CORA Cork Open Research Archive
Cartlann Taighde Oscailte Chorcaí

Title	Freedom of association in Germany
Authors	O'Grady, Leannán Martan
Publication date	2025-01-01
Original Citation	O'Grady, L. M. (2025) 'Freedom of association in Germany', Societās Working Paper 24/2025 (26pp). Cork: School of Law, University College Cork.
Type of publication	Working paper
Rights	© 2025, the Author(s). Views expressed do not represent the views of the Societās project or the School of Law at UCC.
Download date	2026-11-15 16:34:56
Item downloaded from	https://hdl.handle.net/10468/17836



UCC
University College Cork, Ireland
Coláiste na hOllscoile Corcaigh

UCC University College Cork, Ireland Coláiste na hOllscoile Corcaigh
School of Law
Scoil an Dlí

SHAPING A **JUST SOCIETY**
SINCE 1849

Societās Working Paper 24/2025 August 2025

Global Perspectives on Freedom of Association: Germany

Leannán Martan O'Grady

Societās
Exploring the Value of Freedom of Association

IRISH RESEARCH COUNCIL
An Chomhairle um Thaighde in Éirinn

Societās Working Paper Series

Global Perspectives on Freedom of Association Collection

The Global Perspectives on Freedom of Association collection is presented under the auspices of "Societās: Exploring the Value of Freedom of Association". The project is generously funded as a Laureate project of the Irish Research Council and hosted at the School of Law in University College Cork.

Project Lead
Professor Maria Cahill
School of Law, University College Cork, Cork, Ireland
www.associationalfreedom.org | maria.cahill@ucc.ie

Editors of the Global Perspectives on Freedom of Association collection
Professor Maria Cahill, School of Law, University College Cork
Dr. Seán Ó Conaill, School of Law, University College Cork
Professor Dwight Newman, School of Law, University of Saskatchewan
Mr. Ruairí McIntyre, School of Law, University College Cork
Dr. Giulia Lasagni, School of Law, University College Cork
Ms. Aoife Khasri, School of Law, University College Cork
Cover Sheet Design thanks to Mr Ruairí McIntyre used with permission.

© the author, August 2025.
Views expressed do not represent the views of the Societās project or the School of Law at UCC.

Select other working papers in this series include, *inter alia*, reports from Australia, Chile, China, Ethiopia, Finland, France, Germany, India, Indonesia, Ireland, Italy, Kenya, Mexico, Nigeria, Peru, Poland, Russia, Slovenia, South Africa, Spain, Türkiye, the United Kingdom, the United States, as well as international human rights systems such as the Council of Europe, the Inter-American System of Human Rights and the United Nations. Click here or here for to explore further.

Final versions of these papers appear in (2025) 12 1&2 *European Journal of Comparative Law and Governance* and in Maria Cahill & Giulia Lasagni (eds.), *Associational Life and Freedom: Insights from Philosophy and Law* (Hart Publishing, 2025).

Freedom of Association in Germany

Leannán Martan O'Grady

I. Introduction

Within the Basic Law for the Federal Republic of Germany (*Grundgesetz* GG[1]), the freedom of association (*Vereinigungsfreiheit*) is enshrined as a fundamental right (*Grundrecht*). Fundamental rights are an expression of a community of values and culture and serve both as defensive rights against state interference and, as in the case of freedom of association, as participatory rights (*Mitwirkungsrechte*) in the political and democratic process.[2] They are delineated in Article 1 to Article 19 of the Basic Law[3] and significantly shaped by the opposition between state authority and individual rights. This is also expressed through the Basic Law's commitment to a so-called militant democracy (*wehrhafte* or *streitbare Demokratie*),[4] which refers to the idea that a democratic state has the right and duty to defend itself against those who seek to abolish democracy using democratic means.[5]

Whilst many of the fundamental rights defined in Article 1 to Article 19 have strong historical roots,[6] sometimes dating back to the Middle Ages, contemporary German law is also deeply influenced by the legacy of the Nazi era, with both legislation and legal practice shaped

[1] For an English translation of the Articles of the Basic Law see: https://www.gesetze-im-internet.de/englisch_gg/.
[2] Gerhard Robbers, *Einführung in das deutsche Recht* (NomosEinführung, 8th edn, Nomos 2023) 43; see also: Konrad Hesse, *Grundzüge des Verfassungsrechts der Bundesrepublik Deutschland* (20th edn, Müller 1999) 178.
[3] Other legal guarantees scattered throughout the constitution, as Robbers highlights, are considered equal to fundamental rights. Robbers (n 2) 45.
[4] Other terms used to describe this concept include defensive or combative democracy.
[5] Federal Constitutional Court, 'Headnotes to the Order of the First Senate of 13 July 2018', *1 BvR 1474/12, Rn 1-167* (13 July 2018) <https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2018/07/rs20180713_1bvr147412en.html>.
[6] As an example, Art. 17 GG, the right to petition, is one of the oldest fundamental rights in Germany, being already prevalent during the Middle Ages. The functionality as an early warning system was relevant for many different State forms, and as such, it was also included in the constitution of the DDR and certainly the Basic Law of Germany. Volker Epping and others, *Grundrechte* (Springer-Lehrbuch, 10th edn, Springer Publishing 2024) 552; for a further insight into the historical development of relevant ideas in Germany, see Robbers (n 2) 39–41.

by a lasting determination to prevent the recurrence of totalitarianism.[7] In this context, freedom of association assumes particular significance, as it safeguards (political) pluralism and reinforces other fundamental rights that inherently challenge the authority of a dictatorship – as demonstrated by the Nazi regime's determined efforts to abolish it entirely. While freedom of association existed in the 1919 Weimar Constitution (*Weimarer Verfassung* WRV), it was abolished by the Reichstag Fire Decree of 1933 and further undermined by dissolving existing trade unions into the German Labour Front, banning all other political parties and forcibly coordinating civil society organisations, youth groups and religious associations.[8]

Only after the capitulation and occupation of Germany was the right to freedom of association restored by the Western Allies.[9] Initially, a number of state constitutions were adopted in West Germany that guaranteed freedom of association, whereby the Parliamentary Council (*Parlamentarischer Rat*), which developed the Basic Law between 1948 and 1949, also decided in favour of including freedom of association in the new federal constitution.[10] It was enshrined as Article 9 GG as a specialised extension of the general freedom outlined in Article 2 paragraph 1; while both articles provide overlapping protections, Article 9 paragraph 1 takes precedence in matters related to associations.[11] When it does not fully address a situation, Article 2 paragraph 1 acts as a fallback, ensuring, as will be later discussed, protection against forced membership in public-law associations and safeguarding the rights of foreign individuals and associations.[12] Additionally, even though rooted in Article 9 GG, the freedom to form political parties or religious associations is not covered by the general freedom of association. Those are, as will be further elaborated upon in section four, covered by Article 21 GG (political parties), Article 4 paragraph 1 GG (freedom of faith and conscience) and Article 140 GG (law of religious denominations).[13]

Generally, fundamental rights, and therefore freedom of association, hold superior status, requiring legislative alignment according to Article 142 GG at a federal and state level; conflicting laws are invalidated. Therefore, fundamental rights are not just legally protected —

---

[7] Robbers (n 2) 23.
[8] For more insights see Richard J Evans, *The Third Reich in Power, 1933-1939* (Penguin Press 2005).
[9] Generally speaking, German contemporary law is heavily shaped by the catastrophic crimes of the National Socialist rule. Robbers (n 2) 23.
[10] Epping and others (n 6) 1–10.
[11] BVerfGE 1, 264 (274); BVerwGE 54, 211 (220).
[12] Detlef Merten, 'Vereinsfreiheit' in Josef Isensee and Paul Kirchhof (eds), *Handbuch des Staatsrechts der Bundesrepublik Deutschland* (3rd edn, CF Müller Juristischer Verlag 2003) 1064.
[13] Daniela Schroeder, *Grundrechte* (JURIQ Erfolgstraining Öffentliches Recht, 5th edn, CF Müller 2019) 152; see also: Hesse (n 2) 177–78.

