



Law and Emergencies: A Comparative Overview

The Minerva Center for the Rule of Law under Extreme Conditions

January, 2016

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Emergency Laws and Regulations in Germany: Executive Summary

Legislative Framework

The German constitution comprises, for various historical reasons (including the emergency clause in the Weimar Constitution), only a weak emergency constitution, which was added to the Basic Law only in 1968. One of its expressions relates to the State of Defense, which comes nearer to an emergency constitution, although it is legally configured along the lines of institutions and procedures of a democracy. The other major constitutional clause relating to emergencies, allows the States (Länders) to invite assistance from other States or from the Federal government.

Basically, there are three pillars of “emergency” situations and related laws. Their architecture, in general, depends on the design of legislative and administrative competencies:

- 1) The first pillar is a State of Defense: The Bund (federation) is entitled to regulate all matters related to a State of Defense. In order to deal with an external emergency the Bund has issued a couple of laws called safeguarding laws (Sicherstellungsgesetze).
- 2) The second pillar is civil protection: The legislative competence lies with the Federation, and the administrative competences may differ. Due to the regulation in the Civil Protection Act the Federation and Länders share the administrative responsibility.
- 3) The third pillar is the administration of catastrophes, which falls into the competence of the länders. It is important to note, that catastrophes are defined only by the scale of possible losses and damages as well as by the necessity to pool resources to fight the catastrophe.

Entrance into a State of Emergency State of defense is defined as a determination that the federal territory is under attack by armed

forces or imminently threatened with such an attack. A declaration of a State of Defense shall be made by parliament upon an application of the Federal Government, and shall require a two-thirds majority of the votes cast, which shall include at least a majority of the Members of the Bundestag.

Catastrophe is defined as a situation in which life, health, the supply of the population with goods and services indispensable to life, environmental or material assets are threatened or even damaged in such an extraordinary way that effective help and protection could only be guaranteed by a unified guidance of a catastrophe organizations of all competent authorities, organizations and resources. The counties (Landkreise) and big cities (Kreisfreie Städte) are in charge of lower scale catastrophe administration authorities. They may declare the state of emergency if the situation happens within their territory.

Legal Powers

During a declared catastrophe all relevant authorities and organizations work under the unified guidance and hierarchical assignment of the competent catastrophe authority (Landkreis/Kreisfreie Städte). The authority can take every measure necessary to prevent the catastrophe or to fight it. It lies within its discretion to define what is necessary, but all the measures are in principal subject to judicial review (though more limited than in normal times). The powers are not really extraordinary, but follow the powers of the “normal” police forces.

Rights in State of Emergency

The basic rights of the citizens are non-derogable. There are two minor restrictions of rights only in the case of the state of defense, elaborated in the synopsis. In every other case there are no general suspensions or restrictions of the rights of the citizens, but there may be measures to restrict them in certain situations due to the norms of catastrophe. In a case of an emergency at some point nearly any right can be restricted in a way that looking at the individual case the right is fully eliminated, though private property is not generally abolished, and each restriction is curtailed (e.g. by the proportionality principle).

Emergency Laws and Regulations in Germany: Synopsis

Introduction

The German constitution contains, for various historical reasons, only a weak emergency constitution. The German Basic Law of 1949 was originally enacted without an emergency constitution *sensu strictu*. It only specifies various rules for mutual assistance by the States (Länders) and also by the Federation (Bund) in cases of a catastrophe (grave accidents or natural disasters) or a threat to the security of a federal state;¹ a kind of legislative emergency² which is not very functional; and very basic regulations concerning an internal emergency. The possible reason is that the parliamentary council, which was responsible for the draft constitution wanted to avoid any adjacency to the former Article 48 of the Weimar Constitution and the emergency powers it granted the President of the Weimar Republic.

¹ The German Basic Law of 1949 (BL), Article 35:

(1) All federal and Land authorities shall render legal and administrative assistance to one another.

(2) In order to maintain or restore public security or order, a Land in particularly serious cases may call upon personnel and facilities of the Federal Border Police to assist its police when without such assistance the police could not fulfil their responsibilities, or could do so only with great difficulty. In order to respond to a grave accident or a natural disaster, a Land may call for the assistance of police forces of other Länder or of personnel and facilities of other administrative authorities, of the Armed Forces, or of the Federal Border Police.

