure)

(1) Federal statutes shall be enacted by the Bundestag. Upon their adoption they shall, without delay, be transmitted to the Bundesrat by the President of the Bundestag.

(2)** The Bundesrat may, within three weeks of the receipt of the adopted bill, demand that a committee for joint consideration of bills, composed of members of the Bundestag and members of the Bundesrat, be convened. The composition and the procedure of this committee shall be regulated by rules of procedure to be adopted by the Bundestag and requiring the consent of the Bundesrat. The members of the Bundesrat on this committee shall not be bound by instructions. Where the consent of the Bundesrat is required for a bill to become a statute, the Bundestag and the Federal Government may also demand that the committee be convened. Should the committee propose any amendment to the adopted bill, the Bundestag shall again vote on the bill.

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

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

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

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

Article 78 (Passage of federal statutes)

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

Article 79 (Amendment of the Basic Law)

(1) This Basic Law 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 shall be sufficient, for the purpose of clarifying that the provisions of this Basic Law do not preclude the conclusion and entry into force of such treaties, to effect a supplementation of the text of this Basic Law confined to such clarification*.

(2) Any such statute shall require the consent of two thirds of the members of the Bundestag and two thirds of the votes of the Bundesrat.

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

Article 80 (Issue of ordinances)

(1) The Federal Government, a Federal Minister or the Land governments may be authorized by statute to issue ordinances (Rechtsverordnungen). The content, purpose and scope of the

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

authorization so conferred shall be laid down in the statute concerned. This legal basis shall be stated in the ordinance. Where a statute provides that such authorization may be delegated, such delegation shall require another ordinance.

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

Article 80a* (Application of legal provisions in a state of tension)

(1) Where this Basic Law 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 shall, except when a state of defence exists, be admissible only after the Bundestag has determined that a state of tension (*Spannungsfall*) exists or where it has specifically approved such application. In respect of the cases mentioned in the first sentence of paragraph (5) and the second sentence of paragraph (6) of Article 12a, such determination of a state of tension and such specific approval shall require a two-thirds majority of the votes cast.

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

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

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

Article 81 (State of legislative emergency)

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

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

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

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

Article 82 (Promulgation and effective date of legal provisions)

(1) Statutes enacted in accordance with the provisions of this Basic Law shall, after countersignature, be signed by the Federal President and promulgated in the Federal Law Gazette. Ordinances shall be signed by the agency which issues them and, unless otherwise provided by statute, shall be 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 shall take effect on the fourteenth day after the end of the day on which the Federal Law Gazette containing it was published.

VIII. THE EXECUTION OF FEDERAL STATUTES AND THE FEDERAL ADMINISTRATION

Article 83 (Distribution of competence between the Federation and the Laender)

The Laender shall execute federal statutes as matters of their own concern insofar as this Basic Law does not otherwise provide or permit.

Article 84 (Land execution and Federal Government supervision)

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

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

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

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

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

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

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

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

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

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

Article 86 (Direct federal administration)

Where the Federation executes statutes by means of direct federal administration or by federal corporate bodies or institutions under public law, the Federal Government shall, insofar as the statute concerned contains no special provision, issue pertinent general administrative rules. The Federal Government shall provide 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, the federal railroads, the federal postal service and, in accordance with the provisions of Article 89, the administration of federal waterways and of shipping shall be conducted as matters of direct federal administration with their own administrative substructures.

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

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 Land shall be administered as federal corporate bodies under public law.

(3) In addition, autonomous 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 Bundesrat and of the majority of the members of the Bundestag.

Article 87a (Establishment and powers of the Armed Forces)**

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

(2) Apart from defence, the Armed Forces may only be used to the extent explicitly permitted by this Basic Law.

(3) While a state of defence or a state of tension exists, the Armed Forces shall have the power to protect civilian property and discharge functions of traffic control 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 shall cooperate with the competent authorities.

