

Germany

Ulrike Zschache

Introduction

In German Constitutional Basic Law, there is no explicit reference to the term “solidarity”, however, the principle of solidarity can be derived from a broad range of constitutional rights and principles (Piazolo 2004, 163; Volkmann 1998, 299). Germany is a republic based on popular sovereignty and a representative democracy in which the “election of Parliament is the central act for the legitimation of state power” (Heun 2011, 12).¹ At the same time, Germany is a constitutional state. Hence, it is characterised by the rule of law, the supremacy of the basic rights and the protection of individual autonomy against the unlimited interference of the state, the separation of powers into the legislative, executive and judicial branches of government, the judicial independence and the control of the Federal Constitutional Court over the compliance with the constitution (cf. Hartmann n.d.). Moreover, the German constitution codifies the social welfare state principle (Art. 20 para. 1 and 28 para. GG) that guarantees a minimum of social welfare and a universal subsistence minimum. Furthermore, the constitution stipulates the principle of federalism (Art. 20 para. 1, Art 30 and Art 79 para. 3 GG). This means that Germany is a federal state where powers are divided and shared between the central state and the 16 federal states. Interestingly, while in the federal constitution (Basic Law) there is no explicit reference to the solidarity principle, the picture is more complex at the level of the federal states. Similar to the Basic Law, the constitutions of the former West German federal states do not explicitly mention solidarity. In comparison, solidarity is directly referred to or equivalently addressed as a basic principle of state action in the constitutional preambles of the new, East German federal states; sometimes as ab-

1 Going beyond the rulership through mechanisms of representative democracy, the Basic Law comprises elements of direct democracy, yet mostly for the sub-national levels rather than for the national, central state.

stract expectation and sometimes as concrete obligation of the respective federal state (Piazolo 2004, 170-172).²

The German Basic Law (GG) is headed by a catalogue of basic rights, the so-called Bill of Rights. The most important element is the protection of human dignity (Art. 1 GG). The inviolable right to lead a dignified life is the supreme principle of the Basic Law to which all other rights and principles are subordinated. The “German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world.” (Art. 1 para. 2 GG). The fundamental rights that are enshrined in the Bill of Rights are subjective individual rights that guarantee individual freedoms and protect any individual citizen against an encroachment by the state. In fact, already the first article of the Basic Law (Art. 1 para. 3 GG) stipulates that all constitutional basic rights are binding with immediate validity for any state power, including all legislative, executive, and judicial organs at federal, federal state or local level. This also implies that individual citizens can claim these basic rights before court. Moreover, they may enforce them by means of a constitutional complaint before the Federal Constitutional Court if they think there is an infringement of these rights by the state (Hartmann n.d.; Heun 2011, 191-192). Some basic rights are universal rights, e.g. human dignity, free development of one’s personality, life and physical integrity, equality and non-discrimination, religious freedom and freedom of speech (Art. 2-6 GG). Others are assigned exclusively to Germans, e.g. freedom of assembly and association, freedom of movement, occupational freedom and civil rights (Art. 8; 9; 11; 12; 33 GG).

2 The preamble of Brandenburg’s constitution states, for instance, “We, the citizens of the federal state of Brandenburg have freely adopted this constitution, in the spirit of the tradition of law, tolerance and solidarity [...], inspired by the intention to ensure human dignity and freedom, to organise the community life in social justice, to promote the welfare of everybody ...”. Similarly, but without an explicit reference to solidarity, the constitution of the free state of Thuringia declares in its preamble “to respect the freedom and dignity of the individual and to organise the community life in social justice”. In the same spirit, the preambles of the constitutions of Mecklenburg-Vorpommern and Sachsen-Anhalt stipulate to ensure human dignity and freedom and “to create a socially just community”, or, “the foundations for a social and just community life”. The constitution of the free state of Saxony is led by the intention “to serve justice” and the constitution of Berlin by the intention “to serve the spirit of social progress and peace”.

The Bill of Rights of the German Basic Law is also defined by the fact that the basic individual freedom and equality rights have a dogmatic structure (Heun 2011, 192). Human dignity is the leading and overarching principle of the Bill of Rights and constitutes the only absolute norm. The subsequent freedoms are not absolute, but conditional on restrictions (constitutional proviso, simple or qualified proviso of legality) because individual freedoms require reconciliation with conflicting or competing freedoms and rights of others (*ibid.*, 192-193). On the other hand, the Basic Law envisages a special protection in that it imposes additional restrictions on the legislator that may prevent him from restricting fundamental rights without limitations (“restrictions of restrictions”). Since the fundamental rights are directly binding for any state action, any encroachment on these freedoms and protection rights requires special justification. Legislation that aims to restrict fundamental rights is limited and made conditional particularly through the principle of proportionality, i.e. state intervention is only acceptable if the protected rights or legal principles outweigh the basic rights to be restricted by it (*ibid.*, 194-195).

Moreover, it is generally recognised nowadays that going beyond their nature as subjective freedoms, negative protection and “defensive rights” against the state, the basic rights involve a positive dimension as “objective principles for policymaking” and state action (Grimm 1985; Hesse 1999; Heun 2011, 200). From this perspective, the state is not only required to respect individual freedoms, but also to ensure their minimal material preconditions through policymaking so that everybody may have equal opportunities to enjoy the constitutionally granted freedoms. Hence, in this materialist understanding of the state of law, basic rights grant freedom not only from the state but also within the state; and equality not only before the law, but also through the law (Hesse 1999, 127-136). However, in contrast to their character as negative protection and defensive rights, these “objective principles” are under proviso of the available resources and the existing possibilities. What is more, these principles are directed towards the state and state action, but do not constitute individual rights and entitlements that could be directly claimed by individual citizens. Moreover, the minimal preconditions and the specific content of this positive dimension are to be specified through policymaking and legislation (Grimm 1985). On the other hand, since the 1970s, there has been a repeated welfare state debate about the question on how far basic rights are to be interpreted as affirmative individual participation rights (*ibid.*; Heun 2011, 200). While the answer to this question is controversial, there is

general agreement that the right to human dignity and the welfare state principle of the Basic Law (Art. 2 para. 1 GG) oblige the state to guarantee a social welfare minimum and, hence, entitle each citizen to the provision of a material minimum needed to cover daily subsistence (Heun 2011, 200). This has repeatedly been confirmed by the Constitutional Court of Justice, for instance, very prominently in its recent verdict on the minimal provision of social “Hartz IV” benefits (BVerfG, Judgement of the First Senate of 09 Feb., 2010 – 1 BvL 1/09 – “Hartz IV-judgement”) and of asylum seeker benefits (BVerfG, Judgement of the First Senate of 18 July, 2012 – 1 BvL 10/10).

