

Summer School Jakarta – Constitutional Law

The constitutional Embedding of Social Market Economy

- 1. Historical Background**
- 2. Neutrality of the Constitution?**
- 3. Individual Rights and Market Economy**
- 4. The Social Dimension**
- 5. The European Dimension**

Markus Rehberg, LL.M. (Cambr.), Muenster University
<http://www.MarkusRehberg.de>

Historical Background

800-1806: “Holy Roman Empire of German Nation”

- middle age; monarchy with weak emperor and strong states; important role of the church)

1871: New German Empire

- constitutional monarchy, constitution adopted by an elected, but rather weak parliament

1918: Weimar Republic

- abolition of monarchy, voting rights for women, catalogue of basic rights

1933: Takeover by National Socialists

- “enabling act”, dictatorship

Social Market Economy and the Constitution

The Situation around 1949:

- great poverty, destructed buildings, plants, infrastructure ...
- beginning of cold war, division of Germany
- 1948: general strike by trade unions who want to abolish market economy – but the majority of the population rejects these attempts
- 1948: introduction of a new, stable currency (DM) by Ludwig Erhard, influence of “ordoliberal” movement
- control of allied forces; marshall plan

The German Constitution of 1949

Chapter I:	Basic Rights
Chapter II:	Federation and States
Chapter III-VI:	Federal Bodies
Chapter VII:	Legislature
Chapter VIII:	Executive
Chapter IX:	Judicature
Chapter X-XI:	Finance, Defence, Transition

Based on the historical experience
and especially the failure of the Weimar Constitution

Social Market Economy and the Constitution

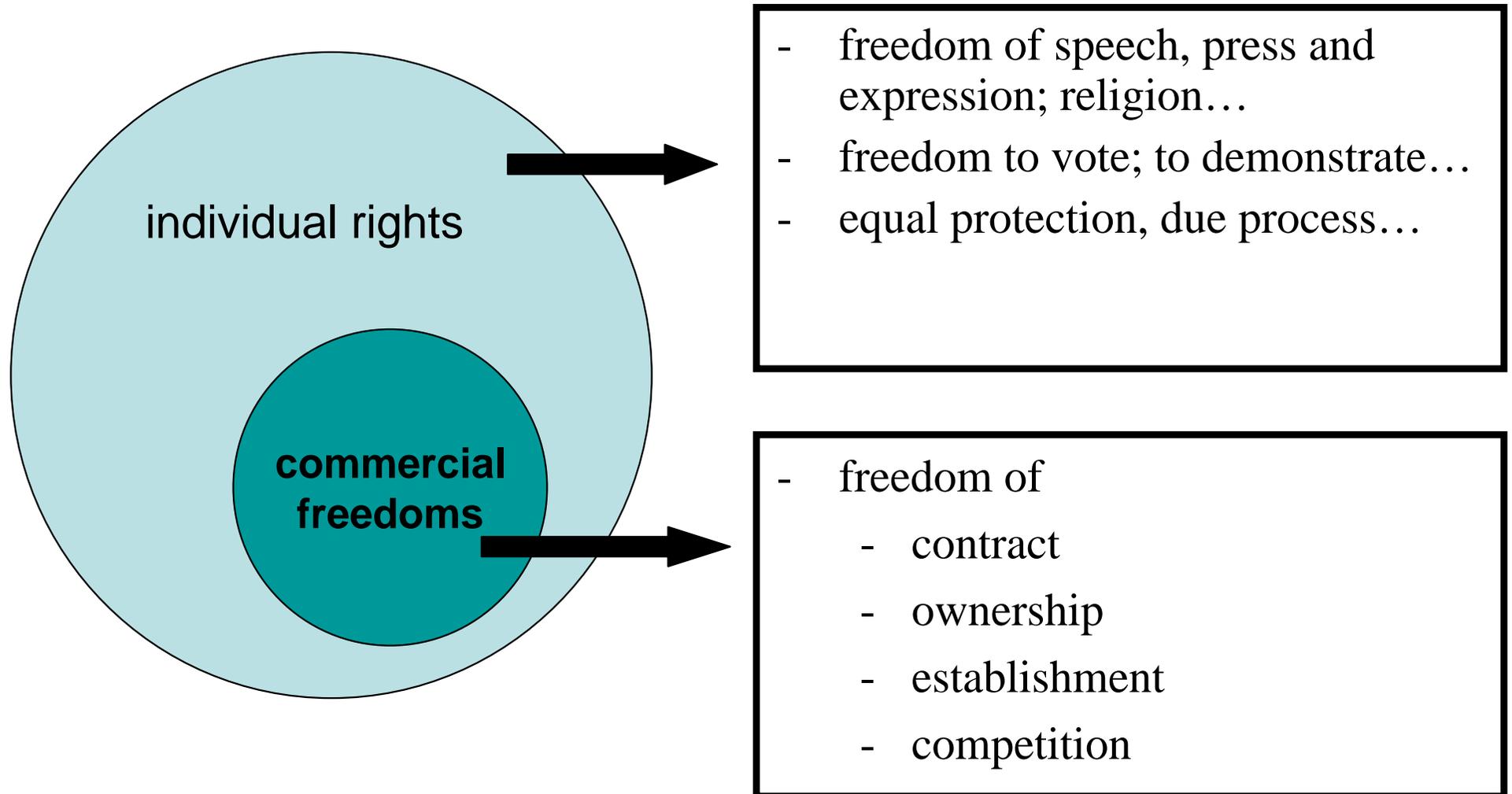
Art. 20 Basic Principles of State, Resistance