they are higher law. This hierarchy is further exacerbated by Article 31 GG, which establishes that federal law takes precedence over conflicting state law – and the homogeneity clause in Article 28 para 1 GG requires that the constitutional order in the federate states aligns with the principles of a republican, democratic, and social state governed by the rule of law in accordance with the Basic Law. Consequently, whilst the federated states have their own constitutions, their scope is limited by the Basic Law,[14] though they retain some autonomy in specific areas – as an example, where the Basic Law does not explicitly grant fundamental rights, those provided by state constitutions are valid.[15]

As fundamental rights serve both as legal function and as an expression of societal values, they establish a profound interconnection with political discourse. This interrelation frequently gives rise to debates concerning their interpretation. Understanding them necessitates studying their exact content as well as landmark decisions, especially those of the Federal Constitutional Court (*Bundesverfassungsgericht* BVerfG) and the German Federal Court of Justice (*Bundesgerichtshof* BGH). The Federal Constitutional Court, established by the Basic Law, plays a crucial role in upholding constitutional rights. Its rulings, according to Section 31(1) of the Federal Constitutional Court Act (*Bundesverfassungsgerichtsgesetz* BVerfGG), are legally binding upon all constitutional institutions at both the federal and state levels. This includes governmental bodies, judicial authorities, and administrative institutions. Through this, the Federal Constitutional Court ensures compliance with the constitution and can, in some cases, even constitute law.[16]

This chapter looks at these landmark decisions alongside ongoing discourses in literature on their interpretation to delineate the contemporary situation of freedom of association in Germany, especially in the context of a developing legal interpretation and implementation.[17] After providing an overview of the contemporary culture of associations in

[14] Furthermore, Article 25 of the Basic Law integrates general rules of international law into German federal law, granting them precedence over statutes and direct applicability to individuals when relevant, while ensuring that widely accepted norms, such as diplomatic protections and wartime prohibitions, override conflicting statutory law unless of constitutional rank. However, other aspects of international law, particularly treaty law, require explicit domestic incorporation through parliamentary approval under Article 59(2) to attain legal force within Germany. Hesse (n 2) 43.

[15] Similarly, the material legal status of rights already enshrined in the Basic Law (eg through Art 142 GG) or incorporated by reference does not create additional guarantees. Despite their constrained legal authority, state constitutions, as Hesse highlights, play a crucial role in political practice. They influence constitutional life within the federate states and shape their legal culture. This is particularly relevant for older state constitutions, which often have historical significance, even if some of their provisions have become obsolete due to federal constitutional developments. ibid 35.

[16] Robbers (n 2) 27.

[17] Thorsten Kingreen and others, *Grundrechte Staatsrecht II* (Staatsrecht 2, 39th edn, CF Müller 2023).

Germany, it focuses on the legal outline of freedom of association, which includes special cases and different dimensions within the Basic Law. Following this, the still relevant debate revolving around the inclusion of the negative right to freedom of association as well as the actual beneficiaries within the legal framework will be discussed. The chapter concludes with the highly relevant possibility of severe interference with freedom of association by the German State, which will provide the basis for final remarks and a brief commentary on the current situation within the German legal system.

II. Associations in Germany

While it is widely accepted that an association under Article 9 paragraph 1 already forms with two persons,[18] in Germany, associations can be either registered (*eingetragene Vereine*, e.V.) or informal. Registered associations require at least seven members, a written constitution, and entry into the register of associations (*Vereinsregister*) at the local district court (*Amtsgericht*), gaining full legal capacity under the Civil Law Book (*Bürgerliches Gesetzbuch* BGB; explicitly sections 21–79), with public law aspects governed by the Law on Associations (*Vereinsgesetz*). The Law on Associations also allows the state to monitor and, if necessary, ban or dissolve associations that violate constitutional principles or threaten public order.

Protected and organised by this legal framework, the culture of associations plays a central role in German civic life. According to the discussion paper *Vereine in Deutschland im Jahr 2022* – published by the NPO *Stifterverband* – as of April 2022 there were 615,759 registered associations in Germany.[19] This represents a substantial component of organised civil society, further illustrated by the fact that in 2021, between 25 and 28 million individuals engaged in voluntary activities within associations, with the economic contribution of such volunteerism estimated at approximately 40 billion Euros per annum.[20]

---

[18] Gerrit Manssen, *Staatsrecht II: Grundrechte* (CH Beck 2020) 171; an association formed by one person is excluded, mainly because of the collective nature of Art. 9 para. 1. This is also the case for one-person demonstrations, which are not covered by Art. 8 para. 1 of the Basic Law either. Merten (n 12) 1051.

[19] Regional variations are notable, with the Saarland exhibiting nearly 11 associations per 1,000 inhabitants, whereas Bremen registers approximately 5 per 1,000 inhabitants. Furthermore, the dynamics of new association formation differ markedly across federal States; eg, Berlin has seen 31 per cent of its associations registered after 2012 in contrast to the Saarland's 16 per cent. Peter Schubert and others, *Vereine in Deutschland Im Jahr 2022. Aktuelle Zahlen Zum Strukturwandel Der Unterschiedlichen Geschwindigkeiten.*, vol 3 (Discussion Paper Series, Stifterverband 2022) 1.

[20] *Bewertung Und Einschätzung Des Dritten Sektors Der Gesellschaft* (Bundesverband der Vereine und des Ehrenamtes eV 2021) 4–5.

Although the overall number of associations continues to increase, the rate of growth is decelerating. In 2021, only 9,352 new associations were registered in the association register, compared to more than 15,000 ten years earlier. This slowdown in growth is not due to an increased removal of inactive associations by local courts, as the number of deletions – which can be enacted due to a voluntary dissolution of the association under section 41 BGB, inactivity or, in severe cases, bans – has remained relatively stable over the past ten years. Rather, there has been a significant decline in new registrations, meaning that due to the decreasing number of new entries and the constant number of deletions, the total number of registered associations is, according to the discussion paper, expected to decline within this decade.[21] Recent trends also suggest that support associations (*Fördervereine*) are becoming increasingly dominant, signalling a shift from traditional sectors such as sport and leisure towards areas including education and civic engagement. This is accompanied by an increasing institutionalisation of civil society through associations, supporting the thesis that civil society organisations are becoming more engaged in interest representation and political decision-making.[22]

In the political sphere, membership in major political parties such as the CDU/CSU and the SPD stands at around 360,000 members each, while the Greens count roughly 150,000 members. This is notwithstanding occasional surges such as the influx of over 20,000 new members for the Greens in November 2024; in the same month, 2,500 new members applied for the SPD and over 1,000 for the CDU.[23] Whilst this sudden growth can be attributed to the collapse of Chancellor Olaf Scholz's coalition government on 6th November 2024, as well as his announcement to call a vote of confidence, it also highlights the engagement and public participation in the political sphere.

