24 September 2012
No 40
ISSN 1664-7963

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Current Concerns

The international journal for independent thought, ethical standards, moral responsibility, and for the promotion and respect of public international law, human rights and humanitarian law

English Edition of Zeit-Fragen

On the Federal Day of Thanksgiving, Prayer and Repentance 2012

ts. It was an early tradition of the "Eidgenossenschaft" (Swiss Confederation) to conduct celebrations of thanking and repentance on the occasions when representatives of the various "Stände" (cantons) assembled in the "Tagsatzung" (legislative and executive council) not least in order to reinforce the cohesion between our urban and rural populations, between members of the Catholic and the Reformed Churches and also between the social classes. During the terrible turmoil of the Thirty-Years-War Reformed as well as Catholic populations decided on introducing an all-year day of prayer in gratitude for the so-far protection from the misery of war. In view of the imminent invasion by the French revolutionary troops the communal "Tagsatzung" of 1796 decided to celebrate the Day of Prayer on 8 September for the first time as a general federal observance/feast. In 1832 almost all the cantons agreed on the third Sunday of September as the fixed date. They did so voluntarily and with full respect to the federalist principle. In 1848, with the founding of the Federation that date was as well maintained. The cantonal governments had mandates drawn up which dealt with current problems of their living together in a comprehensive manner – always embedded in a religious-ethical context. The mandates of the Zurich secretary of the canton *Gottfried Keller* became famous. Since the Second Vatican Council the Day has been celebrated as an ecumenical feast and unto this day the Federal Day of Thanksgiving, Prayer and Repentance – celebrated in quiet unity – has been a symbol of Switzerland, the nation of will, which may not outlast the times but in humility, mutual deference and respect.

In our times when various power groups are tying up the knots of war ever tighter and coldly reckon with the possibility that the smallest event might lead to a conflagration of the entire world – even worse than those in the past – at such times a cooperation beyond party borders is more urgent than ever: The appeal of the 113 members of the Swiss Parliament is a manifestation of the best cooperative and liberal tradition of Switzerland – a Switzerland that has always been social and open to the world as well as committed to the Christian-Occidental principles of good faith and trust, to truthfulness and modesty. Therefore members of parliament from left to right, from urban and rural areas, and from the various language communities were able to agree on something in common – this is a significant proceeding at a time when our country is being exposed to vehement attacks and standing together is the order of the day – we won't let anybody divide us and play us off against each other, not by one millimeter – by powers that have set their minds on nothing but cynical power politics and bare greed.

"Gratitude and modesty are values that are falling into oblivion"

Interview with National Councilor Jakob Büchler, President of the parliamentary group "Christ und Politik"

thk. On 13 September 2011, 113 parliamentarians signed an appeal in the "Bundeshaus" in Bern which calls for a return to the values we share and reminds us of the importance of the Day of Prayer for our Christian culture, the common coexistence in our country and also of the peaceful coexistence of peoples. "Christ und Politik", a parliamentary group at the Bundeshaus with its President, National Councilor Jakob Büchler, was decisively involved in the realzation of the appeal, which was signed by both Catholics and Protestants as well as by members of Free Churches. Current Concerns talked to Jakob Büchler about the significance of this appeal.

Current Concerns: What is the significance of the Day of Prayer for us as Christians?

Jakob Büchler: For me as a Christian the Day of Prayer means that you express gratitude for everything you have received. Previously it was primarily a Thanksgiving Sunday. People thanked for the good harvest. It had a very high priority. In a society in which those values have increasingly been lost you should start to appreciate and care for it again. The gratitude for everything that we have at our disposal: that we have a home [Heimat] and that we can live in a peaceful country. If we compare how things happen in other countries, we must be profoundly grateful. Unfortunately expressing thanks in our society has been dwindling more and more in recent times. Everything seems to be granted in many people's views, because it really is available. Therefore, it is important to remember that it just does not come naturally and people ought to have a deep-rooted feeling of gratitude.

How did that appeal come about? It is very appealing to people.

The parliamentary group "Christ und Politik" has addressed this issue. This was not only my doing, but *Beat Christen*, our "praying man in the Bundeshaus", has played a decisive role. He went through the ranks of parliamentarians. Of course he discussed it with me beforehand. *Pius Segmüller* was my predecessor as president of that group. The whole thing is also related to the series of short prayers, to the reflection that we take during the session on Wednesday morning before the meetings. This is a fifteen-minute contemplation for which we come together; then

National Councilor Jakob Büchler (picture: thk)

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"'Gratitude and modesty ...'"
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the present pastor tells us his thoughts and prays with us. This group initiated to make the Day of Prayer an issue again and to see how much this is still embodied in our Parliament. Of course I felt great joy when I saw that so many National Councilors and Councilors of State expressed that the Day of Prayer still plays a role and that one should revive it. This is obviously a good sign when the Day of Prayer will become more meaningful again.

This is of course a clear commitment to our Christian values.
Yes, exactly. The commitment to our Christian values is very important; especially because in other religions, people have much less inhibitions to profess their faith and their values. While I was in Egypt I was in a store, and when it was time for prayer, the man behind the sales counter knelt on the floor and said his prayers. All customers had to wait until he had finished praying. In Christian circles, that would have been impossible.

We Christians are rather cautious, while other religions have no problem to show their faith. I think we should not let our Christian faith be pushed into the background even further.

