

BASIC RIGHTS IN THE RECENT STATE CONSTITUTIONS
IN EAST GERMANY

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During the so-called "Autumn Revolution" in the former GDR preceding the collapse of the communist system and unification of the two Germanys, the demand for newly formed states (Länder) within the former GDR was strongly expressed. In 1990, even the first freely-elected East German Parliament complied with this demand and the formation of the Länder was laid down by law. However, before the execution of this law, German unification took place, which made all GDR laws no longer valid. Yet the essential stipulations of the "Länder Formation Law" were included in the unification treaty. This led to the formation of the five new Bundesländer in their present shape on Germany's unification day, 3 October 1990.

However, those "newly formed" and legally existing new Bundesländer were at first unable to act because they lacked constitutions and therefore also lacked constitutional governmental power. Constituent assemblies in each of the new Länder had to work out constitutions that were to be compatible with Germany's federal constitution, the Grundgesetz (Basic Law), and had to take the East German characteristics into consideration, too. Those assemblies finished their work quite recently and the new constitutions have come into force in each of the five Länder.¹

All five constitutions contain a catalogue of basic rights that shows some differences when compared with the German Grundgesetz, as well as in comparison with each other. Most striking is the inclusion of some economic and social rights as well as several state aims that are not to be found in the Grundgesetz. Facing this, a number of questions concerning the meaning and the legal significance of these differences arise.

The basic human and civil rights granted by the German Grundgesetz are, under Art. 23 Grundgesetz (GG), also in force in the new Bundesländer since German unification day. It is not necessary for each individual Bundesland to have its own basic rights catalogue, if the Land is completely in agreement with the

¹ Sachsen: 27 May 1992, Sachsen-Anhalt: 16 July 1992, Brandenburg: 20 August 1992, Mecklenburg-Vorpommern: 23 May 1993, Thüringen: 29 October 1993.

wording of the federal Grundgesetz.² So what character does the basic rights catalogue of the Grundgesetz have?

When constituting the Federal Republic of Germany, the main emphasis was laid on the installation of a stable and durable democracy after the experiences made with the Nazi regime. The state under the rule of law was to be ensured by a liberal catalogue of individually actionable personal liberty rights, i.e. the civil and human rights. State aims or social rights are hardly to be found.³ An exception is the so-called "welfare state principle" under Art. 20 (1) GG, which is generally to be taken into consideration by the state when acting.⁴ Although the claim for social aid is, as an exception, according to the Federal Constitutional Court, directly derived from the welfare state principle,⁵ in general there is no possibility to enforce the claim for a social right directly by quoting this principle. It is first necessary to put the right in concrete terms by law. A direct constitutional guarantee by the Grundgesetz for each individual social right does not exist in the Federal Republic. Nevertheless the standard of social benefits is comparatively high, although it is realized by non-constitutional law.

The constitutional work in the new Bundeslander started under different preconditions than the work on the Grundgesetz. The main emphasis was no longer placed on the installation of a stable and durable democracy. After the decline of the "injustice state" GDR there was an easily comprehensible need for more transparency towards the state administration and for basic rights for each single human being, even if they went beyond the standard of the Grundgesetz. On the other hand one tried to preserve social "achievements" from GDR times.⁶ It is thus small wonder that the basic rights catalogues of the new East German constitutions do not restrict themselves to simply copying the basic rights catalogue of the Grundgesetz.

The differences between the constitutions of the individual new Bundeslander and their differing degrees of adopting the federal regulations or not make it difficult to discuss the peculiarities of those catalogues in detail. Therefore it

² CHRISTIAN STARCK: *Verfassungsgebung in den neuen Landern*, in: ZG 1992, p. 1 ff., p. 22.

³ WOLFGANG GRAF VITZTHUM: *Auf der Suche nach einer Sozi-ökonomischen Identität*. in: VB1BW 1991, p. 404 ff., p. 405.

⁴ JOHANNES RUX: *Die Verfassungsdiskussion in den neuen Bundesländern - Vorbild für die Reform des Grundgesetzes?*, in: ZParl 1992, p. 291 ff., p. 300.

⁵ WOLFGANG GRAF VITZTHUM, op. cit., p. 410.