Another relevant sector of associations discussed here concerns religious groups. According to the *Research Group on Worldviews in Germany* (fowid), as of 31st December 2023, there were 38.9 million Protestant and Catholic Christians in Germany, making up 45.9 per cent of the population. This marks a profound shift in religious affiliation within Germany,

[21] Schubert and others (n 19) 2–3.
[22] The data does not provide evidence for a growing prevalence of a culturally nationalist orientation among newly founded associations. ibid 10–11.
[23] Other, smaller parties also recorded astonishing surges in memberships; the Left Party (Die Linke) and the FDP registered 4,860 and 2,000 membership applications, respectively. '„Großartiger Rückenwind" – Grüne Jubeln Über Zehntausende Mitgliedsanträge Seit Ampel-Aus', *Welt* (29.11.2024) <https://www.welt.de/politik/deutschland/article254710376/Gruene-jubeln-ueber-Zehntausende-Mitgliedsantraege-seit-Ampel-Aus.html?utm_source=chatgpt.com> accessed 22 February 2025.

as membership in the Evangelical Church in Germany (EKD) and the Roman Catholic Church has declined significantly. In 2019, these two churches collectively accounted for 52 per cent of the population, which already reflected a downward trend over previous decades. Additionally, in 2023, there were 3.2 million Muslims affiliated with a religious denomination (3.8 per cent), 3.5 million members of other religious communities (4.1 per cent), and more than 39 million people without any religious affiliation (46.2 per cent). Consequently, in 2023, for the first time the proportion of individuals identifying as non-denominational surpassed that of Christians, highlighting a remarkable transformation in the country's religious landscape.[24] This trend is generally attributed to various factors, including secularisation, demographic changes, and individual decisions to distance themselves from traditional religious institutions.[25]

Finally, trade unions (*Gewerkschaften*) also constitute a significant element of association culture in Germany, historically playing a key role in shaping labour relations. However, membership figures have generally declined over recent decades. As of 2023, approximately 16 percent of German employees are members of a trade union, representing a significant decline compared to the approximately double proportion recorded in 1980.[26] The German Confederation of Trade Unions (*Deutscher Gewerkschaftsbund,* DGB) serves as the primary umbrella organisation, representing eight major unions, including IG Metall (covering the metal and electrical industries) and ver.di (United Services Union), which advocates for employees in the service sector.[27] Despite the decline in membership, German trade unions continue to wield considerable influence in wage negotiations and working conditions through collective bargaining agreements. In recent years, tensions between employers and unions have increased, particularly in industries facing restructuring and job cuts, such as the automotive

[24] 'Religionszugehörigkeiten 2023', *Forschungsgruppe Weltanschauungen in Deutschland fowid* (28.08.2024) <https://fowid.de/meldung/religionszugehoerigkeiten-2023>.
[25] As a glimpse on the global development, in the United States, a Gallup survey found that in 2020, only 47 per cent of Americans reported being a member of a church, synagogue, or mosque, compared to 70 per cent in 1999. This decline in religious group memberships suggests a similar trend to that observed in Germany, with more people turning away from organized religions. Jeffrey M Jones, 'U.S. Church Membership Falls Below Majority for First Time', *Gallup* (29.03.2021) <https://news.gallup.com/poll/341963/church-membership-falls-below-majority-first-time.aspx> accessed 22 February 2025.
[26] *Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts.* (OECD/AIAS ICTWSS database no date); Laszlo Goerken and Yue Huang, *Job Satisfaction and Trade Union Membership in Germany* (Discussion Paper Series, Institute of Labor Economics 2022) 1.
[27] 'Unions in Germany', *deutschland.de* (23.02.2023) <https://www.deutschland.de/en/topic/business/globalization-world-trade/unions?utm_source=>.

sector.[28] This has resulted in rising strike actions and industrial disputes.[29] Accompanying this, unions are at the forefront of advocating for reduced working hours and enhanced work-life balance, reflecting broader societal trends in Germany.[30]

III. **Article 9 paragraph 1 of the Basic Law**

Article 9 GG belongs together with Article 8 (freedom of assembly) and Article 5 GG (freedom of expression, arts and sciences) to the fundamental rights of communication. This relevance within the Basic Law is constituted by their function against totalitarianism, enabling the formation of political will in a free, pluralistic and democratic state. Both freedom of association and freedom of assembly are complementary guarantees to the freedom of expression.[31]

Article 9 contains two fundamental rights.[32] Article 9 paragraph 1 GG guarantees the so-called general freedom of association, covering the formation, organisation and ongoing existence and activities of, as well as participation in, an association, containing a broader right to action.[33] As (almost[34]) all fundamental rights in the Basic Law, the right to form and participate in associations is directed at the state, not third parties or the association itself.[35] Furthermore, for the association itself, any obligation for 'democratic' decision-making is excluded; Article 9 paragraph 1 rejects, rather than mandates, the alignment of state and society.[36] It also does not support claims to state support. Accordingly, freedom of association is a permissive right (*Darf-Recht*), not an entitlement right (*Kann-Recht*). While every German citizen may form and join associations, Article 9 paragraph 1 GG does not guarantee the resources to do so.[37] Accordingly, Article 9 paragraph 1 GG neither requires nor forbids state

[28] For an in-depth insight into contemporary German civil society see also Holger Krimmer (ed), *Datenreport Zivilgesellschaft* (Bürgergesellschaft und Demokratie, Springer VS 2019).
[29] Christoph Steitz and Tom Käckenhoff, 'Germany Faces Year of Industrial Strife as Companies Go into Battle with Workers', *Reuters* (13 February 2025) <https://www.reuters.com/markets/europe/germany-faces-year-industrial-strife-companies-go-into-battle-with-workers-2025-02-13/> accessed 22 February 2025.
[30] Bertrand Benoit, 'A Nation of Workaholics Has a New Fixation: Working Less', *The Wall Street Journal* (20.08.2024) <https://www.wsj.com/lifestyle/workaholics-work-less-germany-aa9c5a09> accessed 22 February 2025.
[31] Dietrich Murswiek, 'Grundfälle Zur Vereinigungsfreiheit – Art 9 I, II GG' [1992] JuS 116, 117; Hesse (n 2) 177.
[32] Schroeder (n 13) 152.
[33] Merten (n 12) 1057.
[34] See Art 9 para 3, further elaborated on in the following section of the chapter.
[35] As into internal affairs, like access to member information. BVerfGE 84, 372 (377-378); see also Merten (n 12) 1044, 1058.
[36] ibid 1055.
[37] ibid 1041.

funding for associations,[38] however, if the state provides support, claims to equal access may arise, particularly from Article 3 paragraph 1 GG at the constitutional level,[39] and from statutory regulations at the legislative level.[40]

What is meant by an 'association' (*Verein*) is determined on the basis of section 2 VereinsG (1)[41] as an organisation where a majority of individuals or entities unite for a common purpose voluntarily, adhering to a uniform decision-making process over time. Voluntariness is essential for an association's existence under Article 9 paragraph 1 GG, as compulsory associations of a public or private law nature are not covered by the scope of protection of Article 9.[42] The protection provided by Article 9 paragraph 1 includes all types of associations, whether they are registered or informal, economic – like corporations and joint partnerships[43] –, political, or purely ideological in nature; no specific limitations are imposed here, except for the mandatory alignment with constitutional principles.[44] The legal form of the association is also irrelevant. Thus, a loosely connected citizens' initiative is considered an association, just like a joint-stock company. The primary criterion is whether there is a *certain*[45] degree of organisational stability, which may be reflected in a process of collective decision-making.[46] The key features of 'permanence' and 'organized decision-making' differentiate associations from gatherings under Article 8 paragraph 1 GG, as Article 9 paragraph 1 GG can even encompass temporary groups with structured decision-making.

This, as Konrad Hesse aptly writes, standardises a general principle of the structure of the German society: The free formation of social groups. The social system established by the Basic Law and especially Article 9 is designed to avoid both a feudal-corporate structure, characteristic of earlier societies, and state-controlled organisation dictated by the values of the ruling group, as seen in modern totalitarian regimes.[47]

---

[38] BVerfGE 22, 180 (216-218).
[39] BVerfGE 70, 191 (214).
[40] Merten (n 12) 1042.
[41] Gesetz zur Regelung des öffentlichen Vereinsrechts (Vereinsgesetz). s 2 Begriff des Vereins.
[42] Manssen (n 18) 171; Epping and others (n 6) 490.
[43] Schroeder (n 13) 152; Merten (n 12) 1053; see also s 21 BGB and s 22 BGB.
[44] Merten (n 12) 1052.
[45] The requirements are not rigid; therefore, even loosely organised groups are entitled to protection under Art 9 para 1 of the Basic Law. ibid 1051.
[46] Epping and others (n 6) 490.
[47] Hesse (n 2) 178.