(3) If the natural disaster or accident endangers the territory of more than one Land, the Federal Government, insofar as is necessary to combat the danger, may instruct the Land governments to place police forces at the disposal of other Länder, and may deploy units of the Federal Border Police or the Armed Forces to support the police. Measures taken by the Federal Government pursuant to the first sentence of this paragraph shall be rescinded at any time at the demand of the Bundesrat, and in any event as soon as the danger is removed.

² Article 81 of BL reads as follows:

(1) If, in the circumstances described in Article 68, the Bundestag is not dissolved, the Federal President, at the request of the Federal Government and with the consent of the Bundesrat, may declare a state of legislative emergency with respect to a bill, if the Bundestag rejects the bill although the Federal Government has declared it to be urgent. The same shall apply if a bill has been rejected although the Federal Chancellor had combined it with a motion under Article 68.

(2) If, after a state of legislative emergency has been declared, the Bundestag again rejects the bill or adopts it in a version the Federal Government declares unacceptable, the bill shall be deemed to have become law to the extent that it receives the consent of the Bundesrat. The same shall apply if the Bundestag does not pass the bill within four weeks after it is reintroduced.

(3) During the term of office of a Federal Chancellor, any other bill rejected by the Bundestag may become law in accordance with paragraphs (1) and (2) of this Article within a period of six months after the first declaration of a state of legislative emergency. After the expiration of this period, no further declaration of a state of legislative emergency may be made during the term of office of the same Federal Chancellor.

(4) This Basic Law may neither be amended nor abrogated nor suspended in whole or in part by a law enacted pursuant to paragraph (2) of this Article.

In 1968, a kind of a weak emergency constitution was enshrined in the Basic Law. One of its rules was an extended version of states of internal emergency, specified in Article 91 of the Basic Law.³ The other rules relate to the State of Defense, which come nearer to an emergency constitution, although for various reasons, the Parliament tried to configure this state of defense as much as possible along the lines of the institutions and procedures of democracy (see appendix A).

1. The Legislative Framework

Basically, there are three pillars of “emergency” situations and related laws. Their architecture depends on the general design of legislative and administrative competencies. The Bund (federation) is entitled to regulate all matters related to the state of defense, which is the first pillar. To deal with an external emergency the Bund has issued a couple of laws called safeguarding laws (Sicherstellungsgesetze). They relate to the situations defined in Article 80a BL.⁴ It allows to unlock particular provisions of the BL (e.g. Art. 12a V 1⁵, Art. 12a VI 2⁶, Art. 87a III⁷) in situations where a so called “state of tension” is declared (which is a pre-stage to a

³ In order to avert an imminent danger to the existence or free democratic basic order of the Federation or of a Land, a Land may call upon police forces of other Länder, or upon personnel and facilities of other administrative authorities and of the Federal Border Police. (2) If the Land where such danger is imminent is not itself willing or able to combat the danger, the Federal Government may place the police in that Land and the police forces of other Länder under its own orders and deploy units of the Federal Border Police. Any such order shall be rescinded once the danger is removed, or at any time on the demand of the Bundesrat. If the danger extends beyond the territory of a single Land, the Federal Government, insofar as is necessary to combat such danger, may issue instructions to the Land governments; the first and second sentences of this paragraph shall not be affected by this provision.

⁴ (1) If this Basic Law or a federal law regarding defence, including protection of the civilian population, provides that legal provisions may be applied only in accordance with this Article, their application, except when a state of defence has been declared, shall be permissible only after the Bundestag has determined that a state of tension exists or has specifically approved such application. The determination of a state of tension and specific approval in the cases mentioned in the first sentence of paragraph (5) and the second sentence of paragraph (6) of Article 12a shall require a two-thirds majority of the votes cast. (2) Any measures taken pursuant to legal provisions by virtue of paragraph (1) of this Article shall be rescinded whenever the Bundestag so demands. (3) Notwithstanding paragraph (1) of this Article, the application of such legal provisions shall also be permissible on the basis of and in accordance with a decision made by an international body within the framework of a treaty of alliance with the approval of the Federal Government. Any measures taken pursuant to this paragraph shall be rescinded whenever the Bundestag, by the vote of a majority of its Members, so demands.

⁵ (5) Prior to the existence of a state of defence, assignments under paragraph (3) of this Article may be made only if the requirements of paragraph (1) of Article 80a are met. In preparation for the provision of services under paragraph (3) of this Article that demand special knowledge or skills, participation in training courses may be required by or pursuant to a law. In this case the first sentence of this paragraph shall not apply.

