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The Juridification of the German Equalisation system

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1. Introduction

A federal constitution is to a great extent realized and experienced by the sharing of government income between central and states' governments. Their sharing of power has to be matched by a congruent sharing of income so as to lay the concrete foundation for the autonomy of the component states. The regulation of the sharing of total government income is part of the constitutional law of a federal state. Different systems of sharing of total government income exist. In some cases money is made available without conditions attached, in other cases money is transferred for fixed programs and under detailed conditions. In several cases both systems go together.

In Australia as well as in the US the actual sharing of income is to a greater degree than in the Federal Republic of Germany a matter of political decision-making for which their constitutions only provide a basis in a very general way.

In the Federal Republic of Germany the sharing of government income is prescribed in great detail in Chapter X of the Constitution itself. This circumstance has given cause to an advanced degree of juridification of the system of sharing in which development the Constitutional Court ("Bundesverfassungsgericht") plays an important role. As its interpretation of the German constitutional rules on sharing at the same time relates to concepts which are implemented in other federal states, this juridification of the German system might find a wider interest. This article has been written in order to meet such interest.

As for the nature and function of these constitutional rules the "*Bundesverfassungsgericht*" is of the opinion¹ that these rules are addressed to the federal legislator, who is not to confine himself to only translating the political deci-

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¹ The decisions of the Constitutional Court referred to in this article are mainly the decisions of 24 June 1986 and of 27 May 1992 concerning Articles 106 and 107 of the German constitution. The decisions are published in vol. 72, p.330 – 346, and volume 86 p. 148 – 279 of a series under the title "Entscheidungen des Bundesverfassungsgerichts". References to the decisions in this article consist of a number of the volume followed by the number of the relevant page.

sions favoured by the majority of the component states (hereinafter also called “the “Laender””) into law. The federal legislator has to legislate in accordance with the normative requirements set by the Constitution.

As regards the norms involved the Court was of the opinion that the Constitution itself does not draw clear borderlines between arbitrariness and reasonable compromise. The required reasonableness and willingness for compromise may not be supposed to exist when substantial and contrary financial interests are at stake, so the Court found. These qualities have to be stimulated and supported. The Constitution offers this support by putting legal requirements to political decisionmaking. These have to be honoured in negotiations and may be invoked in order to arrive at an equitable compromise for all concerned (72, 396 ff.).

In the following pages the process of dividing government income as laid down in the German Constitution is described in such a way as to demonstrate the role of the jurisprudence of the “Bundesverfassungsgericht” in the successive phases of the process.

2. The states’ revenues and the shared taxes

- 2.1. The revenues of the German component states consist of the receipts out of
- a) own resources, amongst which local taxes, levies and the revenues of state enterprises are the most important
 - b) a share in the yield of certain taxes introduced by Federal law (“Gemeinschaftssteuern”)
 - c) complemental general purpose grants by the Federal Treasury (“Ergänzungszuweisungen”)
 - d) specific grants transferred by the Federal Treasury in accordance with specific legislation.

The revenues under a), b) and c) are at the free disposal of the “Laender”.

The specific grants mentioned under d) are based on specific Federal legislation which requires the approval of the Federal Senate, being the representative body of the “Laender”.

This article mainly deals with the income mentioned under b) and c).

2.2. In order to demonstrate the importance of the subject in a concrete way it may be mentioned here that total government income of the Federation and the “Laender” together amounted in 1997 to DM 1.787 mrd., or 49% of GDP.

The income of the governments in the “Laender” together came to DM 771 mrd. or 43% of total government income in Germany.

The flow of general purpose money mentioned under b) en c) above amounted to DM 319,5 mrd. or 41% of the income of all “Laender” goverments.

The specific grants mentioned under d) above are estimated at DM 95,5 mrd. or 12% of the income of all “Laender” governments. So, the volume of specific grants is about one third less of the the amount of general purpose money mentioned under b) and c). Before the German reunion in 1990 the volume of the specific grants compared with the general purpose moneyflow was much less.

