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## THE CONSTITUTION OF GERMANY ("BASIC LAW", IN GERMAN: "GRUNDGESETZ")

### *Abstract*

The constitutional history of the German country began in 1871 under Wilhelm I. Since then, five significant events have taken place in the history of the constitution. Kazakhstan is currently discussing its Constitution. The Republic of Kazakhstan is a young state, among the foreign legislation it considers the right one, corresponding to the state. This article presents the Constitution of the Federal Republic of Germany - the Basic Law or "Grundgesetz". It tells about how the constitution has changed in the country of Germany, its history and features. The change in the constitution of the "GRUNDGESETZ" is inextricably linked with the history of the state. Currently, the "basic law" is an example for some countries. But will the law of the Federal Republic of Germany be suitable in the Republic of Kazakhstan? It is openly written that there may be positive, inconsistent sides to this constitution. Therefore, citizens of the Republic of Kazakhstan can consider what practices exist in other countries and what rules can be adopted.

**Keywords:** constitution, Germany, history, parliament, people.

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## ГЕРМАНИЯ КОНСТИТУЦИЯСЫ ("НЕГІЗГІ ЗАҢ", НЕМІСТІЛІНДЕ: "GRUNDGESETZ")

### *Аңдатпа*

Германия елінің конституциялық тарихы 1871 жылы I Вильгельм тұсында басталды. содан бері конституция тарихында бес елеулі оқиға болды. Қазіргі уақытта Қазақстан өзінің Конституциясын талқылауда. Қазақстан Республикасы жас мемлекет болғандықтан, шетел заңнамаларының ішінен дұрысын, мемлекетке сәйкесін қарастыруда. Бұл мақалада Германия Федеративтік Республикасының Конституциясы – Негізгі заң немесе "Grundgesetz" таныстырылады. Германия елінде конституция қаншалықты өзгергенін, оның тарихы мен ерекшеліктеріне тоқталады. "GRUNDGESETZ" конституция-сының өзгерілуі мемлекеттің тарихымен тығыз байланысты. Қазіргі таңда «негізгі заң» біраз елге үлгі болуда. Бірақ, Қазақстан Республикасына Германия Федеративтік Республикасының заңы келе ме? Бұл конституцияның жағымды, сәйкес емес жақтары болуы мүмкін екендігі ашық жазылған. Сондықтан Қазақстан Республикасының азаматтары басқа елдерде қандай тәжірибе бар екенін және қандай ережелерді қабылдауға болатынын қарастыра алады.

**Кілт сөздер:** конституция, Германия, тарих, парламент, халық.

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## КОНСТИТУЦИЯ ГЕРМАНИИ ("ОСНОВНОЙ ЗАКОН", ПО-НЕМЕЦКИ: "GRUNDGESETZ")

### *Аннотация*

Конституционная история германской страны началась в 1871 году при Вильгельме I. с тех пор в истории конституции произошло пять значительных событий. В настоящее время Казахстан обсуждает свою Конституцию. Республика Казахстан-молодое государство, из числа иностранного законодательства рассматривает правильное, соответствующее государству. В этой статье представлена Конституция Федеративной Республики Германия – основной закон или"

Grundgesetz". В нем рассказывается о том, насколько изменилась конституция в стране Германии, ее истории и особенностях. Изменение конституции "GRUNDGESETZ" неразрывно связано с историей государства. В настоящее время «основной закон» является примером для некоторых стран. Но подойдет ли в Республику Казахстан закон Федеративной Республики Германия? Открыто написано, что в этой конституции могут быть положительные, непоследовательные стороны. Поэтому граждане Республики Казахстан могут рассмотреть, какая практика существует в других странах и какие правила могут быть приняты.

**Ключевые слова:** конституция, Германия, история, парламент, народ.

Kazakhstan presently is discussing about its constitution. That is why it might be interesting to cast a glance abroad in order to see what are the experiences in other countries and what regulations perhaps could be taken over or better should be avoided.

Germany, which was unified as a national state only in 1871, established its first democratic constitution in 1919, after its defeat in World War I.

Although some of the greatest German jurists and social scientists of the time participated in writing the Weimar Constitution, it has been adjudged a failure. Political parties became highly fragmented, a phenomenon that was explained partly by an extremely democratic electoral law (not a part of the constitution) providing for proportional representation. Some of the parties of the right, such as Hitler's Nazis, and of the left, such as the Communists, were opposed to the constitutional order and used violence in their efforts to overthrow the Republic.

To deal with these threats, the President used his constitutional emergency powers under which he could suspend civil rights in member states of the federal system. Several chancellors (the German equivalent of a prime minister) stayed in office after the President had dissolved a Parliament in which the chancellor lacked a supporting majority. They continued to govern with the help of presidential emergency powers and by legislating on the basis of powers previously delegated to them by Parliament.

When a new constitution was drafted for the Western zones of occupation after World War II, every effort was made to correct those constitutional errors to which the failure of the Weimar Republic was attributed.

Under the Basic Law of the Federal Republic of Germany, Parliament cannot delegate its legislative function to the chancellor, and civil rights cannot be suspended without continuous parliamentary surveillance. The president has been turned into a figurehead on the model of the French presidents of the Third and Fourth Republics, and Parliament cannot overthrow a chancellor and his cabinet unless it first elects a successor with the vote of a majority of its members.

