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Freedom of Speech and Flag Desecration: A Comparative Study of German, European and United States Laws*

I. INTRODUCTION

In 1990, the German Federal Constitutional Court (*Bundesverfassungsgericht*, or "BVerfG") decided whether desecration of the German flag was protected by the constitutional right of freedom of speech, specifically by artistic freedom.¹ The European Court of Human Rights in 1988 decided if three paintings of a Swiss artist were protected by the right of freedom of speech as granted in Article 10(I) of the European Human Rights Convention ("MRK").² In 1989 and 1990, the U.S. Supreme Court determined twice, in *Texas v. Johnson*,³ and in *U.S. v. Eichmann*,⁴ whether it was necessary to limit the First Amendment right of freedom of speech to protect the American flag and its symbolic value.

This article examines the German, European and American approaches to freedom of speech. Each subsection discusses the relevant constitutional provisions and law which applies in the respective jurisdictions. This is followed by an analysis of the leading cases to show how the law has been interpreted. The fifth section compares the different concepts. Although the laws are similar, the interpretation by the U.S. Supreme Court is the most liberal.

II. THE GERMAN APPROACH

A. Freedom of Speech Protected by the German Constitution (*Grundgesetz*)

1. Article 5, Paragraph 1

The German Constitution (*Grundgesetz*, or "GG") of May 23, 1949, consists of 146 Articles. The procedural and substantive basic rights (*Grundrechte*) are enumerated in GG Articles 1 through 19. GG Article 93(I)(4a) specifies basic rights, and GG Article 5 grants the right of freedom of expression (*Recht der freien Meinungsäußerung*). GG Article

* A table of abbreviations used in this article appears following the text, at page 491.

1. BVerfG, Judgment of March 7, 1990, 1 BvR 266/86, 913/87, 32 N.J.W. 1982 (1990).

2. Joachim Wuerkner, *Kunst und Moral — Gedanken zur "Fri-Art 81" — Entscheidung des Europaischen Gerichtshofs fuer Menschenrechte*, 6 N.J.W. 369 (1989), citing EGMR (Art. 19, 38 ff. MRK).

3. 491 U.S. 397 (1989).

4. 496 U.S. 310 (1990).

5(I) specifically provides: "Everyone shall have the right freely to express and disseminate his opinion by 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 are guaranteed. There shall be no censorship."⁵

GG Article 5(I), then, grants freedom of expression, which includes freedom of speech, and freedom of information, freedom of the press, freedom of radio and film, and prohibits censorship. The freedom of expression broadly granted in GG Article 5(I), in the first half of the first sentence, however, is strictly limited by GG Article 5(II).

2. Article 5, Paragraph 2

GG Article 5(II) specifies, "These rights are limited by the provisions of the general laws, the provisions of law for the protection of youth, and by the right to inviolability of personal honor."⁶ In Germany, there is no generic term for a general law or statute. In Germany a statute is not a general one if it is directed against a specific opinion.⁷ For example, Section 11 of the Statute of October 21, 1878, directed against activities of Social Democrats, was not considered to be a general statute.⁸

There are, however, exceptions — statutes which are constitutional without qualifying as general statutes which limit the basic rights protected by GG Article 5(I)(1) and (2). For example, German Penal Code (*Strafgesetzbuch*, or "StGB") § 86(I)(4), Prohibition of Distribution, Production and Importing of Goods Used to Propagate Nazi Ideology,⁹ is directed against a specific opinion; however, these statutes are held constitutional because of the preference of the protection of the free democratic basic order (*Freiheitlich demokratische Grundordnung*, or "FDGO") of Germany. Furthermore, there is no generally applicable statute when the statute, without aiming at a specific opinion, impacts only on a basic right named in GG Article 5(I)(1) and (2).¹⁰

The term "general laws" covers regulations based on statutory authorization.¹¹ The statutory law for the protection of youth must be created to protect the young and must be suited to such protection.¹² The

5. GRUNDGESETZ [GG] art. 5 I (F.R.G) [The Basic Law of the Federal Republic of Germany] (1970), [hereinafter BASIC LAW translation].

6. *Id.* at art. 5(II).

7. 20 BSGE 178.

8. RGBl 351 (1878).

9. Compare BGH, N.J.W. 1693 (1970); Kohlmann, *Verfassungswidrige Parteien fuer immer mundtot?* J.Z. 681 (1971); Greiser, *Verbreitung verfassungsfeindlicher Propaganda (Die Rechtfertigungsgruende des Paragraphen 86 III StGB)*, N.J.W. 1556 (1972); OLG Celle MDR 941 (1970).

10. Ridder, *Anmerkung zu BVerfG, Beschluss vom 25.01.61 - 1 BuR 9/57, GG Art 5 I,II, StGB Paragraph 193*, J.Z. 539 (1961); Bettermann, *Die allgemeinen Gesetze als Schranken der Pressefreiheit*, J.Z. 604 (1964).

11. OVG Muenster DVBl 509 (1972).

12. 30 BVerfGE 354.

law of personal honor has the power to limit freedom of speech only so far as it is statutory law.¹³

3. Article 5, Paragraph 3

GG Article 5(III) states: "Art and science, research and teaching, shall be free. Freedom of teaching shall not absolve one from loyalty to the constitution."¹⁴ This Article grants broad freedom for art and science, research and teaching. The freedoms granted by this section are not limited by the provision of GG Article 5(II), which limits the various rights of freedom of expression as specified in GG Article 5(I). Following the plain meaning of GG Article 5(III), the freedom of expression in an artistic form arguably could not be touched or sanctioned based on any general statute or other statutory law mentioned in GG Article 5(II). Therefore, if freedom of expression takes an artistic form, it might be unrestricted.

B. *Freedom of Speech Limited by Section 90a, German Penal Code (Strafgesetzbuch)*

A conflict arises if acts exercised under the right of freedom of expression clash with regulations of the penal code. Section 90(a)(I) of the German Penal Code (StGB) states:

Whoever publicly, in an assembly, or by disseminating publications or writings . . . 1. insults or maliciously scorns the Federal Republic of Germany or one of its states, or its constitutional order, or 2. desecrates the colors, the flag, the coat of arms or the anthem of the Federal Republic of Germany or one of its states, shall be punished with imprisonment for up to three years, or shall be fined.¹⁵

Section 90(a) StGB is one of the regulations in the third title of the German Penal Code, "Endangerment of the Democratic Constitutional State."¹⁶ These regulations have been created to focus on endangerment of interior state security. They are designed not only to protect against subversive actions, illegal propaganda, and demoralization of the security institution, but also to prevent the Federal Republic and its institutions from disparagement.¹⁷ The values protected by Section 90(a)(I)(1) StGB are the existence of the state and the existence of the constitutional order in the sense of the free democratic basic order (FDGO).¹⁸

13. 33 BVerfGE 17.