⁶ JOHANNES RUX, op. cit., p.297.

seems more reasonable to give a more general survey of the character of the main differences with the Grundgesetz.

The protection of fundamental rights has been expanded and those rights occupy more space in the new constitutions than in the Grundgesetz. This includes new basic rights, the expansion of the area of application of traditional rights and the expansion of the protected groups of people.⁷ Additionally the new constitutions contain social rights and so-called state aims, which are standards for the governments to strive for.

Several guarantees that are formulated as civil rights in the Grundgesetz, have been partly transformed into universal human rights in the new Lander constitutions such as the freedom of assembly, the freedom of association or the freedom to choose and carry out one's career.⁸ Thus those rights can also be applied to foreigners, which live in the Bundesland in question.

All new constitutions contain the right to have one's personal data protected.⁹ Above all Brandenburg grants additional rights in that direction as a general right to look at documents of authorities,¹⁰ the right to organize citizen's initiatives and, in connection with that, also the right of those action groups to get information from state and local officials.¹¹ That means each individual has a general personal right to information. A specific right to all officially available information concerning the situation of the natural environment in his lebensraum is granted to each person in question.

The freedom of the press has been expanded in comparison with the Grundgesetz.¹² The right to bodily integrity includes also the right to an uninjured soul in Sachsen-Anhalt¹³ and the right to die with dignity in Thuringen and Brandenburg.¹⁴ The fundamental right to protection of marriage is also applicable to

⁷ UTE SACKSOPSKY: *Landesverfassungen und Grundgesetz - am Beispiel der Verfassungen der neuen Bundesländer*. in: NVwZ 1993, p. 235 *ft.*, p. 237.

⁸ Art. 8, 9, 12 GG; e.g.: Art. 23, 28 constitution of Sachsen; Art. 17, 20, 23, 49 constitution of Brandenburg

⁹ e.g.: Art 4 (3) constitution of Sachsen-Anhalt; Art. 33 constitution of Sachsen.

¹⁰ Art. 21 (4) constitution of Brandenburg.

¹¹ Art. 21 constitution of Brandenburg.

¹² e.g.: Art. 19 constitution of Brandenburg; Art. 20 constitution of Sachsen.

¹³ Art. 5 (2) constitution of Sachsen-Anhalt.

¹⁴ Art. 8(1) constitution of Brandenburg; Art. 1(1) constitution of Thuringen.

other long-term relationships.¹⁵ Furthermore some of the classical basic rights have been limited: Children have been generally excluded from the freedom to choose and carry out one's career by a general prohibition on child labour.¹⁶ The freedom of research has been limited by the demand to respect human dignity and the natural basis of life.¹⁷ This is intended to place restrictions on the development of gene technology and nuclear physics.¹⁸

Social and economic rights such as the right to social security, the right to a place in the kindergarten, the right to support for handicapped people as well as the promotion of highly skilled ones, the right to adequate housing and the right to work¹⁹ are concretely mentioned,²⁰ in stark contrast to the Grundgesetz.

Quite a number of non-recoverable state aims, which are supposed to be a binding obligation for governmental policy, have been included in the new constitutions, such as the right to live in conditions fit for human beings, the right to education, the children's right to mental, intellectual and physical development or the right to enjoy nature unless it endangers the environment. The latter also contains the right to enter farm fields as part of the natural landscape,²¹ a regulation which might not please the farmers.

A strong position has been given to minority rights²² and the protection of the environment.²³ The most concrete achievement in the field of equality between women and men seems to be the field of legal and administrative formulations.²⁴ So a chairperson will be called either a chairwoman or a chairman. Traditionally one used only the expression "chairman".

Sometimes the distinction between classical civil rights, social rights and mere state aims appears to be difficult in some constitutions. This is even more true

¹⁵ JOHANNES RUX, *op. cit.*, p. 297.

¹⁶ Art. 27 (8) constitution of Brandenburg.

¹⁷ Art. 31 (2) constitution of Brandenburg.

¹⁸ JOHANNES RUX, *op. cit.*, p. 298.

¹⁹ WOLFGANG GRAP VITZTHUM, *op. cit.*, p. 410.

²⁰ e.g.: Art. 45,47,48 constitution of Brandenburg.