IV. Special Cases of Freedom of Association

Detlef Merten aptly highlights that 'in some sections of the Basic Law, there are qualified special cases of general freedom of association, so that these are, according to their specific scope, leges speciales'[48]. As was previously mentioned, Article 9 of the Basic Law contains two fundamental rights,[49] whereby Article 9 paragraph 3 GG specifically protects so-called coalitions (*Koalitionen*), particular cases of associations[50] with the purpose to safeguard labour and economic conditions.[51] A coalition, to qualify under paragraph 3, is more narrowly defined than associations under paragraph 1 and must have the primary purpose of promoting working conditions, with the improvement of economic conditions potentially serving as a supplementary aspect.[52] The right, therefore, essentially refers to trade unions and employers' organisations, making Article 9 as much a fundamental economic right as it is a right of communication.[53]

Furthermore, a coalition must be freely formed on a private law basis and it is required that its members do not include their social counterparts, ensuring legal and factual independence.[54] The Federal Constitutional Court views coalition freedom as essential for the orderly regulation of working life, with the state retracting its regulatory role to allow parties to manage their affairs independently.[55] It also establishes a foundation for the so-called tariff autonomy (*Tarifautonomie*), the cornerstone principle that trade unions and employers' associations have the independent right to negotiate and establish collective agreements on wages and working conditions without state interference.

The origins of this specific paragraph can be traced back to the nineteenth century as a direct reaction to industrialisation. Volker Epping et al. notes that paragraph 3 is almost identical to Article 159 of the WRV[56]; and this historical position is still influential for decisions by the Federal Constitutional Court to this day.[57] Interestingly, the only change in Article 9 was

---

[48] Translation by author. Original version in German: 'An einigen Stellen des Grundgesetzes finden sich qualifizierte Sonderfälle der allgemeinen Vereinigungsfreiheit, so daß diese entsprechend ihrer tatbestandlichen Reichweite leges speciales sind' Merten (n 12) 1064.
[49] Schroeder (n 13) 152.
[50] Manssen (n 18) 177.
[51] The emphasised relevance not just of freedom of association, but also that of coalitions, is among others highlighted in its implementation in Art 11 of the European Convention on Human Rights (ECHR) and Art 12, 28 of the Charter of Fundamental Rights of the European Union (CFR).
[52] Manssen (n 18) 177.
[53] Epping and others (n 6) 486; Schroeder (n 13) 152.
[54] Manssen (n 18) 177.
[55] BVerfGE 44, 322 (340); BVerfGE 50, 290 (367); BVerfGE 58, 233 (246).
[56] Epping and others (n 6) 489.
[57] See, eg BVerfGE 19, 303; 38, 386.

made to paragraph 3 over the course of the emergency legislation of 1968, which expressly excluded certain crisis instruments from being used against industrial action.[58] This is a rare occurrence, as amendments of the Basic Law require a two-thirds majority in both the Bundestag and Bundesrat.

Within paragraph 3, coalitions are granted special constitutional protection with potential third-party effects.[59] This is relevant, because, as mentioned in the previous section, private individuals and entities are usually not directly bound by fundamental rights, as these rights are conceived as entitlements of individuals rather than obligations imposed upon them;[60] hence, Article 9 paragraph 3 GG is the sole exception.[61] Consequently, under this provision, it is impermissible for an employer to make an individual's employment contingent upon membership in, or non-membership of, a particular trade union.

According to the Federal Constitutional Court, Article 9 does not extend to political parties,[62] parliamentary groups, churches, or religious organizations, as they are not considered associations within the meaning of this provision.[63] Firstly, Article 21 of the Basic Law supersedes Article 9 in regulating the formation and activities of political parties.[64] Only those political associations that do not meet the criteria of a 'party' under Article 21 fall under the scope of Article 9 paragraph 1;[65] yet, despite this legal separation, the freedom granted to political parties has historical roots in the broader right of association.[66] Within Germany's organised landscape, political associations remain relatively insignificant, both in number and structural development, when compared to the multitude of organisations dedicated to various other objectives.[67]

Furthermore, the protection of religious freedom of association is also enshrined as a distinct fundamental right and specific form of the freedom of association,[68] explicitly guaranteed by Article 4 of the Basic Law and Article 137 paragraph 2 sentence 1 of the Weimar

---

[58] Sandra Schmid, 'Deutscher Bundestag - Vor 55 Jahren: Bundestag beschließt Notstandsgesetze' (*Deutscher Bundestag*, no date) <https://www.bundestag.de/dokumente/textarchiv/2023/kw21-kalenderblatt-notstandsgesetze-556672> accessed 25 June 2024.
[59] BVerfGE 84, 212 (224).
[60] Robbers (n 2) 48.
[61] ibid.
[62] Murswiek (n 31) 876.
[63] BVerfGE 83, 341 (354-356); Federal Constitutional Court (n 5).
[64] BVerfGE 2, 1 (13); 12, 296 (304).
[65] This mainly includes local or smaller political groups. BVerfGE 17, 155 (166); 69, 92 (104-105).
[66] Merten (n 12) 1039.
[67] ibid 1041.
[68] ibid 1058.

Constitution, in conjunction with Article 140 of the Basic Law.[69] Unlike general freedom of association, it does not depend on the broader provisions of Article 9 paragraph 1 or utilise the restrictions imposed by Article 9 paragraph 2.[70]

The German Basic Law thus grants specific protections to certain forms of associations that take precedence over the general freedom of association enshrined in Article 9 paragraph 1 GG. This can be attributed to historical influences, as already outlined in the WRV,[71] and the prominent role these types of associations hold within German society. While the subsequent sections of this chapter will focus on Article 9, as it constitutes the fundamental right to freedom of association, the examples of political parties and religious organisations illustrate that this freedom extends beyond its core formulation within the fundamental rights framework of the Basic Law.

V. **The Collective and Individual Dimension of Article 9**

Both the general freedom of association and the freedom of coalition are considered individual fundamental rights as well as collective fundamental rights.[72] The individual general freedom of association guarantees the activities of current or future members, encompassing, as was previously elaborated upon, both the freedom to establish associations and the freedom to participate in their actions. Individual freedom of coalition especially protects collective bargaining autonomy, participation in company co-determination, advertisement, industrial action (strikes and lockouts)[73] and prevents sanctions for membership.[74]

As fundamental collective rights, they apply to the association and coalition themselves,[75] as the association's right to exist and function is also explicitly protected; within the German Basic Law, associations can claim their own fundamental rights, not just those of their members,[76] even if the extent to which the activities of the association, specifically its

[69] BVerfGE 42, 312 (322-323); 53, 366 (387); 83, 341 (354-356).
[70] Article 9 paragraph 1 GG continues to protect religious associations that were explicitly mentioned under Art. 124 para. 1 sentence 3 WRV as part of the general freedom of association. Merten (n 12) 1067.
[71] ibid 1066–67.
[72] Murswiek (n 31) 873; Schroeder (n 13) 154; Epping and others (n 6) 501 BVerfGE 146, 71 (114).
[73] This has been clarified during the aforementioned emergency legislation in 1968, where the following sentence has been added to Art 9 para 3 GG: 'Measures taken pursuant to Article 12a, to paragraphs (2) and (3) of Article 35, to paragraph (4) of Article 87a or to Article 91 may not be directed against industrial disputes engaged in by associations within the meaning of the first sentence of this paragraph in order to safeguard and improve working and economic conditions'. Schmid (n 57).
[74] Epping and others (n 6) 503; BVerfGE 50, 290 (367).
[75] Manssen (n 18) 178.
[76] BVerfGE 16, 147 (158), Merten (n 12) 1047.

external impact, are protected is a matter of controversy.[77] According to the Federal Constitutional Court, at least a core area of the association's continuity and activity is included, guaranteeing the right to the establishment and existence of an organisation. This contains the formation and functioning of an association, the self-determination over its own organisation as well as the process of decision-making and management. In this context, the Federal Constitutional Court has explicitly ruled that the usage of the name[78] and effective self-promotion[79] are protected, since it can be essential for the existence of the association. Furthermore, as clarified by the Federal Constitutional Court, the right of the association to determine the admission and exclusion of members is included,[80] because the association and participation of opposing members can be detrimental to the function of the association.[81] Since Article 9 paragraph 1 GG does not, unlike paragraph 3, have a direct third-party effect of fundamental rights, an individual cannot claim the right to freedom of association when seeking admission to, or facing exclusion from, an association,[82] and associations can exclude individuals based on gender, ethnicity, or (political) views. The state can only intervene in associations that put discrimination at the forefront of their purpose.[83]