14. BASIC LAW translation, *supra* note 5, at art. 5(III).

15. Author's translation of the German Penal Code § 90(a).

16. *Id.*

17. Wuertenberger, *Kunst, Kunstfreiheit und Staatsverunglimpfung (Paragraph 90a StGB)*, J.Z. 309, 311 (1979) (with reference to SCHOENKE-SCHROEDER, STRAFGESETZBUCH, KOMMENTAR (19th ed. 1978), preface to §§ 80 *et seq.*).

18. *Id.* at 311.

C. *Decision of the German Federal Constitutional Court (Bundesverfassungsgericht), March 7, 1990*

1. Facts

In 1990, the German Federal Constitutional Court (BVerfG) had to decide the question of whether an illustration on the cover of a book was protected by the constitutional right of freedom of speech, or more specifically, by the right of artistic freedom, as granted in GG Article 5(III).¹⁹

In 1981 and 1982, the managing director of a literature distribution company sold several copies of the book *Lasst mich bloss in Frieden* (Leave Me In Peace). The book contained, besides cartoons and collages, anti-militaristic prose and poetry.

The book's front cover depicted a soldier with a skull and a steel helmet; the back cover depicted two pictures which formed a collage. The lower portion of the collage showed a black-and-white picture of an oath ceremony of the German armed forces in which soldiers held an unfolded German flag. In the background was a barracks building. In front of that building, a soldier was standing on a podium which was decorated with a German flag. Between this soldier and the barracks was a flagpole with a German flag flying. The sky over the barracks formed the background of the color picture, which was the upper half of the collage. The collage showed a male human torso, wearing a shirt and pants from the knees to the hips, rising like a giant behind the roof of the barracks. The open fly was concealed by the man's right hand in urinating position. Behind the hand, a stream of urine was directed onto the unfolded flag in the lower picture. Under the flag on the ground, a yellow puddle of urine was evident.

2. Procedural Posture

The trial court (*Amtsgericht*) fined the managing director of the literature distribution company 4500.00 German Marks. The court held the back cover of the book to be a desecration of the colors and the flag of the Federal Republic of Germany.²⁰ The highest appellate court for this case, the *Oberlandesgericht* (OLG), dismissed the managing director's appeal.²¹

Based on his rights granted by Article 93(I)(4)(a),²² the managing director called on the Federal Constitution Court, claiming that his basic right of freedom of expression, here the right of artistic freedom, was vio-

19. BVerfG, Judgment of March 7, 1990, 1 BvR 266/86, 913/87, 32 N.J.W. 1982 (1990).

20. *Id.*

21. OGL Frankfurt 84 NStZ 120.

22. GG art. 93(I)(4)(a) grants everyone the right to call on the Federal Constitutional Court claiming that his basic rights, as granted by GG arts. 1-19, or one of his rights under arts. 20(IV), 33, 38, 101, 103 and 104, have been violated by the State. However, all other possible judicial remedies must be exhausted within the courts of ordinary jurisdiction.

lated by the criminal prosecution and sentencing.²³

3. The Court's Decision

Though the Court held that the appealed decisions violated the director's constitutional rights, the Court declared that GG Article 5(III)(1) does not prevent someone from being punished under Section 90(a)(I)(2) of the German Penal Code (StGB) for desecration of the German flag, even when used in an artistic form.²⁴

a. Illustration is Art

The Court held the illustration on the back cover of the book, *Lasst mich bloss in Frieden* (Leave Me In Peace), to be art even though the illustration was offensive. Art is free from State control of style and standard.²⁵ This classification, however, does not prevent punishment under Section 90(a)(I)(2) StGB for desecration of the German flag, because that criminal statute was instituted to shield a constitutionally-protected value.²⁶ In this case, however, the Court held that the necessary weighing of the conflicting constitutional values had not been done properly and, in part, an adequate understanding of that specific piece of art had been lacking.²⁷

By adding two realistic situations, the author made a certain statement that could and had to be interpreted artistically.²⁸ The fact that the artist wanted to express a certain opinion with his product did not preclude the protection of GG Article 5(III)(1) because it is the more specific norm.²⁹

b. Artistic Freedom Does Not Protect from Punishment

The Court went on to state that, although artistic freedom is granted unreservedly, it does not generally preclude punishment for violation of Section 90(a)(I)(2) StGB. The guarantee of GG Article 5(III)(1) is not only limited by the constitutional rights of third persons, but can also collide with various constitutional regulations³⁰ because an orderly coexis-

23. The BVerfG decided that case, along with another case (1 BvR 913/87), against an editor of a journal who had reprinted the back cover of the book, *Lasst mich bloss in Frieden*, with the incriminating collage. The editor had been fined 900.00 DM for desecration of the State and its symbols. The editor's subsequent appeal (*Berufung*) and his additional appeal (*Revision*) had been dismissed. The editor also called on the BVerfG. The Court did review both cases together and drew the same conclusion. The author focuses here on the case 1 BvR 266/86 to avoid repetition.

24. BVerfG, Judgment of March 7, 1990, BvR 266/86, 913/87, 32 N.J.W. 1983 (1990).

25. *Id.* (with reference to 75 BVerfGE 369, 377).

26. *Id.*

27. *Id.*

28. *Id.* (with reference to 30 BVerfGE 173, 189).

29. *Id.* (with reference to 30 BVerfGE 173, 200 and 75 BVerfGE 369, 377).

30. *Id.* (with reference to 30 BVerfGE 173, 193 and *Lerche*, *Schranken der Kunstfreiheit - Insbesondere zu offenen Fragen der Mephisto-Entscheidung*, BayVBl. 177, 180-181 (1974)).

tence of the people requires not only mutual consideration of everyone, but also a functioning public State order which secures the efficiency of the protection of constitutional rights.