⁶ (6) If, during a state of defence, the need for workers in the areas specified in the second sentence of paragraph (3) of this Article cannot be met on a voluntary basis, the right of German citizens to abandon their occupation or place of employment may be restricted by or pursuant to a law in order to meet this need.

state of defense) or if the parliament by 2/3 majority allows for the application of the specific norm. Safeguarding concerns work, traffic, economy, food and the rationale is to secure basic services and goods in those fields, e.g. the supply of energy, telecommunications, etc., and the emergency competence is to take necessary measures like storage, rules of production, reduction of consumption, etc.

The second pillar is civil protection. The legislative competence lies with the Federation, the administrative competence may differ according to Article 87a II BL.⁸ According to the regulation in the Civil Protection Act, Federation and Länders share the administrative responsibility. A central agency is entitled to carry out administrative tasks of the federation which include planning of civil protection, training of the staff responsible for civil protection, informing the population, early warning, research, etc. The länders' administrations, in particular those responsible for carrying out the task of the administration of catastrophes, are in cooperation with the federation, responsible for shelters (public or private), restriction of the right to move freely in the federal territory (Art. 11 BL), evacuations, planning of healthcare in case of defense, and regulation of stand-by-duties and training of healthcare assistants. All in all, this is a type of cooperative administration of the federation and the länders. The resources of the civil protection administration could also be used in cases of catastrophes and vice versa.

The third pillar is the administration of catastrophes, which falls into the competence of the länders. Each of them has a law of catastrophes, the modern ones integrate fire protection and rescue services as they all have to cooperate in cases of catastrophes. Their aim is the effective protection of the population in cases of fire, disasters, emergencies and catastrophes.⁹ Fire protection covers

Prior to the existence of a state of defence, the first sentence of paragraph (5) of this Article shall apply *mutatis mutandis*.

⁷ (3) During a state of defence or a state of tension the Armed Forces shall have the power to protect civilian property and to perform traffic control functions to the extent necessary to accomplish their defence mission. Moreover, during a state of defence or a state of tension, the Armed Forces may also be authorised to support police measures for the protection of civilian property; in this event the Armed Forces shall cooperate with the competent authorities.

⁸ (2) In addition, federal laws concerning defence, including recruitment for military service and protection of the civilian population, may, with the consent of the Bundesrat, provide that they shall be executed, wholly or in part, either by federal administrative authorities with their own administrative substructures or by the Länder on federal commission. If such laws are executed by the Länder on federal commission, they may, with the consent of the Bundesrat, provide that the powers vested in the Federal Government or in the competent highest federal authorities pursuant to Article 85 be transferred wholly or in part to federal higher authorities; in this event the law may provide that such authorities shall not require the consent of the Bundesrat in issuing general administrative rules pursuant to the first sentence of paragraph (2) of Article 85.

⁹ The design of the of the different länder law is more or less identical at least when it comes to the general principles. For the purpose of this analysis I refer to only one of them, the saxony law on fire protection, rescue services and protection against catastrophes (of 2004, (latest amendment of 2012).

prevention of fires as well as firefighting and technical support to the firefighters, which might be auxiliary as well as professional services. Rescue services comprise patient transportation as well as a rescue service in cases of disasters, etc. Protection against catastrophes means prevention, fighting of catastrophes as well as urgent and preliminary help in cases of damages.

It is important to note, that catastrophes are defined only by the scale of possible losses and damages as well as by the necessity to pool resources to fight the catastrophe. It is defined as follows:

“Catastrophes is a situation in which life, health, supply of the population with goods and services indispensable to life, environment or material assets are threatened or even damaged in such an extraordinary way that effective help and protection could only be guaranteed by a unified guidance of a catastrophe organizations of all competent authorities, organizations (which means public as well as private organization, honorary offices as well as professional organizations) and resources”.

According to the definition it does not matter what the cause of the situation might be. The only thing that matters is the extraordinary situation as such. Therefore there are no specific laws dealing with certain types of catastrophes.

Natural disasters	National security	Socio-economic meltdowns
Law of catastrophes in each of the länders.	Basic Law of Germany, Art. 115a. Safeguarding laws (Sicherstellungsgesetze).	