The approval of 113 MPs is a significant figure which is also encouraging.
Yes, especially as we observed it across the political party scene. From left to right, they all agreed. You have to consider it a common commitment to our values, to our faith. We realized that everyone knows that there is still a Day of Prayer, and all those who have signed the petition want to give more significance to it and live it accordingly.

Such signals are important because they remind us of our common cultural foundations and emphasize our common values.
Yes, our society actually suffers from changes in values and a loss of values. Gratitude and modesty are the values that have fallen into oblivion. For example, the question where does our food come from, where do we get all the things from that we find on our table every day? It is not simply there, but requires a lot of effort until we can enjoy these things. Remembering these values once again together, that is also the meaning of the Day of Prayer.

On Wednesday we have our meeting of the group "Christ und Politik". 25 MPs have enrolled. There will be a lecture on the changing values in our society. It is very good to see that a group comes together in order to listen to the lecture. The issue of values and changing values must increasingly become a topic of discussion, and this is what we are going to do next Wednesday.

Mr National Councilor Büchler, thank you for your empowering and courage giving considerations. •

Appeal to the Swiss population on the occasion of the Federal Day of Thanksgiving, Prayer and Repentance 2012

Conscious
that the people in our country are commended to God's protection

that Switzerland will need God's blessings also in the future
that we require a constant search for balance among the many linguistic, political, and religious minorities in our country

we as members of the National Council and the Council of States call upon all the people in our country

to thank
for the freedom, in which we live
for the peace in Switzerland and Europe
for the stability and prosperity of our country even in a difficult time
to repent for our personal and collective misconduct

to pray
that God is with the people of our country and blesses them
for a return to established Christian values such as faithfulness, truthfulness and modesty
for wisdom and just action for all those who are responsible in government, business, churches and civil society
that we attend to the disadvantaged and weak people in Switzerland and in the world.

Signed by 113 Swiss MPs

Switzerland's Good Offices paved the way for the 1962 Evian Accords

by Dr rer. publ. Werner Wüthrich

The Secretary General of the UN, *Ban Ki Moon*, visited Switzerland these days and delivered a speech in the National Council. The occasion was Switzerland's accession to the UN ten years ago. The Federal Council wants Switzerland to be integrated more closely now and applies for a seat as a non-permanent member of the Security Council. Thus he once again sparked off a debate about the UN among the Swiss people. The fact is that the membership is incompatible with Swiss neutrality. The Security Council does not only decide on economic sanctions, which are directed against individual countries, but also on military actions that can lead to major wars. Federal Councilor *Widmer-Schlumpf*: "We discussed this issue. We know that there are decisions that require a clear position, but they are not incompatible with our neutrality." – That is not true. Even before the 2002 vote on the UN membership, Federal Councilor *Deiss* "clarified" the issue with the same result, and made all kinds of promises. After the Swiss accession to the UN Swiss diplomats would end their supposed isolation and help to shape the international scene. They could make even better use of their Good Offices for the promotion of peace and would become active players in the world, respected by everyone. The opposite is the case. As a matter of fact, the outcome of recent years is more than mixed. Keeping track of the numerous conflicts, we get the impression that the world lacks a truly neutral mediator. – That was different before Switzerland joined the UN.

In these weeks, we celebrate the 50th anniversary of the Evian Accords. In 1962 they ended the Algerian War and led the country into independence. Switzerland then shaped world affairs as a UN nonmember with its policy of neutrality and actively helped to end one of the most brutal wars of the post-war period. Its politicians and diplomats experienced much respect and recognition on the international scene. It is worth to relive the dramatic events of the past again and to learn what real peace policy means.

Algeria was the biggest and the oldest French colony, which was formally part of France. More than a million French settlers had settled there. In 1954, the War of Independence began. The Algerian FLN (*Front de Libération Nationale*) was supported by Tunisia and Morocco, both of which had already become independent. The FLN had established a provisional government in Tunis. France did not want to grant independence to Algeria, unlike Tunisia and Morocco, and defied the efforts using military power. The Algerian War was a dirty war that was fought with great brutality. Torture was part of the agenda. France had always about half a million soldiers on the ground in Algeria. Until 1962, about 1.7 million military personnel in total were fighting there – in addition to professional military and foreign legion there were also many conscripts. The French were militarily superior indeed. But such a large country could not be pacified in the long run with military power. This big war was controversial in many places – even in France itself.

Turning point with the election of Charles de Gaulle

In December 1958, General *Charles de Gaulle* was elected President. His policy intended to end the war and to grant independence to Algeria. That was, however, not easy, because France was divided. Parts of the military, the authorities and the population wanted to end the war victoriously and keep Algeria as a part of France. As early as in 1960 ceasefire agreements had taken place in Melun, which failed, however, not least because the media empoisoned the atmosphere with a lurid, sometimes one-sided reporting.

De Gaulle scheduled a referendum on 8 January 1961. 75 percent of the voters in France supported his policy to grant independence to Algeria. The goal was not reached, however, by this vote. Just a few days later, on 20 January, the OAS (*Organisation de l'Armée Secrète*) was founded in Madrid, with which there was some sympathy among military officers. The name was inspired by the *Armée secrète*, a group of the French Resistance during the Second World War. On the one hand, the OAS wanted to become the main representative of the "French patriots" in Algeria. On the other hand they strived for the disruption of the peace process as a separatist group. The symbol of the OAS was the Celtic Cross and their motto was "L'Algérie est française et le restera" (Algeria is French and will remain so). Approximately 4,000 people – mainly in Algeria – were victims of the OAS terror to which the FLN responded with counterterrorism.