Works of art which undermine the constitutionally-granted order are not limited only if they endanger the existence of the State or the Constitution. When other constitutional values are in conflict with expression under artistic freedom, there must be a balance between the contradictory, equally constitutionally-protected interests.³¹

c. The Conflicting Constitutional Values

The Court held that artistic freedom was in conflict with the protection of the symbols of the State. Section 90(a)(I)(2) StGB protects the German flag as a State symbol. GG Article 22 expressly determines the colors of the German flag only, but presupposes the right of the State to present itself in symbols. The purpose of these symbols is to appeal to the State consciousness of its citizens.³²

Germany, as a free State, is dependent on its citizens' identification with the basic values symbolized by the flag. These protected values are symbolized by the colors prescribed in GG Article 22. The colors represent the free, democratic basic order (FDGO). If the flag serves as an important medium of cohesion, the desecration of the flag can undermine the State's authority which is necessary for the State's internal peace. This means that State symbols are protected by the constitution only insofar as they symbolize what is fundamental for Germany.³³

Focusing on GG Article 5(III)(1), however, the protection of the State's symbols is not allowed to immunize the State against criticism and even rejection. It is necessary, therefore, in each case to weigh the contradictory constitutional values.³⁴ In this case, the Court concluded that the decision against the managing director did not meet these constitutional requirements and held the judgment against him as a violation of his constitutional rights.³⁵

The Court held that the Appellate Court (OLG) did not treat the collage correctly. Since it is typical for artists to exaggerate and distort, it is necessary to look beyond the satirical words and pictures to determine the collage's real content.³⁶ The Court held that the Appellate Court misinterpreted the real content of the collage, holding the real content to be

31. *Id.* (with reference to 77 BVerfGE 240, 253).

32. *Id.*; Wuertenberger, *supra* note 17, at 311 (referring to H. KRUEGER, ALLGEMEINE STAATSLAHRE 226 (1965)).

33. *Id.*

34. *Id.*

35. *Id.* In another decision on the same day, the Federal Constitutional Court held that GG Article 5(III)(1) does not generally preclude punishment under Section 90(a)(I)(2) StGB for desecration of the German national anthem, BVerfG, Beschluss from March 7, 1990, 1 BvR 1215/87, 32 N.J.W. 1985 (1990).

36. *Id.* at 1984 (with reference to 62 RGSt 183, 75 BVerfGE 369, 377).

the desecration of the flag and the State, which is symbolized by the flag. The Court found, however, that although the collage shows a State symbol's defamation, it was not intended to attack the state or the democratic basic order of the Federal Republic of Germany. Instead, the criticism was directed mainly against militarism in Germany, and the State was attacked only because it was enforcing the military draft and legitimizing the draft by using the State's symbols at the oath ceremony.³⁷ The Court concluded that because more freedom is given to the satirical distortion than to its content, the OLG's misinterpretation of the collage caused a violation of the constitution.³⁸

Though in this particular case the Court found that the acts were constitutionally protected, the judges held that freedom of expression as granted in GG Article 5(III) does not generally preclude punishment under Section 90(a)(I)(2) StGB.³⁹

4. Consequences of the Court's Opinion

The Court's decision was severely criticized in Germany, especially the determination by the Court of which values were constitutionally protected so that they could be used to limit the freedom of expression as granted by GG Article 5(III), though the constitution should determine these protected values.⁴⁰ The German flag was mentioned in GG Article 22, but not expressly protected.⁴¹

The deciding term "desecration" in the German Penal Code as used in Section 90(a) StGB was held by critics as unclear,⁴² and not interpreted by any of the various courts which were involved in the flag desecration case. Therefore, the Court's decision of March 7, 1990, was held to be more sibyllinic than solomonian.⁴³

It seems dangerous when the rule allowing freedom of expression as granted in GG Article 5(III), to be limited by "constitutionally-protected values" only, is annulled by the Federal Constitutional Court by valuing any statutorily-accepted or by the State-accepted concern to be a "constitutionally-protected value."

37. *Id.*

38. *Id.*

39. *Id.* at 1983.

40. Christoph Gusy, *Anmerkung zu BVerfG, Beschluss v. 7.3.1990 -1 BvR 266/86 und 913/87*, J.Z. 640, 641 (1990) (with reference to CHRISTOPH GUSY, *PARLAMENTARISCHER GESETZGEBER UND BVERFG 65* (1985)).

41. *Id.*

42. *Id.* (with reference to BEMMANN AND MANOLEDAKIS, *DER STRAFRECHTLICHE SCHUTZ DES STAATES 107* (1987)).

43. Gusy, *supra* note 40, at 641.

III. THE EUROPEAN APPROACH

A. *Freedom of Speech Protected by the European Convention on Human Rights*

Freedom of speech is protected in Western Europe not only by the national laws of the European nations, but also by the European Convention on Human Rights (MRK),⁴⁴ which has been ratified by twenty-one western European nations.⁴⁵

By accession to the Convention, the nations guarantee their citizens and residents the Convention's rights and freedoms.⁴⁶ Freedom of speech is granted by MRK Article 10(I).⁴⁷ Freedom of speech under the Convention consists of freedom of forming an opinion, freedom to express an opinion, and freedom to receive information.⁴⁸

When a right or freedom granted by the Convention is violated, the encumbered person or legal entity is entitled to call upon the European Commission of Human Rights ("Commission") for a decision. The Commission was formed by the contracting States under Article 19 (a) of the MRK. The Commission is entitled to accept a matter only after exhaustion of all intra-state legal remedies of an encumbered party.⁴⁹

If the Commission concludes that the named state violated its obligations under the Convention, and mediation by the commissioner, as pre-

44. Several nations have made reservations and declarations regarding specific provisions of the Convention at the time of ratification, acceptance, approval or accession to the Convention.

45. The ratifying nations include the twelve member countries of the European Community: Federal Republic of Germany, Belgium, Denmark, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and the United Kingdom. The other Contracting States to the MRK are: Iceland, Liechtenstein, Malta, Norway, Austria, Sweden, Switzerland, San Marino, Turkey and Cyprus.

46. MRK art. 1.

47. Article 10 of the Convention states:

(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

MRK art. 10.