The Socio-Cultural Dimensions of Solidarity

In Germany, social solidarity is based on various pillars. The welfare state constitutes the first pillar. The German welfare system stands in the tradition of the conservative-corporatist model of welfare states (Esping-Anderson 1990) and has been shaped by the Bismarckian social insurance system (cf. also Leibfried 1992). Following this tradition, the system is strongly based on insurance benefits. Social entitlements and benefits are dependent on previous contributions and on occupational status. This means the German welfare state provides a relatively high level of protection against market forces and income maintenance benefits, preventing the risk of income loss for the insiders of the stratified social insurance systems (Esping-Anderson 1990, 27). By comparison, outsiders of the insurance systems are excluded from the respective insurance benefits. Hence, in the social insurance systems, solidarity is confined to rather narrow solidarity communities (Arts and Gelissen 2002, 142). In addition to the social insurance systems, different types of social aid are granted to people in need, but often in the form of means-tested benefits. In this welfare system, redistribution is relatively weak, while differences in status groups are maintained. In other words, the entitlement to social protection and the chances to benefit from the welfare state are substantially predefined by one's position on the labour market. In this respect, the German welfare state is shaped by a dualistic, exclusive, segmented system.

A second key pillar of social solidarity are the six federal non-statutory social welfare organisations. Based on different world views, beliefs and religions, these voluntary, non-profit welfare umbrella organisations play a key role in the delivery of social services for everyone in need, be it the

elderly, sick, disabled, job- or homeless people, children, families and women or refugees. In so doing, they operate as independent social welfare providers alongside the public and commercial service providers. With their decentralised structure, they provide services and facilities at regional and local levels throughout Germany and are thus an important pillar of the German social welfare state (BAGFW 2017).

Thirdly, the family plays a relevant role for solidarity. It is seen as the first resort when it comes to the provision of means-tested social aid and certain care benefits. According to Esping-Anderson, the conservative-corporatist welfare regime is geared to preserve traditional familyhood and follows the principle of subsidiarity (Esping-Anderson 1990, 27). Following this logic, the state intervenes only when the family is not or no longer able to provide the necessary care to its members. In this tradition, motherhood is typically promoted by family benefits. In contrast, care and family services exist only to a moderate extent (*ibid.*). However, this characterisation holds true for Germany only to some extent. In fact, with the large increase in female employment, care has been increasingly handed over to professional providers. The more recent welfare state literature thus rightly emphasises that in Germany, care is widely furnished by public and non-governmental welfare service providers (Art and Gelissen 2002, 147; Schiefer et al. 2012, 55). Overall, familialism and the role of the family as the first locus of solidarity are considerably less pronounced in comparison with the Mediterranean regime. This resonates with empirical surveys underlining that the German population has high expectations with regard to the responsibilities of the state and the supply and care systems for the provision of welfare (Schiefer et al. 2012, 54). For instance, Allbus surveys show that a vast majority of respondents is of the opinion that the state must ensure a good livelihood, also in the event of illness, hardship, unemployment and old age (Allbus 1994: West 87% – East 97%; Allbus 2004: West 82% – East 92%; Allbus 2014: West 89% – East 91%, source: Statistisches Bundesamt (ed.) Datenreport 2006, 649, Tab. 4; Datenreport 2016, 413, Fig. 4).

Despite the orientation towards state responsibility for welfare provision, volunteerism is strongly established in German society and has continually increased in recent years. It is thus a further important pillar of social solidarity. According to the German Volunteers' Survey 2014, 43.6 percent of the population aged 14 or older engages in volunteering activities outside their own family, kinship or professional environment (Simonson/Ziegelmann/Vogel/Tesch-Römer 2017, 21). Compared to statistics

from 1999, this is an increase of almost ten percent. What is more, there has been a pronounced growth in volunteering particularly since 2009 (ibid.). The motives of volunteers show that volunteerism in Germany is grounded in a widespread sense of social responsibility and solidarity (Schiefer et al. 2012, 55). In 2014, more than 80 percent fully agreed or rather agreed (57.2% and 23.8%, respectively) that their voluntary engagement is motivated by the aim to play a part in shaping society at least to a small degree (Müller/Hameister/Lux 2017, : 417and 427). Moreover, for 60 percent of all respondents, it is very or quite important to help socially disadvantaged people or marginalised social groups (Huxhold/Müller 2017, 488f.). In a European-wide comparison, volunteerism is remarkably widespread in German society. Following the Special Eurobarometer Survey on Volunteering and Intergenerational Solidarity in 2011, 34 percent of Germans engaged in voluntary activities, thus exceeding the European average by ten percent (24%) (Special Eurobarometer Survey 75.2: 7 – QA15).