It should be noted that there are several statutes addressing a generic state of emergency, rather than addressing different types of emergency, but correspond with Germany’s federal system. Taking a look at the statutes and other acts of legislation that might take effect in case of emergency, one has to keep in mind that Germany’s legal system is characterized by a high tendency of codification. Therefore, there are many pieces of legislation which could be affected. However, these provisions are not arranged referring to a certain type of disaster or the like, but regulate a certain type of infrastructure. In this respect, “infrastructure” is meant in the

broadest sense, i.e. any object or facility, which may be affected by, or is a potential source of, an emergency or a catastrophe, e.g. a nuclear power plant as well as a river or public transport.

Taking this into account, a complete analysis of potentially affected legislation is impossible, as one easily can imagine that for any infrastructure given, one can imagine a state of emergency, too, which does affect this infrastructure. Furthermore, a certain infrastructure may be both, disaster victim and a source of a catastrophe. Both aspects may be covered by the same provisions. Whereas the direct effects of a disaster caused by a certain type of infrastructure seem to be limited to a certain type– at least at first glance – e.g. a river may cause a flood, the electrical power supply plant - a blackout, the potential reasons for a disaster affecting a certain type of infrastructure are almost unlimited. For instance, the release of radiation by a nuclear power plant may be caused by countless types of malfunctions as well as by natural disasters or terror attacks.

As noted, any analysis of the German legal framework beyond the constitution and the general statutes addressing all types of emergencies (“Katastrophenschutzgesetze”) is not comprehensive. Therefore, we decided to analyze three arrays additionally to the constitution and the Katastrophenschutzgesetze. The first is an example of a certain type of infrastructure (meant in its literal sense), the second relates to a certain source of (natural) disasters, and the third is an example for a certain effect of a catastrophe. For this purpose, we took a look at the provisions relevant for (a) nuclear power plants, (b) the prevention and countering of floods and (c) a case of a blackout.

In doing so, we discovered that from Germany’s legal system’s point of view, the analysis of a certain situation does not lead to further insights, as on the one hand any situation may affect any infrastructure. On the other hand, the legislations concerning a certain type of infrastructure, define a state of emergency by a certain effect on the infrastructure such as fall of voltage, irrespective of its reason.

Naturally, the countermeasures differ according to the reason, but in most cases concrete actions are not stipulated in the statutes. Precise instructions are given in manuals or guidelines, which are often crafted by private entities. From the German perspective, these guidelines are not state laws. Within the statutes, we often only find provisions saying that appropriate measures have to be taken or something similar. In some places it is specified which measures are generally permitted. Sometimes the guidelines or manuals in question are mentioned in the statutes.

2. Declaration of a State of Emergency: A Table of Analysis

Situation	Definition of "emergency"	Who may declare the state of emergency and under what conditions?	Statutes that come into force during emergency	How does a state of emergency end?
Generic Emergency	A situation in which life, health, supply of the population with goods and services indispensable to life, environment or material assets are threatened or even damaged in such an extraordinary way that effective help and protection could only be guaranteed by a unified guidance of the catastrophe organizations of all competent authorities, organizations (which means public as well as private organization, honorary offices as well as professional organizations) and resources.	The counties (Landkreise) and big cities (Kreisfreie Städte) are in charge of lower catastrophe administration authorities. They may declare the state of emergency if the situation happens within their territory.		The state of emergency ends by declaration of the same authority.

Situation	Definition of "emergency"	Who may declare the state of emergency and under what conditions?	Statutes that come into force during emergency	How does a state of emergency end?
War	Determination that the federal territory is under attack by armed force or imminently threatened with such an attack (state of defense).	Such determination shall be made by Parliament upon an application of the Federal Government, and shall require a two-thirds majority of the votes cast, which shall include at least a majority of the Members of the Bundestag.	Art, 115 a ff. BL, Art. 12a BL, Art. 87a BL, Art. 96 II 2 BL Safeguarding laws (see above).	Article 115l Repeal of emergency measures – Conclusion of peace] (1) The Bundestag, with the consent of the Bundesrat, may at any time repeal laws enacted by the Joint Committee. The Bundesrat may demand that the Bundestag reach a decision on this question. Any measures taken by the Joint Committee or by the Federal Government to avert a danger shall be rescinded if the Bundestag and the Bundesrat so decide. (2) The Bundestag, with the consent of the Bundesrat, may at any time, by a decision to be promulgated by the Federal President, declare a state of defense terminated. The Bundesrat may demand that the Bundestag reach a decision on this question. A state of defense shall be declared terminated without delay if the conditions for determining it no longer exist.