48. FROWEIN AND FROWEIN-PEUKERT, *EUROPAISCHE MENSCHENRECHTS-KONVENTION*, art. 10 n. 2.

49. MRK art. 26.

scribed by MRK Article 28, fails, the Commission calls for a decision by the European Court of Human Rights.⁵⁰ The decision of the European Court of Human Rights is final, and the Contracting States are obligated to obey the Court's decision.⁵¹

B. *The Case of Josef Felix Mueller*

1. Facts

In 1988, the European Court of Human Rights decided the question of whether the exhibition of three paintings of the Swiss artist, Josef Felix Mueller, which were exhibited in the city of Fribourg in Switzerland, were protected by the right of freedom of speech as granted in Article 10 I of the European Convention on Human Rights.

In the fall of 1988, the artist created three monumental paintings entitled *Drei Naechte, drei Bilder* (Three Nights, Three Paintings) at the art exhibition "Fri-Art 81" in Fribourg. The local authorities in Fribourg decided that the paintings emphasized extreme forms of sexuality and confiscated the paintings. The authorities believed the paintings severely injured the morals of the average Swiss citizen and consequently prosecuted the artist.

2. Procedural Posture

a. Earlier Cases

Although the Swiss Constitution of May 29, 1874,⁵² does not contain an explicit, fundamental right of freedom of speech in an artistic form, the Swiss Federal Court in 1962 extended freedom of speech as an unwritten, fundamental right of the Swiss Federal Constitution with respect to the creation of art.⁵³

Twenty years later, however, a criminal court in Zurich⁵⁴ sentenced

50. The European Commission of Human Rights was established by the Contracting States under MRK art. 19(b). The European Court of Human Rights is the second European Court. The European Court of Justice, established under Article 4 of the Treaty establishing the European Community (Treaty of Rome, 1957), insures uniformity in the interpretation and application of the Community law. Treaty of Rome art. 164. The Court of Justice does not have jurisdiction regarding the acts of states which are not members of the European Community but are Contracting States of the European Convention on Human Rights. The European Court of Human Rights is seen by some jurists as the future European Constitutional Court; see, e.g., WEIDMANN, *DER EUROPÄISCHE GERICHTSHOF FUER MENSCHENRECHTE AUF DEM WEG ZU EINEM EUROPÄISCHEN VERFASSUNGSGERICHTSHOF* (1985). See also Lang, *The Development of European Community Constitutional Law*, 25 INT'L LAW. 455 (1991).

51. MRK art. 52.

52. Bundesverfassung der Schweizerischen Eidgenossenschaft.

53. Judgment of September 19, 1962 of the Swiss Federal Court (*Schweizer Bundesgericht*), 64 ZBl 363, 365 (1963).

54. Obergericht Zuerich.

Harald Naegeli, "the Sprayer of Zurich," to nine months imprisonment and a fine of 100,000 Swiss Francs. From 1977 to 1979, Harald Naegeli secretly sprayed figures on hundreds of public and private buildings in the city of Zurich. The figures had a distinctive style and were held by various Swiss art critics to be an important form of art. After his arrest, Naegeli stated that he believed his figures were an artistic message to society.⁵⁵ Naegeli was found guilty of repeated property damage⁵⁶ under Article 145(I) of the Swiss Penal Code.⁵⁷

b. Application to Mueller

Josef Felix Mueller was prosecuted under a provision of the Swiss Penal Code⁵⁸ which outlaws obscene publications. He was convicted by the Court of First Instance Saanen.⁵⁹ Mueller appealed to the Appellate Court Fribourg⁶⁰ without success and brought another appeal to the Swiss Federal Court.⁶¹ The Swiss Federal Court dismissed the appeal, and the artist filed a suit in the European Court of Human Rights against Switzerland for violation of his right of freedom of speech as granted by Article 10 I MRK.

3. Holding of the European Court of Human Rights

The European Court of Human Rights relied in its decision in the matter of Mueller on its previous opinion in the Handyside Case.⁶² The Commission, in its report under MRK Article 31, declared the expression of artistic freedom as of fundamental importance in a democratic society. By means of his creative work, the artist not only expresses his personal view of life, but also his thoughts about the society in which he lives. Artistic expression not only furthers education, but also furthers expression of public opinion. Furthermore, the artistic presentation may initiate a public discussion of the important issues of the time.⁶³

In the Handyside Case, the European Court of Human Rights had to decide whether authorities of the United Kingdom had exceeded their discretion in seizing the alleged obscene publication entitled "The Little

55. Hoffman, N.J.W. 237 (1985); M. MUELLER, DER SPRAYER VON ZUERICH, SOLIDARITAET MIT HARALD NAEGELI (1984). Harald Naegeli appealed the decision of the Swiss Federal Court to the European Court of Human Rights, but the Commission dismissed the case. The reasoning of the Commission was that freedom of speech in an artistic form does not extend to the damage of others' personal property for the purpose of expression of artistic freedom. N.J.W. 2753 (1984); EuGRZ 259, 260 (1984); P.C. RAGAZ, DIE MEINUNGSAEUSSERUNGSFREIHEIT IN DER MENSCHENRECHTSKONVENTION (1979).

56. Sachbeschaedigung.

57. Swiss StGB (Schweizerisches Strafgesetzbuch).

58. Swiss StGB art. 204.

59. Bezirksstrafgericht Saanen.

60. Kantonsgericht Fribourg.

61. Schweizerisches Bundesgericht.

62. Eur. Ct. H.R., Judgment of December 7, 1976.

63. Wuerkner, *Kunst und Moral-Gedanken zur "Fri-Art-81": Entscheidung des Europaeischen Gerichtshof fuer Menschenrechte*, N.J.W. 369, 371 (1989).