Typically, volunteering takes place in public and in organised, collective forms (Vogel/Tesch-Römer/Simonson 2017, 285). Indeed, the rich landscape of non-profit associations and charities offers widespread opportunities for voluntary engagement in Germany. Yet, volunteering is only one aspect of social solidarity. Additionally, informal and private help for others (non-family members) in one's direct social environment is also a relevant dimension of social solidarity (ibid., 285-286). Such private forms of help may include assistance with shopping or gardening, looking after neighbours' children or keeping the elderly company, etc. According to the German Volunteers' Survey 2014, 40.2 percent of the population aged 14 or older provides informal help in their social environment. This means that informal, private support is almost as widespread as volunteering (43.6 %) (Vogel/Tesch-Römer/Simonson 2017, 289). Interestingly, there are some overlaps between these two dimensions of social solidarity (20.5 % do both volunteering and informal help). Nevertheless, both of them are important dimensions of social solidarity independently of each other (23.1 % do only volunteering; 19.7 % provide only informal help). Overall, almost two-thirds of the German (14+) population contribute to formal and/or informal social solidarity (ibid., 191).

A further dimension of social solidarity is the willingness to donate. According to TNS Infratest Deutscher Spendenmonitor 2015, the quota of donations was relatively stable at around 40 percent over the period 1995 to 2015. Other studies confirm that the readiness to donate and the amount

of donations are relatively high in this country (Schiefer et al. 2012, 56). This is believed to be promoted by the fact the German fiscal law grants tax deductions on donations for donors (see below).

Finally, the European Values Study of 2008 shows that in Germany, a majority (52.6 %) is concerned about the living conditions of other people (not family members). What is more, Germans are somewhat more considerate towards others' welfare than the European average (about 45%) (own calculations based on the EVS 2008; Schiefer et al. 2012, 59). All in all, solidarity is widely reflected in citizens' general disposition and behaviour. In this respect it seems that solidarity from below represents an important pillar of social solidarity in Germany.

The Constitutional and Legal Entrenchment of Solidarity

Despite the fact that the German Basic Law makes no explicit reference to "solidarity is implicitly entrenched in various constitutional rights and principles (Piazolo 2004, 163; Volkman 1998, 299). To start with, there is broad consensus that the solidarity principle is enshrined in the constitutional vision of humanity, fundamental rights, the welfare state principle, the orientation towards the common good and the institutional framework of the federal state (Hilpold 2007; Piazolo 2004, 156-176; Volkman 1998; Voßkuhle 2015).

First of all, legal scholars highlight the fact that the German Basic Law is based on the idea of solidary human beings (e.g. Piazolo 2004, 159-160; Volkman 1998, 219-229). The constitutional vision of man is characterised by the fact that human dignity constitutes the fundamental norm of the Basic Law (Art. 1 para. 1 GG). At first sight, human dignity seems to give priority to individual autonomy and individual freedom (Piazolo 2004, 159-160; Volkman 1998, 221). Yet, the Federal Court of Justice has clarified right from the beginning that these norms are inextricably linked to the interrelatedness of the single members of society, their mutual recognition and their integration into a social community (ibid.). In its judgement of 20th July 1954, the Federal Court of Justice declared that:

"The idea of man of the Basic Law is not one of an isolated sovereign individual; rather, the Basic Law has decided the individual-community tension in favour of community relatedness and community connectedness of the single person, without though infringing its own value." (BVerfGE 4, 7 <15-16>, source: Piazolo 2004, 160).

This position has been corroborated and further clarified in later judgements, for instance in 1977 when the Federal Court of Justice highlighted that:

“Respect and protection of human dignity belong to the constitutional principles of the Basic Law. The free human personality and its dignity are the highest legal values within the constitutional order. [...] This is based on the vision of man as a spiritual and moral being that is made to determine for itself and to develop itself in freedom. The Basic Law does not understand this freedom as the freedom of an isolated and autocratic individual, but of a community-related and community-bound individual. Due to this communal connectiveness [freedom] cannot in principle be unlimited. The individual must accept the limits to its freedom of action that the legislator draws in order to maintain and promote social coexistence within the limits of the [...] generally reasonable.” (BVerfGE 45, 187 <227-228>, cf. also Piazzolo 2004, 160; Volkmann 1998, 225; Voßkuhle 2015, 12).

Hence, human dignity implies a mutual constitutive relationship between individual autonomy and the solidary community (Piazzolo 2004, 160-161; Volkmann 1998, 222-226). In this respect, it is interesting to note that the Federal Court of Justice does not directly speak of the solidarity principle, but of the embeddedness of individuals within a social community (hence pointing to the social nature of humankind). Instead, it is the legal scholarship that derives the solidarity principles from the constitutional vision of man and the related judgements (e.g. Piazzolo 2004; Volkmann 1998).

Secondly, solidarity is implicitly enshrined in a number of basic constitutional rights. Initially, the focus of the Basic Law was on individual freedom. Nevertheless, legal experts understand the framework of the basic constitutional rights as an order that aims at a “balance between autonomy and solidarity” (Piazzolo 2004, 161). Basic rights that imply a community and solidarity dimension are, for instance, the “protection of marriage and family” together with the “right of mothers to protection and care by the community” (Art. 6 GG), “freedom of assembly” (Art. 8 GG), “freedom of association and coalition-building” (Art. 9 GG), the requirement that private property use must likewise consider the common good (Art. 14 para. 2 GG), and the reciprocity principle according to which “everybody has the right to a free development of his personality as far as he or she does not infringe on the rights of others” (Art. 2 para. 1 GG) (Piazzolo 2004, 161-162; Volkmann 1998, 278-279).