Negative majorities cannot paralyze government unless they can agree on alternative policies and personnel. The extreme form of proportional representation used before Hitler came to power was replaced by a mixed electoral system under which half the members of the Bundestag (the lower house of the legislature) are elected from party lists by proportional representation, while the other half are elected in single member constituencies.

In order to benefit from proportional representation, a party must obtain at least 5 percent of the votes cast. As a result, the number of parties steadily contracted during the first two decades of the Federal Republic and extremist parties were kept out of Parliament. Cabinets have been very stable, and the provision for the "constructive vote of no confidence" was invoked for the first time only in 1982.

The Basic Law was adopted in 1949, initially as a provisional framework for the basic organization of the state until German reunification. The name "Basic Law" was intended to express its provisional nature. But from the very beginning, the Basic Law has always contained all the features of a constitution and has functioned effectively as one for more than 60 years.

In the Unification Treaty of 31 August 1990, the governments of the Federal Republic of Germany and the German Democratic Republic agreed to restore German unity.

Instead of drafting a new constitution with a subsequent referendum (in accordance with Article 146 of the Basic Law), the procedure of Article 23 of the Basic Law was chosen: Eastern Germany joined the Federal Republic, and five new federal states (Länder) and the reunified city-state of Berlin were created. The parliaments of West and East Germany approved this decision with two-thirds majorities. When reunification took effect on 3 October 1990, the Basic Law became the constitution for the whole of Germany.

The Basic Law has been subject of over 60 amendments since 1949. Among these amendments were the constitutional provisions for rearmament in 1956 and emergency legislation in 1968. Major constitutional reforms were enacted in 1994 following reunification and in 2006 and 2009 in order to reorganize the federalist competences and financial structures of Germany. The Basic Law or "Grundgesetz" is the constitution of the Federal Republic of Germany. It includes the most fundamental rights that determine the way society is organised in Germany. No other law may contradict the Basic Law. For instance, the Asylum Act or the Criminal Law may not contain any ordinances which conflict

with the Basic Law. The Basic Law is the most prominent body of law in Germany, hence stands above all others.

The Basic Law consists of 146 sections, i.e. "articles". The first 19 articles of the Basic Law contain the so-called "fundamental rights", i.e. the most significant human rights vis-à-vis the state, designed to protect the individual from despotism, injustice and violence from the state. Some of these fundamental rights, also referred to as "human rights", apply to everyone in Germany, regardless of residence status. The Basic Law also includes a set of other rights, referred to as "civil rights", which only applies to people who have German citizenship.

Established in West Germany in 1949, The Basic Law is applying to all of Germany since the reunification of 1990. Many of the principles included are consequences of violations of human rights during the National Socialist dictatorship between 1933 and 1945. Fundamental rights have been given a central position in the Basic Law to ensure the atrocities of Nazi times cannot happen again.

The Federal Constitutional Court is in charge of monitoring and assuring compliance with the Basic Law. The government cannot simply amend the Basic Law.

The new republic was founded with only minor elements of direct democracy. At the federal level, there are only two mandatory constitutional referendum types. One type is for enacting a new constitution. Changes to the constitution do not require a public vote and there is no provision for an initiative for a constitutional amendment.

There has never been a referendum of this type, although there was an argument in that direction during German reunification.

The other type requires a regional public vote in case of restructuring the States ("Neugliederung des Bundesgebietes", "New Arrangement of the Federal Territory") which led to a number of effectless referendums to recreate states or change the territory of a state. In addition there was a referendum on the merger of Baden and Württemberg in 1951 (accepted) and a referendum on the merger of Berlin and Brandenburg into Berlin-Brandenburg in 1996 (rejected).

Originally, only some of the Bundesländer ("federated States of Germany") had provisions for a general binding referendum ("Volksentscheid", "people's decision") with Hesse and Bavaria also having a mandatory binding referendum on changes to the state constitution.

Over the years all states have changed their constitutions to allow various types of statewide and municipal referendums. In all states, there is now a general right for referendums on statewide popular initiatives, which was used in Hamburg to push the state government to pass a law on a facultative binding state referendum in 2007.

Most states have a form of non-binding ballot question ("Volksbefragung", "people's inquiry") which has rarely been used - the most important of these had been the 1955 Saar-Statute-referendum.

General forms of direct democracy were introduced in the communities with facultative ballot questions ("Bürgerbefragung", "citizens' inquiry") and public initiatives ("Bürgerbegehren", "citizens' request") which are both non-binding. In some areas, this has been expanded into a binding referendum type ("Bürgerentscheid")

Following World War II the right to petition to the government was installed with high barriers. Any popular initiative had to be filed with the authorities and the signatories have to identify before their signature is accepted.

In order to push the government the initiative must reach a certain amount of valid signatures. The "quorum" is defined differently by the different states ("Länder").

The basic idea of democracy is that the state and its use of power should be legitimated by the people (demos). It follows from this basic idea that the constitution of a democratic state should be the result of a free, public discussion leading to a general referendum. Unfortunately such referendum did never happen in Germany.

It did not happen when the Federal Republic of (West) Germany was founded in 1949, it did not happen when the Saarland became member of the Federal Republic in 1957 and it did not happen when East Germany joined the Federal Republic in 1990.