

**CLIMATE LAW AND HUMAN DIGNITY IN THE CONTEXT OF THE
GERMAN LEGAL**

**SYSTEM. LESSONS LEARNED FROM THE DESTRUCTION OF
LÜTZERATH VILLAGE**

***THE CASE DES HERRN P. & BUND V. BUNDESREPUBLIK
DEUTSCHLAND***

Climate Change Law, Research & Writing (Spring 2023): Final Paper

Student – Marharyta Zilinskaya

Associate Professor of Legal Research Skills - Dana Neacșu



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I. Introduction

A core value of the international human rights system is human dignity.¹ The West German Parliamentary Council,² the country's constitutional assembly, acknowledged human dignity to be of the highest constitutional value in 1949.³ Its protection was stated at the very beginning of the German Basic Law (the German Constitution⁴): “Human dignity shall be inviolable.”⁵ After the unification, the German Constitution incorporated it, and human dignity continues to be a basic value of the current legal system:

Artikel 1

(1) Die Würde des Menschen ist unantastbar. Sie zu achten und zu schützen ist Verpflichtung aller staatlichen Gewalt.

(2) Das Deutsche Volk bekennt sich darum zu unverletzlichen und unveräußerlichen Menschenrechten als Grundlage jeder menschlichen Gemeinschaft, des Friedens und der Gerechtigkeit in der Welt.

1. See G.A. Res. 217 (III) A, United Nations General Assembly art. 1 (10 December 1948), available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited Apr. 3, 2023): “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” (emphasis added). See also Christopher McCrudden, *Human Dignity and Judicial Interpretation of Human Rights*, 19 Eur. J. Int'l L., Sep. 1, 2008, at 655.

2. Michael F. Feldkamp, *Der Parlamentarische Rat 1948–1949. Die Entstehung des Grundgesetzes* 13–15 (2020).

3. Hans Dieter Jarass in: Jarass/Pieroth Grundgesetz-Kommentar [Jarass/Pieroth Basic Law Commentary], 17th ed. 2022, art. 1(1) recitals 1–2 (Ger.).

4. The German Constitution is officially called “Grundgesetz für die Bundesrepublik Deutschland”, in English “Basic Law for the Federal Republic of Germany”, see Grundgesetz für die Bundesrepublik Deutschland [GG] [Basic Law], May 23, 1949, Bundesgesetzblatt I [BGBl. I] at 1 (Ger.), available at <http://www.gesetze-im-internet.de/gg/>, translation at https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html. Its initial version had been enacted in Western Germany before the reunification of the country, and was supposed to be provisional temporary basic law. For an explanation about adoption of the Basic Law as the current German Constitution. See Bundesministerium des Innern und für Heimat [Federal Ministry of the Interior and Community], *Unsere Verfassung, Das Grundgesetz vom 23. Mai 1949 in der jeweils aktuellen Fassung ist die Verfassung der Bundesrepublik Deutschland*, <https://www.bmi.bund.de/DE/themen/verfassung/staatliche-ordnung/unsere-verfassung/unsere-verfassung-artikel.html> (last visited Apr. 5, 2023).

5. Grundgesetz für die Bundesrepublik Deutschland [GG] [Basic Law], May 23, 1949, BGBl. I at 1, art. 1 (Ger.), available at <https://www.gesetze-im-internet.de/gg/BJNR000010949.html>.



(3) Die nachfolgenden Grundrechte binden Gesetzgebung, vollziehende Gewalt und Rechtsprechung als unmittelbar geltendes Recht.⁶

Article 1

[Human dignity – Human rights – Legally binding force of basic rights]

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

(2) The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world.

(3) The following basic rights shall bind the legislature, the executive and the judiciary as directly applicable law.⁷

Here, I argue that the German multifaceted protection of human dignity (*Schutz der Menschenwürde*⁸) includes both a basic right to an ecologically-sound subsistence standard (*Grundrecht auf das ökologische Existenzminimum*⁹) and a basic right to supply with gas and electricity (*Anspruch auf Grundversorgung mit Gas und Elektrizität*¹⁰). My argument rests on the constitutional definition of the

6. *Id.*

7. *Id.*, translated at https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html.

8. Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] Mar. 3, 2004, 109 Entscheidungen des Bundesverfassungsgerichts [BVerfGE] 279, ¶¶ 6, 119, 136, 368 (Ger.). See also Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] Dec. 15, 2015, 140 Entscheidungen des Bundesverfassungsgerichts 317, ¶¶ 74, 110 (Ger.).

9. See discussion in *des Herrn P. & BUND v. Bundesrepublik Deutschland*, recognizing „a basic right to a decent future and a basic right to an ecologically-sound subsistence standard“ (Ger. „ein Grundrecht auf menschenwürdige Zukunft und ein Grundrecht auf das ökologische Existenzminimum“) in Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] Mar. 24, 2021, 157 Entscheidungen des Bundesverfassungsgerichts [BVerfGE] 30, ¶¶ 1, 38, 40, 43, 60, 62, 66, 94, 113 (Ger.).

10. See discussion below in the subsection “The Right to Basic gas and electricity supply as recognized by the German Basic Law (“*Anspruch auf Grundversorgung mit Gas und Elektrizität*”). See Energiewirtschaftsgesetz [EnWG] [Energy Industry Act], July 7, 2005, Bundesgesetzblatt I [BGBl I] at 1970, § 36, (Ger.). See also discussion on public duty to secure energy [*Sicherung der Energieversorgung als öffentliche Aufgabe*] in Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] Dec. 17, 2013, 134 Entscheidungen des Bundesverfassungsgerichts [BVerfGE] 242, ¶ 286 (Ger.). See also Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court], May 18, 2009, 15 Kammerentscheidungen [BVerfGK] 484, ¶ 6 (Ger.). See also Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] Feb. 9, 2010, 125 Entscheidungen des Bundesverfassungsgerichts [BVerfGE] 175 (Ger.).



German State as a social state, Article 20 of the Basic Law,¹¹ and recent court decisions recognizing the citizens' fundamental right to a guaranteed decent subsistence level.¹²

The next section will discuss the German right to supply with gas and electricity (*Anspruch auf Grundversorgung mit Gas und Elektrizität*).¹³ It will address German legal sources concerning this right and central case law in this matter. Afterwards, it will present a right to an ecologically-sound subsistence standard (*Grundrecht auf das ökologische Existenzminimum*). It will analyze German constitutional sources of this right and the judgment from the Federal Constitutional Court on environmental protection from 2021.¹⁴

Then this paper will address the present constitutional interpretation of protection of human dignity (*Schutz der Menschenwürde*) in favor of the right to supply with gas and electricity (*Anspruch auf Grundversorgung mit Gas und Elektrizität*). While the protection of human dignity (*Schutz der Menschenwürde*) itself is never mentioned, the German Federal Constitutional case of *des Herrn P. & BUND v. Germany*¹⁵ implicitly discusses it, when it analyzes the content of a

11. Grundgesetz für die Bundesrepublik Deutschland [GG] [Basic Law], May 23, 1949, BGBl. I, art. 20 (Ger.), *translated at* https://www.gesetze-im-internet.de/englisch_gg/:

The Federal Republic of Germany is a democratic and *social federal state*. All state authority is derived from the people. It shall be exercised by the people through elections and other votes and through specific legislative, executive and judicial bodies. The legislature shall be bound by the constitutional order, the executive and the judiciary by law and justice. All Germans shall have the right to resist any person seeking to abolish this constitutional order if no other remedy is available. (emphasis added).

12. 125 BVerfGE 175 (Ger.): “The fundamental right to guarantee of a decent subsistence level from Article 1 Section 1 of the Basic Law in conjunction with the social state principle from article 20 section 1 of the Basic Law guarantees everyone in need of physical material conditions that are necessary for their social existence.” Ger.: „Das Grundrecht auf Gewährleistung eines menschenwürdigen Existenzminimums aus Art. 1 Abs. 1 GG in Verbindung mit dem Sozialstaatsprinzip des Art. 20 Abs. 1 GG sichert jedem Hilfebedürftigen diejenigen materiellen Voraussetzungen zu, die für seine physische Existenz unerlässlich sind.“ For fundamental right to a guaranteed decent subsistence level *see id.* ¶¶ 132, 133, 143–147, 158, 171, 188, 190, 192, 198, 203, 214, 217. *See also* 134 BVerfGE 242, ¶ 286 (Ger.).

13. There is no international resolution or declaration, which acknowledges a human right to energy. However, in German law such a right is indirectly derived from other fundamental rights and basic regulations. In European law, *see* Consolidated Version of the Treaty on the Functioning of the European Union art. 194, May 9, 2008, 2008 O.J. (C115) 47. The article obligates the EU to ensure the functioning of the energy market and security of energy supply. In the German law, a right to energy security is derived from human dignity from art. 1(1) GG (*Menschenwürde*) combined with the principle of the social state from art. 20(1) GG (*Sozialstaatsprinzip*). *See also* Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] July 18, 2012, 132 Entscheidungen des Bundesverfassungsgerichts [BverfGE] 134 ¶ 200 (Ger.): “An adequate energy supply for heating, hot water and the operation of today's common electrical devices, such as telecommunications devices, can therefore easily be counted as part of the subsistence level.”

14. 157 BVerfGE 30 (Ger.).