Red Schoolbook" and in prosecuting its publisher, Richard Handyside, under the 1959-1964 Obscene Publications Act which resulted in his conviction and seizure and confiscation of the book.⁶⁴

The Court observed that it was not possible to find, in the domestic law of the various Contracting States to the European Convention on Human Rights, a uniform European concept of morals.⁶⁵ Countries' respective laws of the requirements of morals vary in time and place, especially in modern times which are characterized by a rapid and far-reaching evolution of opinions. According to the Court, by reason of their direct and continuous contact with the vital forces of their countries, national authorities are in a better position than international judges to give an opinion on the exact content of these requirements, as well as on the "necessity" of a "restriction" or "penalty" intended to meet these requirements.⁶⁶ National authorities must make the initial assessment of the realities of the pressing social need implied by the notion of "necessity" in this context. Consequently, MRK Article 10(II) leaves the Contracting States a margin of appreciation.⁶⁷

The Court further observed that it is not its task to replace competent national courts, but rather to review under MRK Article 10 decisions delivered in exercise of the courts' power of appreciation. However, the European Court's supervision would generally prove illusory if it did no more than examine these decisions in isolation; it must view them in light of the case as a whole, including the alleged obscene publication in question and the arguments and evidence adduced by the applicant in the domestic legal system, and then decide, on the basis of the different data available to it, whether the reasons given by the national authorities to justify the actual measures of "interference" taken are relevant and sufficient under MRK Article 10(II).⁶⁸

In the Handyside Case, the Court held that freedom of speech is a cornerstone of a democratic society, an important condition for its progress and for individual self-realization.⁶⁹ The Court emphasized that freedom of speech applies to inconvenient views, to views that provoke, shock or bother the State or a part of the population.⁷⁰

In the case of Josef Felix Mueller, the Court followed its opinion in the Handyside Case. The Court extended freedom of expression under MRK Article 10(I) to artistic expression of opinions, including those opinions which provoke, shock or disturb. Pluralism, tolerance and liberality are necessary for a democratic society: "Those who create, interpret,

64. Eur. Ct. H.R., EuGRZ 38, 42 (1976).

65. ZAIM M. NEDJATI, HUMAN RIGHTS UNDER THE EUROPEAN CONVENTION 186 (1978).

66. *Id.*

67. *Id.*

68. *Id.*

69. Eur. Ct. H.R., EuGRZ 38, 42 (1976); *see also* BERGER, RECHTSPRECHUNG DES EUROPÄISCHEN GERICHTSHOF FÜR MENSCHENRECHTE 79 (1987).

70. Eur. Ct. H.R., EuGRZ 38, 42 (1976).

distribute or exhibit works of art contribute to the exchange of ideas and opinions which is essential for a democratic society. Hence, the obligation on the State not to encroach unduly on their freedom of expression."⁷¹

The Court focused on the limitations of freedom of expression as provided for in MRK Article 10(II), holding that Mueller's criminal convictions under the Swiss Penal Code were "prescribed by law"⁷² and were necessary "for the protection of morals and the rights of others."⁷³

The Court had to decide the question of whether or not the restriction of the right granted by MRK Article 10(I) was "necessary in a democratic society."⁷⁴ In answer, the Court held that artists and others who support the artist's work are limited by the restrictions of MRK Article 10(II): whoever exercises these freedoms carries duties and responsibilities. The reach of these duties and responsibilities depends on the artist's situation and the media he used. The Court held that it had to review the duties and responsibilities in order to answer the question of whether or not a conviction was necessary in a democratic society.⁷⁵

The Court then weighed individual artistic freedom against the protection of morals.⁷⁶ The Court stated that in 1988, it was still impossible to find a common European view of morals in the social and legal order of the Contracting States to the European Convention on Human Rights. Therefore, the public authorities are generally, by means of their direct and continuous contact with their countries' people, better equipped to judge the specific meaning of the duties and responsibilities, and also to judge the necessity to restrict the exercise of the freedoms and to decide on a penalty to obtain the restriction.⁷⁷

The Court thereby granted the Contracting States wide discretion in judging the necessity of restricting the right of freedom of expression. The Court concluded that Josef Felix Mueller's conviction was necessary for the protection of morals of the Swiss population and other visitors to the exhibition.⁷⁸

C. Freedom of Speech Protection in States which Adopted the European Convention on Human Rights Compared with German Intra-State Protection

The European Court of Human Rights focused in Mueller's case on the criteria of duties and responsibilities as provided for in MRK Article 10(II). However, it may be a heavy burden on the artist to think about his

71. Eur. Ct. H.R., EuGRZ 543, 545 (1988); N.J.W. 379 (1989).

72. MRK art. 10 II, criterion 1.

73. *Id.* at criterion 2.

74. *Id.* at criterion 3.

75. Eur. Ct. H.R., EuGRZ 543, 545 (1988).

76. *Id.*

77. *Id.*

78. *Id.*

duties and responsibilities while he is creating a piece of art. The Court was criticized for infringing upon the creativity of artists.⁷⁹

The German Federal Constitutional Court has a different approach in reviewing the limitation of artistic freedom, acknowledging in its decisions that there are peculiarities in the field of art which have to be considered when the courts review the limits of freedom of expression in the arts.⁸⁰ For example, in its so-called "Cartoon Decision" in 1977,⁸¹ the German Federal Constitutional Court had to decide whether or not a cartoon published in a magazine, which showed a high-ranking German politician as a copulating pig, was protected by the constitutional right of freedom of expression under Article 5 of the German Constitution.⁸² The artist was fined for defamation⁸³ by a criminal court of first instance.

The Federal Constitutional Court held the cartoons to be art as stated in GG Article 5(III).⁸⁴ Though the Court found it impossible to generally define what art is, it held it necessary to differentiate between what constitutes art and what does not, and define the basic requirements for a work to be considered art in applying GG Article 5(III).⁸⁵ A differentiation between higher and lower, or better or worse, art was held not to be allowed by the Court. Such a differentiation would be considered an illegal censorship of the content.⁸⁶

The Court considered the cartoons to be the product of a free, creative process in which the artist expressed his views, impressions and experiences.⁸⁷ The Court, therefore, held that the cartoon met the requirements essential for artistic activity.⁸⁸

The fact that the artist expresses a certain opinion with the cartoons does not change the fact that the cartoons are art.⁸⁹ The Court further held that art, and the expression of an opinion, are not mutually exclusive; an opinion could — as is normally a fact in art with a political theme — be expressed as art.⁹⁰ The Court viewed GG Article 5(III)(1) to be the governing basic right.

Though the Court held the cartoons to be art, it found that the personal rights of the politician, who was the subject of the cartoons, out-

79. Wuerkner, *supra* note 63.

80. 30 BVerfGE 173, 191.

81. Karikatur-Beschluss.

82. 75 BVerfGE 369.

83. StGB § 185.

84. Wuerkner, *supra* note 63, at 377.

85. *Id.*

86. *Id.* (with reference to SCHOLZ, MAUNZ, DUERIG, GRUNDGESETZ KOMMENTAR, n. 39 (1983); GG art. 5(III)).