(4) In order to avert any imminent danger to the existence or to the free

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

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

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

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

(1) The Federal Armed Forces Administration shall be conducted as a direct federal administration with its own administrative substructure. Its function shall be to administer personnel matters and directly to meet the material requirements of the Armed Forces. Tasks connected with benefits to injured persons or with construction work shall not be assigned to the Federal Armed Forces Administration except by federal legislation requiring the consent of the Bundesrat. Such consent shall also be required for any statutes to the extent that they empower the Federal Armed Forces Administration to interfere with rights of third parties; this shall, however, not apply 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 Bundesrat, provide that they shall be executed, wholly or in part, either by means of direct federal administration having its own administrative substructure or by the Laender acting as agents of the Federation. Where such statutes are executed by the Laender acting as agents of the Federation, they may, with the consent of the Bundesrat, provide that the powers vested in the Federal Government or appropriate highest federal authorities by virtue of Article 85 shall be transferred wholly or in part to higher federal authorities; in such an event it may be enacted that these authorities shall not require the consent of the Bundesrat in issuing general administrative rules as referred to in the first sentence of paragraph (2) of Article 85.

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

Article 87c* (Delegated administration in the field of nuclear energy)

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

Article 87d (Aviation administration)**

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

(2) Through federal legislation requiring the consent of the Bundesrat, functions of aviation administration may be delegated to the Laender acting as agents of the Federation.

Article 88 (Federal Bank)

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

Article 89 (Federal waterways)

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

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

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

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

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

Article 90 (Federal highways)

(1) The Federation shall be the owner of the former Reich motorways (Reichsautobahnen) and Reich highways.

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

(3) At the request of a Land, the Federation may place federal motorways and other federal highways used for long-distance traffic under direct federal administration insofar as they lie within the territory of that Land.

Article 91* (Internal emergency)

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

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

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

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

VIIIa. JOINT TASKS*

Article 91a* (Participation of the Federation by virtue of federal legislation)

(1) The Federation shall participate, in the following sectors, in the discharge of responsibilities of the Laender, provided that such responsibilities are important to society as a whole and that federal participation is necessary for the improvement of living conditions (joint tasks):

- 1.** 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 shall be defined in detail by a federal statute requiring the consent of the Bundesrat. Such legislation should include general principles governing the discharge of joint tasks.

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

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

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

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

** As amended by federal statute of 31 July 1970 (Federal Law Gazette I p. 1161).

Article 91b* (Cooperation of the Federation and the Laender by virtue of agreements made)

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

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

IX. THE ADMINISTRATION OF JUSTICE

Article 92* (Court organization)

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

Article 93 (Federal Constitutional Court, jurisdiction)

(1) The Federal Constitutional Court shall decide:

1. on the interpretation of this Basic Law in the event of disputes concerning the extent of the rights and duties of a highest federal body or of other parties concerned who have been vested with rights of their own by this Basic Law or by rules of procedure of a highest federal body;
2. in case of differences of opinion or doubts on the formal and material compatibility of federal law or Land law with this Basic Law, or on the compatibility of Land law with other federal law, at the request of the Federal Government, of a Land government or of one third of the Bundestag members;
3. in case of differences of opinion on the rights and duties of the Federation and the Laender, particularly in the execution of federal law by the Laender and in the exercise of federal supervision;
4. on other disputes involving public law, between the Federation and the Laender, between different Laender or within a Land, unless recourse to another court exists;
- 4a.** on complaints of unconstitutionality, which may be entered by any person who claims that one of his basic rights or one of his rights under paragraph (4) of Article 20 or under Article 33, 38, 101, 103 or 104 has been violated by public authority;
- 4b.** on complaints of unconstitutionality entered by communes or associations of communes on the ground that their right to

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

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

self-government under Article 28 has been violated by a statute other than a Land statute open to complaint to the respective Land constitutional court;

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

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

Article 94 (Federal Constitutional Court, composition)

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

(2) The constitution and procedure of the Federal Constitutional Court shall be regulated by a federal statute which shall specify in what cases its decisions shall 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, labour and social jurisdiction, the Federation shall establish as highest courts of justice the Federal Court of Justice, the Federal Administrative Court, the Federal Finance Court, the Federal Labour Court and the Federal Social Court.