²¹ Art. 10 (2) constitution of Sachsen.

²² Art. 18 constitution of Mecklenburg-Vorpommern.

²³ Art. 10 (1) constitution of Sachsen.

²⁴ Art. 100 constitution of Sachsen-Anhalt.

since some state aims are formulated as "rights to something". These rights seem to be systematically mixed with each other and cause some doubts as to how legally relevant they are in comparison to each other.²⁵ This also is a difference in comparison with the Grundgesetz.

Before examining the legal relevance and significance as well as the constitutional legality of these features, the question arises of whether the new Bundesländer are economically and administratively able and strong enough to realize those rights and obligations.

In so far as it concerns the concrete social rights such as the right to a place in kindergarten, the right to adequate housing or the right to work, one has to see the difference between the planned economy of the GDR and the market economy of the Federal Republic of Germany. Today's Germany does not have the jobs at its own disposal;²⁶ it is above all the enterprises which control them. In general one is faced with the same situation concerning the housing market and the kindergartens as well. Therefore is it impossible for the state to implement those rights effectively unless it changes the system. Even if the state had the direct access to housing or the employment market, it would always be a matter of financial ability²⁷ whether such a right could be granted to everybody. The question of available financial means cannot be foreseen by the constitution-makers. The new Bundesländer are inherently unable to guarantee those concrete social rights. Even if the system allowed state's total responsibility for the economic situation, in the present recession the Federal Republic also economically would be unable to do so.²⁸

The more general social rights such as the right to social security might expect too much of the newly-formed states. The same estimation could be true concerning the state aims as the right to enjoy nature, the right to education or the right to live in conditions fit for human beings. However this problem will most probably not be legally relevant in practice, since these rights are put in a general way. If they do not define the range of the state's obligations, they cannot grant individual rights. This would water down the democratic constitutional system of

²⁵ CHRISTIAN STARCK: *Verfassungsggebung in Thüringen*, in: *ThürVBl* 1992, p. 10 ff., p. 14.

²⁶ CHRISTIAN STARCK, *op. cit.*, in: *ZG* 1992, p. 24.

²⁷ CHRISTIAN STARCK, *op. cit.*, in: *ZG* 1992, p. 24.

²⁸ JOHANNES RUX, *op. cit.*, p. 299.

the German state of law. which consists in a comparatively small number of basic and precisely defined rights and rules.²⁹

The generally formulated social rights indisputably need a further legal basis³⁰ that makes them more concrete in order to enforce them in court.³¹ Contrary but equally justified interests such as the farmers' wish not let everybody walk through their fields, will also need to be taken into consideration. The mention in the constitutions alone does not bind the Lander directly to extensive social obligations.

The extensive information rights that have been given to the people of the new Bundeslander will probably lead to a complete transparency of the states' administration. In view of the law and predominant public or private interests everybody may have a look at files or documents of administrations, officials or the states themselves. This is intended to be a control of the executive power by everybody, which might cause lasting damage to the effective functioning of administrations. Although a plus in granting information rights quite often means a minus in administrative effectiveness, the new Lander are, up to a certain extent, certainly able to implement these rights. Because of the lack of statistical evidence so far, it cannot be judged conclusively whether or not the granted information rights will cause a collapse of the new administrations. This would be quite a presumptuous evaluation.

In summation, the new, Bundeslander are in reality most probably able to realize the granted civil and human rights, even if it will keep the administration under a lot of pressure. The general social rights and state aims do *per definitionem* not establish any direct claims, but the more specific social rights would overtax the new Lander economically and it would also be nearly impossible to realize them in the present system of market economy. Therefore it is necessary to examine those more concrete social rights in the constitutions for their character as binding or non-binding rights. In general, the relevance of law is to be seen under the principle *impossibilium nulla est obligatio*,³² which would make regulations that are impossible to realize no longer binding.

²⁹ WOLFGANG GRAF VITZTHUM, op. cit., p. 406.

³⁰ Bundesminister des Inneren und der Justiz: Staatszielbestimmungen, Gesetzgebungsaufträge, Bericht der Sachverständigenkommission, 12/1983, p. 1 ff.

³¹ see Art. 53 of the Spanish constitution, which states explicitly that not constitutional social rights but only non-constitutional law can establish direct claims against the state.