15. *Des Herrn. P & BUND v. Bundesrepublik Deutschland*, 134 BVerfGE 242 (Ger.).



decent existence (*menschenwürdige Existenz*¹⁶). The Court balances the basic right to an ecologically-sound subsistence standard (*Grundrecht auf das ökologische Existenzminimum*) as the duty of the German state to ensure a clean environment for its citizens and right to energy supply (*Sicherung der Energieversorgung*).¹⁷ The latter prevails, although, as discussed here, the court never mentions either. Luckily, as shown here, clean energy can be met within the German legal system, though the road to reach it is not easy.

II. *Protection of Human Dignity (Schutz der Menschenwürde) as a central German Constitutional Value*

Under the German Basic Law the state has the duty to ensure a subsistence level of life for each of its citizens.¹⁸ This duty is derived directly from the protection of the human dignity (*Schutz der Menschenwürde*) from Article 1(1) of the Basic Law.¹⁹ Human dignity is not just one of the basic rights listed in the first twenty articles of the German Constitution,²⁰ it is a core of the constitutional “system of values” (*Wertesystem*, or *Wertordnung*).²¹ This characterization was applied by the Federal Constitutional Court in the *Lüth*-judgment back in 1958:

[I]t is just as correct that the Basic Law, which *does not intend to be a value-neutral* order [...], in its section on fundamental rights has also set up an *objective value system* and that this is precisely where a fundamental strengthening of the validity of fundamental rights is expressed [...]. *This system of values, which finds its center in the human [...] dignity*, must apply as a basic constitutional decision for all areas of law.²² (emphasis added)

16. *Id.* ¶ 286.

17. *Id.* ¶ 144, 298.

18. Hans Dieter Jarass in: Jarass/Pieroth Grundgesetz-Kommentar [Jarass/Pieroth Basic Law Commentary], 17th ed. 2022, art. 1(1) recital 16 (Ger.). *See also* Volker Neumann, *Menschenwürde und Existenzminimum [Human Dignity and Subsistence Minimum]*, 13 *Neue Zeitschrift für Verwaltungsrecht [NVwZ]*, May 15, 1995, at 429 (Ger.).

19. Grundgesetz für die Bundesrepublik Deutschland [GG] [Basic Law], May 23, 1949, BGBI. I at 1, art. 1 (Ger.), *available at* <http://www.gesetze-im-internet.de/gg/>.

20. Grundgesetz für die Bundesrepublik Deutschland [GG] [Basic Law], May 23, 1949, BGBI. 1 at 1, art. 20 (Ger.), *available at* <https://www.gesetze-im-internet.de/gg/BJNR000010949.html>. There is a discussion among German lawyers, whether art. 1 is one of the fundamental rights or exclusively a principle, from which the fundamental rights in articles 2–20 are driven, *see* Susanne Baer, *Menschenwürde zwischen Recht, Prinzip und Referenz [Human Dignity between Law, Principle and Reference]*, *Deutsche Zeitschrift für Philosophie [DZPh]*, Jan. 14, 2014, at 571.

21. Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] Jan. 15, 1958, 7 *Entscheidungen des Bundesverfassungsgerichts [BVerfGE]* 198, ¶¶ 25, 26, 55 (Ger.).

22. *Id.* ¶ 25:



Consequently, human dignity is an undisputable highest constitutional value of the German Basic Law as well as a core principle and source for all the fundamental rights listed in the first twenty articles.²³ It requires a human being to be free (Article 2(1) Basic Law), protected from deprivation of life and liberty (Article 2(2) Basic Law), equal (Article 3(1) Basic Law), free to profess a religious or philosophical creed (Article 4(1) Basic Law), free to express their opinions (Article 5(1) Basic Law), free to raise a family (Article 6(1) Basic Law), etc.²⁴ Although human dignity encompasses all the fundamental rights explicitly mentioned in the Basic Law, it is not limited to them.

Human dignity requisites the fulfillment of some basic human needs. Nowadays, a lot of them are connected with both electricity and clean environment: electricity is necessary for light in the streets, house equipment and medical apparatuses; similarly, clean environment is essential for access to unpolluted water and air. At this point, both access to energy and clean environment are inevitable parts of a guarantee of the human dignity and subsistence level. Although both energy supply and clean environment are two sides of the same medallion, unfortunately, it may very often seem that they stay in conflict.

Within the same legal system, along with the outbreak of the Ukrainian war, a conflict between the right to gas and electricity supply (*Anspruch auf Grundversorgung mit Gas und Elektrizität*) and the basic right to an ecologically-sound subsistence standard (*Grundrecht auf das ökologische Existenzminimum*) has ensued. In panic of a possible loss of energy access, German politicians made decisions which were harmful for the environment. One of the most controversial decisions was the clearing of the Lützerath village for coal mining purposes.²⁵ It cannot be omitted that big energy corporations profit from such decisions, while a real price will be paid by the people of Lützerath village, environment and future

Richtig ist aber, daß das Grundgesetz, das keine wertneutrale Ordnung sein will ... in seinem Grundrechtsabschnitt auch eine objektive Wertordnung aufgerichtet hat und daß gerade hierin eine prinzipielle Verstärkung der Geltungskraft der Grundrechte zum Ausdruck kommt ... Dieses Wertsystem, das seinen Mittelpunkt in menschlichen Würde findet, muß als verfassungsrechtliche Grundentscheidung für alle Bereiche des Rechts gelten.

23. Udo Di Fabio, *Grundrechte als Wertordnung [Fundamental Rights as a System of Values]*, 59 *Juristenzeitung [JZ]* 1, 5–6 (2004).

24. Grundgesetz für die Bundesrepublik Deutschland [GG] [Basic Law], May 23, 1949, art. 1–6. See also Udo Di Fabio, *Grundrechte als Wertordnung [Fundamental Rights as a System of Values]*, 59 *Juristenzeitung [JZ]* 1, 6 (2004).

25. Ingmar Björn Nolting, *The Eviction of Lützerath: the Village Being Destroyed for a Coalmine – a Photo Essay*, *The Guardian* (Jan. 24, 2023, 07:00 AM), <https://www.theguardian.com/artanddesign/2023/jan/24/eviction-lutzerath-village-destroyed-coalmine-a-photo-essay>.



generations. At this point, how far can politicians go, in order to justify environmental damages with security policies? Are there any limitations on energy rights? Where should the borders be placed?

a. The Right to Basic Gas and Electricity Supply as Recognized by the German Basic Law (Anspruch auf Grundversorgung mit Gas und Elektrizität)

The right to a basic gas and electricity supply (*Anspruch auf Grundversorgung mit Gas und Elektrizität*) is not literally mentioned in the German Constitution. Nevertheless, its existence is acknowledged by the interpretation of its Article 1(1) in conjunction with Article 20(1) of the Basic Law. As mentioned above, Article 1(1) of the Basic Law guarantees that the human dignity shall be inviolable, and the state has a duty to respect and protect it.²⁶ This duty goes along with the characterization of Germany as a social state in Article 20(1) of the Basic Law: “The Federal Republic of Germany is a democratic and social federal state.”²⁷ The term “social state” (*Sozialstaat*²⁸) is not legally defined in the Constitution. According to the German legal dictionary “Juraforum”, it is “a democratic constitutional state that aims to achieve social justice and security for its citizens in accordance with the constitution and achieves this goal with appropriate legislative measures and material support services.”²⁹ The dictionary of the German Parliament (*Bundestag*) defines the term “social state” as follows: “The legislature in the Federal Republic must take care of social justice and the social security of the citizens.”³⁰ Both definitions from Juraforum and German Parliament embrace the state’s goal, which is social justice and care, and the means to reach this goal, which is mainly legislation.

Article 1 and 20 of the Basic Law are narrowly connected with each other: one of the most important goals of the social state is to guarantee a decent subsistence level for everyone.³¹ The corresponding legal obligation to guarantee the minimum subsistence level is derived from the constitutional value of human

26. Grundgesetz [GG] [Basic Law], May 23, 1949, BGBl. I at 1, art. 1(1) (Ger.).

27. *Id.* art. 20(1): „Die Bundesrepublik Deutschland ist ein demokratischer und sozialer Bundesstaat.“

28. *Id.*

29. Juraforum, *Sozialstaat – Definition und gesetzliche Grundlagen im Grundgesetz der BRD*, <https://www.juraforum.de/lexikon/sozialstaat> (last visited Feb. 28, 2023).

30. Bundestag, *Sozialstaat*, <https://www.bundestag.de/services/glossar/glossar/S/sozialstaat-245542> (last visited Feb. 28, 2023).

31. Bernd Grzeszick in: Dürig/Herzog/Scholz/Grzeszick Grundgesetz GG – Kommentar [Dürig/Herzog/Scholz/Grzeszick Basic Law Commentary], 99th ed. 2022, art. 20(1) recital 23 (Ger.). See also Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] June 18, 1975, 40 Entscheidungen des Bundesverfassungsgerichts 121, ¶ 133 (Ger.).



dignity in junction with the social state principle.³² The legislature is obliged to specify and update the law, in order to secure everybody with conditions necessary for a decent life³³:

The basic right to guarantee a decent subsistence level from Article 1(1) of the Basic Law in connection with the social state principle of Article 20, social, cultural and political life are essential [...]. This fundamental right [...] has an independent meaning alongside the absolute claim under Article 1 Section 1 of the Basic Law to respect for the dignity of every individual. It is fundamentally unavailable and must be redeemed, but requires specification and constant updating by the legislator.³⁴

What is necessary to secure physical existence and socio-cultural development can only be determined relatively from a comparison with the general living conditions of the social environment and thus depends on the minimum needs considered necessary in the – respective – society.³⁵

In other words, the German Constitution only sets a goal to secure a protection of human dignity (*Schutz der Menschenwürde*) in Germany as a social state (*Sozialstaat*), however, it does not specify, exactly which life conditions are considered to be in accordance with human dignity. The Constitution leaves this scope open for regulation and interpretation by legislature in the ordinary laws.³⁶

32. Bernd Grzeszick in: Dürig/Herzog/Scholz/Grzeszick Grundgesetz GG – Kommentar Dürig/Herzog/Scholz/Grzeszick Basic Law Commentary], 99th ed. 2022, art. 20(1) recital 23 (Ger.).