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

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

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

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

Article 96* (Other federal courts, exercise of federal jurisdiction by courts of the Laender)

(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 shall be regulated by federal statute. These courts shall be within the competence of the Federal Minister of Justice. Their full-time judges shall be persons qualified to hold judicial office.

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

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

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

Article 96a*

Article 97 (Independence of the judges)

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

(2) Judges appointed permanently on a full-time basis in established positions cannot, against their will, be dismissed or permanently or temporarily suspended from office or given a different posting or retired

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

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

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

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 Laender)

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

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

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

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

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

Article 99 (Decision by the Federal Constitutional Court and the highest courts of the Federation in disputes concerning Land law)**

The decision on constitutional disputes within a Land may be assigned by Land legislation to the Federal Constitutional Court, and the decision at last instance in matters involving the application of Land law to the highest courts of justice referred to in paragraph (1) of Article 95.

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

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

Article 100 (Compatibility of statutory law with the Basic Law)

(1) Where a court considers that a statute on whose validity the court's decision depends is unconstitutional, the proceedings shall be stayed, and a decision shall be obtained from the Land court with jurisdiction over constitutional disputes where the constitution of a Land is held to be violated, or from the Federal Constitutional Court where this Basic Law is held to be violated. This shall also apply where this Basic Law is held to be violated by Land law or where a Land 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 shall obtain a decision from the Federal Constitutional Court.

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

Article 101 (Ban on extraordinary courts)

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

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

Article 102 (Abolition of capital punishment)

Capital punishment shall be abolished.

Article 103 (Hearing in accordance with the law, ban on retroactive criminal legislation and on repeated punishment)

(1) In the courts everyone shall be 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.

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

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 shall 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 shall be regulated by legislation.

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

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

X. FINANCE

Article 104a* (Apportionment of expenditure between the Federation and the Laender)

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

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

(3) Federal statutes to be executed by the Laender 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 shall meet one half of the expenditure or more, it shall be implemented by the Laender as agents of the Federation. Where any such statute provides that the Laender shall meet one quarter of the expenditure or more, it shall require the consent of the Bundesrat.

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

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

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

Article 105 (Legislative powers)

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

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

(2a)** The Laender shall have power to legislate on local excise taxes as long and 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 Laender or communes or associations of communes shall require the consent of the Bundesrat.

Article 106* (Apportionment of tax revenue)**

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

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

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

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

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

5. non-recurrent levies on property, and contributions imposed for the purpose of implementing the equalization of burdens (Lastenausgleich) legislation*;
6. income and corporation surtaxes;
7. charges imposed within the framework of the European Communities.

(2) Revenue from the following taxes shall accrue to the Laender:

1. 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) of this Article or jointly to the Federation and the Laender pursuant to paragraph (3) of this Article;
5. beer tax;
6. gaming casinos levy.

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

1. The Federation and the Laender shall have an equal claim to coverage from current revenues of their respective necessary expenditures. The extent of such expenditures shall be determined having due regard to financial planning for several years ahead.
2. The coverage requirements of the Federation and of the Laender shall be coordinated in such a way that a fair balance is struck, any

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

overburdening of taxpayers precluded, and uniformity of living standards in the federal territory ensured.

(4) The respective shares of the Federation and the Laender in the revenue from the turnover tax shall be apportioned anew whenever the relation of revenues to expenditures in the Federation develops substantially differently from that of the Laender. Where federal legislation imposes additional expenditures on or withdraws revenue from the Laender, the additional burden may be compensated for by allocation of federal grants under a federal statute requiring the consent of the Bundesrat, provided such additional burden is limited to a short period of time. Such statute shall lay down the principles for calculating such grants and distributing them among the Laender.