2.3. The moneyflow under b) and c) has

- a vertical aspect, i.e. the total amount of general purpose money which comes at the free disposal of the “Laender”,
- an horizontal aspect, i.e. the distribution of the total amount among the “Laender”.

The German Constitution holds detailed rules for the sharing of tax revenues between the Federation and the “Laender”, as well as for the distribution among the “Laender”. Especially the latter distribution has given cause to jurisprudence of the “Bundesverfassungsgericht”.

3. The vertical aspect

3.1. The total amount of general purpose money which comes at the free disposal of the “Laender” is dependent on the revenue of three major taxes, plus the amount which the Federal Treasury is to make available for the complementary general purpose grants (“Ergaenzungszuweisungen”). The volume of latter amount is dependent on the recognized needs of the less prosperous “Laender” as defined under *The horizontal aspect*, see para. 4.

3.2. The main source of income of the “Laender” is their share in three major taxes levied by Federal legislation (“Gemeinschaftsteuern”). They share these taxes with the Federation in accordance with article 106 of the Constitution. These taxes are the most remunerative ones. The “Gemeinschaftsteuern” together yield 74,5% of total tax revenue in the Federal Republic. They are: the corporation tax, the incometax and the turnover tax. The revenue of the incometax is the largest, it yielded 64% of the receipts of the shared taxes together in 1995.

In accordance with Article 106 of the Constitution the corporation tax and the incometax are equally divided between the Federation and the “Laender” after a reduction of 15% of the incometax for the support of local governments. The revenue of the turnover tax is to be divided between Federation and “Laender” in common agreement. So, this division is a negotiable issue between Federation and “Laender”².

² The German turnover tax is a consumption- and distribution tax. It has got the structure of an added value tax.

3.3. The Federation and the “Laender” have to negotiate about their shares in the turnover tax. It is the only flexible element in the system of the vertical division of the “Gemeinschaftssteuern” because the share of each in the corporation and the incometax has already been fixed by the Constitution itself at 50%. The agreed shares in the turnover tax have to be laid down in a federal law which requires the approval of the Senate. The agreed percentages are to apply for an indeterminate period.

The German Constitution contains guidelines for the abovementioned negotiations³. These have to take into account that

- the Federation and the “Laender” have an equal claim to the average of their necessary expenditure planned over a medium term.
- the requirements of the partners are to be coordinated in such a way that a fair result is to be obtained, overburdening of the taxpayer is avoided and the uniformity of living standards in the Federal Republic is guaranteed.

These guidelines are rather difficult to substantiate. The “*Bundesverfassungsgericht*” argued on this issue that the final meaning of the different elements in this summing up is to arrive at a fair result in which the equal coverage of the financial requirements between the Federation and the “Laender” is honoured. It is the intention that already in the vertical division of the turnover tax the expenditure and the financial needs⁴ of the “Laender” is to be taken account of. (72, 384)

3.5. According to Art. 106(4) of the Constitution the shares in the turnover tax, once being established, are to be modified whenever the relation of revenues to expenditures of the Federation develops substantially differently from that of the “Laender”. This provision holds an obligation for the Federation to take the initiative. It does not preclude the Federation and the “Laender” to arrange for a modification of the division in common agreement when the above situation does not occur. (72, 384)

3.6. The share of the “Laender” in the turnover-tax has been increased from 37% to 44% in 1995. So, the Federation receives at the moment 56% of the revenues from this tax. This apportionment is part of the Consolidation Law of 1993⁵, by which the interimrules in force in the former “East German” “Laender” were replaced by the rules already in force in the “West German” “Laender”.

³ Art. 106(3)

⁴ The word “financial needs” have to be read in the context of the jurisprudence which has been developed in connection with the words “financial equalisation”, dealt with in para. 4.3. of this Article.