Many of these individual basic rights typically require joint exercise and solidary cooperation (Volkmann 1998, 237). Furthermore, the Basic Law includes general solidarity-related rights and duties that apply equally

to all its citizens and are necessary for a functioning community, for instance the duty to pay taxes or the right to assume honorary positions (Piazolo 2004, 161). In fact, solidarity is also implicitly expressed in the norm that “every German [...] has the same civic rights and duties” (Art. 33 para 1 GG) (Piazolo 2004, 161-162). Moreover, based on the right to human dignity (Art. 1 GG) and the welfare state principle (Art. 20 para. 1 GG), the right to social security and the guarantee of a minimum subsistence to secure a life in human dignity were derived and consolidated as basic constitutional rights in the process of constitutional jurisdiction (e.g. BVerwGE 1, 159 <161-162>; 25, 307 <317-318>; BVerfGE 68, 193 BVerfGE 87, 153; BVerfGE 125, 175; sources: Piazolo 2004, 160; Volkmann 1998, 226; Voßkuhle 2015, 12). These rights are considered a crucial dimension of solidarity in that they stipulate mutual support and “standing by each other” in society (Piazolo 2004, 164; also Depenheuer 2009, 103-104). In addition, the principle of intergenerational solidarity is derived from the constitutional requirement to preserve the natural living conditions (Art. 20a GG) and the recently introduced debt ceiling (Art. 109 para. 3, 1; Art. 115 GG) (Voßkuhle 2015, 12; also Piazolo 2004, 163).

Overall, in the German constitutional order the principle of solidarity can be identified in a range of basic rights, even if solidarity is not explicitly mentioned. However, experts tend to agree that the solidarity principle does not go beyond the validity of the single regulations and hence it does not constitute a general, overriding constitutional principle or programme. Moreover, the duty of each individual citizen to show solidarity finds its limits in the constitutional individual freedom and autonomy rights (e.g. Haversath 2012, 12; Piazolo 2004, 163). In this sense, legal scholars have come to the conclusion that the Basic Law does not foresee that collective principles like solidarity leverage diffuse collective interests at the expense of individual interests: “Where the solidarity principle is covered by basic rights, it is obsolete; [...] where it shall work as a title for intervention or a priority clause, it is dangerous or even harmful” (Haversath 2012, 12).

Thirdly, going beyond the constitutional basic rights, solidarity is expressed in the fact that the Basic Law defines Germany as a social welfare state (Art. 20 para. 1; Art. 28 para.1 GG). In contrast to the basic rights, the welfare state principle does not constitute individual rights or duties; rather, it is directed towards the state. In this respect, solidarity among citizens is mediated through the state (Piazolo 2004, 164-165). Due to the ab-

stract character of this constitutional norm, the welfare state principle needed further legislative concretisation and codification, particularly in the Social Code (Heun 2011, 45). In addition, it was specified and strengthened by constitutional jurisdiction. The Federal Court of Justice already stated at an early stage that the legislator is “constitutionally obliged to take social action” and characterised the welfare state principle as a “constitutional principle” against the negative impact of the unlimited use of individual freedom (BVerfGE 1, 97 <105>, source: Volkmann 1998, 333). In addition, it emphasised that state intervention and legislative acts intended to realise social welfare are legitimate because of the constitutional “requirements of social solidarity [...] [and] mutual consideration” (BVerfGE 35, 348 <356>, source: Piazzolo 2004, 163). According to the Federal Court of Justice, the welfare state principle implies the obligation of the state to ensure social justice and to mitigate and balance social differences in society (BVerfGE 22, 180 <204>, source: Volkmann 1998, 333). Moreover, the state is required to protect its citizens against social risks such as unemployment, illness, invalidity, old age or poverty. Furthermore, the state is required to regulate and structure responsibility in solidarity and mutual consideration within the various solidarity communities and society as a whole, and to define their relations towards self-responsibility and subsidiarity (Depenheuer 2009, 2-18; Kreikebohm 2010, 8; Piazzolo 2004, 163-164; Volkmann 1998, 332-334; Zacher 1977; 2004; 2013).

The constitution grants solidarity in particular within the legally institutionalised solidarity communities. This primarily refers to the various statutory social insurance systems where solidarity among the contributing members is a means to ensure social security (Depenheuer 2009; Piazzolo 2004, 164). In fact, the solidarity principle is the “essential characteristic of the social insurance law” and “constitutes the legal foundations of social insurance” (Piazzolo 2004, 164, also Depenheuer 209, 21, 100-101, 105, 118). In this respect, the Federal Court of Justice has explicitly emphasised that the statutory social insurance providers are organised according to the solidarity principle (Piazzolo 2004, 164). Moreover, in various judgements the Court made particular reference to the public pension and health insurance. For instance, it stated that the statutory pension insurance is typically characterised by the “principles of solidarity, social equity and the intergenerational contract” (BVerfGE 76, 256 <127>) and “fundamentally based on the idea of solidarity among its members and social balance” (ibid. <129>). Moreover, “since the very beginning, it involves a

certain amount of social care. [...] The approximately equal welfare promotion of all members of the solidarity community, with special consideration of those in need, is paramount to the statutory pension insurance. The pension contributions guarantee a solidarity-based and -secured old-age protection” (ibid.). In a similar vein, the Federal Court of Justice has characterised the statutory health insurance as “solidarity community” (e.g. BVerfG 1 BvL 4/96 <33>; 1 BvL 16/96 <66>, <80>) that involves “solidary redistribution” (1 BvL 16/96 <83>). Furthermore, it highlighted solidarity as a main principle due to which, for instance, elderly and health-impaired persons are granted insurance protection at a socially reasonable contribution rate without any individual risk check (e.g. BvL 4/96 <37>).

Moving beyond the Basic Law and the jurisdiction of the Federal Court of Justice, the principle of social solidarity and the solidarity communities are furthermore stipulated and specified in the social law (e.g. Depenheuer 2009; Voßkuhle 2015, 14). The German Social Security Code governs in detail how the constitutional welfare state principle and the solidarity principle are to be implemented in the different areas of social risk, i.e. it defines provisions for unemployment, illness, disability, old age, motherhood, etc. Moreover, the sectorally structured statutory social insurance systems are organised as solidarity communities of its members. As regards health insurance, for instance, the solidarity principle and the solidarity communities are particularly highlighted in Article 1 of Book Five of the Social Code and in specific reform laws, such as the “law to strengthen solidarity in the statutory health insurance system” of 1998 (BGBl I No. 85, 28 Dec 1998, 3853).