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

(6) Revenue from taxes on real estate and on local industry and trade shall accrue to the communes; revenue from local excise taxes shall accrue to the communes or, as may be provided for by Land legislation, to associations of communes. Communes shall be authorized to assess, 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 Land, revenue from taxes on real estate and on local industry and trade as well as from local excise taxes shall accrue to the Land. The Federation and the Laender may participate, by virtue of an apportionment, in the revenue from the tax on local industry and trade. Details regarding such apportionment shall be regulated by a federal statute requiring the consent of the Bundesrat. In accordance with Land 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 Land legislation, of the Land share of total revenue from joint taxes shall accrue to the communes or associations of communes. In all other respects Land legislation shall determine whether and to what extent revenue from Land taxes shall accrue to communes or associations of communes.

(8) Where in individual Laender 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 Laender or communes or associations of communes, the Federation shall grant the necessary compensation where and insofar as such Laender or communes or associations of communes cannot reasonably be expected to bear such special burden. In granting such compensation, due account shall be taken of third-party indemnities and financial benefits accruing to the Laender or communes or associations of communes concerned as a result of provision for such facilities.

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

Article 107* (Financial equalization)

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

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

(2) Such statute shall ensure a reasonable equalization between financially strong and financially weak Laender, due account being taken of the financial capacity and financial requirements of communes or associations of communes. Such statute shall specify the conditions governing equalization claims of Laender entitled to equalization payments and equalization liabilities of Laender owing equalization payments as well as the criteria for determining the amounts of equalization payments. Such statute may also provide for grants to be made by the Federation from federal funds to financially weak Laender in order to complement the coverage of their general financial requirements (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 shall be administered by federal revenue authorities. The organization of these authorities shall be regulated by federal statute. The heads of authorities at the intermediate level shall be appointed in consultation with the respective Land governments.

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

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

(4) In respect of the administration of taxes, a federal statute requiring the consent of the Bundesrat may provide for collaboration between

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

federal and Land revenue authorities, or in the case of taxes under paragraph (1) of this Article for their administration by Land revenue authorities, or in the case of other taxes for their administration by federal revenue authorities, 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 Laender from the appropriate Land revenue authorities to communes or associations of communes.

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

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

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

Article 109* (Budget management in the Federation and the Laender)

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

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

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

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

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

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

1. maximum amounts, terms and timing of loans to be raised by territorial entities (Gebietskoerperschaften) or special purpose associations (Zweckverbaende), and
2. an obligation on the part of the Federation and the Laender to maintain interest-free deposits at the Deutsche Bundesbank (reserves for counterbalancing economic trends).

Authorizations to issue the relevant ordinances may be conferred on the Federal Government only. Such ordinances shall require the consent of the Bundesrat. They shall be repealed insofar as the Bundestag may so demand; details shall be regulated by federal legislation.

Article 110* (Budget and budget law of the Federation)

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

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

(4) The budget 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

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

these provisions shall 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 Federal 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) of this Article, the Federal Government may borrow the funds necessary for the conduct of current operations up to a maximum of one quarter of the total amount of the previous budget.

Article 112* (Expenditures in excess of budgetary estimates)

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

Article 113* (Consent of the Federal Government to increases in expenditures or decreases in revenue)

(1) Statutes increasing the budget expenditures proposed by the Federal Government or involving or likely in future to cause new expenditures shall require the consent of the Federal Government. This shall also apply

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

to statutes involving or likely in future to cause decreases in revenue. The Federal Government may demand that the Bundestag postpone its vote on such bills. In this case the Federal Government shall state its position to the Bundestag within six weeks.

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

(3) Where the bill has become a statute pursuant to Article 78, the Federal Government may withhold its consent only within six weeks and only after having initiated the procedure provided for in the third and fourth sentences of paragraph (1) or in paragraph (2) of the present Article. Upon the expiry of this period such consent shall be deemed to have been given.

Article 114* (Rendering and auditing of accounts)

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

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

Article 115* (Procurement of credit)

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

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

be permissible only to avert a disturbance of the overall economic equilibrium. Details shall be regulated by federal legislation.

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

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

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

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

(4) 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 the first sentence of paragraph (1) of this Article, such determination shall be deemed to have been made and promulgated at the time the attack began. The Federal President shall announce such time as soon as circumstances permit.