Situation	Definition of "emergency"	Who may declare the state of emergency and under what conditions?	Statutes that come into force during emergency	How does a state of emergency end?
				(3) The conclusion of peace shall be determined by a federal law.

Situation	Definition of "emergency"	Who may declare the state of emergency and under what conditions?	Statutes that come into force during emergency	How does a state of emergency end?
Nuclear <i>(brought here as an example of an emergency)</i>	There is no definition of a nuclear disaster in the emergency statutes, but there are definitions in the internal guidelines of the authorities. Following the "Basic Recommendations for Disaster Control in the Vicinity of Nuclear Installations" disaster alarm shall be declared, if an accident at a nuclear facility leads to dangerous radioactive releases or if these releases are imminent. More specific: "A nuclear accident is a course of events resulting in serious radiological impact on the vicinity of the relevant nuclear facility or where such an impact is threatened. Impacts are serious if in	The operator of a nuclear facility shall immediately alert the offices responsible for receiving alerts under the special disaster control plans if the conditions specified for an early warning or a disaster alert are fulfilled. The disaster control authorities then trigger the disaster alarm, and inform other authorities and the public (following the generic disaster control statute).		

Situation	Definition of "emergency"	Who may declare the state of emergency and under what conditions?	Statutes that come into force during emergency	How does a state of emergency end?
	<p>the vicinity an effective dose of 10 mSv and a dose at the thyroid gland of 50 mSv in children and adolescents aged below 18 years as well as in pregnant women is reached or exceeded."</p> <p>Also there are intervention reference levels for specific interventions such as evacuation.</p>			

Situation	Definition of "emergency"	Who may declare the state of emergency and under what conditions?	Statutes that come into force during emergency	How does a state of emergency end?
Specific statutes reviewed in the research	In general, emergency is defined as malfunction of a certain infrastructure, which is of such degree, that it cannot be remedied by normal means, especially market-driven measures.	Two types can be identified: Statutes that define the state of emergency and do not need a special declaration to be applicable, especially those for short-term emergencies (self-executing in the case of emergency) and rules for preparedness; Rules for longer-term emergencies need declaration of a case of emergency, most times by a decree.		Only of relevance for statutes that require the declaration of the situation of emergency: Depends on the decree.

3. Legal Powers

During a declared catastrophe all relevant authorities and organizations work under the unified guidance and hierarchical assignment of the competent catastrophe authority (Landkreis/Kreisfreie Städte). The authority can take every measure necessary to prevent the catastrophe or to fight it. It lies within its discretion to define what is necessary, but all the measures are in principal subject to judicial review. The powers are not really extraordinary, but follow the powers of the “normal” police forces, whereas the police powers remain intact but subordinated to orders by the catastrophe authority. Various obligations to cooperate come into force as well as obligations of the citizens to cooperate, help and to tolerate measures like demands of certain private resources, entering private properties, obligation of members of professions to help, etc.

Regarding damages: There is only a provision relating to urgent and preliminary help in cases of damages. In most cases the federation and the länders constitute a fund, granting financial help for losses caused by a particular catastrophic situation, for example floods. All measures of the catastrophe authority are subject to judicial review. But the normal suspension instruments do not apply, so that the review will normally come as an *ex post* review. This restriction is by no means a specific emergency rule but comes into play in various other situations.

The German code consists of many provisions related to potential catastrophes. It is impossible to comprehensively cover them and some general insights were put forth above. With regard to nuclear disasters, in the non-binding guidelines several possible measures, that the authorities can adopt, are mentioned. Below are some of those measures, which are more or less typical also for other disasters:

- The vicinity of the nuclear facility shall be sub-divided into zones and sectors in order to localize measures (Central zone, Intermediate zone, Outer zone, Distal zone)
- Analyzing existing measuring devices (see above) and installation of mobile ad-hoc measuring devices.
- Distributing iodine tablets in accordance with a special plan and requesting to take iodine tablets,
- Evacuation in accordance with a special plan,
- Establishing and operating emergency stations for decontamination and medical care of the population and task personnel affected,
- Warning the population not to eat freshly harvested groceries and to not use water
- Blocking contaminated water catchment points.

Note: These measures are not exclusive to nuclear disasters whereas all these measures are possible measures regarding the generic disaster control statute.

4. Rights in a State of Emergency

The basic rights of the citizens are non-derogable at all.