On 21 April 1961, the OAS staged a coup in Algiers, assisted by four generals of the French army, who stood against de Gaulle's peace policy. However, the coup failed and the generals were sentenced to death (and later pardoned). The situation remained extremely tense. On 17 October 1961 a protest march of about 30,000 French Algerians took place in Paris, prompted by the FLN. The demonstration got out of control and turned into civil unrest. About 200 people lost their lives. Police arrested about 14,000 protesters and held them in sports stadiums and improvised prison cells for several days. In this dangerous, highly tense situation genuine peace negotiations were impossible.

Who mediates?

Both sides appealed to Switzerland with the request to assist with its "good offices" (see box). Peace negotiations were completely out of the question at first. It was more about enabling direct face to face talks. There had been first contacts of the warring parties in Switzerland since 1960. Federal Councilor *Max Petitpierre* had agreed to prepare the ground as part of his "active neutrality policy".

The talks took place – given the dangerous situation – in utmost secrecy. The media might have sparked the riots again or even provoked the OAS to launch attacks. The reports on the talks can be viewed on the database "Diplomatic Documents of Switzerland" (*www.dodis.ch/9709* and *10392; 10413* and *10389; 10307* and *398)*. Especially noteworthy is the 50-page report by *Olivier Long*, who describes the mediation efforts in detail: Two employees of the *Political Department of the Confederation*, Olivier Long and *M. Bucher* had organized the meetings with great discretion. The counterparties should initially come together in an informal, private setting in Lucerne. With *Georges Pompidou* (later President), de Gaulle had chosen a close friend to be chief negotiator. Pompidou worked in the private sector at that time.

Meeting in Lucerne and Neuchâtel

The delegations of the warring parties stayed in separate hotels in Lucerne. The interviews themselves took place at the Hotel *Schweizerhof.* Algerians and Frenchmen met after breakfast, spent the whole day together and discussed till late at night. Long and Bucher sat next door and made sure that nothing conspicuous got out. The situation was dangerous nevertheless because the delegations conferred with their governments in Paris and Tunis in the evening and the possibility existed that the media could find out about the talks and the OAS would vio-

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lently disturb the peace process. The enemies talked to each other in Lucerne face to face for the first time in seven years. – How were things to proceed from there? Long and Bucher considered the situation so dangerous that they transferred the sequel to another place – to Neuchâtel.

The report by Olivier Long indicates that the delegations achieved a better understanding personally and developed some confidence to negotiate a real peace after eight years of wartime atrocities. Olivier Long wrote, "Nous nous abstenons de poser des questions, mais la satisfaction non-déguisée des participants, de deux côtés, montre que la rencontre s'est passée mieux qu'on ne l'espérait de part et d'autre." (We abstained from asking questions, but the unhidden satisfaction of the participants on both sides indicated that the meeting was better than both sides had expected it to be.)

Undoubtedly the success was the merit of Charles de Gaulle, who acted behind Georges Pompidou and so virtually sat at the negotiating table. These discussions were not only about the independence of Algeria and the fate of the French settlers (who later should leave the country in large numbers). France had made efforts to exploit the resources in the Algerian Sahara. It did not want to leave this investment behind so easily. France had carried out nuclear tests in the desert that were now finished and their traces had to be removed. However, the fate of the Hakis, i.e. those Algerians who had collaborated with the French army, remained undecided.

After the second round of talks in Neuchâtel – again they had managed to maintain the secrecy – the concept for the formal peace negotiations was settled: They were to take place on French soil in Evian – on the French side of Lake Geneva. In a first phase of negotiations – which also should be held in secrecy – they would negotiate on an armistice. The formal peace negotiations should begin when the guns fell silent in Algeria. The negotiations should be held openly and involving the media.

The Evian Accords

The concept for true peace negotiations decided upon in Lucerne and Neuchâtel was not easy to be implemented. The threat of terrorist attacks by the OAS, which absolutely wanted to prevent peace, was still acute. The negotiators of the Algerians therefore did not want to be accommodated on French soil. They were accommodated in Switzerland and transported by military helicopters or in bad weather with fast boats across Lake Geneva every day. But they did not feel safe even there. The Swiss Army offered a battalion of soldiers to prevent attacks and assaults. The Algerians changed the location every day to be protected from the media. The press people knew that somewhere secret negotiations for a cease-fire were in progress. Olivier Long commented, "Cette monstrueuse chasse à l'homme, résultat de l'activité de la presse à sensation, ne simplifie pas notre tâche." (This monstrous hunting of people, a result of the tabloids' activities, does not simplify our task.) The costs of this major action were borne entirely by the Confederation.

The authorities also reckoned with a failure of efforts and were preparing for it. For that case, they figured that riots might break out in France and French-Algerians living there would have to flee to Switzerland in large numbers.

However, this did not happen. The guns fell silent in Algeria, as agreed, and peace negotiations began. After only a few days they were successful. After intensive preliminary discussions in Lucerne, Neuchâtel and at other meetings, there was probably not much left to be discussed. The Evian Accords put an end to one of the most brutal wars of the colonial era on 18 March 1962. Some things remained uncertain. How would the French settlers behave? Their property was guaranteed in the accords, however. What would happen to the Hakis, who had collaborated with the French army? – The main thing was that the war was over. On 5 July 1962, Algeria's electorate laid the foundations for their independent state in a referendum.