The most relevant exception to this autonomy is in the case of monopolistic associations or those with significant economic or social power,[84] which may be required to accept members if they have a substantial or fundamental interest in joining.[85] This was, among others, further clarified on 2nd December 1974, when a cycling association sought membership in the German Sports Confederation (*Deutscher Sportbund*).[86] The confederation rejected the application based on its statute permitting only one peak association per sport – which, in this case, was already occupied by the German Cycling Federation (*Bund Deutscher Radfahrer*). The plaintiff argued that the DSB's monopoly rendered this restriction invalid, as the rejection led to disadvantages such as reduced funding, exclusion from key events, and membership loss. In this context, the Federal Court of Justice in civil matters clarified the following:

---

[77] Epping and others (n 6) 492.
[78] BVerfGE 30, 227 (241).
[79] BVerfGE 84, 372 (378).
[80] BVerfG, Decision of the 2nd Chamber of the First Senate of 2 February 2023, 1 BvR 187/21, Rn. 1-12, https://www.bverfg.de/e/rk20230202_1bvr018721.html.
[81] Murswiek (n 31) 873.
[82] Epping and others (n 6) 492.
[83] Merten (n 12) 1052.
[84] BGHZ 63, 282 (284); 77, 32; 93, 151 (152).
[85] Merten (n 12) 1056; Schroeder (n 13) 154.
[86] The German Sports Confederation (DSB) served as the overarching organisation for state sports federations and sports associations in Germany, operating as a registered association (e. V.). On 20 May 2006, it merged with the National Olympic Committee for Germany to establish the German Olympic Sports Confederation (DOSB).

> If a monopoly association rejects the admission of an applicant for membership by invoking a restriction on admission under its articles of association, the purpose of which is in itself objectively justified, the restriction on admission may nevertheless be ineffective if the purpose pursued by the monopoly association can also be achieved by another, 'milder' formulation of the articles of association that would allow the applicant to become a member.
>
> The alternative may apply if the applicant is able to fulfil the admission requirements set by the monopoly association without disproportionate sacrifice.[87]

The Federal Court of Justice therefore confirmed the obligation of a monopoly association to admit a membership applicant despite statutory restrictions.[88] The ruling establishes that such restrictions, even if substantively justified, may be invalid if a less restrictive framework could achieve the same objective.

This interpretation is even further exemplified within rulings by the Federal Constitutional Court and Federal Court of Justice regarding unions, as they are more likely to assume a position that constitutes a fundamental interest in joining[89] – as their decisions, in certain cases, can significantly impact access to economic, professional, or social participation.[90] A fitting example for this is a decision by the German Federal Court of Justice in 1984, focussing on the IG Metall.[91] The court established that IG Metall is generally subject to an obligation to admit applicants within its sphere of influence, even if it is strictly speaking not monopolistic,[92] as the IG Metall has an exceptionally high membership, granting it an overwhelmingly dominant position within the metal industry. No other union within its jurisdiction has ever approached its significance or bargaining power, making membership in IG Metall effectively obligatory for those seeking adequate and effective representation.[93]

Nonetheless, this admission obligation is not absolute. Within the same decision, the court recognised that unions have a legitimate interest in maintaining their organisational

---

[87] Translation by the author. For the original version in German, see BGHZ 63, 282.
[88] BGHZ 63, 282 (284).
[89] BGHZ 63, 282; 29, 344 (347); BGH NJW 1973, 35.
[90] Pascal Annerfelt, 'Grenzen Gewerkschaftlicher Autonomie Bei Aufnahme Und Ausschluss von Mitgliedern' (2021) 69 Arbeit und Recht 14, 14–15.
[91] BGHZ 93, 151.
[92] Annerfelt (n 90) 16.
[93] '[…] wenn der Verein oder Verband im wirtschaftlichen oder sozialen Bereich eine überragende Machtstellung innehat und ein wesentliches oder grundlegendes Interesse am Erwerb der Mitgliedschaft besteht.' BGHZ 93, 151.

integrity and can reject applicants in specific circumstances. Grounds for rejection may include prior membership in organisations hostile to the union or conduct detrimental to its principles. In such cases, the court balances the applicant's fundamental interest in joining against the association's right to self-preservation. An especially valuable example for this involved the exclusion of a police officer from the Police Union (*Gewerkschaft der Polizei*) due to his membership in the far-right National Democratic Party of Germany (NPD) and election as a representative in the Bavarian State Parliament in 1966,[94] which was elaborated on by the German Federal Court of Justice in 1972. The union expelled him on the basis that membership in organisations deemed incompatible with its principles was not permitted under its internal rules. The plaintiff argued that his exclusion violated his fundamental rights, particularly political neutrality, freedom of association under Article 9 of the Basic Law, and freedom of opinion. He further contended that the NPD, not being a banned party under Article 21 GG, should be treated as a democratic entity and that his expulsion caused reputational damage, for which he sought compensation. The court upheld the exclusion, ruling that the union had the right to protect its integrity and prevent members from supporting organisations whose goals conflicted with its fundamental principles. The reason for the plaintiff's affiliation with the NPD being incompatible with the union's democratic values is a direct consequence of the NPD's conviction that, for the maintenance of industrial peace, it is prudent to establish unified organisations of both employees and employers – effectively calling into question the continued existence of free trade unions.[95]

This is in accordance with the collective and individual dimension of Article 9 GG; while monopolistic or dominant associations generally have autonomy in deciding membership, their influence can impose legal constraints to prevent unjust exclusion, especially if their decisions unjustly infringe upon fundamental rights.

VI. Negative Right to Freedom of Association

Although not explicitly mentioned in the text of the article, the right to form associations under Article 9 paragraph 1 GG is often interpreted to include the mirrored right to a so-called negative right to freedom of associations, ie the freedom to leave associations under private

[94] BGH NJW 1973, 35 (36).
[95] P. Annerfelt highlights in this context the historical dimension of the relationship between National Socialists and Unions, whereby the suffering experienced by thousands of trade unionists under National Socialist rule resulted in the conviction of irreconcilability of the idea of free trade unions and fascism. Annerfelt (n 90) 18.

law or to keep away from them from the outset.[96] Yet, there is some – if limited – debate on this, which does not question the existence of a negative right to freedom of association, but rather its protection under Article 9 GG; even if not included, it would be covered by the general freedom of action guaranteed by Article 2 paragraph 1 GG.[97] Regardless of the association's legal nature, within the Basic Law, compulsory membership constitutes an intrusion into general freedom of action.[98]

From a critical perspective, it must be noted that other fundamental rights in the GG explicitly include a negative component, such as the prohibition of forced labour in Article 12 paragraph 2 and 3, and the right not to disclose religious beliefs in Article 136 paragraph 3 WRV (incorporated into the GG by Article 140 GG).[99] Furthermore, the freedom to act implies the freedom to abstain, which exists even without explicit constitutional protection. A state does not need to permit someone not to do something and since Article 9 paragraph 1 expresses no general duty to found or participate in associations, there is strictly speaking no need for a specific permission not to associate.[100] It is however, generally agreed that it exists. Some of the reasons include that the decision to join one association can exclude membership in another, and mandatory membership can therefore eliminate genuine choice,[101] therefore necessitating an implication of the negative right within Article 9 paragraph 1 GG. Building on this, proponents of the existence within Article 9 paragraph 1 further argue that true freedom of association requires the freedom not to associate,[102] and there is a certain consensus on this position. In the context of this work, it is assumed that it exists within Article 9 paragraph 1 and is also deeply embedded in the general conception of the Basic Law.