There are two minor restrictions of rights only in the case of the state of defense, laid out in Art. 115 c. II of the Basic Law:

"To the extent required by circumstances during a state of defense, a federal law for a state of defense may:

1. Make temporary provisions concerning compensation in the event of expropriation that deviate from the requirements of the second sentence of paragraph (3) of Article 14;
2. 2. Establish a time limit for deprivations of freedom different from that specified in the third sentence of paragraph (2) and the first sentence of paragraph (3) of Article 104, but not exceeding four days, for cases in which no judge has been able to act within the time limit that normally applies."

In every other case there are no general suspensions or restrictions of the rights of the citizens, but there may be measures to restrict them in certain situations due to the norms of catastrophe. In a case of an emergency at some point nearly any right can be restricted in a way that looking at the individual case the right is fully eliminated (e.g. consumption of a good in personal property), but private property is not generally abolished; each restriction is limited (e.g. by the proportionality principle). As mentioned above, there are, for example, obligations to tolerate some emergency measures like entering houses and property, demands for goods and services, etc.

5. Regulation

Note: since it is impossible to cover all aspects of catastrophes and emergencies covered in the German law, the list below should be seen as non-comprehensive.

Regulation by information:

The authorities shall, as a prevention measure, inform the public about potential risks and measures to prevent or reduce damages and inform about possible measures of self protection (§ 52 SächsBRKG, §5 ZSG). The civil protection law includes the obligation of

the federation to support the dignity of people as a basis of civil protection and fighting catastrophes (§ 20 ZKB).

With regard to nuclear disasters: the responsible disaster control authorities shall create a disaster control concept (Katastrophenschutzplan) for each nuclear power plant.¹⁰ These concepts have to be made available for the public. This is not a unique characteristic of the law concerning nuclear power plants, though (The legal basis for the operation of German nuclear power plants, the Atomic Energy Act)¹¹. These concepts have to be created for facilities and sites containing large quantities of dangerous substances that fall within the scope of the Directive 96/82/EC (Seveso-II), too.¹²

Furthermore, there are several regulations, which concern the powers of the authorities to gather information about the conditions inside and outside of the nuclear power plants:

- The controlling authorities have installed a remote monitoring system (Kernreaktor-Fernüberwachungssysteme, KFÜ), which enables them to monitor the radiological measurement by the operator of the plant. In addition, these authorities also have their own measuring system. This redundancy enables them to have live data of the radiological situation in the vicinity of the plant and to react quickly after or even before the measured values reach a critical height.
- Another instrument of gathering information is the liability of the operator of a nuclear power plant to report specific incidents occurring in the plant, which differ from the normal operation. To ensure this, there has to be a safety representative (Atomrechtlicher Sicherheitsbeauftragter) within the plant, who is responsible for these matters.¹³

Regulation by licensing and permits:

In the general law of catastrophe there is no regulation by licensing order permits. This might be different in laws related to specific aspects. There might be license regulations, e.g. in the urban planning laws where a license to establish a building may be prohibited in certain areas for reasons of high flooding risks, etc.

¹⁰ This is not regulated in the statutes themselves, but in the guidelines for the authorities, who make these requirements part of the permissions.

¹¹ Act on the Peaceful Utilization of Atomic Energy and the Protection against its Hazards (Atomic Energy Act).

¹² According to the disaster statutes of the federal states, e.g. §13 a Hamburgisches Katastrophenschutzgesetz.

¹³ Atomrechtliche Sicherheitsbeauftragten-und Meldeverordnung.

With regard to nuclear disasters: like other buildings and sites, nuclear power plants need permissions/official approval for operation. Permission requires disaster prevention concepts and meeting other safety demands.

Criminal liability:

There are as in more or less every law some rules about administrative offenses (§ 73 SächsBRKG). The fines are low (between EU 1-25.000). Of course, the general criminal legislation applies to catastrophes, disasters, etc. There are several criminal liabilities regarding radiological dangers.¹⁴

Civil liability:

The general norms of liability apply to situations like those discussed in the synopsis. Additionally, there is a provision, which allows public authorities to demand reimbursement for expenses from those causing disasters, catastrophes etc. (§71 SächsBRKG). Those running plants with high risk potential might have to bear additional reimbursement obligations (§ 68 SächsBRKG). The civil liability for damages, which are caused by a nuclear facility, is unlimited (§ 31 AtG). This is a strong liability compared to other members of the EU, where the limits of liability exist.