33. *Id.* recital 26.

34. 127 BVerfGE 175, heading 1 and 2 Ger.:

Das Grundrecht auf Gewährleistung eines menschenwürdigen Existenzminimums aus Art. 1 Abs. 1 GG in Verbindung mit dem Sozialstaatsprinzip des Art. 20 Abs. 1 GG sichert jedem Hilfebedürftigen diejenigen materiellen Voraussetzungen zu, die für seine physische Existenz und für ein Mindestmaß an Teilhabe am gesellschaftlichen, kulturellen und politischen Leben unerlässlich sind. Dieses Grundrecht aus Art. 1 Abs. 1 GG hat als Gewährleistungsrecht in seiner Verbindung mit Art. 20 Abs. 1 GG neben dem absolut wirkenden Anspruch aus Art. 1 Abs. 1 GG auf Achtung der Würde jedes Einzelnen eigenständige Bedeutung. Es ist dem Grunde nach unverfügbar und muss eingelöst werden, bedarf aber der Konkretisierung und stetigen Aktualisierung durch den Gesetzgeber.

35. *Id.* Ger.: „Was das Notwendige zur Sicherung der physischen Existenz und der soziokulturellen Entfaltung ist, kann grundsätzlich nur relativ aus einem Vergleich mit den allgemeinen Lebensbedingungen des gesellschaftlichen Umfelds ermittelt werden und hängt damit von dem in der – jeweiligen – Gesellschaft für erforderlich angesehenen Mindestbedarf ab.“

36. In the German legal system, the laws are divided into constitutional law (*Verfassungsrecht*) and ordinary law (*einfaches Recht*). The constitutional law is the Basic Law, all other laws enacted by the Parliament are called ordinary laws. See Georg Hermes, *Verfassungsrecht und einfaches Recht – Verfassungsgerichtsbarkeit und Fachgerichtsbarkeit* [Constitutional Law and Ordinary Law – Constitutional Jurisdiction and Specialized



The German legislature did specify that heating and gas are necessary to secure physical existence. The Parliament enacted Social Codes. Pursuant to § 22 SGB II, the state covers costs of heating for citizens in need.³⁷ In the case law, the Federal Constitutional Court of Germany never explicitly names “a right to basic gas and electricity supply”, however, it mentions heating as a part of the subsistence level:

The direct constitutional entitlement to the guarantee of a decent subsistence level extends only to those means that are absolutely necessary to maintain a decent existence. It guarantees the entire minimum subsistence level through a uniform fundamental rights guarantee, which covers both the physical existence of people, i.e. food, clothing, household effects, accommodation, *heating*, hygiene and health.³⁸

Consequently, it is fundamental to have light, water, gas, heating, etc. Those are inseparable elements of protection of human dignity (*Schutz der Menschenwürde*), and the state is obliged to secure their supply as proved in the Social Code.

Another statute, which constitutes a source for the right to a basic supply with gas and electricity (*Anspruch auf Grundversorgung mit Gas und Elektrizität*³⁹) is § 36 of the Energy Industry Act. The title of this statute is “Obligation to the Basic Supply” (*Grundversorgungspflicht*).⁴⁰ This statute is

Jurisdiction] 121–130 (Robert Alexy *et. al.* eds., 1st ed. 2001), available at <https://www.degruyter.com/document/doi/10.1515/9783110898743.119/pdf>.

37. Sozialgesetzbuch II – Bürgergeld, Grundsicherung für Arbeitssuchende [SGB II] [Social Code II – Citizens’ Income, Basic Security for Jobseekers], Dec. 24, 2003, Bundesgesetzblatt I [BGBl I] at 2954, § 22(1), https://www.gesetze-im-internet.de/sgb_2/ (Ger.): „Bedarfe für Unterkunft und Heizung werden in Höhe der tatsächlichen Aufwendungen anerkannt, soweit diese angemessen sind ...“

38. 125 BVerfGE 175 ¶ 135 (Ger.):

Der unmittelbar verfassungsrechtliche Leistungsanspruch auf Gewährleistung eines menschenwürdigen Existenzminimums erstreckt sich nur auf diejenigen Mittel, die zur Aufrechterhaltung eines menschenwürdigen Daseins unbedingt erforderlich sind. Er gewährleistet das gesamte Existenzminimum durch eine einheitliche grundrechtliche Garantie, die sowohl die physische Existenz des Menschen, also Nahrung, Kleidung, Hausrat, Unterkunft, Heizung, Hygiene und Gesundheit als auch die Sicherung der Möglichkeit zur Pflege zwischenmenschlicher Beziehungen und zu einem Mindestmaß an Teilhabe am gesellschaftlichen, kulturellen und politischen Leben umfasst, denn der Mensch als Person existiert notwendig in sozialen Bezügen.

39. Bundesnetzagentur [Federal Network Agency], *Grundversorgung*, [https://www.bundesnetzagentur.de/DE/](https://www.bundesnetzagentur.de/DE/Vportal/Energie/Vertragsarten/Grundversorgung/start.html)

[Vportal/Energie/Vertragsarten/Grundversorgung/start.html](https://www.bundesnetzagentur.de/DE/Vportal/Energie/Vertragsarten/Grundversorgung/start.html) (last visited Apr. 2, 2023).

40. Energiewirtschaftsgesetz [EnWG] [Energy Industry Act], July 7, 2005, BGBl I at 1970, § 36, (Ger.) http://www.gesetze-im-internet.de/enwg_2005/_36.html; see also Verordnung über Allgemeine Bedingungen für die Grundversorgung von Haushaltskunden und die



further specified and concretized in the Ordinance Regulating the Provision of the Basic Electricity Supply Law⁴¹ and Ordinance on Basic Gas Supply.⁴²

To sum up, a right to a basic supply with gas and electricity is regulated in ordinary German law and is derived directly from the Constitution. Article 1(1) in conjunction with Article 20(1) of the Basic Law requires the state to respect the human dignity of its citizens and ensure basic conditions for a subsistence level. The German Parliament acknowledged that heating, gas and electricity are part of this in the Social Code and Energy Supply Act.

b. A Basic Right to Ecologically-Sound Subsistence Standard in Order to Live with Dignity as Recognized by the German Constitution (Grundrecht auf das ökologische Existenzminimum)

Similar to the right to basic gas and electricity supply, the right to ecologically-sound subsistence standard (*Grundrecht auf das ökologische Existenzminimum*⁴³) is not explicitly mentioned in the German Basic Law. However, its derivation from the German Constitution is acknowledged in the constitutional case law. In the judgment of the Federal Constitutional Court from 2021,⁴⁴ the Court confirmed an existence of the state's obligations to protect (*Schutzpflichten*) life and physical integrity from effects of the changing climate derived from Article 2(2) of the Basic Law.⁴⁵ It reads: "Every person shall have the right to life and physical integrity."⁴⁶ Notably, back in 2009, the Federal

Ersatzversorgung mit Gas aus dem Niederdrucknetz [GasGVV] [Ordinance on General Conditions for the Basic Supply of Household Customers and the Backup Supply with Gas from the Low Pressure Network], Oct. 26, 2006, Bundesgesetzblatt I [BGBl I] at 2391, § 6 (Ger.), available at http://www.gesetze-im-internet.de/gasgvv/_6.html.

41. Stromgrundversorgungsverordnung [StromGVV] [Ordinance Regulating the Provision of the Basic Electricity Supply], Oct. 26, 2006, Bundesgesetzblatt I [BGBl I] at 2391 (Ger.), available at <http://www.gesetze-im-internet.de/stromgvv/index.html>.

42. Verordnung über Allgemeine Bedingungen für die Grundversorgung von Haushaltskunden und die Ersatzversorgung mit Gas aus dem Niederdrucknetz [GasGVV] [Ordinance on General Conditions for the Basic Supply of Household Customers and the Backup Supply with Gas from the Low Pressure Network], Oct. 26, 2006, BGBl I at 2391 (Ger.), available at <http://www.gesetze-im-internet.de/gasgvv/index.html>.

43. 157 BVerfGE 30 ¶¶ 40, 43, 113.

44. *Id.* For critics on a missing enforcement of the principles created by this judgment see Thomas Groß, *Zwei Jahre Klimabeschluss des Bundesverfassungsgerichts [Two Years since Climate Judgment by the Federal Constitutional Court]*, Verfassungsblog [Constitutional Blog] (Mar. 18, 2023) (Ger.), <https://verfassungsblog.de/zwei-jahre-klimabeschluss-des-bundesverfassungsgerichts/>.

45. Wolfgang Kahl, *Klimaschutz und Grundrechte [Climate Protection and Fundamental Rights]*, 43 Juristische Ausbildung [Jura], Jan. 18 2021, at 117 (Ger.).