⁵ “Gesetz zur Umsetzung des Federalen Konsolidierungsprogramms” (Act for the replacement of the Federal Consolidationprogram) of 23.6.1993 (Bundesgesetzblatt 1993 I 944), entering into force on 1 January 1995

4. The horizontal aspect

4.1. The receipts of the income and the corporation tax accrue to the individual “Laender” in which the money is economically earned. In many instances, however, taxes are collected in an other ““Land””. Therefore the Constitution provides for a Federal interstate tax law by which the effect of these distortions is countered “by volume and nature” (Art. 107(1)). The “*Bundesverfassungsgericht*” was of the opinion that the Federal legislator has a discretion of its own in interpreting the words “nature” and “volume”, this discretion only being limited by the requirement that the distortion had to be corrected substantially, not marginally. The Court added that the Constitution in the article under discussion - as well as in the other rules laid down in the financial chapter of the Constitution - only offers a normative framework, leaving it to the Federal legislator to fill it up as he sees fit. (72, 395)

The “Laender”-share of the turnover tax is distributed among the “Laender” in proportion to their population. However, this distribution is at the same time adapted so as to correct differences in the income of the ““Laender””- governments .

4.2. The distribution of the ““Laender””- share of the turnover tax over the “Laender” has been regulated as follows.

The German Constitution prescribes in its Article 107(2) that

by a Federal law (a)

the differences in financial capacity (b)

will be reduced “to a reasonable level” (c)

ad a) It is the Federation which is responsible for the horizontal distribution and the equalisation.

The “*Bundesverfassungsgericht*” concluded from this text that its first aim was to withhold the horizontal distribution from free negotiations between the “Laender”. However, the Federation has to be more than just a chairman of the negotiations. It has to test the outcome of the negotiations against the norms set by the Constitution. (72, 396)

The Federal legislator draws up the necessary Bill to be voted on by simple majority.

This is the Financial Settlement Act⁶ which is intended to remain in force for an indeterminate period. The Act requires the approval of the Senate.

⁶ Its latest version is of 23 June 1993 (BgbI. I, 944) which entered into force on 1 January 1995. It has been amended, lastly, on 16 June 1998 (BgbI. 1998 I 1290)

ad b) The expression “differences in financial capacity” is unclear, the Constitution does not define the words “financial capacity”. The question arose whether “financial capacity” should be equated with “tax revenue”. The “*Bundesverfassungsgericht*” was of the opinion in its judgment of 1986 that the Federal legislator is free to determine which revenues are to be taken into account for calculating the financial capacity of a “Land”. There is no necessity to add up all revenues of a “Land”. The Constitution obliges the Federal legislator to lay down only a yardstick for making comparisons amongst the “Laender” in this respect. So some revenues could be left out if their amount is too small, or if they have the same level for all “Laender”, or if the tracing of the revenues is not worthwhile in view of the costs involved. (72, 400)

In its judgment of 1997 the Court added that the ownership of property could not be considered when determining the financial capacity of a “Land” (95, 263).

The words “financial capacity” have also been related to “financial needs”. The “*Bundesverfassungsgericht*” argued that it would indeed be justified to take financial needs into account when determining on the level of financial capacity, but only as far as these needs would give occasion to expenditures for objectively given circumstances which could arise in any “Land”. (72, 401) This requirement excludes expenditures which are the direct and foreseeable consequence of political decisions made by the “Laender” governments, whilst exercising their powers. (72, 405)

The requirement has been met by taking into account the size of the population of German cities when calculating the financial capacity of the “Laender”. In this way the level of urbanisation leads to a modulation in the horizontal distribution of the “Laender”-share of the turnover tax. The “*Bundesverfassungsgericht*” added - by way of exemption on the above rule - that also the specific expenditure on seaports might be deducted when calculating the financial capacity, this already being a practice since 1923. (72, 401)

The needs which are to be taken account of when calculating financial capacity are laid down in the Financial Settlement Act.