Even after the peace agreement, the danger was not quite over – not for the participating Swiss diplomats, either. On 22 August, just a few weeks after the declaration of independence bullets of assassins shot holes into Charles de Gaulle's limousine and barely missed him. This brutal act showed that the OAS was still unwilling to accept an independent Algeria. *Jean-Marie Bastien-Thiry*, an OAS member, had organized the attempt on de Gaulle. He was sentenced to death and executed. This actually marked the end of the OAS. These events were adapted for the screen in 1973 in the classic movie "The Jackal". We should also mention the film by *Jean-Luc Godard*, "Le petit soldat" (1960), which depicts the struggle between the agents of the OAS and the FLN in Geneva. The wounds of war have still not been completely healed now. Hence Algeria renounced to invite official representatives of France to the celebrations of the this year's 50th anniversary of Independence.

Positive impact on Switzerland's policy

At that time, Switzerland received – not only from France and Algeria – a lot of recognition and gratitude on the international scene for their neutral stance and for their Good Offices. Both had led to a real peace agreement in a difficult and dangerous environment and had a positive impact on other policy areas. Swiss politicians and diplomats met with open doors and much kindness on the international stage.

On 17 November 1961 Federal President Charles de Gaulle had welcomed Federal Councilor *Hans Schaffner* to a personal conversation. Schaffner's own protocol can be read today (*dodis.ch/30270)*. Hans Schaffner began his minutes with the following preamble: "President de Gaulle gave the impression of a very confident personality, without somehow manifesting superiority in his forms of expression. On the contrary, he exuded an atmosphere of hospitality and knows to listen very well." Here is a snippet from the conversation:

Charles de Gaulle: "I would like to express France's gratitude for the services that Switzerland has provided for the resolution of the Algerian conflict which are very well known to me. The Algerian problem is a very important issue, but I am determined to solve it. [...]."

Hans Schaffner: "The Federal Council hopes for a very good solution to this serious problem. We are glad about being able to provide Good Offices to France, as it is the Federal Council's endeavor in

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Switzerland's Good Offices

ww. Switzerland's Good Offices have provided support in many conflicts, helping opponents to approach and contributing to ease the situation or reconcile the opponents with each other. The roots of this policy date back to the Middle Ages. The Confederation was a loose federation of states then, and it happened again and again that some allies got into conflict with each other, which was sometimes fought militarily. It was an iron rule, which was anchored in the agreements of the alliance: the allies must not be involved, they have to "stand still", i.e. act neutrally and contribute actively to reconciliation. This was the only way to hold the Federation, founded in 1291, together for so many centuries. When in 1815 the Swiss policy of neutrality was declared the official policy and was internationally recognized thereafter, Switzerland offered its Good Offices to other states and thus often contributed to resolve conflicts in a discreet way – until today. The foundation of the International Red Cross (ICRC) headquarters in Geneva is also to be understood against this background.

Criminal Justice and the Dictates of Realpolitik

Commentary on the Idea and Reality of the International Criminal Court Ten Years after the Coming into Force of the Rome Statute

by Hans Köchler, University of Innsbruck[*]

Ten years after the coming into force of the Rome Statute – and nine years after the first permanent institution of international criminal justice has become operational – the International Criminal Court's record is rather sobering. Although by now 121 states have acceded to it, the Court has so far only dealt with "situations" in seven African countries, and has delivered only one judgment – against Congolese militia leader *Thomas Lubanga Dyilo.* [...]

At present, altogether five people are kept in the custody of the Court in The Hague, including the only person convicted so far (in first instance). Despite their diplomatic immunity, four employees of the Court, including the lawyer temporarily appointed to represent Gaddafi's son *Saif-al-Islam*, were themselves held in investigative detention in Libya over a period of several weeks last June. They had visited the suspect, for whom the Court had issued an arrest warrant and whom they were supposed to represent, to inform him about his legal rights.

Criminal justice between law and power politics

This rather bizarre incident – which indirectly resulted from the UN Security Council's "referral" of the situation in Libya to the Court – has highlighted, in a most dramatic manner, the dilemma of criminal justice between the demands of law on the one hand and international power politics on the other. More than in other areas of international law, ideal and reality are wide apart.

Supposedly, the (permanent) International Criminal Court (ICC) the statute of which had been adopted in Rome in 1998 was to provide an alternative to the ad hoc jurisdiction of Courts such as those established, shortly after the end of the Cold War, for the former Yugoslavia and Rwanda through binding resolutions of the Security Council. Unlike in the case of courts created by executive fiat, the legal status of the ICC is guaranteed by a multilateral treaty. In principle, the Court was meant to operate independently of political interference. The statutory independence is indeed indispensable for its permanent acceptance and credibility in the eyes of the world. Above all, the ICC was expected to gradually do away with the perception that international affairs are governed by double standards and that only the weak – or the losers in a struggle for power – are held accountable. However, the Court's performance so far has done nothing to change this assessment. This is due to both *structural* (regarding the composition of the Court, i.e. the group of States Parties) as well as *procedural* reasons (concerning the Statute). Not surprisingly, the latter is the result of a compromise dictated by the power and national interests of the states that were involved in the negotiation process.