46. Grundgesetz für die Bundesrepublik Deutschland [GG] [Basic Law], May 23, 1949, BGBl. I, art. 2(2) (Ger.), available at <https://www.gesetze-im-internet.de/gg/BJNR000010949.html>: "Jeder hat das Recht auf Leben und körperliche Unversehrtheit. In diese Rechte darf nur auf



Constitutional Court rejected a violation of this article⁴⁷ when the complainant alleged her life and health were endangered by an administrative decision to accept iron-ore mining:

A ... basic right to prevent threats to the environment and future generations occurring after his [the complainant's] lifetime, to which the complainant is entitled as a holder of basic rights, cannot be derived either from Article 2 section 2 sentence 1 of the Basic Law or from other guarantees of basic rights.⁴⁸

However, in 2021, the Court changed its interpretation of the Basic Law and ruled the following: "There are obligations to protect in Article 2(2) ... which are owed to the complainants living in Germany because of the dangers of climate change."⁴⁹ Hence, the Court ruled that the state's obligation to protect the life and physical integrity of its citizens, which is based on Article 2(2) of the Basic Law, which includes protection against impairments from environmental pollution. This also encompasses the obligation to protect life and health from the dangers of climate change, for example from climate-related extreme weather events such as heat waves, forest and wildfires, hurricanes, heavy rain, floods, avalanches or landslides.⁵⁰ The judgment also refers to the Article 20a of the Basic Law, which reads as follows:

Article 20a

[Protection of the natural foundations of life and animals]

Mindful also of its responsibility towards future generations, the state shall protect the natural foundations of life and animals by

Grund eines Gesetzes eingegriffen werden." *Translated at* https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html.

47. Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] Nov. 10, 2009, 16 Kammerentscheidungen [BVerfGK] 370, ¶¶ 19, 20, 22.

48. *Id.* ¶ 55: „Ein dem Beschwerdeführer selbst als Grundrechtsträger zustehendes, verfassungsbeschwerdefähiges Grundrecht auf Verhinderung erst nach seinen Lebzeiten eintretender Gefährdungen für die Umwelt und nachfolgende Generationen lässt sich weder aus Art. 2 Abs. 2 Satz 1 GG noch aus sonstigen grundrechtlichen Verbürgungen ableiten.“

49. 157 BVerfGE 30, ¶ 143: „Gegenüber den in Deutschland lebenden Beschwerdeführenden bestehen wegen der Gefahren des Klimawandels Schutzpflichten aus Art. 2 Abs. 2 Satz 1 ...“

50. Gilbert Häfner, *Recht auf Zukunft: Klimaschutz als Grundrecht* [*Right to Future: Climate Protection as a Fundamental Right*], Mitteldeutscher Rundfunk (Oct. 14, 2021, 10:30 AM), <https://www.mdr.de/ratgeber/recht/gilbert-haefner-recht-klimaschutz-zukunft-100.html>.



legislation and, in accordance with law and justice, by executive and judicial action, all within the framework of the constitutional order.⁵¹

Artikel 20a

Der Staat schützt auch in Verantwortung für die künftigen Generationen die natürlichen Lebensgrundlagen und die Tiere im Rahmen der verfassungsmäßigen Ordnung durch die Gesetzgebung und nach Maßgabe von Gesetz und Recht durch die vollziehende Gewalt und die Rechtsprechung.⁵²

This article was added to the Constitution in 1994 and resulted from a debate lasting over two decades, concerning if a fundamental right to a clean environment should exist. Initially, the plan was to amend the Basic Law and add such a right. However, politicians came to a compromise that instead of the right to clean environment there would be a national objective (*Staatsziel*⁵³) to protect natural foundations of life and animals.⁵⁴ In the judgment, the Court explicitly says that Article 20a of the Basic law obliges the state to protect the climate and aims for the creation of climate neutrality.⁵⁵

In its reasoning, the Court has an ecologically-sound subsistence standard is derived from Article 20a in conjunction with protection of human dignity from Article 1(1) of the Basic Law: “A right to the ecologically-sound subsistence standard is based, among other things, on the human rights guaranteed by Article 1(1) in conjunction with Article 20, the subsistence level also requires minimum ecological standards.”⁵⁶

It follows from the principle of human dignity that state action or refrainment must not destroy the basis of self-development and the preservation of the living conditions of future generations. In view of the damage that has already occurred and the threat associated with

51. Grundgesetz für die Bundesrepublik Deutschland [GG] [Basic Law] May 23, 1949, BGBl. I, art. 20a (Ger.), *translated at* https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0116.

52. *Id.* available at <https://www.gesetze-im-internet.de/gg/BJNR000010949.html>

53. Bundeszentrale für politische Bildung [Federal Agency for Civic Education], *Das Politiklexikon. Staatsziele* [Political Dictionary. National Objectives], <https://www.bpb.de/kurz-knapp/lexika/politiklexikon/18289/>

staatsziele/ (last visited Apr. 12, 2023): „National objective (*Staatsziel*) is the intentions and goals of a political community, which, in contrast to the fundamental rights, cannot be legally enforced.”

54. Christian Calliess in: Dürig/Herzog/Scholz Grundgesetz-Kommentar, 99th ed. 2022, art. 20a recital 7 (Ger.).

55. 157 BVerfGE 30, headnote 2.

56. *Id.* ¶ 114.



climate change, the principle of human dignity in connection with Article 20a of the Basic Law already obliges to guarantee living conditions in which the subject quality of the complainant can also develop in the future.⁵⁷

The Court has applied all the three constitutional provisions in its reasoning, namely a conjunction of human dignity,⁵⁸ right to life and physical integrity,⁵⁹ and national objective to protect environment.⁶⁰ They have proved an ecologically-sound subsistence standard and imposed on the state a duty to protect the basic rights for life, health and property in a climate change context.

III. The German Constitutional Court Interpretation of the Right to Live with Dignity. The Case of *des Herrn P. & BUND v. Germany*

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The case of *des Herrn P. & BUND v. Germany* was decided by the Federal Constitutional Court back in 2013. Although the right to an ecologically-sound subsistence standard (*Grundrecht auf das ökologische Existenzminimum*) and the right to basic gas and electricity supply (*Anspruch auf Grundversorgung mit Gas und Elektrizität*) are not explicitly mentioned by the Court, it discusses environmental protection (*Umweltschutz*⁶²) and energy supply (*Sicherung der Energieversorgung*⁶³) as an essential part of a decent human life (*menschenwürdige Existenz*⁶⁴). In light of other judgments cited above, German ordinary law, and agencies' interpretation of constitutional terms, this case proves an existence of those rights as a part of the highest constitutional value, which is human dignity.

57. *Id.* ¶ 61:

Aus dem Menschenwürdeprinzip folge, dass staatliches Handeln oder Unterlassen nicht die Grundlage der Selbstentfaltung und die Erhaltung der Existenzbedingungen zukünftiger Generationen zerstören dürfe. In Ansehung der bereits aufgetretenen Schäden und der mit dem Klimawandel verbundenen Bedrohung verpflichte das Menschenwürdeprinzip in Verbindung mit Art. 20a GG schon heute, Lebensbedingungen zu gewährleisten, in denen sich „die Subjektqualität der Beschwerdeführenden auch zukünftig entfalten“ könne.

58. Grundgesetz für die Bundesrepublik Deutschland [GG] [Basic Law] May 23, 1949, BGBI. I, art. 1(1) (Ger.).

59. *Id.* art. 2(1).

60. *Id.* art. 20a.

61. 134 BVerfGE 242.

62. *See, e.g., id.* ¶¶ 287, 289, 292.

63. *See, e.g., id.* ¶¶ 144, 228.

64. *See, e.g., id.* ¶¶ 268, 295.



a. The Case of des Herrn P. & BUND v. Germany: The Facts

North Rhine-Westphalia (NR-W) is a state in the western part of Germany. After World-War II it has been known as a land of coal and steel. Rich deposits of coal are located about 30 miles north-west from the city of Cologne, within NR-W.⁶⁵ This region was an important contributor to the rapid growth of the German economy back in the post-war period.⁶⁶ Nowadays, a huge brown coal open-case mine called Garzweiler is located there. The mine consists of two parts, namely Garzweiler I and Garzweiler II. Garzweiler I resulted from the merger of two coal mines whose existence goes back to the last century.⁶⁷ Garzweiler II is a new open case mine located directly west from Garzweiler I. It is the approval of Garzweiler II, which raised a lot of frustration of the population and doubts on constitutionality of this administrative decision.

Controversies started back in 1987, when a plan for Garzweiler II was submitted by an energy supplier company Rheinbraun AG. According to this plan 11,800 people in 19 localities would have been relocated to create the 25 sq mi of mining exploitation.⁶⁸ The research pointed out the impact of the mining exploitation on the local population and environment. Regardless of multiple protests and 40,000 signatures collected against Garzweiler II, the review of the project continued.⁶⁹ In 1991, the state government merely reduced the mining area from 25 sq mi to 18.5 sq mi.

The project was released for the public in 1993. In response, about 19,000 official objections were raised against it. Nevertheless, in 1994 the Brown Coal

65. Lothar Lahner, Walter Lorenz, *Lagerstätten von mineralischen und Energierohstoffen* [Deposits of Mineral and Energy Raw Materials], in *Nationalatlas Bundesrepublik Deutschland – Relief, Boden und Wasser* 48–51 (Herbert Liedtke *et. al.* eds., 2003).