According to the Basic Law, social law is subject to the concurrent legislation principle. This means that the federal states have the power to legislate social matters “so long as and to the extent that the Federation has not exercised its legislative power by enacting a law” (Art. 72 para 1 Basic Law). Yet, in practice, there has been a process of continuous concentration of social policy competencies in the hands of the Federal Government. Unitarisation took place against the backdrop of a basic conflict between the aims of the social welfare state and federalism (Stoy 2015, 80). While the latter promotes the principle of federal pluralism, the purpose of the social welfare state is to promote equality and solidarity. A federal organisation of social policy would undermine equality and solidarity as it opens the door to regional differences at the level of social protection and regarding expenses for citizens. Thus, over the years, the Federal Govern-

ment has increasingly regulated on social policy matters in order to grant its citizens equal social rights and to ensure a cross-regional burden-sharing throughout the country (Stoy 2015, 80-81). This trend was also supported by the Basic Law which entitles the Federation to intervene as legislator “if and to the extent that the establishment of equivalent living conditions throughout the federal territory [...] renders federal regulation necessary in the national interest” (Art. 72 para 2 Basis Law).

Solidarity is also reflected in recent social reforms and policy measures. For instance, social law explicitly promotes volunteering and, thus, solidarity behaviour of civil society. In particular, since 2011 special rules apply to volunteers working in the framework of the Federal Volunteer Service, the Voluntary Social Year and the Voluntary Ecological Year. Despite their marginal employment and salary, volunteers working in these programmes for at least one year are granted access to the unemployment insurance scheme, to which their employers pay the respective contributions. Accordingly, they are entitled to unemployment benefits. Due to the marginal salary, these income based benefits are calculated either on the grounds of previous employment, if applicable, or with respect to an achievable future salary. In addition, in contrast to other volunteers, those volunteers employed in the Federal Volunteer Service, Voluntary Social Year and Voluntary Ecological Year programmes have full access to the statutory health and long-term care insurance schemes (BGBl. I No. 19, 687-693; Art. 27; Art. 130; Art. 344 of Book Three Social Code; Art. 7; Art. 10 of Book Five Social Code).

A major reform step towards more social justice and fairness is the step-wise introduction of a nationwide statutory minimum wage since January 2015. Even though the law itself makes no explicit reference to solidarity, the introduction of the general statutory minimum wage was promoted particularly by the unions as an important means to foster social solidarity. This policy change already had its origins in the pre-crisis period and was prepared over a long period through continuous reform efforts and sectoral agreements between the various social partners. From January 2015 onwards, employees have the legally enshrined right to the general, cross-sectoral minimum wage, initially set at 8.50 € an hour, and since January 2017, 8.84 € an hour (BMAS 2015b, 53; 2017; Minimum Wage Act). A crucial aim of the minimum wage is to protect employees from unfair and unreasonably low wages (which typically are not subject to social insurance contributions) and to improve the income and living conditions of the so-called “working poor” of the low-wage sectors who are of-

ten forced to claim additional SGB II benefits or to accept several jobs in tandem in order to cover their living expenses. Hence, the minimum wage represents a novel instrument to foster social equality and fairness (BMAS 2017).

Moreover, the extension of short-term allowances during the peak of the economic recession in Germany can be regarded as a means to promote social solidarity. Basically, the German social law and the employment promotion policies under Book III of the Social Code involve the possibility to grant wage replacement benefits in the form of a short-term allowance. These are wage compensations based on the amount of pay loss if an employer needs to reduce working hours temporarily because of economic problems related to structural and cyclical reasons or unavoidable events. In that case a short-term allowance is paid by the local employment agency in order to keep the respective workers in employment, to stabilise employment relations, to stabilise the workers' income and purchasing power and to enable the employer to maintain its qualified and experienced personnel (BMAS 2015a, 71; BMAS 2015b, 27). Normally, the maximum allowance time is six months (Art. 104 SGB III). The short-term allowance scheme was deemed particularly important during the global economic crisis, during which Germany was mostly affected in its first phase. In the context of two subsequent economic stimulus packages agreed upon in 2008 and 2009, the government amended the respective law by ministerial order and extended the maximum allowance period first to 18 and then to 24 months. Moreover, the threshold of the required share of affected workers was relaxed which particularly helped small- and medium-sized businesses and their workers. In addition, access to the scheme was opened up to temporary workers. Overall, this instrument was an important measure that protected workers and supported employers during the economic crisis in Germany; it maintained employment levels and hence avoided a rise in unemployment rates despite the economic recession. Together with other measures from the economic stimulus packages, such as the car scrappage bonus, tax relief on income and corporation taxes for craftsmen and household services, higher child benefits and higher public spending on infrastructure, the extension and relaxation of the short-time allowance scheme helped to maintain income levels, employment and purchasing power in Germany, and thus absorb much of the economic shockwave. On the one hand, it provided a cushion against negative effects in times of economic crisis, while on the other hand, allowing the German economy to return quickly to production and economic

strength as soon as global market demands started to re-increase. This is emblematic for the German response to the crisis: it reacted to the economic downturn mostly in the form of short-term interventions geared to stimulate and stabilise the economy, while it barely introduced new crisis-driven long-term policy changes. This is illustrated by the short-term allowance as it was not implemented as a new instrument, but meant a modification of an existing scheme (Giesen 2013; Schnitzler 2013).

