



Synthèse / Summary / Kurzfassung / резюме

**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE / FEDERAL REPUBLIC OF
GERMANY / BUNDESREPUBLIK DEUTSCHLAND / ФЕДЕРАТИВНАЯ
РЕСПУБЛИКА ГЕРМАНИЯ**

The Federal Constitutional Court of Germany Bundesverfassungsgericht

Anglais / English / Englisch / английский

Summary of Part One

1. In its continuous practice, the Federal Constitutional Court recurrently refers to explicit and implicit constitutional principles. These normative optimisation principles constitute an “internal compass” for the interpretation of constitutional law. They “en-close” the individual provisions and, because of their general and fundamental nature, they define the frame for the Constitution.

2. Art. 79 sec. 3 GG defines the limits for a statute amending the Constitution. This provision makes certain parts of the structure of the Basic Law immutable. Art. 79 sec. 3 GG has taken on particular significance in the context of the case-law of the Federal Constitutional Court concerning European integration.

3. Examples of implicit constitutional principles are the principles of allegiance to the Federal Government (*Bundestreue*) and to constitutional organs (*Verfassungsgantreue*) as well as the Basic Law’s principle of openness to public international law and to the legal system of the European Union. The latter is derived from several provisions of the Basic Law that characterise the “open statehood” of the Federal Republic of Germany.

4. As the “guardian of the Constitution,” the Federal Constitutional Court is called upon to make final binding decisions on the interpretation and application of constitutional law – including constitutional principles. In interpreting constitutional norms, the Federal Constitutional Court makes use of recognised methods of interpretation, although these often take on a specifically constitutional character. Systematic maxims of constitutional interpretation include, e.g., the principles of “unity of the Constitution” (*Einheit der Verfassung*) and “practical concordance” (*praktische Konkordanz*).

5. Objective constitutional principles and subjective rights guaranteed by the Basic Law, especially the fundamental rights, are understood not separately, but as lying within a context of meaning under the principle of “unity of the Constitution.”

6. A significant constitutional principle developed in the case-law of the Federal Constitutional Court is the requirement of a parliamentary decision under the Basic Law’s provisions which concern defence (*wehrverfassungsrechtlicher Parlamentsvorbehalt*). The Federal Constitutional Court derived this requirement from the overall context of the provisions of the Basic Law which concern defence, in light of the German constitutional tradition since 1918.

Summary of Part Two

1. It is predominantly held that apart from the case of Art. 79 GG, no principles of constitutional law are superior per se to other norms of constitutional law.

2. The Federal Constitutional Court too proceeds on the assumption that the Basic Law can be understood only as a unified whole, so that at the level of the Constitution itself, it is generally not conceivable that norms will rank higher or lower, in the sense that they might be measured against one another.

3. In accordance with Art. 79 GG, the Constitution is amended by way of legislation. A law amending the Constitution must be carried by two thirds of the Members

of the Bundestag and two thirds of the votes of the Bundesrat. The people are not directly involved. A constitutional amendment is possible only by amending the text of the Constitution itself.

In Art. 79 sec. 3 GG, the Constitution includes an eternity clause that prohibits amendments affecting the principles indicated there.

4. Insofar as the procedure for amending the Constitution is governed by the Basic Law, the amendment is subject to review by the Federal Constitutional Court within the scope of that court's general jurisdiction.

5. A review by the Federal Constitutional Court of laws amending the Constitution may occur in various proceedings that may be pursued by different legal subjects. The procedures of the greatest practical relevance are constitutional complaints by individuals, and proceedings for judicial review of a law. Review of a constitutional amendment follows the general rules of procedure for these types of proceedings.

6. In the aforementioned proceedings, the Federal Constitutional Court may also decide on the substantive limits of a constitutional amendment that proceed from Art. 79 sec.3 GG. To date, the Court has never declared a constitutional amendment unconstitutional. The Federal Constitutional Court allows latitude for the legislature deciding on constitutional amendments.

7. There is no indication of a debate in Germany as to whether the Federal Constitutional Court's powers of review over constitutional amendments should be defined even more broadly. However, conversely, there is also no intensive discussion of whether the Federal Constitutional Court's existing powers of review over constitutional amendments should be defined more narrowly.