(5) 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 Federal President may, with the consent of the Bundestag, issue declarations under international law regarding the

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

existence of such state of defence. Where the conditions mentioned in paragraph (2) of this Article apply, the Joint Committee shall act in substitution for the Bundestag.

Article 115b (Transfer of command to the Federal Chancellor during a state of defence)

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

Article 115c (Extension of legislative powers of the Federation during a state of defence)

(1) The Federation shall have the right to legislate concurrently in respect of a state of defence even on matters within the legislative powers of the Laender. Such statutes shall require the consent of the Bundesrat.

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

1. preliminary compensation to be made in the event of property being taken, notwithstanding the second sentence of paragraph (3) of Article 14;
2. a time-limit other than that referred to in the third sentence of paragraph (2) and the first sentence of paragraph (3) of Article 104 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 Bundesrat, regulate the administration and the financial system of the Federation and the Laender notwithstanding Sections VIII, VIIIa and X, provided that the viability of the Laender, 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) of this Article may, for the purpose of preparing for

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

their enforcement, be applied even prior to the occurrence of a state of defence.

Article 115d (Legislative process in the case of urgent bills during a state of defence)

(1) While a state of defence exists, the provisions of paragraphs (2) and (3) of this Article shall apply in respect of federal legislation, notwithstanding the provisions of paragraph (2) of Article 76, the second sentence of paragraph (1) and paragraphs (2) to (4) of Article 77, Article 78, and paragraph (1) of Article 82.

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

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

Article 115e (Powers of the Joint Committee)

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

(2) The Joint Committee may not enact any statute to amend this Basic Law or to deprive it of effect or application either in whole or in part. The Joint Committee shall not be authorized to enact statutes pursuant to paragraph (1) of Article 24 or to Article 29.

Article 115f (Powers of the Federal Government)

(1) While a state of defence exists, the Federal 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 Land governments and, where it deems the matter urgent, to Land authorities, and may delegate this power to members of Land governments to be designated by it.
- (2) The Bundestag, the Bundesrat and the Joint Committee shall be informed without delay of the measures taken in accordance with paragraph (1) of this Article.

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

The constitutional status and the performance of the constitutional functions of the Federal Constitutional Court and its judges shall 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 sentences of this Article shall require a two-thirds majority of the judges present.

Article 115h (Functioning capability of constitutional organs during a state of defence)

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

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

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

Article 115i (Powers of the Land 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 Land governments or the authorities or commissioners designated by them shall be authorized to take, within their respective spheres of competence, the measures provided for in paragraph (1) of Article 115f.

(2) Any measures taken in accordance with paragraph (1) of the present Article may be revoked at any time by the Federal Government, or, in relation to Land authorities and subordinate federal authorities, by Land 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 shall 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, shall 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 shall apply no longer than the end of the second fiscal

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

year following upon the termination of a state of defence. After such termination they may, with the consent of the Bundesrat, 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, termination of a state of defence, conclusion of peace)

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

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

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

XI. TRANSITIONAL AND CONCLUDING PROVISIONS

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

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

(2) Former German citizens who, between 30 January 1933 and 8 May 1945, were deprived of their citizenship on political, racial or religious grounds, and their descendants, shall be regranting German citizenship on application. They shall be considered as not having been deprived of their German citizenship where they have established their domicile (Wohnsitz) in Germany after 8 May 1945 and have not expressed a contrary intention.

Article 117 (Temporary ruling for Article 3 paragraph (2) and Article 11)

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

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

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

A new delimitation of the territory comprising the Laender of Baden, Wuerttemberg-Baden and Wuerttemberg-Hohenzollern may be effected, notwithstanding the provisions of Article 29, by agreement between the Laender concerned. Where no agreement is reached, the reorganization shall be effected by federal legislation which shall provide for a plebiscite*.

* See footnote ** to Article 23.