87. *Id.*

88. *Id.* (with reference to 67 BVerfGE 213, 226 and 30 BVerfGE 173, 200).

89. *Id.*

90. *Id.* (with reference to SCHOLZ, MAUNZ, DUERIG, GRUNDGESETZ KOMMENTAR, n.13 (1983); GG art. 5(III)).

weighed the artist's freedom of expression.⁹¹ Even though exaggerations were typical for cartoons, and were directed toward a public figure, the cartoons were not protected by artistic freedom.⁹² The Court found that the cartoons were directed against the personal honor of the politician, which is protected by GG Article 1(I).⁹³ The German Federal Constitutional Court held in previous cases that if someone's personal honor is impaired, there is a severe injury to his personal rights. The commission of this injury is not protected by artistic freedom.⁹⁴

In its "Cartoon Decision," and also in its "Anachronistic March Decision,"⁹⁵ the German Federal Constitutional Court respected the arts' peculiarities and considered them in its decision process. The Court does not take recourse, as does the European Court of Human Rights, to the duties and responsibilities of the artist while he is in the process of being creative, and thereby grants the artist a greater amount of freedom in the creative process.

IV. THE UNITED STATES APPROACH

A. *Freedom of Speech Protected by the First Amendment of the Constitution*

Freedom of speech in the United States of America is protected by the First Amendment of the United States Constitution.⁹⁶ Though the First Amendment literally forbids the abridging of freedom of "speech," the United States Supreme Court has long recognized that its protection does not end with the spoken or written word, and that it also includes conduct.⁹⁷

B. *The Case of Texas v. Johnson*

In 1989, the U.S. Supreme Court had to decide, in the case of *Texas v. Johnson*,⁹⁸ whether it was necessary, in order to protect the American flag and its symbolic value, to limit the First Amendment right to freedom of speech. After publicly burning an American flag as a means of political protest, Gregory Lee Johnson was convicted of desecrating a flag in violation of the Texas Penal Code.⁹⁹ After a trial, Johnson was con-

91. *Id.* at 379.

92. *Id.*

93. *Id.*

94. *Id.* at 380 (with reference to 67 BVerfGE 213, 228).

95. ANACHRONISTISCHER ZUG (1980), 67 BVerfGE 213, 224.

96. U.S. CONST. amend. I: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for redress of grievances."

97. See e.g., *Spence v. Washington*, 418 U.S. 405 (1974).

98. *Texas v. Johnson*, 491 U.S. 397 (1989).

99. TEX. PENAL CODE ANN. § 42.09, Desecration of Venerated Object (1989) provides:

victed and sentenced to one year in prison and fined U.S. \$2000.00. The Court of Appeals for the Fifth District of Texas affirmed Johnson's conviction, but the Texas Court of Criminal Appeals reversed, holding that the State could not, consistent with the First Amendment, punish Johnson for burning the flag in those specific circumstances.

Johnson participated in a political demonstration held in Dallas in 1984, during the Republican National Convention, against the policies of the Reagan Administration. At the end of the demonstration, in front of the Dallas city hall, Johnson burned an American flag. He was convicted of desecrating a flag by burning it rather than for uttering insulting words. The U.S. Supreme Court held that Johnson's burning of the flag constituted expressive conduct, permitting him to invoke the First Amendment.¹⁰⁰

The next question the Supreme Court had to answer was whether the State's regulation was related to the suppression of free expression.¹⁰¹ The Court answered affirmatively, and then used a high standard of scrutiny to decide whether the State's interest justified Johnson's conviction.¹⁰² The Court found that Johnson's burning of the flag was conduct "sufficiently imbued with elements of communication" to implicate the First Amendment.¹⁰³ Johnson's burning of the flag as part of the political demonstration that coincided with the convening of the Republican Party and its renomination of Ronald Reagan for President was held by the Court to be of an expressive, overtly political nature.¹⁰⁴ The Court stated that while the government may regulate such expressive conduct, the regulation must be for reasons separate from the content of such conduct.

(a) A person commits an offense if he intentionally or knowingly desecrates:

- (1) a public monument;
- (2) a place of worship or burial; or
- (3) a state or national flag.

(b) For purposes of this section, 'desecrate' means deface, damage, or otherwise physically mistreat in a way that the actor knows will seriously offend one or more persons likely to observe or discover his action.

(c) An offense under this section is a Class A misdemeanor.

100. *Johnson*, 491 U.S. at 406.

101. *Id.* The Court, in *United States v. O'Brien*, 391 U.S. 367 (1968), held that if State regulation is not related to expression, then the less stringent standard for regulation of non-communicative conduct should be applied. In this case, the Court had to decide first whether draft card burning during the Vietnam War protests was protected as speech by the First Amendment. In *O'Brien*, the Court held that when speech and non-speech are combined in conduct, an incidental restriction of expression resulting from regulating the non-speech element could be justified only if the following conditions were satisfied: (1) the regulation furthered an important or substantial governmental interest; (2) the government interest was unrelated to the suppression of free expression; and (3) the incidental restriction on freedom was no greater than essential to the furtherance of that interest. *Id.*

102. *Johnson*, 491 U.S. at 412. The Court held that, although Johnson had raised a facial challenge to Texas' flag-desecration statute, it chose to resolve the case on the basis of Johnson's claim that the statute, as applied to him, violated the First Amendment. *Id.*

103. *Id.* at 406.