The debate regarding the negative right to freedom of coalition entailed in Article 9 paragraph 3 GG is inclined to reach a consensus that it exists,[103] but it remains uncertain whether the negative right to freedom of association is limited to the right to refrain from joining or extends to protection against the effects of coalitions.[104] The Federal Constitutional

---

[96] BVerfGE 50, 290 (354).
[97] Johannes Hellermann, *Die Sogenannte Negative Seite Der Freiheitsrechte* (Schriften zum öffentlichen Recht, Duncker & Humblot 1993) 250.
[98] BVerwG NJW 2021, 406; Epping and others (n 6) 493–95.
[99] BVerfGE 52, 223 (239) (Schulgebet).
[100] Epping and others (n 6) 494.
[101] Merten (n 12) 1060.
[102] Manssen (n 18) 171; Epping and others (n 6) 493.
[103] BVerfGE 50, 290 (367); Philipp Leydecker, *Der Tarifvertrag als exklusives Gut: Die rechtliche Zulässigkeit und Erstreikbarkeit von Differenzierungsklauseln* (Schriften zum Sozial- und Arbeitsrecht 243, Duncker & Humblot 2005) 110; Epping and others (n 6) 493.
[104] BVerfGE 64, 208 (213); Leydecker (n 103) 84–86.

Court consistently holds that the negative right to freedom of coalition is only affected if significant pressure to join is exerted; therefore, the protection under Article 9 paragraph 3 GG is not infringed if an employer is required to apply collective agreements, regardless of his membership in the employers' association, to obtain public contracts, as seen in the Berlin regulation on compliance with collective agreements.[105]

Last but not least, it is important to mention that the protection under Article 9 GG against compulsory membership in public law associations is debatable, as the negative right to freedom of association within paragraph 1 protects the right to leave, or refrain from joining, *private law* associations.[106] Public law associations, on the other hand, aim to involve citizens in state administration, such as the Federal Bar Association (*Bundesrechtsanwaltskammer* BRAK), Chamber of Industry and Commerce (*Industrie- und Handelskammer* IHK), student bodies and the Chamber of Craft (*Handwerkskammer* HWK).[107] As Epping et al. highlight, the negative right to freedom of association protects the right to leave, or not join, private associations but does not extend to public law associations since citizens cannot form such associations.[108] Still, counterclaims exist, stating that the negative right to freedom of association within Article 9 paragraph 1 GG should protect against public law associations, as there is no difference to the individual whether the association they are compelled to join is of a private or public nature;[109] especially since historically, freedom of association was meant to protect against compulsory guilds.[110] Also, any state-enforced affiliation with specific organisations would limit the freedom to create or join private associations.[111] However, as Epping et al. further elaborate, this would make it difficult to justify existing public law compulsory associations under constitutional law.[112] It must therefore be agreed that public law associations are not covered by Article 9 paragraph 1, but by Article 2 paragraph 1 GG; an interference with the general freedom of action – which it would be, regardless of whether the association was established under private or public law – would have to be justified.

---

[105] BVerfGE 116, 202 (218).
[106] BVerfG, NJW 2001, 2617 (2617).
[107] Epping and others (n 6) 495.
[108] ibid.
[109] Karl Heinrich Friauf, in Klemens Pleyer and Rudolf Reinhardt (eds), *Festschrift für Rudolf Reinhardt zum 70 Geburtstag, 7 Juni 1972* (Keip 1995) 395.
[110] Murswiek (n 31) 118–19; Herbert Bethge, 'Grundrechtsprobleme Einer Zwangsmitgliedschaft in Verbänden Des Öffentlichen Rechts' [1979] Juristische Arbeitsblätter 281, 284–85; for an overview see also Epping and others (n 6) 495.
[111] Merten (n 12) 1060–61.
[112] Epping and others (n 6) 495.

VII. **Beneficiaries of Article 9 of the Basic Law**

Article 9 paragraph 1 GG constitutes a fundamental right of Germans, including all Germans within the meaning of Article 116 GG as natural persons.[113] Pursuant to Article 19 paragraph 3 GG, domestic legal persons who wish to form an association within the meaning of Article 9 paragraph 1 GG may also be entitled to fundamental rights. Non-Germans are also allowed to form associations, but they cannot invoke a specific fundamental right and must rely on Article 2 paragraph 1 GG.[114] This does not apply to EU citizens, for whom the Federal Republic of Germany is obliged to guarantee the same protection of fundamental rights within the scope of application of the EC Treaties via Article 2 paragraph 1 GG as Germans via Article 9 paragraph 1 GG. The Federal Constitutional Court has not yet decided if freedom of association under Article 9 applies to economic entities, including large corporations or mutual insurance associations with extensive memberships, where individual participation becomes increasingly marginal. However, precisely defining the threshold at which an organisation no longer qualifies as an association in this sense remains a complex challenge.[115]

Foreign associations, which are led, or mostly composed of, foreigners[116] or who have no registered office in Germany, are not protected under Article 9, paragraph 1 GG[117] and can be banned for reasons beyond Article 9 paragraph 2 GG under section14 of the Associations Act. In such instances, as in the case of individual freedom of association, fundamental rights are protected solely in accordance with Article 2 paragraph 1 GG.[118]

Unlike paragraph 1, the freedom of coalition under paragraph 3, is a fundamental right for everyone. This right is defined by its connection to dependent employment and protects all individuals in their professional roles, whether as employees or employers, without excluding any occupational groups.[119]

---

[113] Within the German Basic Law, there is a distinction between the above-mentioned fundamental rights that protect all Germans and those that are general human rights of all individuals, independent of nationality. As an example, these include the freedom of religious belief or freedom of expression. Robbers (n 2) 47.
[114] Epping and others (n 6) 488.
[115] BVerfGE 124, 25/34; Manssen (n 18) 172–73.
[116] Whereby, according to s 14 para 1 of the Associations Act, associations are explicitly not considered foreign associations if their members or leaders are all or predominantly foreign nationals of a member state of the European Union.
[117] Manssen (n 18) 172.
[118] Merten (n 12) 1046, 1048.
[119] Murswiek (n 31) 873; Epping and others (n 6) 501.

VIII. **Severe Interference**

The limitations of Article 9 paragraph 1 GG are contained within Article 9 paragraph 2 GG, which defines a narrow qualified legal reservation to the freedom of association and allows for preventive protection of the constitution. The necessity for this has been clarified by the Federal Constitutional Court, stating that

> freedom of association is dependent to a greater or lesser extent on regulations that integrate the free associations and their life into the general legal system, guarantee the security of legal transactions, secure the rights of members and take into account the interests of third parties or public interests that require protection.[120]

This is reflective of the aforementioned commitment of the Basic Law to a militant democracy[121] and allows the state to target criminal organisations specifically by focusing on the collective actions of their members rather than individual behaviour. The reasoning for this is aptly summarised in a 1956 reasoning by the Federal Constitutional Court concerning the ban of the Communist Party of Germany (KPD): "No unconditional freedom for the enemies of freedom".[122]

As further delineated by the Federal Constitutional Court in its 2018 decision, addressing constitutional complaints against three association bans, an association is prohibited under Article 9 paragraph 2 GG if it incites or supports criminal actions, adopts an aggressive stance against constitutional principles, or actively promotes violence or terrorism, including through third-party support[123] – whereby it is acknowledged that humanitarian aid in crisis regions can have an indirect effect on terrorism that is not necessarily grounds for prohibition.[124] Interestingly, even if individual acts are not criminal, if they are part of a group's activities or tacitly accepted by the group, the state can intervene[125] as organised collectives

---

[120] Translation by author. Complete passage in original language: 'Art. 9 Abs. 1 GG schützt die Vereinigungsfreiheit allerdings nicht schrankenlos, und die Gewährung der Vereinigungsfreiheit kann nicht bedeuten, dass jede staatliche Regelung der Organisation und Willensbildung von Vereinigungen ausgeschlossen ist. Vereinigungsfreiheit ist in mehr oder minder großem Umfang auf Regelungen angewiesen, welche die freien Zusammenschlüsse und ihr Leben in die allgemeine Rechtsordnung einfügen, die Sicherheit des Rechtsverkehrs gewährleisten, Rechte der Mitglieder sichern und den schutzbedürftigen Belangen Dritter oder auch öffentlichen Interessen Rechnung tragen. Demgemäß ist mit der verfassungsrechtlichen Garantie der Vereinigungsfreiheit seit jeher die Notwendigkeit einer gesetzlichen Ausgestaltung dieser Freiheit verbunden, ohne die sie praktische Wirksamkeit nicht entfalten könnte.' BVerfG, NJW 2001, 2617 (2617).