66 Bill Neill, *The Ruhr: Creating an identity after coal*, 7 *Plan. Prac. & Rsch.* 21, 22–23 (1992).

67. The merge occurred in 1983. See Virtuelles Museum Erkelenz [Virtual Museum of Erkelenz], *Braunkohlegebiet Garzweiler II* [Open-cast Mine Garzweiler II], <https://www.virtuelles-museum.com/ort/braunkohlegebiet-garzweiler-ii/> (last visited Feb. 10, 2023).

68. BUND Landesverband Nordrhein-Westfalen [BUND Association of the state North-Rhine-Westphalia] *Tagebau Garzweiler: Chronologie und Steckbrief* [Garzweiler Open-cast Mine: Chronology and Profile], <https://www.bund-nrw.de/themen/braunkohle/hintergruende-und-publikationen/braunkohlentagebaue/garzweiler/steckbriefchronologie-garzweiler/> (last visited Feb. 10, 2023).

69. Virtuelles Museum Erkelenz [Virtual Museum of Erkelenz], *Braunkohlegebiet Garzweiler II* [Open-cast Mine Garzweiler II], <https://www.virtuelles-museum.com/ort/braunkohlegebiet-garzweiler-ii/> (last visited Feb. 10, 2023).



Committee⁷⁰ decided that objections were irrelevant and accepted the plan.⁷¹ Subsequently, the Federal Ministry of Environment approved the plan in 1995. Mining operations, however, had not been launched until 2006 because of the high controversy of the project in the political debate. That year, a relocation of the population from the villages covered by the project began.

One of the citizens who was affected by the expropriation and relocation was Mr. P., the first Appellant in this case.⁷² He was an owner of a residence covered by the Garzweiler II project. Another owner of the property, who raised a constitutional complaint together with Mr. P, was a non-governmental organization called BUND.⁷³ The appellants asserted that their constitutional rights' were violated as a result of the Garzweiler II project's approval.

b. The Case of des Herrn P. & BUND v. Germany: The Legal Issue

The applicable law in this case is the Basic Law of the Federal Republic of Germany. The Federal Constitutional Court discussed the validity of the administrative decision to accept the Garzweiler II project in light of the Constitution. In particular, the Court reviewed the alleged violation of a basic right to property (*Grundrecht auf Eigentum*⁷⁴) from Article 14 of the Basic Law and a freedom of movement (*Bewegungsfreiheit*⁷⁵) from Article 11 of the Basic Law. The Court discussed the energy and environment in its reasoning on the right to

70. Ger. Braunkohlensausschuss, it is a body of the regional planning, which task is to make balanced decisions on the scope and duration of opencast mines against the background of the enormous impact on the landscape and the life planning of the people affected by resettlement. See Braunkohlensausschuss [Brown Coal Committee], https://www.bezreg-koeln.nrw.de/brk_internet/gremien/braunkohlensausschuss/index.html (last visited Apr. 20, 2023).

71. BUND Landesverband Nordrhein-Westfalen [BUND Association of the state North-Rhine-Westphalia] *Tagebau Garzweiler: Chronologie und Steckbrief* [Garzweiler Open-cast Mine: Chronology and Profile], <https://www.bund-nrw.de/themen/braunkohle/hintergruende-und-publikationen/braunkohlentagebaue/garzweiler/steckbriefchronologie-garzweiler/> (last visited Feb. 10, 2023).

72. 134 BVerfGE 242, ¶ 20.

73. See *id.* ¶ 49. BUND (Bund für Umwelt und Naturschutz Deutschland), in English “German Federation for the Environment and Nature Conservation” is a German non-governmental organization dedicated to preserving nature and protecting environment.

74. Grundgesetz [GG] [Basic Law] May 23, 1949, BGBl. I, art. 14 (Ger.), available at <https://www.gesetze-im-internet.de/gg/BJNR000010949.html>, translated at https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0116.

75. *Id.* art. 11.



property from Article 14 of the Basic Law.⁷⁶ It focused on the third section of the article, which regulates a constitutionality of the expropriation. It reads as follows:

Article 14 [Property – Inheritance – Expropriation]

(3) Expropriation shall only be permissible for the public good. It may only be ordered by or pursuant to a law that determines the nature and extent of compensation. Such compensation shall be determined by establishing an equitable balance between the public interest and the interests of those affected. In case of dispute concerning the amount of compensation, recourse may be had to the ordinary courts.⁷⁷

Expropriation is a specific intrusion on fundamental rights by public authority, which is characterized by a “sovereign shift in the allocation of property.”⁷⁸ It has to be admissible, that means it must fulfill specific requirements set by Article 14 section 3 of the Basic Law. Its first sentence defines that the only permissible goal of the expropriation is the public good (*Wohl der Allgemeinheit*).⁷⁹ The second sentence determines the form of the expropriation – a law that regulates the nature and extent of compensation.⁸⁰ Finally, the third sentence requires a weighing of interests for a determination of the compensation’s amount.⁸¹ In this case, a legal basis for the expropriation required by Article 14 section 3 sentence 2 of the Basic Law was § 79 section 1 of the Federal Mining Act:

The assignment of property is permissible in individual cases if it serves the public good, in particular if the supply of raw materials to the market, the maintenance of jobs in mining, the existence or improvement of the economic structure or the reasonable and planned exploitation of the deposit is ensured and the purpose of the

76. As this paper focuses on the energy and environment, the Court’s discussion on the freedom of movement will be omitted. For Court’s reasoning on this right see 134 BVerfGE 242, ¶¶ 40–48.

77. Grundgesetz [GG] [Basic Law] May 23, 1949, BGBl. I, art. 14 (Ger.), available at <https://www.gesetze-im-internet.de/gg/BJNR000010949.html>, translated at https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0116.

78. Foroud Shirvani & Hans-Jürgen Papier, in: Dürig/Herzog/Scholz/Grzeszick Grundgesetz GG – Kommentar [Dürig/Herzog/Scholz/Grzeszick Basic Law Commentary], 99th ed. 2022, art. 14(3), recital 628 (Ger.).

79. Micheal Antoni in: Hömig/Wolff Grundgesetz Handkommentar [Basic Law Commentarz], 13th ed. 2022, art. 14 recital 13 (Ger.).

80. *Id.* recital 17.

81. *Id.* recital 18.



assignment of land cannot be achieved in any other reasonable way, taking into account the location of the mining operation.⁸²

One of the main legal issues in this case was whether “the public good” criterion from Article 14 section 3 of the Basic Law and § 79 section 1 of the Federal Mining Act had been met.⁸³ “The public good” in this case was an energy supply, preservation of jobs in the mining industry, and improvement of the economic structure.⁸⁴ These justifications alone, however, are not enough for fulfillment of this criterion. According to the Court’s interpretation, a particular project does not serve the public interest if the *affected* interests outweigh.⁸⁵ In other words, the authorities also have to consider, which public interests are adversely affected by the project’s implementation, and decide, whether the pursued or affected interests prevail.⁸⁶ Also, the project should be reasonably necessary in order to achieve the specifically pursued public interest.⁸⁷

The Appellant BUND argued in this case that, first of all, the project was not necessary to guarantee an energy supply for the country. BUND claimed that there are plenty of renewable energy sources, which are capable of delivering energy supply.⁸⁸ Secondly, they argued that the project had a huge negative impact on people and the environment such as: emission of climate-damaging carbon-dioxide, massive interventions in the water balance, and loss of valuable soil.⁸⁹ Based on those arguments, BUND asserted that affected interests, namely climate, outweigh the interests pursued by the project. This issue was a subject of the Court’s discussion: “The question to be decided ... is whether the burdens on people and the environment associated with a specific project are outweighed by the [energy] supply advantages expected from the project.”⁹⁰

82. Bundesberggesetz [BBergG] [Federal Mining Act], Aug. 13, 1980, Bundesgesetzblatt I [BGBl I] at 1310, § 79(1) (Ger.), available at https://www.gesetze-im-internet.de/bbergg/_79.html:

Die Grundabtretung ist im einzelnen Falle zulässig, wenn sie dem Wohle der Allgemeinheit dient, insbesondere die Versorgung des Marktes mit Rohstoffen, die Erhaltung der Arbeitsplätze im Bergbau, der Bestand oder die Verbesserung der Wirtschaftsstruktur oder der sinnvolle und planmäßige Abbau der Lagerstätte gesichert werden sollen, und der Grundabtretungszweck unter Beachtung der Standortgebundenheit des Gewinnungsbetriebes auf andere zumutbare Weise nicht erreicht werden kann.

83. 134 BverfGE 242, ¶ 182.

84. *Id.* ¶ 204.

85. *Id.* ¶ 189.

86. *Id.* ¶ 211.

87. *Id.* ¶ 227.

88. *Id.* ¶ 297.

89. *Id.* ¶ 296.