Moving beyond social law, the solidarity is variously reflected in tax law. To start with, there are legal provisions geared to promote the work of charitable non-profit organisations and volunteering at both institutional and individual levels. At institutional level, registered non-profit associations with a recognised public benefit status are granted tax exemptions or relief in terms of corporation tax, business tax, VAT, inheritance and gift tax and land tax and land transfer tax. Non-profit associations are entitled to corporation and business tax exemptions if they can demonstrate that they exist for charitable public benefit purposes, benevolent purposes or church-related purposes (Art. 52-54 Fiscal Code). Associations involving a taxable economic business are excluded from corporation tax exemption, unless annual revenues remain under the threshold of 35,000€ (incl. VAT). As regards VAT, non-profit associations enjoy tax exemption for donations, membership fees and subsidies (idealistic area of activity). Furthermore, a reduced VAT rate (7% instead of 16%) applies to non-profit associations serving directly and exclusively charitable, benevolent or religious purposes, and to certain activities and fields related to the realisation of these purposes (economic area of activity serving directly tax-exempt purposes, e.g. presentations, courses, events) (Strecker 2002, 139-144). In addition, associations are exempted from VAT if their turnover does not exceed 17,500€ in the previous year and remains under 50,000€ in the current year (Art. 19 Value Added Law). Furthermore, charitable non-profit associations are exempted from inheritance and gift tax (Art. 13 para. 1, 16b Inheritance and Gift Tax Law) and from land and land transfer tax (Art. 3 Land Tax Law) if these assets are directly and exclusively dedicated to and used for charitable, benevolent or religious purposes.

On an individual level, charitable non-profit organisations are promoted by means of tax deductions on donations for donors and membership fees. Donations and membership fees to a charitable non-profit organisation that aim to support tax privileged purposes, i.e. charitable, benevolent or religious purposes, are deductible as special expenditures by up to 20 per-

cent of the taxable annual income or by 0.4 percent of all taxable revenues and the salaries and wages paid in the respective calendar year (Art. 10b Income Tax Law). Until 2009, these income tax advantages were only granted if the receiving institution was based on German territory. However, according to a verdict of the European Court of Justice in January 2009, this rule was in conflict with the right to free capital movement and, hence, fiscal deduction of donations needed to be extended to eligible recipients within the entire European Union and in countries associated with the European Economic Area. The necessary changes in Article 10 of the Income Tax Law were implemented in Germany by a reform law in April 2010 (BGBl. I No. 15, 14 Apr. 2010, 386-397).

Moreover, in September 2015 the Federal Ministry of Finance, together with the supreme Länder finance authorities, introduced special simplifications in tax law and fiscal relief that aim to promote civic refugee help initiatives. In this context, tax deductions on donations for donors are now fostered by a simplified donation proof. In addition, working time committed to refugee help and in-kind benefits to refugees are recognised as donations and thus as deductible special expenditures. Moreover, donation campaigns for refugee help are promoted by a simplified tax procedure granting fiscal advantages in terms of corporate and gift tax even to those charitable non-profit organisations which do not exist for refugee help or similar purposes according to its statute. These fiscal relaxations are in place from 1 August 2015 until 31 December 2018 (BMF 2015; 2016).

Finally, the Basic Law stipulates solidarity in financial relations within German federalism.³ On the one hand, this involves horizontal redistribution of tax revenues between the 16 federal states, based on the so-called “Länder fiscal equalisation scheme” (Art. 107 para. 2 GG). This horizontal fiscal equalisation rests on the idea that financially strong federal states show solidarity and help financially weaker states in order to contribute to equivalent living conditions in the whole country. On the other hand, “Länder fiscal equalisation” also has a vertical dimension in that the central state may redistribute tax revenues and provide financial support to economically weak federal states (*ibid.*). The principle of financial solidar-

3 Some experts argue, though, that financial equalisation is not so much a form of solidarity but rather a reflection of the principle of federal loyalty. Moreover, financial equalisation systems, particularly the top-down ones, were mainly a compensation for the missing revenue raising powers of the federal states (Voßkuhle 2015: 11-12).

ity and fiscal equalisation was also implemented by the solidarity surcharge that had been imposed on income tax liability after German reunification in order to support the new federal states of East Germany (Piazolo 2004, 166; Voßkuhle 2015, 12).

Conclusions and Outlook

Overall, the solidarity is not explicitly entrenched, but rather implicit in the German constitution and legislation. The constitutional Basic Law does not directly refer to solidarity. Moreover, it puts a strong emphasis on individual autonomy and freedom (not least as a reaction to past experience with the Nazi regime). Nevertheless, the Federal Court of Justice and particularly legal scholars have derived the solidarity principle from various basic rights and constitutional principles. It is widely agreed that the solidarity principle is reflected in the constitutional vision of man, the fundamental rights, the welfare state principle, the constitutional orientation towards the common good and the institutional framework of the federal state. In particular, legal experts argue that the Basic Law is grounded on a solidaristic view of mankind (e.g., Piazolo 2004; Volkman 1998). Following the Federal Court of Justice, human dignity as the fundamental constitutional norm is not granted to isolated individuals, but to human beings who are members of a social community and whose individual freedom is limited through their social embeddedness and interconnectedness. In this sense, the constitutional vision of man draws attention to the community dimension of social solidarity. At the same time, the constitution also comprises basic rights and principles in which solidarity in favour of the individual finds expression. This is, for instance, reflected in the welfare state principle and in the right to social security and a decent minimum standard of living (Voßkuhle 2015, 12).

In addition to notions of solidarity addressing the relations between society members and their rights and duties, the idea of solidarity is also reflected in the federal system of the state and in the relations between the national state and the single federal states (e.g. through the Länder fiscal equalisation scheme). Moving beyond the constitution, the solidarity principle is – again implicitly rather than expressly – reflected in various laws and policy instruments (e.g. in social and tax law). All in all, no coherent understanding of solidarity can be derived from the German constitution and legislation. Instead, different notions and aspects of solidarity appear

across the different constitutional rights, principles and legal regulations. This complexity is enhanced by the fact that the lack of an explicit entrenchment requires legal interpretation and deduction of solidarity accounts. Furthermore, legal experts underline that there is no general constitutional or legal solidarity principle that would go beyond the sum of the single and selective solidarity-related rights and regulations (e.g. Haversatz 2012). Interestingly, the picture changes somewhat at the level of the federal states. Here, it is striking that the constitutions of the former East German federal states directly address solidarity or refer to it in an equivalent way as a basic constitutional principle (mostly by subscribing to the objective of a community of social peace and justice).