If the International Criminal Court ever were to provide an alternative to the often politicized and legally questionable jurisdiction of ad hoc courts, its composition – i.e. the group of States Parties – should be actually representative of the international community. This is certainly not the case yet since three out of the five permanent members of the Security Council (China, Russia and the United States) have not acceded to the Rome Statute. Other major military powers such as India, Turkey or Israel are also not States Parties. However, in the prosecution of international crimes (war crimes, genocide, crimes against humanity), the officials of the most powerful countries ought to be subjected to the jurisdiction of the Court in exactly the same way as the citizens of smaller and militarily weak states. There is no justice with duplicity. The ratification status of the Rome Statute is indeed at the roots of the Court's

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[*] Hans Köchler is Professor of Philosophy (with a particular focus on political philosophy) at the University of Innsbruck in Austria. From 2000 to 2002 he served as international observer, nominated by the Secretary-General of the United Nations, at the Lockerbie trial in the Netherlands. In two reports to the UN, which he wrote in this capacity, he raised fundamental questions about the politicization of international criminal justice. Köchler is the author of the book "Global Justice or Global Revenge? International Criminal Justice at the Crossroads," which was published in English, Arabic and Turkish versions.

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general to contribute such services on all areas where they are required in order to emphasize the positive sense of our neutrality."
Charles de Gaulle: "France understands the significance of your neutrality and approves of it. In its armed manner it means security to us."

In the ongoing conversation Hans Schaffner set out to obtain some understanding for the fact that Switzerland had trouble in joining the EEC. At that time Switzerland was under enormous political pressure from the United States to ask for an associate status (which happened a few days later). The United States aimed at dissolving the EFTA, founded in 1960, and unite the countries of Western Europe under the umbrella of the EEC into a unified political bloc – the United States of Europe. The "particularism" in Europe was to have an end (More details about this in: *Current Concerns* of 6 Feb. 2012, European Integration, Part 2). Schaffner expressed great concern about this endeavor vis à vis de Gaulle. Another snippet from the interview minutes:

Hans Schaffner: "We cannot cede competences to another community in our referendum democracy of, as they are reserved to the people who are the sovereign in the full sense of the word."
Charles de Gaulle: "France wants integration because it is absolutely necessary to strengthen the West, especially because we are striving for a permanent settlement of our relationship with Germany. [...] The integration will still bring some difficulties, however; hence the membership negotiations with England will be very long and very difficult. France understands your desire for a form of agreement, which will not be easy to find. However, you may be assured that you will not meet any difficulties from the part of France."

At the end of the conversation de Gaulle invited Schaffner to visit him in Paris any time. About a year later, on 14 January 1963, de Gaulle broke off the membership negotiations with Great Britain. He intended to establish a "Europe of fatherlands", and considered the then UK application as a Trojan horse with which the United States sought to impose their ideas on European policy. The association requests of the three neutral EFTA countries Switzerland, Sweden and Austria, enforced by the US, became therefore invalid and cooperation within the EFTA could start. Without de Gaulle there would probably be no more EFTA, representing the liberal association of sovereign nations. •

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"structural dilemma;" because of its limited membership the ICC can effectively do nothing about the application of double standards in the prosecution of international crimes.

Actually an ad hoc court of the Security Council?

The dilemma is further exacerbated by procedural provisions in the Statute, which establish a relationship between the United Nations Organization and the Court that is nothing short of dysfunctional and puts in jeopardy the Court's very independence, not to speak of the normative contradictions those provisions cause within the Statute. According to Article 13(b) of the Statute, the Security Council, using its coercive powers under Chapter VII of the UN Charter, may "refer" to the Court "situations" also in states that are not parties to the Rome Statute. Furthermore, Article 16 entitles the supreme executive organ of the United Nations to "defer" an investigation or prosecution for the renewable period of one year. This does not only mean that states that are not bound by the Rome Statute in terms of international treaty law, may be subjected to the jurisdiction of the Court (Article 13[b]), but also that non-States Parties are enabled to directly interfere in the Court's exercise of jurisdiction. The International Criminal Court is thus effectively also made an ad hoc court of the Security Council. The situation is further aggravated by the fact that – due to the veto power of the five permanent members – it is considerations of political opportunity, not of law, that determine the criteria for decisions which have a decisive impact on the further development of international criminal justice. It goes without saying that – in the context of the Security Council – political opportunity is primarily defined by the national interests of those five states each of whom may veto a decision on referral or deferral under the Rome Statute. The problem has become all too obvious in the selectivity of the Council's referral decisions so far. While the "situations" in the non-ICC member states Sudan (Darfur) and Libya were referred to the Court, no such measure was taken by the Council concerning "situations" such as those in Syria or Gaza (Palestine) where the Court has no statutory jurisdiction either – in the case of Gaza, because the United Nations Organization has not yet recognized Palestine as a sovereign state and Israel has not ratified the Rome Statute.