Insurance:

In some fields a mandatory insurance is discussed, but – to the best of our knowledge is not implemented yet (e.g. flood risks). However, those who do not have disaster insurance might not be entitled to get money from compensation funds. With regard to nuclear disasters: There is no unlimited obligatory insurance, but there is a duty to provide financial security up to 2.5 Billion Euros (§ 13 AtG).

¹⁴ §307 StGB Causing a nuclear explosion; §309 StGB Misuse of ionising radiation; §311 StGB Releasing ionising radiation; §312 StGB Construction of a defective nuclear facility; §327 StGB Unlawful operation of facilities; §328 StGB Unlawful handling of radioactive substances, dangerous substances and goods.

Appendix A

Article 115a [Declaration of state of defence]

(1) Any determination that the federal territory is under attack by armed force or imminently threatened with such an attack (state of defence) shall be made by the Bundestag with the consent of the Bundesrat. Such determination shall be made on application of the Federal Government and shall require a two-thirds majority of the votes cast, which shall include at least a majority of the Members of the Bundestag.

(2) If the situation imperatively calls for immediate action, and if insurmountable obstacles prevent the timely convening of the Bundestag or the Bundestag cannot muster a quorum, the Joint Committee shall make this determination by a two-thirds majority of the votes cast, which shall include at least a majority of its members.

(3) The determination shall be promulgated by the Federal President in the Federal Law Gazette pursuant to Article 82. If this cannot be done in time, promulgation shall be effected in another manner; the determination shall be printed in the Federal Law Gazette as soon as circumstances permit.

(4) If the federal territory is under attack by armed force, and if the competent federal authorities are not in a position at once to make the determination provided for in the first sentence of paragraph (1) of this Article, the determination shall be deemed to have been made and promulgated at the time the attack began. The Federal President shall announce that time as soon as circumstances permit.

(5) If the determination of a state of defence has been promulgated, and if the federal territory is under attack by armed force, the Federal President, with the consent of the Bundestag, may issue declarations under international law regarding the existence of the state of defence. Under the conditions specified in paragraph (2) of this Article, the Joint Committee shall act in place of the Bundestag.

Article 115b [Power of command of the Federal Chancellor]

Upon the promulgation of a state of defence the power of command over the Armed Forces shall pass to the Federal Chancellor.

Article 115c [Extension of the legislative powers of the Federation]

(1) The Federation shall have the right to legislate concurrently for a state of defence even with respect to matters within the legislative powers of the Länder. Such laws shall require the consent of the Bundesrat.

(2) To the extent required by circumstances during a state of defence, a federal law for a state of defence may:

1. make temporary provisions concerning compensation in the event of expropriation that deviate from the requirements of the second sentence of paragraph (3) of Article 14;
2. establish a time limit for deprivations of freedom different from that specified in the third sentence of paragraph (2) and the first sentence of paragraph (3) of Article 104, but not exceeding four days, for cases in which no judge has been able to act within the time limit that normally applies.

(3) To the extent necessary to repel an existing or imminently threatened attack, a federal law for a state of defence may, with the consent of the Bundesrat, regulate the administration and finances of the Federation and the Länder without regard to Titles VIII, VIIIA and X of this Basic Law, provided that the viability of the Länder, municipalities, and associations of municipalities, especially with respect to financial matters, is assured.

(4) Federal laws enacted pursuant to paragraph (1) or clause 1 of paragraph (2) of this Article may, for the purpose of preparing for their enforcement, be applied even before a state of defence arises.

Article 115d [Urgent bills]

(1) During a state of defence the federal legislative process shall be governed by the provisions of paragraphs (2) and (3) of this Article without regard to the provisions of paragraph (2) of Article 76, the second sentence of paragraph (1) and paragraphs (2) to (4) of Article 77, Article 78, and paragraph (1) of Article 82.

(2) Federal Government bills that the Government designates as urgent shall be forwarded to the Bundesrat at the same time as they are submitted to the Bundestag. The Bundestag and the Bundesrat shall debate such bills in joint session without delay. Insofar as the consent of the Bundesrat is necessary for any such bill to become law, a majority of its votes shall be required. Details shall be regulated by rules of procedure adopted by the Bundestag and requiring the consent of the Bundesrat.

(3) The second sentence of paragraph (3) of Article 115a shall apply to the promulgation of such laws *mutatis mutandis*.

Article 115e [Joint Committee]

(1) If, during a state of defence, the Joint Committee by a two-thirds majority of the votes cast, which shall include at least a majority of its members, determines that insurmountable obstacles prevent the timely convening of the Bundestag or that the Bundestag cannot muster a quorum, the Joint Committee shall occupy the position of both the Bundestag and the Bundesrat and shall exercise their powers as a single body.