Article 119 (Ordinances having statutory effect in matters relating to refugees and expellees)

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

Article 120* (Occupation costs and burdens resulting from the war)

(1)** The Federation shall meet 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 October 1969, the Federation and the Laender shall 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 Laender, communes, associations of communes or other entities performing functions of the Laender or the communes, the Federation shall not be obliged to meet expenditure of that nature even where it arises after that date. The Federation shall pay the subsidies towards the burdens of social insurance institutions, including unemployment insurance and public assistance to the unemployed. The distribution between the Federation and the Laender of costs and other burdens caused 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.

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

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

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

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

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

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

Article 121 (Definition of "majority of the members")

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

Article 122 (Transfer of legislative powers hitherto existing)

(1) From the date of the assembly of the Bundestag, statutes shall be enacted exclusively by the legislative bodies recognized in this Basic Law.

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

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

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

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

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

Article 124 (Applicability as federal law within the sphere of exclusive legislative power)

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

Article 125 (Applicability as federal law within the sphere of concurrent legislative power)

Law affecting matters subject to the concurrent legislative power of the Federation shall become 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 126 (Differences of opinion regarding the applicability of law as federal law)

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

Article 127 (Legislation of the Bizonal Economic Administration)

Within one year of the promulgation of this Basic Law the Federal Government may, with the consent of the governments of the Laender

concerned, extend to the Laender of Baden, Greater Berlin, Rhineland-Palatinate and Wuerttemberg-Hohenzollem any legislation of the Bizonal 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 paragraph (5) of Article 84, these powers shall 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 shall pass to the agencies henceforth competent in the matter. In cases of doubt, the Federal Government shall decide in agreement with the Bundesrat; such decisions shall be published.

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

(3) Insofar as legal provisions within the meaning of paragraphs (1) and (2) of this Article authorize their amendment or supplementation or the issue of legal instead of statutory provisions, such authorizations shall be deemed to have expired.

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

Article 130 (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 Land law or treaties between Laender, 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, shall be placed under the control of the Federal Government.

The Federal Government shall provide, with the consent of the Bundesrat, for their transfer, dissolution or liquidation.

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

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

Article 131 (Legal position of persons formerly employed in the public service)

Federal legislation shall be 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 shall apply *mutatis mutandis* to persons, including refugees and expellees, who, on 8 May 1945, were entitled to a pension and who no longer receive any such pension or any commensurate pension for reasons other than those arising from civil service regulations or collective agreement rules. Until the pertinent federal statute comes into force, no legal claims can be made, unless otherwise provided by Land legislation.

Article 132 (Temporary revocation of rights of persons employed in the public service)

(1) Civil servants and judges who, when this Basic Law comes into force, are appointed for life, may, within six months after the first assembly of the Bundestag, 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 shall apply *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 shall not apply to members of the public service who are not affected by the provisions regarding the "Liberation from National Socialism and Militarism" or who are recognized victims of National Socialism, except on important grounds relating to themselves as individuals.

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

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

Article 133 (Bizonal Economic Administration, succession to rights and obligations)

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

Article 134 (Reich property to become federal property)

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

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

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

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

Article 135 (Succession to property of previously existing Laender and corporate bodies)

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

(2) Property of Laender or corporate bodies or institutions under public law which no longer exist shall pass, 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 Land or the corporate body or institution under public law which now discharges these tasks.

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

(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) of this Article 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 Laender or corporate bodies or institutions under public law concerned, shall be regulated by federal legislation requiring the consent of the Bundesrat.

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

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

Article 135a* (Old liabilities)

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

1. liabilities of the Reich or liabilities of the former Land of Prussia or liabilities of such corporate bodies and institutions under public law as no longer exist;
2. such liabilities of the Federation or corporate bodies and institutions under public law as are connected with the transfer of properties pursuant to Article 89, 90, 134 or 135, and such liabilities of these entities as arise from measures taken by the entities mentioned under item 1;
3. such liabilities of Laender or communes or associations of communes as have arisen from measures taken by these entities before 1 August 1945 within the framework of administrative functions incumbent upon or delegated by the Reich to comply with regulations of occupying powers or to put an end to a state of emergency due to the war.