[121] Federal Constitutional Court (n 5).

[122] Translation by author. Complete passage in original language: 'keine unbedingte Freiheit für die Feinde der Freiheit'. BVerfGE 5, 85.

[123] Federal Constitutional Court (n 5).

[124] BVerfGE 149, 160; Kingreen and others (n 17) 864–66.

[125] BVerwGE 80, 299 (307).

pose greater risk compared to individuals.[126] This is also relevant in the context of international understanding, which is a key value under protection; actions directed against specific nations or groups and breaches of sections 102 to 104 of the German Criminal Code (*Strafgesetzbuch* StGB) are only significant if they challenge international cooperation itself. As Merten highlights, Article 9 paragraph 2 of the Basic Law does not safeguard foreign interests or sensitivities.[127]

The Federal Ministry of the Interior (*Bundesinnenministerium für Innen und für Heimat*) oversees bans on associations operating across state borders, while state interior ministries handle bans within their respective territories.[128] They are obligated to maintain a high threshold for prohibition and adhere to the principle that there can be no limitation of otherwise applicable liberty rights. Restrictions on fundamental rights are only justified to safeguard the fundamental rights of others or other constitutional legal interests.[129] This is especially prominent in cases where the association's opinions are covered by the freedom of expression enshrined in Article 5 paragraph 1 GG, as these stances cannot be grounds for a prohibition of an association.[130] A total of 55 associations and 109 partial and substitute organisations have been banned in Germany under Article 9 paragraph 2 of the Basic Law since the foundation of the Federal Republic of Germany in 1949,[131] whereby these associations actively and aggressively opposed the constitutional order to lose their protection. Merely having a critical stance is generally insufficient, as Article 9 paragraph 2 GG does not prohibit ideologies or beliefs. However, it is not necessary for the association to immediately threaten fundamental constitutional principles, nor must there be an imminent danger or potential for achieving unconstitutional goals[132] – other than the prohibitions of political parties under Article 21 paragraph 2 GG, whereas there must be a concrete danger for the basic democratic order to justify a prohibition.[133]

The wording of the provision suggests that associations directed against the legal interests mentioned therein are constitutionally prohibited. However, as Gerrit Manssen notes,

---

[126] Merten (n 12) 1070.
[127] Murswiek (n 31) 116; Merten (n 12) 1071.
[128] Robbers (n 2) 43.
[129] BVerfGE 28, 243 (261); 81, 278 (292-293); 94, 268 (284); Merten (n 12) 1072.
[130] BVerfGE 149, 160; Manssen (n 18) 175.
[131] There were a total of 20 bans in the area of right-wing extremism, 1 in left-wing extremism, 19 in Islamism, 7 in foreigner extremism, 79 of an illegal nature (rock clubs; organised crime) and 2 bans for other reasons. Bundesministerium des Innern und für Heimat, 'Öffentliches Vereinsrecht' [no date].
[132] BVerfGE 149, 160 (197-199).
[133] BVerfGE 144, 20 (199, 223). See also Robbers (n 2) 67.

such an interpretation would be hostile to fundamental rights. Associations would have no certainty regarding whether they are prohibited or not.[134] Therefore, as declared in section 3 VereinsG, any prohibition does not occur automatically but must first be decreed by the competent state authority.[135] Until the prohibition order takes effect, the association must not be treated as prohibited.[136] This prohibition order has a constitutive effect, but the association is, in the context of judicial protection, still capable of litigation and fundamental rights.[137] This is a relevant difference to the freedom of assembly enshrined in Article 8 GG, which only provides protection to peaceful assemblies without weapons.[138]

The topic of prohibition of associations is one of the most intricate debates surrounding Article 9 today, as it comes up in a variety of contexts; and the recurring topic of far-right parties or organisations generates particular publicity. The annual Report on the Protection of the Constitution (*Verfassungsschutzbericht*)[139] highlights the ban of several associations for activities that violated constitutional principles, fostered extremism, or opposed democratic values. As an example, right-wing extremist groups, particularly the 'Reichsbürger' and 'Selbstverwalter'[140] movements, were targeted for rejecting the legitimacy of the German State and promoting xenophobic and antisemitic ideologies. The 2023 report highlights the 'suspicion of continuing a prohibited organisation'[141] in regard to the association *Geeinte deutsche Völker und Stämme* (GdVuSt; roughly translated to mean United German peoples and tribes). The group and its sub-organisations were initially banned on 19 March 2020 by the Federal Minister of the Interior, Horst Seehofer, which marked the first time that a group from the Reichsbürger milieu has been prohibited. The ban was executed through coordinated searches and seizures across ten German States, involving approximately 400 law enforcement officers, resulting in the confiscation of the group's assets.[142]

---

[134] Manssen (n 18) 175.
[135] Hesse (n 2) 180.
[136] Manssen (n 18) 2020; Epping and others (n 6) 490; Cf. BVerwGE 4, 188.
[137] Federal Constitutional Court (n 5).
[138] Epping and others (n 6) 20, 490.
[139] Bundesministerium des Innern und für Heimat, *Verfassungsschutzbericht 2023* (2024); for a summarised version in english translation see: Federal Ministry of the Interior and Community, *Brief Summary. 2023 Report on the Protection of the Constitution* (2024).
[140] Bundesministerium des Innern und für Heimat, *Verfassungsschutzbericht 2023* (n 139) 62–63, 132–42.
[141] Translation by author. Section in original language: 'Wegen des Verdachts der Fortführung einer verbotenen Vereinigung [...]' ibid 138.
[142] For more information see the press release of the Federal Ministry of the Interior at the time of the ban: Bundesministerium des Innern und für Heimat, 'Bundesinnenminister Seehofer Verbietet Mit "Geeinte Deutsche Völker Und Stämme" Erstmals Reichsbürgervereinigung' (19 March 2020) <https://www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2020/03/verbot-reichbuergervereinigung.html> accessed 3 March 2025.

Since then, different cases have underscored the actuality of this problem. On 6 March 2025, members of the *Vereinte Patrioten* were sentenced to prison terms of up to eight years for plotting the violent overthrow of the German government, including plans to abduct then Health Minister Karl Lauterbach and reinstate the 1871 imperial constitution.[143] On 13 May 2025, Federal Minister of the Interior Alexander Dobrindt banned the biggest group within the milieu, the *Königreich Deutschland* (Kingdom of Germany), citing its anti-constitutional activities and criminal operations. Also in this case, authorities conducted nationwide raids, seizing assets and arresting key figures, including leader Peter Fitzek, for operating an illicit financial network.[144]

It is controversial whether Article 9 paragraph 2 GG can also be applied to Article 9 paragraph 3 GG, as it defines a very specific kind of freedom of association that has an equally specific position within the system.[145] Still, outside the scope of Article 9 paragraph 2 GG, both the freedom of association and freedom of coalition can be restricted by conflicting constitutional law, ie fundamental rights of third parties and other constitutional rights.[146] In the case of freedom of coalition under Article 9 paragraph 3 GG, the topic of interference can become relevant in the context of multiple strikes by different unions against the same employer, in which instance the legislature has considerable discretion.[147] The Federal Constitutional Court has also approved laws mandating fixed-term employment for academic staff at universities and state research institutions, excluding alternative collective agreements.[148] This measure, interfering with freedom of coalition, is justified by the need to periodically create new positions for junior researchers to protect academic freedom.[149] Still, as with every interference, all restrictions must adhere to the principle of proportionality (*Verhältnismäßigkeitsprinzip*).[150]

---

[143] 'Geplante Lauterbach-Entführung – Gericht Verurteilt „Reichsbürger" Zu Mehrjährigen Haftstrafen', *Welt* (7 March 2025) <https://www.welt.de/politik/deutschland/article255621884/Geplante-Entfuehrung-von-Karl-Lauterbach-Gericht-verurteilt-Reichsbuerger-zu-mehrjaehrigen-Haftstrafen.html> accessed 13 March 2025.