³² WOLFGANG GRAF VITZTHUM, op. cit., p. 406.

The relevance and significance of those rights is not always clear by simply looking at the wording of the articles in question. The word "right" alone does not make for a clear distinction, because it is used for each of the categories.³³ But it is also often structurally difficult in the new constitutions to separate binding rights from mere state aims, which seem more to express a political will than responsible legislation. In Sachsen-Anhalt, Thuringen and Brandenburg, all categories of "rights" (including personal liberty rights, social rights and state aims) are mentioned in the same chapters. In Brandenburg, even in the individual articles it is not perfectly clear whether the regulation in question is a state aim or a basic right.

At first a "right" to social security, to adequate housing and to work are invented; yet the obligation to realize those rights depends on the Land's actual ability to do so. That lowers those rights to the level of state aims or rather non-binding social rights again.³⁴

In Sachsen-Anhalt the state aims contain so-called "basic rights fragments", which makes the distinction even more difficult.³⁵

It is important to clear up the legal difference between basic personal liberty rights on one hand and social rights and state aims on the other.

Basic freedom rights are primarily subjective human or civil rights³⁶ which are only indirectly also part of the objective law, whereas social rights and state aims do not establish any direct subjective right for the citizen, even if the rights are formulated quite concretely such as the right to work. The individual rights granted by human and civil rights against the state stand thus in marked contrast to social rights and state aims. At best, when realizing those aims and rights, individual direct claims might arise, above all because of the principle of equal treatment for all. When the state supports culture, children, handicapped or highly skilled people in following those aims, then individuals or groups must not be constitutionally privileged or discriminated. Those claims, however, are not original, but derivative ones.

³³ see Art. 7 constitution of Sachsen.

³⁴ Art. 45,47,48 constitution of Brandenburg.

³⁵ see Art. 34, 37,40 constitution of Sachsen-Anhalt.

³⁶ German Constitutional Court, BVerfGE 50, 290, 337.

Another difference is that state aims and social rights have a more general content than basic freedom rights/Consequently state aims need transformation to concretize them, whereas freedom rights are mostly self-executing.³⁷

The invention of social rights that go beyond the granting of the minimum of social aid directly derived from the welfare state principle,³⁸ causes, as discussed, many problems in state practice. Basic rights define limits for the state that are directly applicable from the constitution. Claims for state obligations or payments as well as state aims have to be transformed by law and depend on the state budget. They have to be realizable financially. The implementation of social rights does not only affect the state as is the case when talking about human and civil rights. It causes at the same time a burden on the citizens which have to pay for the necessary finances.

This is the problem of distribution inside the society that might reasonably be solved politically in view of the welfare state principle rather than by including concrete, individual claims into the basic rights catalogue of a constitution. Therefore those rights and claims have to be seen with the reservation that it must be possible to fulfill them.³⁹ The social rights invented by the new constitutions are non-binding social rights with the same status as state aims, thus having a priority in government policy, but not granting enforceable rights. They have to be understood as means to concretize the welfare state principle, for the government to take into consideration when acting sovereignly.⁴⁰

Some of the personal liberty rights that seem to be new in the constitutions of the new Bundeslander such as the right to data protection, protection against the dangers of gene technology or extension of the freedom of the press are orientated to modern problems. These rights simply follow the basic rights development, which has been developed by the German Constitutional Court.⁴¹ Although they are not statute law in the Federal Republic, they belong nevertheless to the actual constitutional law. Consequently there was no substantive need for their codification in the new constitutions. This codification represents quite concretely the present constitutional situation. But if the development of constitutional law progresses as

³⁷ German Constitutional Court, BVerfGE 84, 372,378 f.; 67,329. 340 f.

³⁸ German Constitutional Court, BVerfGE 1,97, 105.

³⁹ German Constitutional Court, BVerfGE 33, 303,333.

⁴⁰ CHRISTIAN STARCK, *op. cit.*, in: ZG 1992, p. 24.

⁴¹ see: German Constitutional Court, BVerfGE 73, 118, 118 ff.

the technological evolution advances, the new constitutional rights in the new Bundeslander might become obsolete quite soon.⁴²

However, other personal liberty rights, e.g. the general information rights towards the state, grant a truly new right that did not exist in such form before in Germany.