Ad c) According to the Constitution the reduction of the differences in financial capacity must actually be applied when the financial capacity of a “Land” remains below a certain percentage of the average financial capacity of the “Laender” together. An equalisation process is then to be followed in order to supplement the income of such a “Land” to that percentage.

The Financial Settlement Act fixes that figure at present on 95%. The supplemental amounts are to be financed by the “Laender” which receive more than the average income. In this way the system creates a number of paying and a number of receiving “Laender”. However, there is a limit: The supplemental amounts may not exceed one quarter of a “Land”’s share calculated in accordance with a distribution on a per capita basis.

Fixing the abovementioned percentage is an important issue for negotiation between the Federation and the “Laender”. The German Constitution contains norms for this negotiation. On this issue the “*Bundesverfassungsgericht*” is of the opinion that reasonable equalisation means arriving at a compromise honouring the financial autonomy of the “Laender” as well as the solidarity inherent to the federal principle. The solidarity entails a duty for the more prosperous “Laender” to assist the less prosperous ones without at the same time creating an obligation of a strict equalisation of government income. For, it would be contrary to the federal principle to supply the less prosperous “Laender” with an absolute income guarantee by way of the equalisation system. (72,404) In this way they would become detached from the political community of the Federal Republic of Germany. So the “*Bundesverfassungsgericht*” argued. (72,419)

All this means in practice that in fixing the abovementioned percentage for the ceiling of the supplemental amount some distance has to be kept from the amount of the average financial capacity.

4.3. Up to the in the above described first phase of the equalisation process the distribution of income over the “Laender” has a certain automatism. Its results are obtained by calculations prescribed by the Constitution and the Financial Settlement Act. The system is financed out of the ““Laender””-share of the turnover-tax.

However, the German Constitution recognises that this first phase might not lead to a reasonable financial equalisation because of the limit set. “Laender” which do not reach at the 95% of the average state’s income by the implementation of the above system, the so-called financially weak ones, receive complementary general purpose grants (“*Ergaenzungszuweisungen*”) for the coverage of their general financial requirements. These grants are not to be financed out of the distribution system but by the Federal Treasury. The Constitution provides only for the possibility of granting such complementary grants. However, the “*Bundesverfassungsgericht*” was of the opinion that the greater the the gap between the result of the first phase of the equalisation and the average income of the “Laender” is, the more obligatory the application of this possibility becomes. (72, 403)

5. The “Ergaenzungszuweisungen”

5.1. The “*Bundesverfassungsgericht*” considers the allotment of complementary general purpose grants as the second and last phase of the equalisation process. Sufficient financial means have to be reserved for it by the Federal Treasury. In this connection the Court referred to art. 106 of the German Constitution which provides for a modification of the percentages in the sharing of the turnover tax if expenditures in the Federation develop substantially different from that of the “Laender”. By doing so the Court seems to lay a priority with the financial needs of the “Laender”. The “Laender” have to have sufficient financial means at their disposal to exercise their powers. The Court underlines its argument by adding that the principle of loyalty (“*Bundestreue*”) creates an obligation in this respect for the Federal Government.⁷

Being a final phase of the equalisation process implies that the result of this second phase added to the first one cannot surpass the set 95% limit of the average financial capacity of the “Laender” together (72, 402), at least when this final phase consists only of a topping up of the first phase.

5.2. As may be gathered from the text of article 107(2) of the Constitution⁸, the financial needs of the “Laender” may be taken into account when calculating the amount of the complementary general purpose grants.

The “*Bundesverfassungsgericht*” concluded from this text that special financial burdens (“*Sonderlasten*”) which a “Land” carries, may be included in the calculations of these complementary grants. (72, 402) These financial burdens, however, may not be brought about by political decisions which a “Land” takes when exercising its powers. (72, 405)

In its judgment the Court pointed out that the Constitution does not limit the total amount of the complementary grants and that these complementary grants might constitute a substantial part of the total amount involved in the equalisation process. (72, 403) The amount of the special burdens might even - in exceptional cases - lead to a transgression of the 95% limit⁹.