[144] For more information see the press release of the Federal Ministry of the Interior at the time of the ban: Bundesministerium des Innern und für Heimat, 'Bundesinnenminister Dobrindt Verbietet Den Verein "Königreich Deutschland"' (Berlin, 13 May 2025) <https://www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2025/05/verbot-koenigreich-deutschland.html> accessed 5 June 2025.

[145] Murswiek (n 31) 875; Epping and others (n 6) 509; Manssen (n 18) 179.

[146] Schroeder (n 13) 158.

[147] This is especially relevant as strikes themselves must adhere to the principle of proportionality. See BAGE 23, 292 and BVerfGE 84, 212.

[148] BVerfGE 94, 268 (270).

[149] Art 5 para 3 GG.

[150] Manssen (n 18) 179.

IX. **Conclusion**

It was demonstrated that freedom of association in Germany is enshrined as a fundamental right and therefore higher law in the Basic Law, shaped by historical experiences and constitutional principles. Positioned at the beginning of the constitution, it underscores the importance of individual rights in response to past authoritarianism, aligning Germany with European and North American human rights traditions by emphasising both individual and collective liberties. In particular, the Federal Constitutional Court has, on many occasions, reinforced these protections, ensuring that associations can function freely within the legal framework.

The diverse aspects of freedom of association, such as the definition of specific cases outside of Article 9 GG, the duality of an individual and a collective dimension and the highly relevant option for severe interference within the German Basic Law combine with a particular jurisdiction that emphasises proportionality-based jurisprudence, a combative democracy, a federal structure – including legal diversity – and social state (*Sozialstaat*) principles. Especially the latter views associational rights also as tools for social justice and economic fairness, as evident in labour law (*Arbeitsrecht*) and the freedom of coalition enshrined under Article 9 paragraph 3, where collective bargaining rights are strongly protected.[151] This constitutes a flourishing environment of a multitude of associations in Germany today, enabling individuals to unite for manifold purposes.

In this context, ongoing debates, particularly concerning the negative freedom of association and instances of severe state interference, illustrate the dynamic nature of freedom of association and its application over time. They have to be perceived as healthy disputes concerning some of the most fundamental aspects of a democratic system. In this way, Germany's approach has influenced European human rights law, particularly through engagement with the European Court of Human Rights (ECtHR) and the European Court of Justice (ECJ). As an example, the ECtHR is drawing from the proportionality approach, which originated in Germany,[152] into broader European legal standards and also those concerning

[151] As an exemplary and insightful ruling in this context, see especially BVerfG 92, 365, whereby the Federal Constitutional Court reinforces the principle that collective bargaining must remain free from undue state interference while ensuring a fair balance between negotiating parties.
[152] Lothar Hirschberg, *Der Grundsatz Der Verhältnismässigkeit* (Göttinger rechtswissenschaftliche Studien Bd. 106, Schwartz 1981) 6.

freedom of association enshrined in Article 11 of the European Convention on Human Rights.[153]

While Germany's legal framework therefore offers an influential and functional model for freedom of association, certain issues arise or persist that highlight potential threats to its current stability. The handling of Palestinian solidarity movements – which mainly fall under Article 8 but are, as previously highlighted, heavily linked with Article 9 – has drawn criticism, with the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Irene Khan, considering 'the response [from Germany] among the toughest, imposing a blanket ban on all demonstrations in support of Palestinian people from 7th to 21st October 2023, and pre-emptively banning several such gatherings'.[154] Amnesty International argues that restrictive measures on Palestinian organisations and pro-Palestinian demonstrations conflate legitimate political dissent with hate speech, limiting public discourse on foreign policy and disproportionately targeting these movements – and 'calls on the Berlin authorities to refrain from blanket bans of assemblies, so that the rights to freedom of expression and freedom of peaceful assembly in Berlin are preserved for everyone'.[155] Such constraints not only raise concerns regarding all fundamental rights of communication but also set a precedent that may be used to curtail other forms of political advocacy.

Additionally, the aforementioned groups linked to the Reichsbürger movement showcases the immediate threat certain associations pose to the Federal Republic of Germany, and the necessity of balancing freedom of association against severe interferences by the state. This is potentially exacerbated by further, fundamental issues; as former Federal Constitutional Court President Andreas Voßkuhle warns, Germany risks a decline in its state capacity, potentially weakening its ability to uphold fundamental rights. He has called for significant state reforms to prevent the country from falling behind globally, highlighting a crucial concern: If governance structures become ineffective, the enforcement and protection of

[153] eg Case 34503/97 Demir and Baykara v Turkey ECLI:CE:ECHR:2008:1112JUD003450397, [2008] ECHR 1345.
[154] United Nations, 'Global Threats to Freedom of Expression Arising from the Conflict in Gaza. Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Irene Khan' (23 August 2024) <https://www.un.org/unispal/document/report-special-rapporteur-23aug24/> accessed 14 March 2025.
[155] Amnesty International, 'Protect the Protest: Against Blanket Bans of Demonstrations for the Rights of Palestinians' (12 September 2023) 4 <https://www.amnesty.org/en/documents/eur23/7180/2023/en/> accessed 14 March 2025.

constitutional rights, including freedom of association, may be jeopardised.[156] These considerations are further reinforced through discussions on state reform, with calls for a more 'action-capable state' gaining prominence. Initiatives seeking structural changes to increase governmental efficiency aim to address current political and administrative challenges,[157] highlighting a contemporary necessity and also potential weaknesses. This is exacerbated by new challenges, particularly the preservation and development of European integration and the inclusion of new population groups. With Russia's war of aggression against Ukraine, there is also a renewed focus on the restoration and securing of peace in Europe,[158] whereas actors with various intentions apply pressure from the outside.[159]

Whilst these developments should not be considered to be the cause of an inevitable decline in fundamental rights in Germany, they clearly indicate that challenges persist, and, in some cases, are becoming even more urgent. The broader implications extend beyond individual cases, raising essential questions about the resilience of democratic freedoms in times of political and societal transformation. Ultimately, ongoing legal and political debates will shape the interpretation and application of these rights, emphasising the paradox that a stable democracy requires a functioning right to freedom of association, and such a freedom also necessitates the existence of a stable democratic system.

---

[156] Eva R Lautsch, 'Diese Vorschläge Sollen Deutschland Aus Der Lähmung Befreien', *Zeit* (12 March 2025) <https://www.zeit.de/politik/deutschland/2025-03/initiative-fuer-einen-handlungsfaehigen-staat-staatsreform-bundespressekonferenz-peer-steinbrueck>.

[157] 'Ex-Verfassungsrichter Fürchtet Deutschlands Abstieg Zum „Zweite-Welt-Land"', *Welt* (12 March 2025) <https://www.welt.de/politik/deutschland/article255678502/Deutschland-in-der-Krise-Ex-Verfassungsrichter-fuerchtet-Abstieg-zum-Zweite-Welt-Land.html> accessed 13 March 2025.

[158] Robbers (n 2) 42.

[159] Tamsin Paternoster and Liv Stroud, 'The Musk Effect: Could the X Owner Actually Impact Germany's Election?', *Euronews* (10 January 2025) <https://www.euronews.com/my-europe/2025/01/10/the-musk-effect-could-the-x-owner-actually-impact-germanys-election> accessed 13 March 2025.