So the constitution-givers in the new Bundeslander invented a couple of new fundamental personal liberty rights, such as the right to general information towards government administrations and officials as well as a number of codifications of the constitutional development carried out by the German Constitutional Court. An example for that is the right to have personal data protected. There is also an extensive catalogue of state aims and non-binding social rights included in the constitutions which are of great political importance. Last but not least a modification of some traditional fundamental rights has taken place, such as the limitation of the freedom of research in favour of the protection of man against the dangers of gene technology.

The question arises as to whether the Bundeslander have the competence to enact such sweeping constitutional legislation.

Apparently the East German constitutions do not copy the Grundgesetz. They (at least in part) do not even restrict themselves to the character of the federal regulations, but they include and realize a number of their own ideas. This is legally only possible if the Bundeslander have original power to enact a constitution, a power that is not simply derived from the Federal Republic of Germany.

For that, the single states must first of all have at least some qualities of statehood. This is a particular feature of a federal state: Bundeslander, as well as the complete federal state have their own state qualities.⁴³ An outstanding characteristic of state quality is, above all, the sovereignty to codify the state's constitutional order on its own authority because of its own constitutional power.⁴⁴ The idea is that both constitutional spheres stand independently from each other side by side.⁴⁵ The state quality of the Bundeslander is an original one, therefore not derived from the federal

⁴² CHRISTIAN STARCK. op. cit., in: ZG 1992, p. 23.

⁴³ German Constitutional Court, BVerfGE 36, 342, 360 f.

⁴⁴ MICHAEL SACHS: *Die Bedeutung slisdstaatlichen Verfassungnsrechts in der Geaenwurl*, in: DVBl 1987, p. 857 ff., p. 863.

⁴⁵ German Constitutional Court, BVerfGE 60, 175, 207.

state or the Grundgesetz. It is only recognized by the Grundgesetz.⁴⁶ The own sovereignty to create a constitution corresponds with a *pouvoir constituant* in each individual state.

The constituent power can generally not be bound, because this power itself creates the most superior law and has to take the fundamental decisions that concern the state's existence.⁴⁷ This total independence is nowadays to be regarded as restricted by public international law and a number of universal law principles.⁴⁸ But the Grundgesetz also defines a couple of legal handicaps to bind the *pouvoir constituant* of the Bundeslander.

Although the Grundgesetz starts from the assumption that the Lander have their own state quality and constituent sovereignty,⁴⁹ the constitution of an individual state within a federal state cannot be based on its *pouvoir constituant* only, but some regulations of the federal constitution must have an impact on the form of the individual state's constitution, too. There is a conflict between the principle of the sovereignty and independence of the individual states on one hand and the necessary homogeneity of a federal state⁵⁰ on the other.

Art. 28 GG contains the obligation for the individual states to correspond to the principles of a democratic, republican and social state of law, as the Grundgesetz defines those principles. This is no condition requiring uniform constitutions, but the Grundgesetz contains the obligation to respect a certain homogeneity. So the individual states have a certain amount of leeway towards the Grundgesetz.

Constitutional regulations of the Bundeslander which contravene the federal Grundgesetz have no effect under Art. 31 and 142 GG and are invalid.⁵¹ In so far as the constitutions of the new Bundeslander have the same content as the

⁴⁶ German Constitutional Court, BVesfGE 36, 342, 361; ALBERT V. MUTIUS/THOMAS FRIEDRICH: *Veifassungsentwicklung in den neuen BundesUindern - wischen Eigenstaatlichkeit und mitwendiger HomogeniOt*, in: StWSitP 1991, p. 243 ff., p. 247.

⁴⁷ ERNST-WOLFGANG BOCKENFORDE: *Die veifassungsgebende Gewalt des Volhes - Ein Grembe griff des Verfassungsrechts*, Frankfurt 1986, p. 8 f.

⁴⁸ German Constitutional Court, BVerfGE 1, 14,61.

⁴⁹ see Art.7(l).33(l)GG.

⁵⁰ KLAUS STERN: *DOS Staatsrecht der Bundesrepublik Deuschlund*, Vol. 1, 2nd ed., Munich 1984, p. 705 ff.