104. *Id.*

Here the State offered two rationales. First, the restriction was intended to prevent breaches of the peace. This rationale was held insufficient, for it did not automatically follow that conduct such as that in which Johnson engaged leads to breaches of the peace. In the case at hand, in the demonstration in question, no violence erupted.¹⁰⁵ Second, the regulation would preserve the flag as a symbol of nationhood and national unity. The Court held that the interest of the State in preserving the special symbolic character of the flag by restriction on Johnson's expression was content-based so that "the most exacting scrutiny" had to be applied.¹⁰⁶

The Court then confirmed its principle view: "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."¹⁰⁷ The Court did not recognize an exception to that principle, even where the American flag was involved.¹⁰⁸

With reference to *Schacht*,¹⁰⁹ the Court emphasized that it had never held that the government may demand that a symbol be used to express only one view of that symbol or its referents.¹¹⁰ In *Schacht v. United States*, the Court invalidated a federal statute permitting an actor portraying a member of one of the U.S. armed forces to "wear the uniform of that armed force if the portrayal does not tend to discredit that armed force." That proviso, the Court held, "which leaves Americans free to praise the war in Vietnam but can send persons like Schacht to prison for opposing it cannot survive in a country which has the First Amendment."¹¹¹

Comparing the U.S. flag with the Presidential Seal or the Constitution, the Court held that there was no indication — either in the text of the Constitution or in opinions interpreting the Constitution — that a separate juridical category existed for the American flag alone.¹¹² The Court said it was not the state's ends but the means to which it objected. The Court recognized that the government had a legitimate interest in "preserv[ing] the national flag as an unalloyed symbol of our country,"

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*, citing *Street v. New York*, 394 U.S. 576 (1969). In *Street*, the Court held that a state may not criminally punish a person for uttering words critical of the flag. Rejecting the argument that the conviction "could be sustained on the ground that the accused had failed to show the respect for our national symbol which may properly be demanded of every citizen," the Court concluded that "the constitutionally guaranteed freedom to be intellectually . . . diverse, or even contrary, and the right to differ as to things that touch the heart of the existing order encompass the freedom to express publicly one's opinions about our flag, including those opinions which are defiant or contemptuous." *Id.*

109. 398 U.S. 58 (1970).

110. *Johnson*, 491 U.S. at 417.

111. *Id.*, citing *Schacht v. United States*, 398 U.S. 58 (1970).

112. *Id.*

but held that this interest did not justify criminal punishment of a person for burning a flag as a means of political protest.¹¹³

The Court viewed its decision in *Johnson* as a reaffirmation of the principles of freedom and inclusiveness that the flag best reflected, and of the conviction that the American people's tolerance of criticism such as Johnson's was a sign and source of its strength. The Court saw that it is the nation's resilience, not its rigidity, that is reflected in the flag, and it was that resilience that the Court wanted to reassert.¹¹⁴

In a dissenting opinion, Chief Justice Rehnquist held that the American flag enjoys a unique position as a national symbol, and from that it derived a special class of deserved protection.¹¹⁵ Chief Justice Rehnquist considered Johnson to have been free to make any verbal denunciation of the flag that he wished, that Johnson had been free to burn the flag in private, or could have burned other symbols of the government.¹¹⁶

To penalize flag burning if the actor knows that it will seriously offend other persons who observe or discover his action¹¹⁷ was viewed by the Chief Justice as justified because it deprived the actor of only one "rather inarticulate symbolic form of protest," and left him many other symbols and every form of verbal expression by which to express his disapproval of national policy.¹¹⁸ Chief Justice Rehnquist held that Johnson was punished for his use of the flag, and not for the idea he sought to convey by burning it.¹¹⁹

C. *The Case of U.S. v. Eichmann*

In 1990, the U.S. Supreme Court had to decide again whether the protection of the American flag and its symbolic value entitles the legislature to limit the constitutional right of freedom of speech as granted by the First Amendment.¹²⁰

While the Court in *Johnson*¹²¹ held a provision of the Texas Penal Code to be incompatible with the Constitutionally granted right of freedom of speech, the Court had to review in *Eichmann* the question of whether a federal statute, the Flag Protection Act of 1989,¹²² was consistent with the First Amendment.

Congress passed the Flag Protection Act of 1989 as a response to the

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.* at 418.

117. TEX. PENAL CODE ANN. § 42.09 (1989).

118. *Johnson*, 491 U.S. at 432.

119. *Id.* Chief Justice Rehnquist viewed it as one of the high purposes of a democratic society to legislate against conduct that is regarded as evil and profoundly offensive to the majority of people - whether it be murder or flag-burning. *Id.* at 435.

120. *U.S. v. Eichmann*, 496 U.S. 310 (1990).

121. 491 U.S. 397 (1989).

122. 18 U.S.C. § 700 (Supp. 1990).

Court's opinion in *Texas v. Johnson*.¹²³ The Flag Protection Act of 1989 criminalized the conduct of anyone who "knowingly mutilates, defaces, physically defiles, burns, maintains on the floor or ground or tramples upon" a United States flag, except conduct related to the disposal of a "worn or soiled flag."

Based on the Flag Protection Act of 1989, several demonstrators who publicly burned the American flag to protest the politics of the Reagan administration or, in some cases, burned the flag to protest the Flag Protection Act of 1989, were indicted in several states. In every case, the U.S. District Courts dismissed the charges with respect to the decision of the Supreme Court in *Johnson*, and held the Flag Protection Act to be in violation of the First Amendment.

The appeals were consolidated and dismissed by a majority of five Justices. The U.S. Supreme Court confirmed its holding in *Johnson* and referred to that opinion.¹²⁴ The Court considered it important that the Flag Protection Act of 1989 was aimed at the limitation of freedom of speech by penalizing the desecration of the flag by burning it or by other means of physical mistreatment.¹²⁵

Congress had chosen a neutral wording of the statute by penalizing every intentional desecration of the flag, while the Texas Penal Code¹²⁶ in *Johnson* penalized a person only for desecration of the flag if the actor knew it would seriously offend other persons.

However, the Court in *U.S. v. Eichmann*¹²⁷ held that, though the plain meaning of the Federal statute neither mentioned the actor's motives nor the effect of his act on third persons, the Flag Protection Act of 1989 was aimed at penalizing only such acts of flag desecration which were used by an actor to express publicly an opinion that was directed against the flag as a symbol of nationhood and national unity. Therefore, the Court continued, an indictment and conviction under the Flag Protection Act of 1989 constituted a direct violation of freedom of speech as granted by the First Amendment. When there is direct restriction of expression, the State's asserted interest in preserving the special symbolic character of the flag must be subjected to the most exacting scrutiny. The Court held that the First Amendment's freedom to express even opinions rejected by the majority of the people has preference over the State's in-

123. Immediately after the decision in the flag-burning case (*Texas v. Johnson*) was announced, President Bush responded to the decision by announcing that he would seek a Constitutional amendment to prohibit the burning of the American flag. He added, "Protection of the flag, a unique national symbol, will in no way limit the opportunity nor the breadth of protest available in the exercise of free speech rights." Bipartisan Congressional support greeted the proposal; public opinion polls indicated that the *Johnson* decision was very unpopular. RONALD D. ROTUNDA, MODERN CONSTITUTIONAL LAW: CASES AND NOTES 93 (3d ed. Supp. 1989).