Hypocrisy of great powers

The degree of hypocrisy, which the policies of great powers that have kept their distance from the Court may reach, has again become obvious in the Libyan case. As members of the Security Council, those countries are in a position to interfere with the jurisdiction of the Court, without actually being subjected to it, and thus to use it for their own purposes. Since last year's regime change, the very states that so fiercely fought for the involvement of the International Criminal Court seem to have lost all interest in enforcing its authority in the non-treaty state Libya. In the new constellation, they rather seem to be satisfied with a procedure on the basis of the principle of complementarity according to § 1 of the Rome Statute. This provision entitles Libya to investigate and prosecute the cases taken up by the Court, but only if proper judicial conditions are ensured – which, however, is to be determined by the Court, and not by Libya. The rather weak and passive attitude of the states referred to above in the case of the four ICC officials who got arrested while on a mission to Libya also points in the direction of political opportunism. After all, those individuals had only undertaken that travel because the Security Council at first had created jurisdiction for the Court. The obvious duplicity in the behaviour of these states has contributed to a growing lack of confidence in international criminal justice. The demoralizing effect of their policies is particularly felt and visible in regions outside of Europe – especially in Africa – where the creation of the ICC received large support. Apart from Europe, Africa is the continent with the highest density of ratifications of the Rome Statute. In view of the political instrumentalization of the Court by powerful members of the Security Council, it does not come as a surprise that the African Union already decided in July 2009 to cease cooperation with the ICC in the case against the President of Sudan.

There is a further provision in the Rome Statute, which seriously restricts the Court in its exercise of jurisdiction and indirectly subjects it to political influence. The by now notorious Article 98 prevents the Court from proceeding with a request for surrender of a suspect if the country where he is residing has concluded a non-extradition treaty with a third state. The United States, for instance, has concluded – as a kind of precautionary measure – bilateral treaties for that purpose with a large number of states. Its military or economic power often had a decisive influence on the prospective treaty partners. This has made obvious again how the most powerful countries are able – and eager – to shield their citizens from the jurisdiction of the Court and to use it "from outside," so to speak, (via the Security Council) for their own purposes. This is a case par excellence where "might makes right."

Blind in one eye?

Both the structural and procedural factors that render the ICC susceptible to political interference have been aggravated by the conduct so far of the Prosecutor who, according to the Statute, may initiate an investigation on his own (proprio motu). The procedurally strong position of the Prosecutor under the Rome Statute – who is not exclusively dependant on referrals from States Parties – could indeed be a counterweight to the power and interest politics of both States Parties and those non-States Parties who try to instrumentalize the Court for their purposes. As far as the first step in the Court's exercise of jurisdiction – the initiation of an investigation – is concerned, everything depends on the independence and courage of the Prosecutor who, according to the Statute, must be a person of "high moral character." The term of Luis Moreno Ocampo, which ended after the first nine years of the Court's operation, was characterized by a sharp discrepancy between hesitation, even inaction, on the one hand and decisive, bold prosecutorial initiatives on the other – depending on the political circumstanc-

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Current Concerns

The international journal for independent thought, ethical standards, moral responsibility, and for the promotion and respect of public international law, human rights and humanitarian law

Publisher: Zeit-Fragen Cooperative
Editor: Erika Vögeli
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Phone: +41 (0)44 350 65 50
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Subscription details:
published regularly electronically as PDF file

Annual subscription rate of SFr. 40,-, € 30,-, £ 25,-, $ 40,- for the following countries: Australia, Austria, Belgium, Brunei, Canada, Cyprus, , Denmark, Finland, France, Germany, Greece, Hongkong, Iceland, Ireland, Israel, Italy, Japan, Kuwait, Liechtenstein, Luxembourg, Netherlands, New Zealand, Norway, Qatar, Singapore, Spain, Sweden, Switzerland, United Arab Emirates, United Kingdom, USA

Annual subscription rate of SFr. 20,-, € 15,-, £ 12,50, $ 20,- for all other countries.

Account: Postscheck-Konto: PC 87-644472-4

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"Criminal justice dictated ..."
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es. While, in Ocampo's obvious assessment, the situation in Afghanistan – that had acceded to the Court in 2003 – did not require his involvement, he acted almost with lightning speed to obtain arrest warrants against the leading political figures in Libya – a country where he had only "borrowed" jurisdiction (due to the intervention of the Security Council), but where the interests of powerful states were at stake. At the same time, and in spite of overwhelming evidence, he found no reason for prosecutorial action concerning war crimes and crimes against humanity that had allegedly been committed by the country's tribal militias. After régime change in Libya, he was literally full of praise for the country's judicial system, thus emboldening the new rulers in their efforts to deny the Court the prosecution of the pending cases. His prosecutorial practice – extreme caution and indecision in one instance, and anticipatory obedience in another – has made it more than obvious that what the office of Prosecutor needs most is personal integrity and independence, and an entirely non-political approach. Nothing less is required if the International Criminal Court is ever to be accepted and sustained as a permanent institution. Independence and immunity of the Court's leading officials, guaranteed on paper, are not in any way sufficient. They are meaningless without independence of the mind. One can only hope that the newly appointed Prosecutor – Fatou Bensouda from the African nation of Gambia – will be more circumspect in the conduct of her office, and that she will be less considerate of external interests, and in particular of power politics, than her predecessor. Should she actually have the courage to make full use of her authority under Article 15(1) of the Rome Statute (her proprio motu powers), she might at least help to correct the perception, resulting from past conduct, of the International Criminal Court as a de facto regional court for Africa – as if only Africans had committed international crimes.