⁵¹ BODO PIEROTH/BERNHARD SCHLINK: *StaatsrechI II - Grundrechle*. 7th ed., Munich 1991, p. 35 ff.

Grundgesetz, they stay in force, even if the regulations are expressed differently. The granting of higher basic rights standards is also allowed. The Grundgesetz codifies only a minimum standard in its basic rights catalogue.

The social rights and state aims granted by the new constitutions do not establish direct individual claims, but they have to be taken into consideration by all state organs, which can have a significant impact on their work. The express mention of those state aims shows a different attitude of the new constitution-givers towards the character of basic rights. Although the social rights are not yet directly enforceable, they do influence any further constitutional development. The welfare state principle of the Grundgesetz covers this evolution and opens the way to a new understanding of what a constitution can stand for.⁵² The state is no longer above all regarded as monopoly on power, but also as active part in changing the social structure of the nation.

Nevertheless the social rights and state aims catalogues of the constitutions in the new Bundesländer do not contradict the Grundgesetz; they are compatible with it. Concerning the fundamental personal liberty rights, it is necessary to give those differences a closer look which could contain substantial new meanings in comparison with the Grundgesetz. Those changes of wording may only have been invented because of their nicer formulation. Yet they might also establish real innovations.

It is at first important to emphasize that an expansion of the protection, which a freedom right grants to the people, very rarely leads to the incompatibility of the newly formulated basic right with the Grundgesetz, unless other rights are heavily limited by the regulation. As already pointed out, the Grundgesetz guarantees a minimum, not a maximum standard.⁵³ Only if the regulation of the Grundgesetz had been invented as an exception with the clear intention of restricting the right in question would the expansion of that right not be allowed in the Federal Republic.

As an example. Art. 26 of the Brandenburg constitution recognizes also the right to protection of long-term relationships, whereas Art. 6 GG only protects marriages. This could be interpreted as undermining the GG marriage provision, which would lead to incompatibility with the Grundgesetz. On the other hand, a protection-rule in favour of one group does not necessarily denote that no other group can be granted similar rights, too. The recognition of long-term relationships

⁵² JOHANNES RUX, *op. cit.*, p. 300.

⁵³ UTE SACKSOFSKY, *op. cit.*, p. 237.

does not endanger the constitutional status of marriage. It could truly lead to a real devaluation of marriage, if marriage had not any institutional advantage towards other long-term relationships, other than the recognition by the church. It is questionable however, whether this would be sufficient to cause the incompatibility of Art. 26 of the constitution of Brandenburg with the Grundgesetz, because the problem of fading attractiveness of marriages is a problem of society which should have little impact on the validity of constitutional law. Some problems could be caused by the definition of a "long-term relationship". How long is long-term? How large can the relation be? What about homosexual relationships?

Nevertheless the conclusion is that marriage does not effectively lose any of its protection rights. A real conflict of Art. 26 of the constitution of Brandenburg with Art. 6 GG does not exist.⁵⁴

It is obvious that the regulations in the new constitutions that are codifications of the constitutional development carried out by the German Constitutional Court are compatible with the Grundgesetz. Those rights, such as the right to have one's personal data protected are, according to the constitutional court, already implicitly included in the basic rights catalogue of the Grundgesetz.⁵⁵

Those traditional basic personal liberty rights, which have been limited in the new constitutions, such as the freedom of research or the limiting of the freedom to choose and carry out one's career by a general prohibition of child labour, mostly only make more concrete the requirement to take other fundamental rights into consideration when enjoying one's freedoms. Although the demand to respect human dignity and the natural basis of life also existed before, its emphasis in the new constitutions is new. It is, however, covered as such by the Grundgesetz.⁵⁵

Each individual case still requires a weighing of competing basic rights by the court in question anyway.

The general prohibition of child labour needs a closer look concerning the restriction of the freedom to choose and carry out one's career. The wording of Art. 27 (8) of the Brandenburg Constitution forbids child labour and does not mention any exception. If it were a fundamental right, then it would be a real new limitation of the freedom to choose and carry out one's career, because this general prohibition of child labour does not exist in the Grundgesetz and therefore played little role in

⁵⁴ JQHANNES RUX, *op. cit.*, p. 297.