124. *Eichmann*, 496 U.S. 310 (1990).

125. *Id.* at 314.

126. TEX. PENAL CODE ANN. § 42.09.

127. *Eichmann*, 496 U.S. at 314.

terest in protecting symbols as the State's media of identification and integration. Therefore, the Court held that the Flag Protection Act of 1989 violated the Constitutional right to freedom of speech, even though a majority of the people was in favor of penalizing flag burning.¹²⁸

In his dissenting opinion, Justice Stevens objected, stating that the First Amendment does not grant absolute protection to any kind of expression. The Constitutional protection of freedom of speech does not immunize any attack on Constitutional values and symbols. The flag, as a national symbol, has to be protected from destruction and desecration, even though those acts are done to express a certain opinion.¹²⁹

V. SIMILARITIES AND DIFFERENCES BETWEEN THE GERMAN, EUROPEAN AND UNITED STATES APPROACHES

The German and the U.S. Constitutions both contain provisions that grant freedom of speech. While the plain meaning of the U.S. Constitution seems to grant unlimited freedom of speech, the Article of the German Constitution that grants freedom of speech¹³⁰ itself describes the borders of that freedom. However, artistic freedom, as provided in Article 5(III) of the German Constitution is not limited by the language of the Article granting freedom of speech.

In the U.S., the limits to freedom of speech are determined by the highest U.S. court, the Supreme Court; the highest German court, the Federal Constitutional Court,¹³¹ also determines the extent of freedom of speech. The reasoning of the German Federal Constitutional Court's decision of March 7, 1990, is close to the reasoning of the dissenting opinions in *Texas v. Johnson*¹³² and *U.S. v. Eichmann*.¹³³

The European Court of Human Rights, in the case of Mueller, had to interpret the freedom of speech as granted in the Convention. This Article bestows freedom of speech within the limits of the "duties and responsibilities it carries with it,"¹³⁴ so that by its plain meaning there is a limitation. The duties and responsibilities have to be determined by each Contracting State to the European Convention on Human Rights. There is wide room for discretion on the part of national authorities of the Contracting States in limiting the freedom of speech as granted by the Convention by means of national penal statute.

VI. CONCLUSION

Freedom of speech as granted in the European Convention on

128. *Id.* at 315.

129. *Id.* at 316.

130. GG art. 5.

131. Bundesverfassungsgericht.

132. 491 U.S. 397 (1989).

133. 496 U.S. 310 (1990).

134. MRK art. 10(II).

Human Rights and as interpreted by the European Court of Human Rights has the lowest level of protection in comparison to Germany and the United States of America. Although several of the Contracting States to the European Convention on Human Rights are not currently members of the European Community, they are all prospective members. The European Convention on Human Rights may one day become part of a constitution of the European Community. Under that scenario the provisions protecting freedom of speech should, in order to offer the most effective protection, be revised and approximated to the provisions in the German or U.S. constitutions.

The decision process and the results of the U.S. Supreme Court's decisions in the area of freedom of speech seem to be more liberal than the practice of the German Federal Constitutional Court. The decisions of the U.S. Supreme Court tend to come closer to the real meaning of freedom of speech as granted by the Constitutions of both States.

Comprehensive education and training of German Federal Constitutional Court judges in comparative law may have prevented the German Court from holding, in the case decided on March 7, 1990, that freedom of speech as granted by the German Constitution in GG Article 5(III) does not generally preclude punishment under the German Penal Code.

The German courts are upholding their rather restrictive view. In October, 1991, the Court of First Instance¹³⁵ in Munich fined Volker A. Zahn, author of an article published in the German news magazine *Wiener*, and Wolfgang Maier, its publisher, DM 2000 and DM 7000 respectively for publishing an article in the magazine. The four page long article's headline was "Bavaria: The Madhouse of the Republic" (*Bayern: Das Irrenhaus der Republik*), and its subheadline was "My Ass is Licked" (*Mi leckst am Oarsch*).

The journalist and publisher were prosecuted for, and convicted of, a violation of Section 90(a)(I)(1) of the German Penal Code for insulting, and maliciously scorning the Federal State of Bavaria by means of the article.¹³⁶ Judge Dieter Schoepf held that the publisher and author desecrated the State of Bavaria by calling it "the madhouse of the Republic" and by equating it with the former State of East Germany.¹³⁷

It will be of great interest to review the outcome of appeals to this decision if they reach the German Federal Constitutional Court, or even the European Court of Human Rights.

Bernhard Jürgen Bleise

135. Amtsgericht Muenchen.

136. Compare Chapter III(B)(6) regarding StGB § 90(a).

137. DER SPIEGEL, Oct. 28, 1991, at 348.

TABLE OF ABBREVIATIONS

BayVB1	Bayerisches Verwaltungsblatt
BSGE	Entscheidungen des Bundessozialgerichts Decisions of the German Federal Social Law Court
BVerfG	Bundesverfassungsgericht German Federal Constitutional Court
BVerfGE	Entscheidungen des Bundesverfassungsgerichts Decisions of the German Federal Constitutional Court
EGMR	Europaeischer Gerichtshof fuer Menschenrechte European Court of Human Rights
EuGRZ	Europaeische Grundrechte
GG	Grundgesetz Basic Law of The Federal Republic of Germany
J.Z.	Juristenzeitung
MDR	Monatszeitschrift fuer deutsches Recht
MRK	Konvention zum Schutze der Menschenrechte und Grundfreiheiten European Convention on Human Rights
N.J.W.	Neue Juristische Wochenschrift
NStZ	Neue Zeitschrift fuer Strafrecht
OLG	Oberlandesgericht Court of Appeals
OVG	Oberverswaltungsgericht Superior Administrative Court
RGBl	Reichsgesetzblatt Law Gazette of the German Reich (until 1945)
RGSt	Reichsgericht-Rechtsprechung in Strafsachen Decisions of the Supreme Court of the German Reich in penal cases (until 1945)
Schweiz StGB	Schweizerisches Strafgesetzbuch Swiss Penal Code
StGB	Strafgesetzbuch German Penal Code
ZBl	Schweizerisches Zentralblatt fuer Staats-und Gemeindeverwaltung