The system lacks legitimacy – and won't survive in the long term

However, even the most courageous and upright prosecutor cannot do away with the structural weaknesses of the Court in its present form. The system of criminal justice embodied in the Rome Statute lacks legitimacy, and won't survive in the long term, unless the militarily powerful – and, above all, the most powerful – states accede to the Court. These are the states whose officials and representatives are in a much stronger position to actually commit the crimes enumerated and defined in the Statute than their counterparts from the many smaller, and weaker, states that are under the Court's jurisdiction. The system can neither be morally defended nor sustained in terms of realpolitik should, for instance, the use of nuclear arms be excluded from the Court's jurisdiction, a "precautionary" attempt which France has made by way of an "interpretative declaration" annexed to the instrument of ratification of the Rome Statute. It is impossible to defend the idea of justice without the recognition of equality before the law. The concept of "international crimes" will lose all credibility if different standards are applied on a permanent basis. Through numerous solemn proclamations, the punishment and prevention of those crimes has been made the concern of the entire international community. There is either a consistent system of international criminal justice, free of contradictions between its basic norms, or no system at all. *Tertium non datur.*

The International Criminal Court must in no way perpetuate the principle of "might makes right"

Under no circumstances, either directly or indirectly, either openly or covertly, must the International Criminal Court perpetuate the principle of "might makes right." This, however, will be the case as long as the composition of the group of States Parties remains as imbalanced in terms of power relations as it is today; and it also is the case because the Statute of the Court concedes to an external entity (that is composed, and thus acts, according to considerations of power politics) the privilege to interfere with its jurisdiction, whether by restricting or expanding it. Because of the veto, the Security Council will never "refer" a situation in a country that enjoys the protection of any of its five permanent members – not to speak of the fundamental immunity that, always and under any circumstances, protects the officials of those permanent members that are not States Parties to the Court. Instead of obfuscating the issue, one should simply admit that even in the era, and under the auspices, of the ICC the "end of impunity" has not yet been achieved. What exists is a two-class system of criminal justice where the Security Council may use "referrals" for political purposes, and in particular as "disciplinary measures" in domestic or international conflicts.

In any state that adheres to the rule of law, the exercise of judicial power must be strictly separate from the exercise of the state's other powers, and judicial authority vis-à-vis the legislative and executive branches must be secured. At the international level, however, there is no functioning separation of powers on that basis. The United Nations Organization is no world state, and the Security Council is all the more not an agent within a proper system of checks and balances which, under the prevailing international conditions, doesn't even exist in rudimentary form. Since the Court has no enforcement powers of its own, except indirectly and only if it acts on the basis of a referral from the Security Council, and in view of its record, one cannot avoid asking whether the states that established this permanent institution, which is aimed at the universality of criminal justice, have not put the cart before the horse. The very idea of justice risks to be frustrated by the realities of power politics. •

Source: *International Progress Organization,* 2012, *www.i-p-o.org*

The article is a slightly abridged translation from the German original.

(Translation by *Current Concerns)*

Catalans seek autonomy

"A people has the right to administer its own affairs, its resources and its money"

by Raphael Minder, Barcelona

ts. Spain and its regions are suffering from the financial crisis. But instead of indulging in depressive fatalism, the Catalans are referring to the people's right to administer its own affairs, its resources and its money. According to a MP in Barcelona, the people in a crisis, needed to hold on to some positive vision of the future and not just worry every morning about how high the debt risk premium will be. A majority of Catalans call for fiscal sovereignty and for loosening or even breaking ties with the rest of recession-plagued Spain. Even if in the past the country's own politicians did not always handle the finances as they should have, at least they were the people's representatives, and a people ought to have full power to give its politicians a "failed" or a "passed". That way, the large, centralized and controlled European states' failure to be in touch with their own people is becoming a topic, as their citizens are demanding more autonomy and federalism.

Xavier Carbonell, the chief executive of *Palex*, a medical device supplier, might not seem to be a businessman willing to risk a political confrontation between his home region, Catalonia, and the central government in Madrid.

After all, Palex, based in Barcelona, receives about 90 percent of its $150 million of annual revenue from customers in the rest of Spain.

Yet on Tuesday Mr Carbonell joined hundreds of thousands of fellow Catalans in central Barcelona demanding Catalonia's independence from the rest of Spain – even though that demand could make Catalonia vulnerable to retaliatory measures, possibly even a Madrid-led popular boycott of Catalan goods. But Mr Carbonell said such "short-term risks" were secondary to more fundamental economic and political principles.

"A people has the right to manage itself, its resources and its money," he said.

Even as the Spanish government of Prime Minister *Mariano Rajoy* finds itself on the front lines of the euro debt crisis, Catalonia has thrust itself to the fore of Mr Rajoy's domestic challenges. Catalonia is so heavily in debt that it recently asked for a emergency loan of € billion, or $6.47 billion, from Madrid. But here in this region with its own language and sense of identity, the financial crisis has also brought longstanding cultural and economic resentments to a boil.

Catalan society remains divided over whether the breakaway demands should be limited to fiscal sovereignty from Madrid or go beyond that. Despite the unprecedented turnout at Tuesday's rally, recent opinion polls show that only a thin majority of Catalans favors full independence. But Mr Carbonell's aspirations reflect the extent to which separatism has recently shifted from fringe to mainstream thinking among both the politicians and business leaders of Spain's most economically powerful region, which accounts for almost one-fifth of the country's economic output.

And that in turn presents yet another significant challenge for Mr Rajoy, whose relationship with Spain's regions has already been strained by the crisis and his insistence that support for Catalonia and other heavily indebted regions requires greater regional fiscal discipline.

Catalan politicians acknowledge that the separatist push could not have come at a more awkward moment for Mr Rajoy, as he also faces external pressure to decide whether Spain should seek further European financial assistance through the new bond-buying program agreed last week by the European Central Bank.

"A major economic crisis unfortunately tends to bring to the surface all sorts of issues at the same time," said *Rocío Martínez-Sampere*, a Socialist lawmaker in Catalonia's regional Parliament.