⁵⁵ German Constitutional Court, BVerfGE 65, 1, 1 ff.

the weighing of basic rights before. However, fundamental rights, according to present German constitutional theory, are individual rights which bind the state. The prohibition on child labour does not grant any individual rights or freedoms. It is not meant as a defensive right against the state, but rather as a constitutional demand on the legislator. So this prohibition is to be seen as a non-binding state aim rather than as fundamental right. The limitation of the right to choose and carry out one's career is non-binding and is therefore to be seen as a mere directive for evolution in this field compatible with the Grundgesetz.

The newly invented rights which are not dealt with in the Grundgesetz do not generally contradict it. They are a typical example of Lander using their constitutional leeway. As long as the general right to information does not limit other constitutional rights, it is compatible with the Grundgesetz. It is difficult to foresee whether or not the use of this right will be done in a way which might be incompatible with constitutional regulations. This will not necessarily be the case. Therefore this right has to be assumed to be covered by the constitution, too.

In conclusion, it is worth emphasizing that none of the regulations in the basic rights catalogues of the new constitutions is necessarily incompatible with the Grundgesetz. They either accept the limits placed by the Grundgesetz or should be understood as mere state aims that do not grant really enforceable rights, rather giving directives for the political and legal evolution of the Bundesland in question. The confusion and difficulties in distinction between the two main categories of directly binding and non-binding "rights" will cause the main problems when dealing with the basic rights catalogue of the constitutions in the new Bundeslander. It may lead people to expect benefits and services from the constitutions that the Lander are unable to fulfill and did not intend to either.⁵⁶

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CHRISTIAN STARCK, *op. cit.*, in: ZG 1992, p. 24.

BIBLIOGRAPHY

- BOCKENFORDE, ERNST-WOLFGANG: *Die verfassungsgebende Gewalt des Volkes - Ein Grenzbegriff des Verfassungsrechts*, Frankfurt 1986.
- Bundesminister des Inneren und der Justiz: Staatszielbestimmungen, Gesetzgebungsauftrage, Bericht der Sachverständigenkommission, 12/1983, p. I ff.
- V. MUTIUS, ALBERT/PRIEDRICH, THOMAS: *Verfassungsentwicklung in den neuen Bundesländern - zwischen Eigenstaatlichkeit und notwendiger Homogenität*. in: STAATSWISSENSCHAFTEN UND STAATSPRAXIS (StWStP)1991,p.243ff.
- PIEROTH, BODO/SCHLINK, BERNHARD: *Staatsrecht II - Grundrechte*, 7th edition, Munich 1991.
- RUX, JOHANNES: *Die Verfassungsdiskussion in den neuen Bundesländern - Vorbild für die Reform des Grundgesetzes?*, in: ZEITSCHRIFT FÜR PARLAMENTSFRAGEN (ZParl) 1992, p. 291 ff.
- SACHS, MICHAEL: *Die Bedeutung gliedstaatlichen Verfassungsrechts in der Gegenwart*, in: DEUTSCHES VERWALTUNGSBLATT (DVB1) 1987, p. 857 ff.
- SACKSOFSKY, UTE: *Landesverfassungen und Grundgesetz - am Beispiel der Verfassungen der neuen Bundesländer*, in: NEUE ZEITSCHRIFT FÜR VERWALTUNGSRECHT (NVwZ) 1993, p. 235 ff.
- STARCK, CHRISTIAN: *Verfassungsgebung in den neuen Ländern*, in: ZEITSCHRIFT FÜR GESETZGEBUNG (ZG) 1992, p. 1 ff.
- STARCK, CHRISTIAN: *Verfassungsgebung in Thüringen*, in: THÜRINGER VERWALTUNGSBLÄTTER (ThurVB1) 1992, p. 10 ff.
- STERN, KLAUS: *Das Staatsrecht der Bundesrepublik Deutschland*, Volume I, 2nd edition, Munich 1984.
- GRAF VITZTHUM, WOLFGANG: *Auf der Suche nach einer sozio-ökonomischen Identität?*, in: VERWALTUNGSBLÄTTER FÜR BADEN-WÜRTTEMBERG (VB1BW) 1991, p. 404 ff.