⁷ The principle of “*Bundestreue*” has been developed in a series of judgments by the Court. It implies extra duties surpassing the described formal obligations existing between the Federation and the “Laender”, as well as limitations in the implementation of formally allotted powers. In accordance with this principle there is an increased duty to co-operation if unanimity is required for a decision.

⁸ The text in Article 107(2) reads: “ Es kann auch bestimmen dasz der Bund aus seinen Mitteln leistungsschwachen “Laender” n Zuweisungen zur ergaenzenden Deckung ihres allgemeinen Finanzbedarfs (Ergaenzungszuweisungen) gewaehrt. See also para. 4.2. above.

⁹ See para. 5.4.

The Federation has to specify the special burdens which it will thus compensate, and deal with those requirements of the “Laender” in the same way (72, 405).

5.3. One category of special burdens got extra attention of the “*Bundensverfassungsgericht*”, that is the so-called emergency budget situation (“Haushaltsnotlage”).

An emergency budget situation might be taken account of when calculating the complementary grants but only as far as this means a temporary assistance in a process of selfhelp which is undertaken by the “Land” in question, and on the condition that assistance could not be rendered in an other way. The condition that this “special burden” has not been caused by (inconsiderate) political decisions of the “Land” concerned, is to be applied in a relaxed way in these cases. (86, 261)

5.4. Within the category of emergency budget situations the “*Bundesverfassungsgericht*” discerns the even more stringent case of an “extreme emergency budget situation”. This case presents itself when the “Land” in question is unable to perform its duties anymore and cannot free itself, by its own power, of the emergency situation. The Court argues circumstantially and is digging deep on behalf of these “Laender”. It starts from the wellknown position that the financial chapter in the Constitution intends to guarantee the “Laender” to be financially capable to perform their duties. It adds that it is not sufficient for the “Laender” to be capable to pay their bills, they must also be able to exercise actually their autonomous powers.

In a second line of reasoning the Court refers to Article 109 of the Constitution which prescribes that the Federation and the “Laender” have to take into account the requirement of an overall economic equilibrium in their budgetpolicy. The Court concludes from all this that Federation and “Laender” are bound to solidarity and that the principle of mutual assistance is part of the federal structure mentioned in Article 20 of the Constitution. (86, 264)

The Court warns that this conclusion would not justify a deviation from the normal pattern of decisionmaking. It is the Federation which, in accordance with its obligations in the equalisation process as laid down in the Constitution, must take the initiative when cases of an “extreme emergency budget situation” arise. The Court explains that it intended by this reasoning only an intensification of already existing obligations and to give an interpretation concerning nature and extent of the possibilities already offered by the Constitution.

As regards the financial consequences of its conclusions the Court was of the opinion that these had to be borne by the Federation and the “Laender” together. The amount of the complementary grants might in these cases temporarily surpass the 95% limit on the condition that a program for reform is being followed by the Government in question. (86,269)

Bremen en Saar”Land” are the German “Laender” which are in this situation.

5.5. The judgments by the Court concerning the complementary general purpose grants and the reunification of Germany in 1990 have led to a diversity of special financial burdens which might be compensated by complementary grants.

The Financial Settlement Act provides for the following:

- a) Complementary grants in view of special needs. This category of grants is only allotted to the former East German “Laender” in relation to expenditure made to undo the former partition of Germany (“teilungsbedingte Sonderlasten”). It is the largest category of special financial burdens.
- b) Complementary grants for small type financially weak “Laender” because of their disproportionately high costs to support a full blown public service.
- c) Special complementary grants in assistance to “Laender” in extreme emergency budget situations
- d) Interim complementary grants on behalf of the former “West”- German financially weak “Laender” in compensation for the disproportionate large reduction of their income out of the “Laender” share in the turnover tax.
- e) Deficiency complementary grants on behalf of former West- en East-German “Laender” which do not carry special financial burdens but may only be considered for a topping up of the results of the first phase of the equalisation process.