The federal structure also has implications for the way explicit and implicit references to solidarity are implemented. In fact, the impact of the solidarity principle is not just a matter of constitutional and legal regulation, but also of implementation, and in Germany, the implementation of national legislation is largely shaped by the principle of federalism. Typically, federal laws are executed by the 16 federal states in their own right (Art. 83 Basic Law). Execution of federal laws by the central Federal Government is restricted to exceptional cases defined by the Basic Law. Moreover, the execution of federal law by the single federal states implies that they establish the necessary administrative bodies and regulate all related administrative procedures (Art. 84 para 1 Basic Law). The executive competences of the federal states constitute an important pillar of their autonomy because they enable them to shape policies and to exercise influence (Stoy 2015, 85). Consequently, there is a variety of administrative procedures that reflect the preferences of the different regional governments to some extent. What is more, this complexity is further enhanced by the prominent role of the local communities. In the organisation of the state system, local communities belong to the federal states and cannot be directly addressed by the Federation with executive tasks. Instead, they must be commissioned by their federal state. In practice, this is very often the case. In fact, according to estimates, between 75 and 80 percent of federal laws are executed by local administrations (Stoy 2015, 85). Hence, the implementation of federal law may vary considerably across Germany depending on the local administrative practices and regional administrative regulations.

Yet, the influence of the federal states differs across the issue fields. In the area of social policy, for instance, the executive power of the federal states is limited. Here, all public contribution-based social insurance sys-

tems (e.g. pensions, unemployment insurance) are administered in the form of “federal corporations under public law” (Art. 87 para 2 Basic Law). Overall, these contribution-based social benefits make up 60 percent of social expenditure in Germany (BMAS 2016, 9) which means that the larger share is administered by national institutions. In comparison, all other federal social policy regulations, including tax based social benefit schemes, fall under the administrative authority of the federal states (e.g. social aid, parental allowance and care allowance) (Stoy 2015, 85).

However, the Basic Law foresees certain limits and controls of regional administrative autonomy and heterogeneity. For reasons of coherence, the Federal Government may issue general administrative rules, provided that they attain the consent of the Bundesrat (in which each federal state has a vote) (Art. 84 para 2). In addition, the Federal Government has to exercise oversight to guarantee that the federal states execute federal laws in compliance with the law (Art. 84 para 3).

Despite the lack of explicit references in the constitution and legislation, solidarity is well entrenched in Germany society. A major pillar of solidarity is the German welfare state. It provides people in need with a broad range of social services and facilities. Here, a particular characteristic of Germany is that the welfare system can rely on the coexistence of statutory, public and non-statutory, independent non-profit service providers. Moreover, volunteerism is well established in society. Almost half of the adult population actively volunteers for a social cause, and almost two-thirds engage in volunteering and/or informal help in their social environment. The important role of volunteerism is reflected and supported by the rich landscape of non-profit associations and charity organisations in Germany.

References

- Arts, W. and J. Gelissen (2002)* “Three worlds of welfare capitalism or more? A state-of-the-art report” *Journal of European Social Policy* 12(2): 137–158.
- BMAS (2015a)* Übersicht über das Sozialrecht. Federal Ministry of Labour and Social Affairs, Nürnberg: BW Bildung und Wissen.
- BMAS (2015b)* Social Security at a Glance. Federal Ministry of Labour and Social Affairs <http://www.bmas.de/>
- BMAS (2016)* Sozialbudget 2015. Federal Ministry of Labour and Social Affairs <http://www.bmas.de/>
- BMAS (2017)* Der Mindestlohn – Fragen und Antworten. <http://www.bmas.de/DE/Service/Medien/Publikationen/a640-ml-broschuere.html>
- BMF (2015)* Steuerliche Maßnahmen zur Förderung der Hilfe für Flüchtlinge. Federal Ministry of Finance, BMF communication IV C 4 – S 2223/07/0015, 22 Sept. 2015.
- BMF (2016)* Steuerliche Maßnahmen zur Förderung der Hilfe für Flüchtlinge; Verlängerung des zeitlichen Anwendungsbereichs des BMF-Schreibens vom 22. September 2015. Federal Ministry of Finance, BMF communication IV C 4 – S 2223/07/0015:015; 2016/0916258, 6 Dec. 2016.
- Depenheuer, O. (2009)* Solidarität im Verfassungsstaat. Grundlegung einer normativen Theorie der Verteilung [1991]. Norderstedt: Books on Demand.
- Dragolov, G., Z. Ignácz, J. Lorenz, J. Delhey, J. and K. Boehnke (2014)* Radar gesellschaftlicher Zusammenhalt – messen was verbindet. Gütersloh: Bertelsmann Stiftung.
- Esping Anderson, G. (1990)* The Three Worlds of Welfare Capitalism. Princeton: Princeton University Press.
- Giesen, R. (2013)* “Rechtliche Fragen des Einsatzes arbeitsmarktpolitischer Instrumente zur Krisenbewältigung” In *Sozialrecht in der Finanzkrise*, Bundestagung des Dt. Sozialrechtsverbandes e.V., 10.-11.Okt 2013, Berlin: Erich-Schmidt, 71-92.
- Grimm, D. (1985)* “Grundrechte” In D. Grimm (ed.), *Einführung in das öffentliche Recht*. Heidelberg: UTB.
- Hartmann, J. (n.d.)*. “Facts about Germany. Political System”, *The State & Politics*. <http://www.tatsachen-ueber-deutschland.de/>
- Haversath, P. (2012)* “Solidarität im Recht – Gegenseitige Verbundenheit als Grund und Grenze hoheitlichen Handelns” *Berliner Online-Beiträge zum Europarecht*, Nr. 76, Berlin: Freie Universität Berlin.
- Hesse, K. (1999)* *Grundzüge des Verfassungsrechts der Bundesrepublik Deutschland*, 20th. ed. Heidelberg: Müller.
- Heun, W. (2011)* *The Constitution of Germany. A Contextual Analysis*. Oxford/Portland: Hart Publ.
- Hilpold, P. (2007)* “Solidarität als Rechtsprinzip – völkerrechtliche, europarechtliche und staatsrechtliche Betrachtungen”, *JöR*, 55, 195-214.