(1) The Federal Republic of Germany is a democratic and social federal state.

Art. 15 Socialisation

Land, natural resources, and means of production can, for the purpose of socialisation, be transferred to public ownership or other forms of collective enterprise by statute regulation the nature and extent of compensation (which has to establish an equitable balance of public interest and the interests of those affected).

Market Economy and Individual Rights



Foundations of Market Economy (1)

Art. 2 Liberty

(1) Everyone has the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or morality.

Art. 12 Work

(1) All Germans have the right to freely choose their occupation, their place of work, and their place of study or training. The practice of an occupation can be regulated pursuant to a statute.

Foundations of Market Economy (2)

Art. 14 Property

- (1) Property and the right of inheritance are guaranteed. Their contents and limits are determined by statute.
- (2) Property imposes duties. Its use should also serve the public weal.

Art. 19 Domestic Corporations

- (3) Basic rights also apply to domestic corporations to the extent that the nature of such right permits.

The Social Dimension (1)

Art. 1 Human Dignity

(1) Human dignity is inviolable. To respect *and protect* it is the duty of all state authority.

Art. 20 Basic Principles of State, ...

(1) The Federal Republic of Germany is a democratic and *social* federal state.

The Social Dimension (2)

Art. 14 Property

- (1) Property and the right of inheritance are guaranteed. Their contents *and limits* are determined by statute.
- (2) Property imposes *duties*. Its use should also serve the *public weal*.

Art. 9 Association

- (3) The right to form associations to safeguard and improve working and economic conditions is guaranteed to everyone and for all professions. Agreements which restrict or seek to impair this right are null and void, measures directed to this end are illegal.

The European Dimension – Art. 23

Art. 23 European Union

(1) To realise a unified Europe, Germany participates in the development of the European Union which is bound to democratic, rule of law, social and federal principles as well as the principle of subsidiarity and provides a protection of fundamental rights essentially equivalent to those of this Constitution. The federation can, for this purpose and with the consent of the Senate, delegate sovereign power.

The European Dimension – EU law

From EEC to EC:

- The EC-Treaty traditionally has a very strong economic focus. However, in the past years more and more political elements were added

Clear Statement for Market Economy:

- undistorted competition (Art. 81ff.)
- free movement of goods (Art. 30), workers (Art. 39), establishment (Art. 43); services (Art. 49); capital (Art. 56)
- protection of fundamental rights (Art. 2, 6 of the EU-Treaty)