The total amount of complementary grants rose in 1995 to 26,3 mrd. DM and is larger than the amount redistributed between more and less prosperous “Laender” in the first phase of the equalisation process (DM 20 mrd.).

6. A case on the borderline

6.1. As mentioned above complementary grants may be supplied in the equalisation process on account of special financial burdens. This circumstance evokes the question of the relationship between general purpose assistance and the specific grants-in-aid by the Federal authorities, especially the ones for investment assistance.

The “*Bundesverfassungsgericht*” itself made the connection between complementary general purpose grants and specific investment assistance in its judgment of 1992. It mentioned the possibility to make use of the instruments of “joint tasks” (“*Gemeinschaftsaufgaben*”, Art. 91a of the Constitution) and of financial investment assistance (“*Finanzhilfe*”, Art. 104a) in cases in which specific burdens are alleged. Both instruments provide for financial assistance or compensation in the case of large investments or expenditures. In its judgment the Court points out that a specific grants could be the more suitable money-transfer because the Federation is not obliged to spread this specific assistance over all financially weak “Laender” as is the case when assistance is rendered

by way of the general purpose complementary grants. (86, 268) Moreover, it is of the opinion that in the case of an extreme emergency budget situation the government in question could be told which instrument is to be chosen. (86, 269) The above judgment was made in a case of an extreme emergency budget situation. However, also in connection with a “simple” emergency budget situation the reservation has been made “that no other solution had to be possible”¹⁰, meaning that also in these “simple cases” the Federation may consider - in consultation with the “Land” in question - if the instrument of a specific investment grant is not to be preferred over a complementary general purpose grant.

6.2. By this judgment a clear borderline existing in the German financing system for the “Laender” has been broken. In the original set up the “Laender” would mainly receive their income out of the “Gemeinschaftsteuern” as complemented by the complementary general purpose grants. Specific grants in aid had to remain an exception, they had to fulfill the conditions painstakingly laid down in the Constitution so as to protect the “Laender” against federal dominance. In 1975 the “*Bundesverfassungsgericht*” still gave as its opinion that specific investment grants had to remain rare and that this instrument could never be used to replace income out of the equalisation system. (39, 108) At present the *Bundesverfassungsgericht* typifies specific investment assistance in the case of an emergency budget situation as a complement of the equalisation system.

7. Concluding remarks

7.1. It may be evident from the above that the role of the “*Bundesverfassungsgericht*” in the sharing of government income between the Federation and the “Laender” has increased after the reunification of Germany in 1990. However, its role has also been of importance before that event.

- In its earlier judgments the *Bundesgericht* underlined repeatedly the responsibility of the Federation concerning the well-functioning of the system. The Federation also has to take the initiative when only “Laender”- interests would require this.
- The “*Bundesverfassungsgericht*” has given the Federal legislator the necessary leeway by only globally defining the norms by which the latter had to act.
- The objective criterion which it has laid down for the calculation of financial capacity (“*Finanzkraft*”), has been of great importance for the right implementation of the equalisation.
- Also of importance has been its reasoning concerning the degree of equalisation which had to be reached at. In its reasoning it prudentially tried to avoid

¹⁰ See para. 5.3.

discouraging the governments of the more prosperous “Laender” and to thwart the energy of the less prosperous ones by guaranteeing an average income.

By these judgments the “Bundesverfassungsgericht” has strengthened the basis of the system of the sharing of Government income between the Federation and the “Laender”.

7.2. The Court, however, also supported and regulated by its judgments a necessary development of the system.

- By allowing special financial burdens ("Sonderlasten") to rise to a substantial volume in the equalisation system, it broke away from the original intention of the Constitution that the “Ergaenzungszuweisungen” would only be a subsidiary, complementary part of the system. At first, it did maintain, however, the strictly objective criteria also for the second phase of the equalisation process.