- Huxhold, O. and D. Müller (2017) "Werthaltungen und freiwilliges Engagement", In J. Simonson, C. Vogel and C. Tesch-Römer (eds.), *Freiwilliges Engagement in Deutschland. Der Deutsche Freiwilligensurvey 2014*, Springer VS.
- Kreikebohm, R. (2010) "Solidarität und Subsidiarität als Ausprägungen des „Sozialen“ den Zeiten der Finanz- und Wirtschaftskrise, RATUBS Nr. 6/2010. TU Braunschweig, Carl-Friedrich-Gauß-Fakultät, Institut für Rechtswissenschaften: 1-21.
- Leibfried, S. (1992) "Towards a European welfare state? On integrating Poverty Regimes into the European Community", in Z. Ferge and J. E. Kolberg (eds.) *Social Policy in a Changing Europe*, Frankfurt: Campus.
- Müller, D., N. Hameister and K. Lux (2017) "Anstoß und Motive für das freiwillige Engagement", in J. Simonson, C. Vogel and C. Tesch-Römer (eds.), *Freiwilliges Engagement in Deutschland. Der Deutsche Freiwilligensurvey 2014*. Springer VS.
- Piazolo, M. (2004) *Solidarität. Deutungen zu einem Leitprinzip der Europäischen Union*. Würzburg: Ergon.
- Schiefer, D., J. van der Noll, J. Delhey and K. Boehnke (2012) *Kohäsionsradar: Zusammenhalt messen Gesellschaftlicher Zusammenhalt in Deutschland – ein erster Überblick*. Gütersloh: Bertelsmann Stiftung.
- Schnitzler, M. (2013) "Einsatz arbeitsmarktpolitischer Instrumente zur Krisenbewältigung – Kommentar aus Sicht der Bundesagentur für Arbeit", *Sozialrecht in der Finanzkrise*, Bundestagung des Dt. Sozialrechtsverbandes e.V., 10.-11. Okt 2013, Berlin: Erich-Schmidt: 101-106.
- Simonson, J., C. Vogel and C. Tesch-Römer (eds.) (2017) *Freiwilliges Engagement in Deutschland. Der Deutsche Freiwilligensurvey 2014*. Springer VS.
- Simonson, J., J.P. Ziegelmann, C. Vogel and C. Tesch-Römer (2017) "Zentrale Ergebnisse des Deutschen Freiwilligensurveys 2014", in Simonson, J., C. Vogel and C. Tesch-Römer (eds.), *Freiwilliges Engagement in Deutschland. Der Deutsche Freiwilligensurvey 2014*, Springer VS.
- Special Eurobarometer (2011) Volunteering and Intergenerational Solidarity*, Survey 75.2, 2011.
- Stoy, V. (2015) *Föderale Vielfalt im unitarischen Sozialstaat. Die sozialpolitische Angebotssteuerung der deutschen Länder*. Springer VS.
- Strecker, C. (2002) *Vergütete Solidarität und solidarische Vergütung: Zur Förderung von Ehrenamt und Engagement durch den Staat*, Opladen: Leske + Budrich.
- TNS Infratest Deutscher Spendenmonitor (2015)* <http://fundraisingverband.de/>
- Vogel, C., C. Tesch-Römer J. Simonson (2017) "Zusammenspiel des freiwilligen Engagements mit informeller Unterstützung", in Simonson, J., C. Vogel and C. Tesch-Römer (eds.), *Freiwilliges Engagement in Deutschland. Der Deutsche Freiwilligensurvey 2014*, Springer VS.
- Volkman, U. (1998) *Solidarität. Programm und Prinzip der Verfassung*. Tübingen: Mohr Siebeck.
- Vofßkuhle, A. (2015) *Solidarität als Rechtspflicht?. Festrede zum Jahresempfang der Evangelischen Akademie Tutzing 22th Jan 2015*, <http://web.ev-akademie-tutzing.de/>

- Zacher, H. F. (2013) *Social Policy in the Federal Republic of Germany: The Constitution of the Social*. Berlin Heidelberg: Springer.
- Zacher, H. F. (1977) "Was können wir über das Sozialstaatsprinzip wissen?" In R. Stödter and W. Thieme (eds.): *Hamburg, Deutschland, Europa. Festschrift H.P. Ipsen 1977*. Tübingen: Mohr Siebeck.
- Zacher, H. F. (2004) "§ 28 Das soziale Staatsziel" in Isensee, J. and P. Kirchhof (eds.) *Handbuch des Staatsrechts der Bundesrepublik Deutschland, Vol. II Verfassungsstaat*, 3rd rev. and ext. ed. Heidelberg: Müller, 659-784.

BVERFG decisions

- BVerwGE 1, 159, judgement of 24 Jun 1954.
- BVerwGE 25, 307 judgement of 30 Nov 1966.
- BVerfGE 68, 193, judgement of 31 Oct 1984, guild of dental technicians.
- BVerfGE 76, 256, judgement of 30 Sept 1987, civil service pension scheme.
- BVerfGE 87, 153, judgement of 25 Sept 1992, basic allowance.
- BVerfG, 1 BvL 16/96, judgement of 15 Mar 2000, Rn. (1-101).
- BVerfG, 1 BvL 4/96, judgement of 22 May 2001, Rn. (1-46).
- BVerfGE 125, 175, judgement of 09 Feb 2010, Hartz IV-judgement.
- BVerfG, 1 BvL 10/10, judgement of 18 Jul 2012, Asylum Seeker Benefits.