Article 136 (First assembly of the Bundesrat)

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

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

- (1)** The right of civil servants, of other salaried public employees, of professional soldiers, of temporary volunteer soldiers or of judges to stand for election in the Federation, in the Laender or in the communes may be restricted by legislation.

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

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

(2) The electoral statute to be adopted by the Parliamentary Council shall apply to the election of the first Bundestag, of the first Federal Convention and of the first Federal President of the Federal Republic.

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

Article 138 (Southern German notaries)

Changes in notarial institutions as presently existing in the Laender of Baden*, Bavaria, Wuerttemberg-Baden* and Wuerttemberg-Hohenzollem* shall require the consent of the governments of these Laender.

Article 139 (Continued validity of denazification provisions)

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

Article 140 (Law of religious bodies)

The provisions of Articles 136, 137, 138, 139 and 141 of the German Constitution of 11 August 1919 shall be an integral part of this Basic Law**.

Article 141 ("Bremen Clause")

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

Article 142 (Basic rights in Land constitutions)

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

* See footnote ** to Article 23.

** See Appendix.

Article 142a* (Repealed)

Article 143 (Repealed)**

Article 144 (Ratification of the Basic Law)

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

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

Article 145 (Promulgation of the Basic Law)

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

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

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

Article 146 (Duration of validity of the Basic Law)

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

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

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

*** Cf. Introduction, pp. 4 - 5.

APPENDIX TO THE BASIC LAW*

Article 136 (Weimar Constitution of 11 August 1919)

- (1) Civil and political rights and duties shall be neither dependent on nor restricted by the exercise of the freedom of religion.
- (2) Enjoyment of civil and political rights and eligibility for public office shall be independent of religious denomination.
- (3) No one shall be bound to disclose his religious convictions. The authorities shall not have the right to inquire into a person's membership of a religious body except to the extent that rights or duties depend thereon or that a statistical survey ordered by law makes it necessary.
- (4) No one may be compelled to perform any religious act or ceremony or to participate in religious exercises or to use a religious form of oath.

Article 137 (Weimar Constitution)

- (1) There shall be no state church.
- (2) Freedom of association to form religious bodies shall be guaranteed. The union of religious bodies within the territory of the Reich shall not be subject to any restrictions.
- (3) Every religious body shall regulate and administer its affairs autonomously within the limits of the law valid for all. It shall confer its offices without the participation of the state or the civil community.
- (4) Religious bodies shall acquire legal capacity according to the general provisions of civil law.
- (5) Religious bodies shall remain corporate bodies under public law insofar as they have been such heretofore. The other religious bodies shall be granted like rights upon application, where their constitution and the number of their members offer an assurance of their permanency. Where several such religious bodies under public law unite in one organization, such organization shall also be a corporate body under public law.

* See Article 140 above.

(6) Religious bodies that are corporate bodies under public law shall be entitled to levy taxes in accordance with Land law on the basis of the civil taxation lists.

(7) Associations whose purpose is the common cultivation of a philosophical persuasion shall have the same status as religious bodies.

(8) Such further regulation as may be required for the implementation of these provisions shall be a matter for Land legislation.

Article 138 (Weimar Constitution)

(1) State contributions to religious bodies, based on law or contract or special legal title, shall be redeemed by means of Land legislation. The principles for such redemption shall be established by the Reich.

(2) The right to own property and other rights of religious bodies or associations in respect of their institutions, foundations and other assets destined for purposes of worship, education or charity shall be guaranteed.

Article 139 (Weimar Constitution)

Sunday and the public holidays recognized by the state shall remain legally protected as days of rest from work and of spiritual edification.

Article 141 (Weimar Constitution)

To the extent that there exists a need for religious services and spiritual care in the army, in hospitals, prisons or other public institutions, the religious bodies shall be permitted to perform religious acts; in this connexion there shall be no compulsion of any kind.



Federal Republic of Germany
Press and Information Office of the Federal Government