90. *Id.* ¶ 289: „Eine [...] zu entscheidende Frage ist es hingegen, ob die mit einem konkreten Vorhaben verbundenen Belastungen für Mensch und Umwelt von den mit dem Vorhaben erwarteten Versorgungsvorteilen überwogen werden.“



c. The Case of des Herrn P. & BUND v. Germany: The Holding

The Federal Constitutional Court acknowledged that both raw material and energy supply (*Rohstoff- und Energieversorgung*) and environmental protection (*Umweltschutz*) are important public goods.⁹¹ Nevertheless, it refused to make any assessments, if the administration considered a public good of environment sufficiently, resulting in the clearance of the village Lützerath. The Court explained that the Garzweiler II project was accessible to a very limited extent of review. It reasoned that although environmental factors should be taken into account in a decision on energy-policy, it is a task of the executive power, not judicial, to assess them. The courts may review such administrative decisions only if they are obviously and clearly wrong. According to the Court an approval of Garzweiler II project was not such a case:

When weighing the individual factors, the federal and state governments have considerable scope for assessment. The assessment of the interaction of the various factors in turn depends on political evaluations and, to a large extent, on prognostic assessments. These decisions of the federal or state government are only accessible to a very limited extent to review by the Constitutional Court. The Basic Law does not provide any standard for the federal or state energy policy that is only constitutional or even constitutionally preferable at a certain point in time [...] Fundamental energy policy decisions, therefore, can only be reviewed by the Federal Constitutional Court to determine whether they are obviously and clearly incompatible with constitutional assessments, as expressed in particular in fundamental rights or state objectives, here specifically environmental protection (Article 20a of the Basic Law).⁹²

The Court did not specify which decisions are clearly incompatible with the Article 20a of the Basic Law. It may be arguable, taking into account floods in western Germany in 2021, which resulted in deaths of over one hundred eighty

91. See *id.* ¶¶ 229, 235, 314 for discussion on environmental protection; see *id.*, ¶¶ 8, 27, 64, 65 for discussion on raw material and energy supply. See *id.* ¶ 37 for discussion on „energy policy necessity”.

92. *Id.* ¶¶ 287–289: “Energiepolitische Grundentscheidungen können daher vom Bundesverfassungsgericht nur darauf überprüft werden, ob sie offensichtlich und eindeutig unvereinbar sind mit verfassungsrechtlichen Wertungen, wie sie insbesondere in den Grundrechten oder den Staatszielbestimmungen, hier namentlich dem Umweltschutz (Art. 20a GG), zum Ausdruck kommen.”



people and billions of euros worth of material damage.⁹³ In summary, the case discussed above shows that the Court did not find sufficient legal basis in German law and the Basic Law to be able to intervene into the discussed administrative decision. Although both importance of energy supply and climate impact were included in the Court's reasoning, the Court did not go into the considerations about the balance between them.

IV. Protection of Human dignity (Schutz der Menschenwürde) equally encompasses a basic right to gas and electricity (Anspruch auf Grundversorgung mit Gas und Elektrizität) and a basic right to an ecologically-sound subsistence standard (ein Grundrecht auf das ökologische Existenzminimum). The Fallacy of the Need to Choose between the two rights.

As argued, although both rights are derived from the Basic Law and the federal jurisprudence, politicians keep making decisions in favor of energy, overlooking and underestimating the environmental impact. For example, the Lützerath villagers were eventually evicted in January 2023 regardless of multiple protests,⁹⁴ legal issues, and floods in the region. Lützerath's eviction gives the impression that a choice between energy and environment is inevitable. Some politicians and researchers justify this action with the energy crisis in Europe⁹⁵ and argue that the exploitation of coal under Lützerath will have no impact on achievement of internationally set 1.5 Celsius target.⁹⁶ However, this subsection will show that within the German legal system, both rights co-exist and are *equally* necessary for dignity.

The general principle of mutual reciprocity between environmental protection and basic human needs is discussed in an article by Conor Gearty "Do Human Rights Help or Hinder Environmental Protection."⁹⁷ In the very beginning

93. Angela Dewan, *Germany's deadly floods were up to 9 times more likely because of climate change, study estimates*, CNN (Aug. 24, 2021, 5:30 AM), <https://www.cnn.com/2021/08/23/europe/germany-floods-belgium-climate-change-intl/index.html>. See also Andreas Schäfer, *Hochwasser Mitteleuropa. Juli 2023 (Deutschland) [Floods in Central Europe. July 2021 (Germany)]*, Forensic Disaster Analysis [CEDIM] (July 21, 2021), https://www.cedim.kit.edu/download/FDA_HochwasserJuli2021_Bericht1.pdf.

94. Jenny Hill, *Lützerath Eviction: German Police Drag Climate Protesters From Coal Village*, BBC (Jan. 12, 2023), <https://www.bbc.com/news/world-europe-64233676>.

95. Wilfried Rickels, *Welche Rolle spielt Lützerath für Klimaschutz und Energiesicherheit*, Science Media Center Germany, <https://www.sciencemediacenter.de/alle-angebote/rapid-reaction/details/news/welche-rolle-spielt-luetzerath-fuer-klimaschutz-und-energiesicherheit/> (last visited Apr. 10, 2023).

96. *Id.*

97. Conor Gearty, *Do Human Rights Help or Hinder Environmental Protection*, in *Human Rights in the World Community: Issues and Action* 246, 246 (Anna Grear & Burns H. Weston ed., 2016).



of the article, the author stated that the immediate response to a question posed in its title would be that of course human rights hinder environmental protection.⁹⁸ Gearty discusses this issue in the context of the international law, however, it can be translated in the German legal system as well as in the way of analogy. At first glance, it may seem that in the German legal system a basic right to have access to gas and electricity inevitably hinders the right to an ecologically-sound subsistence standard. Conversely, the right to ecologically-sound subsistence standard impedes the right to have access to gas and electricity. However, Grearty exposes how clear a link between basic rights and environmental protection is.⁹⁹ Access to unspoiled natural resources enables survival, including land, shelter, food, water and air. Thus, pollution control and environmental integrity can be recast as mechanisms of enforcement of human needs, functioning as *sine qua non* conditions. By analogy, control of the energy supply and a guarantee of an ecologically-sound subsistence standard can be remodulated into the enforcement of the constitutional protection of human dignity. Those two rights do not hinder each other, but rather equally enable a decent human life.

Some would disagree with the statement mentioned above and make a counterargument that environmental protection is a huge limitation and hindrance for other basic rights, for example property rights.¹⁰⁰ There are even voices which characterize climate law regime as a “climate dictatorship” and “climate racism.”¹⁰¹ A legal analysis of the German energy law presented below shows, however, that environmental limitations to the laws are legitimately enacted provisions directly derived from Article 20a of the Basic Law. It reshapes energy law in new terms rather than just limits it. Of course, the integration of energy law and environmental law may face many barriers: energy law usually leaves the environment largely to the side, viewed as one more cost of doing business.¹⁰² Today, there is a misconception in the narrative surrounding energy law and environmental law that they have little to do with each other. The misconception claims that the goal of energy law as an economic development, and

98. *Id.* at 246.

99. *Id.* at 249.

100. Leonardo Munhoz, *The Environmental Limitations to Property Rights in Brazil and United States of America* (Jan. 2014) (LLM thesis, Pace University School of Law), available at <https://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1014&context=lawdissertations>.

101. Miriam Meyer, *Droht und bald Klimarassismus? Wie sich Rechte die Klimakrise zunutze machen* [*Does Climate Racism Threaten us? How Right Wing Takes Advantage of the Climate Crisis*], Politik Watson (Sept. 2, 2022, 10:39 AM), <https://politik.watson.de/nachhaltigkeit/interview/683799837-droht-uns-bald-klimarassismus-wie-sich-rechte-die-klimakrise-zunutze-machen>.

102. Amy J. Wildermuth, *The Next Step: The Integration of Energy Law and Environmental Law*, 31 *Utah Env't Law Rev.* 369, 388 (2011).



the goal of environmental law as conservation of resources and protection of public health are in opposition.¹⁰³ However, in the German legal system it is not the case. There is a tangible increase in the integration between the both mentioned fields of law. For example, the “Basic Law of Energy Industry”¹⁰⁴ in Germany, namely the Energy Industry Act,¹⁰⁵ defines in its § 1 section 1 that the goal of energy law is to provide the public with clean energy:

§ 1 Purpose and goals of the law

The purpose of the law is to provide the general public with grid-bound supply of electricity, gas and hydrogen that is as safe, inexpensive, consumer-friendly, efficient, environmentally friendly and greenhouse gas-neutral as possible, which is increasingly based on renewable energies.

§ 1 Zweck und Ziele des Gesetzes

Zweck des Gesetzes ist eine möglichst sichere, preisgünstige, verbraucherfreundliche, effiziente, umweltverträgliche und treibhausgasneutrale leitungsgebundene Versorgung der Allgemeinheit mit Elektrizität, Gas und Wasserstoff, die zunehmend auf erneuerbaren Energien beruht.¹⁰⁶

Pursuant to statutory language, a purpose for the energy law is an energy supply for the public. Energy supply pursues, therefore, a goal of public good (*Gemeinwohlzweck*).¹⁰⁷ Notably, the legislature included environment in the very purpose of the energy law and integrated it as a part of the public good. The environmental compatibility in the Energy Industry Act is derived from the constitution as a specification of the discussed earlier national objective from Article 20a of the Basic Law imposed on the legislature.¹⁰⁸ Environmental protection has been included in the statutes throughout the whole Act: for example, environmental compatibility was legally defined in § 3 of the Act; § 12c

103. *Id.* at 381.

104. Industrie- und Handelskammer [Chamber of Commerce and Industry], *Energiegesetze/Energiepolitik*, <https://www.ihk.de/lahndill/innovation/energiefragen/energiegesetzte-und-energiepolitik-2781792> (last visited Apr. 14, 2023).

105. Energiewirtschaftsgesetz [EnWG] [Energy Industry Act], July 7, 2005, BGBl I at 1970 (Ger.), available at https://www.gesetze-im-internet.de/enwg_2005/.