- After the reunion of Germany its recognition of “the emergency budget situation” and “the extreme emergency budget situation” as categories of special financial burdens did away with the requirement of objective criteria for this type of “Sonderlast”.

- The “Bundesverfassungsgericht” was also induced by that time to invoke the principle of loyalty (“Bundestreue”) and to lay down that Federation and “Laender” are bound to solidarity and to mutual financial assistance. This strengthened a two way system: not only the Federation has a duty to assist the “Laender”, but the “Laender” too have to assist the Federation so as to enable it to fulfill its duties.

- The increased volume of the “Ergaenzungszuweisungen”, especially in the cases of emergency budget situation and the extreme emergency budget situation, made it quite natural for the Court to relate this type of assistance to the macro-economic responsibility of the Federation. This development dented the autonomy of the “Laender” somewhat.

7.3. The “Bundesverfassungsgericht” construed very prudently the build-up of its jurisprudence accompanying the political developments in Germany. It left open the road backwards by tailoring its jurisprudence to the specifics of the present situation. When in the foreseeable future the differences in prosperity between the “Laender” will diminish, the judgments which could imply a certain threat to the “Laender”-autonomy will automatically lose their relevance. So, the existing system of the sharing of Government income as provided for in the Constitution has been saved notwithstanding the great pressure put on it by the German reunion of 1990. Federal legislator and “Bundesverfassungsgericht” teamed up to succeed in this. The Federal legislator created a greater volume of money to be redistributed under the system, the “Bundesverfassungsgericht”

adapted it to withstand the pressures by its interpretation of the constitutional provisions.

7.4. However the objections of the more prosperous West-German “Laender” against the system are increasing. Their allegation is that the Equalisation System affects them in a disproportional way. They pointed out in a request to the Bundesverfassungsgericht¹¹ that 4 “Laender”, which have more than 110% financial capacity, end up below the 95% limit of the average after implementation of the Equalisation. They concluded by asking that certain articles in the Financial Settlement Act be declared contrary to article 107 of the German Constitution, and that the Court set a date for their expiry.

In its judgment of 23 September 1999 the “*Bundesverfassungsgericht*” decided not to pronounce on the challenged articles of the Financial Settlement Act because of the uncertainties in the assessment which then would have to be made by it of the present and the future economic and political developments. Instead it ordered the legislator to clarify the Financial Settlement Act by an act providing standards on a number of passages in the Financial Settlement Act (a “*Maszgaebegesetz*”) before 1 January 2003, and to renew the Financial Settlement Act per 1 January 2005 incorporating these standards. The Court stated in its instructions expressly that differences in financial capacity had to be reduced by the equalisation system, not enlarged. The “Laender” must not forfeit their position in the order of prosperity by the system in such a way that they would end up at the other end of the scale of financial capacity.

So, in this instance too the Bundesverfassungsgericht clearly teamed up with the political leadership. For the Coalitionpartners in the German Federal Government had already expressed in their program of 20 October 1998 their intention to prepare for a reform of the Financial Chapter in the Constitution and of the Equalisationsystem, to be realised per 1 January 1995. In this reform the interests of the less prosperous “Laender” – especially the East German ones – had to be taken care of, next to the aim of making it attractive for all “Laender” to increase their income. Indeed, a Prime Ministers’ meeting of 17 December 1998 decided to establish a committee between the Federal and the “Laender” governments to prepare for a reform of the sharing of powers and of government revenue between Federation and “Laender”, thereby underlining the connexity between powers and income as a basic principle in the German federation. The Committee would have to submit its results to a joined committee of both houses of the German parliament. The report of the intergovernmental Committee is still being awaited at this date.

Nimwegen, 1 December 1999

¹¹ dated 30 July 1998

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