(2) This Basic Law may neither be amended nor abrogated nor suspended in whole or in part by a law enacted by the Joint Committee. The Joint Committee shall have no power to enact laws pursuant to the second sentence of paragraph (1) of Article 23, paragraph (1) of Article 24, or Article 29.

Article 115f [Use of Federal Border Police – Extended powers of instruction]

(1) During a state of defence the Federal Government, to the extent circumstances require, may:

1. employ the Federal Border Police throughout the federal territory;
2. issue instructions not only to federal administrative authorities but also to Land governments and, if it deems the matter urgent, to Land authorities, and may delegate this power to members of Land governments designated by it.

(2) The Bundestag, the Bundesrat and the Joint Committee shall be informed without delay of the measures taken in accordance with paragraph (1) of this Article.

Article 115g [Federal Constitutional Court]

Neither the constitutional status nor the performance of the constitutional functions of the Federal Constitutional Court or its judges may be impaired. The law governing the Federal Constitutional Court may be amended by a law enacted by the Joint Committee only insofar as the Federal Constitutional Court agrees is necessary to ensure that it can continue to perform its functions. Pending the enactment of such a law, the Federal Constitutional Court may take such measures as are necessary to this end. Determinations by the Federal Constitutional Court pursuant to the second and third sentences of this Article shall be made by a majority of the judges

present.

Article 115h [Expiry of electoral terms and terms of office]

(1) Any electoral terms of the Bundestag or of Land parliaments due to expire during a state of defence shall end six months after the termination of the state of defence. A term of office of the Federal President due to expire during a state of defence, and the exercise of his functions by the President of the Bundesrat in case of the premature vacancy of his office, shall end nine months after the termination of the state of defence. The term of office of a member of the Federal Constitutional Court due to expire during a state of defence shall end six months after the termination of the state of defence.

(2) Should it be necessary for the Joint Committee to elect a new Federal Chancellor, it shall do so by the votes of a majority of its members; the Federal President shall propose a candidate to the Joint Committee. The Joint Committee may express its lack of confidence in the Federal Chancellor only by electing a successor by a two-thirds majority of its members.

(3) The Bundestag shall not be dissolved while a state of defence exists.

Article 115i [Powers of the Land governments]

(1) If the competent federal bodies are incapable of taking the measures necessary to avert the danger, and if the situation imperatively calls for immediate independent action in particular areas of the federal territory, the Land governments or the authorities or representatives they designate shall be authorised, within their respective spheres of competence, to take the measures provided for in paragraph (1) of Article 115f.

(2) Any measures taken in accordance with paragraph (1) of this Article may be rescinded at any time by the Federal Government, or, with respect to Land authorities and subordinate federal authorities, by Minister-Presidents of the Länder.

Article 115k [Rank and duration of emergency provisions]

(1) Laws enacted in accordance with Articles 115c, 115e and 115g, as well as statutory instruments issued on the basis of such laws, shall suspend the operation of incompatible law so long as they are in effect. This provision shall not apply to earlier law enacted pursuant to Articles 115c, 115e or 115g.

(2) Laws adopted by the Joint Committee, as well as statutory instruments issued on the basis of such laws, shall cease to have effect no later than six months after the termination of a state of defence.

(3) Laws containing provisions that diverge from Articles 91a, 91b, 104a, 106 and 107 shall apply no longer than the end of the second fiscal year following the termination of a state of defence. After such termination they may, with the consent of the Bundesrat, be amended by a federal law so as to revert to the provisions of Titles VIIIa and X.

Article 115I [Repeal of emergency measures – Conclusion of peace]

(1) The Bundestag, with the consent of the Bundesrat, may at any time repeal laws enacted by the Joint Committee. The Bundesrat may demand that the Bundestag reach a decision on this question. Any measures taken by the Joint Committee or by the Federal Government to avert a danger shall be rescinded if the Bundestag and the Bundesrat so decide.

(2) The Bundestag, with the consent of the Bundesrat, may at any time, by a decision to be promulgated by the Federal President, declare a state of defence terminated. The Bundesrat may demand that the Bundestag reach a decision on this question. A state of defence shall be declared terminated without delay if the conditions for determining it no longer exist.

(3) The conclusion of peace shall be determined by a federal law.