106. *Id.*

107. Martin Kment in: *Energiewirtschaftsgesetz* [Commentary on Energy Industry Act], 2nd ed. 2019, § 1 recital 3 (Ger.).

108. *Id.* § 1 recital 9 (Ger.); see also Christian Calliess in: *Dürig/Herzog/Scholz Grundgesetz-Kommentar*, 99th ed. 2022, art. recital 202 (Ger.).



of the Act requiring environmental report for certain projects; § 13j regulates a cooperation between Federal Ministry on Economic Affairs and Energy with the Federal Ministry for Environment, Nature Conservation, Nuclear Safety and Consumer Protection; and environmental compatibility repeats in § 43b and § 43f etc.

Another statutory evidence of the claim that environmental law is integrated into the energy law is a Renewable Energy Sources Act.¹⁰⁹ Its first statute reads the following:

§ 1 Goal of the Act

(1) The aim of this law, particularly in the interest of climate and environmental protection, is the transformation to a sustainable and greenhouse gas-neutral power supply that is based entirely on renewable energies.

(2) In order to achieve the target according to paragraph 1, the share of electricity generated from renewable energies in the gross electricity consumption in the national territory of the Federal Republic of Germany, including the German exclusive economic zone (federal territory), should be increased to at least 80 percent in 2030.

(3) The expansion of renewable energies required to achieve the target in accordance with paragraph 2 should be continuous, cost-efficient, environmentally friendly and compatible with the grid.¹¹⁰

Similar to the Energy Industry Act, the Renewable Energy Sources Act is a specification of the constitutional national objective from Article 20a of the Basic

109 Erneuerbare-Energien-Gesetz [EEG] [Renewable Energy Sources Act], Mar. 29, 2000 BGBl I at 305, last amended by Gesetz [G], Jan. 4, 2023, BGBl I Nr. 6 (Ger.), *available at* https://www.gesetze-im-internet.de/eeg_2014/BJNR106610014.html.

110. *Id.* § 1:

(1) Ziel dieses Gesetzes ist insbesondere im Interesse des Klima- und Umweltschutzes die Transformation zu einer nachhaltigen und treibhausgasneutralen Stromversorgung, die vollständig auf erneuerbaren Energien beruht.

(2) Zur Erreichung des Ziels nach Absatz 1 soll der Anteil des aus erneuerbaren Energien erzeugten Stroms am Bruttostromverbrauch im Staatsgebiet der Bundesrepublik Deutschland einschließlich der deutschen ausschließlichen Wirtschaftszone (Bundesgebiet) auf mindestens 80 Prozent im Jahr 2030 gesteigert werden.

(3) Der für die Erreichung des Ziels nach Absatz 2 erforderliche Ausbau der erneuerbaren Energien soll stetig, kosteneffizient, umweltverträglich und netzverträglich erfolgen.



Law.¹¹¹ It sets a postulate of a sustainable development of the energy supply and respect for the environment.¹¹² The statutes cited in this section prove that because of the constitutional objective of the state to pursue protection of the environmental foundations of life and animals from Article 20a of the Basic Law, energy law is unimaginable without environmental law. The goal of the energy law is not mere economic development and energy supply of the population, it is also environmental compatibility and sustainability. The statutory language seems to acknowledge that both energy supply and environment are equally important for the population and – as it logically follows – for the initial principle of the whole German legal system, namely protection of human dignity (*Schutz der Menschenwürde*).

V. Conclusion

This paper has argued that a core value of the German constitutional system is human dignity and, in order to be effective that right needs to equally include the right to basic access to gas and electricity (*Anspruch auf Grundversorgung mit Gas und Elektrizität*) and the right to an ecologically-sound subsistence standard (*Grundrecht auf das ökologische Existenzminimum*). The case of *Des Herrn P. & BUND v. Germany* showed that the Constitutional Court is not ready to provide this guidance, but as this paper argued, such an interpretation is supported in law. Although none of the discussed rights are mentioned explicitly in the Basic Law, they are derived through different articles and the courts.

Both rights are equally important for survival. Energy is not less important than environment, and another evidence of this are floods in Germany.¹¹³ Within last two decades, at least five big floods happened in Germany: in 2002, at least 21 people died in the so-called “Elbe flood of the century” in Saxony alone; in June 2013, floods caused death of 25 people in Germany and neighboring countries; in 2016, seven people died in floods in Lower Bavaria. After massive heavy rain, the disaster alarm was triggered in Lower Saxony in 2017. In 2021, there was a flood in North Rhine-Westphalia with a record number of deaths of more than 180 people.¹¹⁴ A lot of experts claim that climate change is the main reason for the

111. Jochen Mohr in: *Berliner Kommentar zum Energierecht [BerlKommEnR]* [Berlin Commentary to Energy Law], 5th ed. 2022, § 1 recital 2 (Ger.).

112. *Id.*

113. Andreas Schäfer, *Hochwasser Mitteleuropa. Juli 2023 (Deutschland)*, Forensic Disaster Analysis [CEDIM] (July 21, 2021), https://www.cedim.kit.edu/download/FDA_HochwasserJuli2021_Bericht1.pdf.

114. Bundeszentrale für Politische Bildung [Federal Agency for Civic Education], *Jahrhunderthochwasser 2021 in Deutschland [Century Flood of 2021 in Germany]* (July 28, 2021),



floods in this region.¹¹⁵ They assume that this will happen more often in the future.¹¹⁶ At this point, it is trivial to repeat that environment is no less important than energy, especially when people lose their shelters, and even lives. As explained in the paper, the German courts need to do more to implement those two rights to ensure the human dignity. However, as a social state within the Basic Law, Germany seems to be on the right track.

<https://www.bpb.de/kurz-knapp/hintergrund-aktuell/337277/jahrhunderthochwasser-2021-in-deutschland/>.

115. Karlsruher Institut für Technologie [Institute of Technology in Karlsruhe], *Hochwasserrisiken wurden deutlich unterschätzt*, [*Flood Risks Were Clearly Underestimated*] (July 2021), https://www.kit.edu/kit/pi_2021_070_hochwasserrisiken-wurden-deutlich-unterschätzt.php

116. *Id.*



Bibliography

Primary sources

German laws:

Bundesberggesetz [BBergG] [Federal Mining Act], Aug. 13, 1980, Bundesgesetzblatt I [BGBl I] at 1310, https://www.gesetze-im-internet.de/bbergg/__79.html.

Energiewirtschaftsgesetz [EnWG] [Energy Industry Act], July 7, 2005, Bundesgesetzblatt I [BGBl I] at 1970, https://www.gesetze-im-internet.de/enwg_2005/.

Erneuerbare-Energien-Gesetz [EEG] [Renewable Energy Sources Act], Mar. 29, 2000, Bundesgesetzblatt I [BGBl I] at 305, last amended by Gesetz [G], Jan. 4, 2023, BGBl I Nr. 6, https://www.gesetze-im-internet.de/eeg_2014/BJNR106610014.html.

Grundgesetz für die Bundesrepublik Deutschland [GG] [Basic Law], May 23, 1949, Bundesgesetzblatt I [BGBl I] at 1, <http://www.gesetze-im-internet.de/gg/>, *translated at* https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html.

Sozialgesetzbuch II – Bürgergeld, Grundsicherung für Arbeitssuchende [SGB II] [Social Code II – Citizens' Income, Basic Security for Jobseekers], Dec. 24, 2003, Bundesgesetzblatt I [BGBl I] at 2954, https://www.gesetze-im-internet.de/sgb_2/.

Stromgrundversorgungsverordnung [StromGVV] [Ordinance Regulating the Provision of the Basic Electricity Supply], Oct. 26, 2006, Bundesgesetzblatt I [BGBl I] at 2391, <http://www.gesetze-im-internet.de/stromgvv/index.html>.

Verordnung über Allgemeine Bedingungen für die Grundversorgung von Haushaltskunden und die Ersatzversorgung mit Gas aus dem Niederdrucknetz [GasGVV] [Ordinance on General Conditions for the Basic Supply of Household Customers and the Backup Supply with Gas from the Low Pressure Network], Oct. 26, 2006, Bundesgesetzblatt I [BGBl I] at 2391, <https://www.gesetze-im-internet.de/gasgvv/>.

International Laws:

G.A. Res. 217 (III) A, United Nations General Assembly art. 1 (10 December 1948).



Consolidated Version of the Treaty on the Functioning of the European Union art. 194, May 9, 2008, 2008 O.J. (C115) 47.

German cases:

Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] Mar. 24, 2021, 157 Entscheidungen des Bundesverfassungsgerichts [BVerfGE] 30.

Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] Dec. 15, 2015, 140 Entscheidungen des Bundesverfassungsgerichts 317.

Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] Dec. 17, 2013, 134 Entscheidungen des Bundesverfassungsgerichts [BVerfGE] 242.

Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] July 18, 2012, 132 Entscheidungen des Bundesverfassungsgerichts [BVerfGE] 134.

Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] Feb. 9, 2010, 125 Entscheidungen des Bundesverfassungsgerichts [BVerfGE] 175.

Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] May 18, 2009, 15 Kammerentscheidungen [BVerfGK] 484.

Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] Nov. 10, 2009, 16 Kammerentscheidungen [BVerfGK] 370.

Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] Mar. 3, 2004, 109 Entscheidungen des Bundesverfassungsgerichts [BVerfGE] 279.

Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] June 18, 1975, 40 Entscheidungen des Bundesverfassungsgerichts 121.

Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] Jan. 15, 1958, 7 Entscheidungen des Bundesverfassungsgerichts [BVerfGE] 198.

Secondary Sources

German Commentaries:

Bernd Grzeszick in: Dürig/Herzog/Scholz/Grzeszick Grundgesetz GG – Kommentar [Dürig/Herzog/Scholz/Grzeszick Basic Law Commentary], 99th ed. 2022, art. 20.



Jochen Mohr in: Berliner Kommentar zum Energierecht [BerlKommEnR] [Berlin Commentary to Energy Law], 5th ed. 2022, § 1.

Hans Dieter Jarass in: Jarass/Pieroth Grundgesetz-Kommentar [Jarass/Pieroth Basic Law Commentary], 17th ed. 2022, art. 1.

Foroud Shirvani & Hans-Jürgen Papier, in: Dürig/Herzog/Scholz Grundgesetz GG – Kommentar [Dürig/Herzog/Scholz Basic Law Commentary], 99th ed. 2022, art. 14.

Martin Kment in: Energiewirtschaftsgesetz [Commentary on Energy Industry Act], 2nd ed. 2019, § 1.

Micheal Antoni in: Hömig/Wolff Grundgesetz Handkommentar [Basic Law Commentary], 13th ed. 2022, art. 14.

Journals:

Amy J. Wildermuth, *The Next Step: The Integration of Energy Law and Environmental Law*, 31 Utah Env't Law Rev., July 18, 2011, at 369.

Bill Neill, *The Ruhr: Creating an identity after coal*, 7 Plan. Prac. & Rsch., Feb. 21, 1992,

at 21.

Christopher McCrudden, *Human Dignity and Judicial Interpretation of Human Rights*, 19 Eur. J. Int'l L., Sep. 1, 2008, at 655.

Susanne Baer, *Menschenwürde zwischen Recht, Prinzip und Referenz* [Human Dignity between Law, Principle and Reference], Deutsche Zeitschrift für Philosophie [DZPh], Jan. 14, 2014, at 571.

Udo Di Fabio, *Grundrechte als Wertordnung* [Fundamental Rights as a System of Values], 59 Juristenzeitung [JZ], Jan. 9, 2004, at 1.

Volker Neumann, *Menschenwürde und Existenzminimum* [Human Dignity and Subsistence Minimum], 13 Neue Zeitschrift für Verwaltungsrecht [NVwZ], May 15, 1995, at 429.

Wolfgang Kahl, *Klimaschutz und Grundrechte* [Climate Protection and Fundamental Rights], 43 Juristische Ausbildung [Jura], Jan. 18, 2021, at 117.



Books:

Conor Grearty, *Do Human Rights Help or Hinder Environmental Protection, in Human Rights in the World Community: Issues and Action* 246 (Anna Grear & Burns H. Weston eds., 2016).

Michael F. Feldkamp, *Der Parlamentarische Rat 1948–1949. Die Entstehung des Grundgesetzes* (2020).

Georg Hermes, *Verfassungsrecht und einfaches Recht – Verfassungsgerichtsbarkeit und Fachgerichtsbarkeit [Constitutional Law and Ordinary Law – Constitutional Jurisdiction and Specialized Jurisdiction]* 121 (Robert Alexy *et. al.* eds., 1st ed. 2001).

Lothar Lahner, Walter Lorenz, *Lagerstätten von mineralischen und Energierohstoffen [Deposits of Mineral and Energy Raw Materials], in Nationalatlas Bundesrepublik Deutschland – Relief, Boden und Wasser* 48 (Herbert Liedtke *et. al.* eds., 2003).

Internet Resources:

Andreas Schäfer, *Hochwasser Mitteleuropa. Juli 2023 (Deutschland) [Floods in Central Europe. July 2021 (Germany)]*, Forensic Disaster Analysis [CEDIM] (July 21, 2021), https://www.cedim.kit.edu/download/FDA_HochwasserJuli2021_Bericht1.pdf.

BUND Landesverband Nordrhein-Westfalen [BUND Association of the state North-Rhine-Westphalia] *Tagebau Garzweiler: Chronologie und Steckbrief [Garzweiler Open-cast Mine: Chronology and Profile]*, <https://www.bund-nrw.de/themen/braunkohle/hintergruende-und-publicationen/braunkohlentagebaue/garzweiler/steckbriefchronologie-garzweiler/> (last visited Feb. 10, 2023).

Bundesministerium des Innern und für Heimat [Federal Ministry of the Interior and Community], *Unsere Verfassung, Das Grundgesetz vom 23. Mai 1949 in der jeweils aktuellen Fassung ist die Verfassung der Bundesrepublik Deutschland*, <https://www.bmi.bund.de/DE/themen/verfassung/staatliche-ordnung/unsere-verfassung/unsere-verfassung-artikel.html> (last visited Apr. 5, 2023).



Bundestag [German Parliament], *Sozialstaat*,
<https://www.bundestag.de/services/glossar/>

[glossar/S/sozialstaat-245542](https://www.bundestag.de/services/glossar/S/sozialstaat-245542) (last visited Feb. 28, 2023).

Bundesnetzagentur [Federal Network Agency], *Grundversorgung*,
<https://www.bundesnetzagentur.de/DE/Vportal/Energie/Vertragsarten/Grundversorgung/start.html> (last visited Apr. 2, 2023).

Bundeszentrale für politische Bildung [Federal Agency for Civic Education], *Das Politlexikon. Staatsziele* [*Political Dictionary. National Objectives*],
<https://www.bpb.de/kurz-knapp/lexika/politiklexikon/18289/staatsziele/> (last visited Apr. 12, 2023).

Braunkohlensausschuss [Brown Coal Committee], https://www.bezreg-koeln.nrw.de/brk_internet/gremien/braunkohlensausschuss/index.html (last visited Apr. 20, 2023).

Ingmar Björn Nolting, *The Eviction of Lützerath: the Village Being Destroyed for a Coalmine – a Photo Essay*, *The Guardian* (Jan. 24, 2023, 07:00 AM),
<https://www.theguardian.com/artanddesign/2023/jan/24/eviction-lutzerath-village-destroyed-coalmine-a-photo-essay>.

Gilbert Häfner, *Recht auf Zukunft: Klimaschutz als Grundrecht* [*Right to Future: Climate Protection as a Fundamental Right*], *Mitteldeutscher Rundfunk* (Oct. 14, 2021, 10:30 AM), <https://www.mdr.de/ratgeber/recht/gilbert-haefner-recht-klimaschutz-zukunft-100.html>.

Industrie- und Handelskammer [Chamber of Commerce and Industry], *Energiegesetze/ Energiepolitik*, <https://www.ihk.de/laehn-dill/innovation/energiefragen/>

[energiegesetzte-und-energiepolitik-2781792](https://www.ihk.de/laehn-dill/innovation/energiefragen/energiegesetzte-und-energiepolitik-2781792) (last visited Apr. 14, 2023).

Jenny Hill, *Lützerath Eviction: German Police Drag Climate Protesters From Coal Village*, *BBC* (Jan. 12, 2023), <https://www.bbc.com/news/world-europe-64233676>.

Juraforum, *Sozialstaat – Definition und gesetzliche Grundlagen im Grundgesetz der BRD*, <https://www.juraforum.de/lexikon/sozialstaat> (last visited Feb. 28, 2023).

Karlsruher Institut für Technologie [Institute of Technology in Karlsruhe], *Hochwasserrisiken wurden deutlich unterschätzt*, [*Flood Risks Were Clearly*



Underestimated] (July 2021),
https://www.kit.edu/kit/pi_2021_070_hochwasserrisiken-wurden-deutlich-unterschatzt.php.

Miriam Meyer, *Droht und bald Klimarassismus? Wie sich Rechte die Klimakrise zunutze machen* [*Does Climate Racism Threaten us? How Right Wing Takes Advantage of the Climate Crisis*], Politik Watson (Sept. 2, 2022, 10:39 AM), <https://politik.watson.de/nachhaltigkeit/interview/683799837-droht-uns-bald-klimarassismus-wie-sich-rechte-die-klimakrise-zunutze-machen>.

Thomas Groß, *Zwei Jahre Klimabeschluss des Bundesverfassungsgerichts* [*Two Years since Climate Judgment by the Federal Constitutional Court*], Verfassungsblog [Constitutional Blog] (Mar. 18, 2023), <https://verfassungsblog.de/zwei-jahre-klimabeschluss-des-bundesverfassungsgerichts/>.

Virtuelles Museum Erkelenz [Virtual Museum of Erkelenz], *Braunkohlegebiet Garzweiler II* [*Open-cast Mine Garzweiler II*], <https://www.virtuelles-museum.com/ort/braunkohlegebiet-garzweiler-ii/> (last visited Feb. 10, 2023).

Wilfried Rickels, *Welche Rolle spielt Lützerath für Klimaschutz und Energiesicherheit*, Science Media Center Germany, <https://www.sciencemediacenter.de/alle-angebote/rapid-reaction/details/news/welche-rolle-spielt-luetzerath-fuer-klimaschutz-und-energiesicherheit/> (last visited Apr. 10, 2023).

Thesis:

Leonardo Munhoz, *The Environmental Limitations to Property Rights in Brazil and United States of America* (Jan. 2014) (LLM thesis, Pace University School of Law), <https://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1014&context=lawdissertation>.

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