Even if the concept of Catalan independence remains ill defined, *Josep Ramoneda*, a Catalan philosopher and writer, suggested that it was in fact "the only real political project in Spain at this moment."

"In a crisis," he added, "people need to hold on to some positive vision of the future and not just worry every morning about how high the debt risk premium is."

Mr Rajoy, meanwhile, has tried to circumvent the Catalan challenge by calling for national unity. On Tuesday, he urged regions instead to close ranks and focus on together pulling the economy out of recession.

With a 200 billion economy roughly the size of Portugal's, Catalonia and its 7.5 million inhabitants – 16 percent of the Spanish population – have long been one of the country's main economic engines. The region blends a powerful financial services sector, led by the big bank *La Caixa,* with a strong industrial base that includes traditional sectors like textiles and car manufacturing (Nissan and Volkswagen have factories near Barcelona), as well as biotechnology companies like Grifols, a developer of products based on blood plasma.

Officials in Madrid like to point out that it was central government financing of the 1992 Olympics that helped raise Barcelona's global profile, transforming it into one of Europe's most visited cities, with about 9 million tourists a year, compared with 1 million before the Games. The metropolitan area's commercial allure is now such that local authorities last week were able to announce a private developer's plans for a new 4.8 billion gaming and leisure resort called Barcelona World, to be located 120 kilometers, or 75 miles, south of the capital, near Tarragona, on land owned by La Caixa.

The financial crisis, however, has revealed that Catalonia, like many other regions, has badly managed its public accounts. Mr Rajoy has blamed the nation's indebted regions for two-thirds of last year's fiscal shortfall that has forced Spain to miss budget-balancing targets it had agreed to under its euro zone obligations.

Of total debt of 140 billion among Spain's 17 regional governments, Catalonia owes the biggest amount: 42 billion. It is in such trouble that it can no longer borrow in the financial markets, which is why Catalonia has had to ask the Rajoy government for emergency financing.

In some respects, Catalonia has continued to outperform the nation as a whole. Against a national unemployment rate of 24.6 percent, Catalan joblessness is marginally better, at just below 22 percent. And many Catalans have concluded that their recovery prospects would be enhanced by loosening or breaking ties with the rest of recession-plagued Spain.

"Until the crisis, many people here saw the advantages of being part of a dynamic Spanish economy, but now all we see is a falling economy run by Madrid politicians who are making it worse," said *Salvador García Ruiz*, one of the founders of *Collectiu Emma*, an association promoting Catalan interests. While he acknowledged that Catalan politicians had also overspent and in some cases were caught up in corruption scandals, "at least they are our own, and a people should have full power to give its politicians a fail or a pass."

So far, the regional government of Catalonia, led by *Artur Mas* and his party, *Convergencia i Unió,* has instead restricted its demands to fiscal sovereignty, starting with the need to convince Mr Rajoy that Catalonia should be allowed to reduce its contribution to a fiscal system that redistributes part of the tax revenues to other poorer regions of Spain. The two politicians are schedule to discuss the issue at a meeting next Thursday.

But looking ahead to two regional elections next month – in the Basque Country and in Mr Rajoy's home region, Galicia – the Prime Minister is unlikely to strike any deal with Catalonia that could open up a Pandora's box of new demands by other indebted regions. He is also trying to turn

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Direct democracy is alive in Germany as well

"All state authority is derived from the people. It shall be exercised by the people through elections and other votes [...]"

by Ewald Wetekamp

People in Germany speak out on all political levels and call for participation and self-determination. "We cannot do anything – those high up there do as they please, anyway." – Certainly this pessimistic phrase about political paternalism was once justified. But today no citizen should evade responsibility that way; for since the 1990ies direct democracy has started on a triumphal march through Germany. The German citizens are not as fed up with politics as they were often said to be, rather they are distrustful against "being tricked". Deference to authority as back in imperial times is gone long ago.

Up to 1990 there was little chance to exercise direct-democratic influence in the German states and municipalities. However, during the last two decades – pressed by citizens who persistently demanded their democratic rights at many level – many states and municipalities have made a move and given the people more direct-democratic rights. Since 2006, all 16 German states have known direct democracy at both state and at local level. Hamburg goes ahead and has now taken the leading position in a "referendum-ranking" released by the German association "Direkte Demokratie" (Direct Democracy). *Current Concerns* repeatedly reported how citizens of Hamburg, associations and individuals joined forces in order to boost direct democracy in Hamburg.

Referenda in all areasof public life

However, there is a lot going on in other German states as well. Some successful examples: A referendum in Thuringia succeeded in campaigning "for better family policies", the citizens of Berlin were successful with the petition, "No more secret treaties – we Berlin citizens want our water back". Generally, there are several petitions against privatization, such as Leipzig's public decision that declared a comprehensive privatization ban on all public service areas[1]: "Health is not a commodity – against the complete privatization of hospitals," Hamburg, "Our Hamburg – our network," for the municipal ownership of the Hamburg energy networks (the process is not yet completed). This series also includes the transparency law, recently achieved by a petition that compels the public authorities to release important information, such as the disclosure of all contracts over 100,000, which broadly relate to public welfare services. Such a law is unique in Germany, so far.

Some petitions are against the "mergeritis" of communes, like a referendum in Schleswig-Holstein – "Against the merging of boroughs without their consent" - one from Brandenburg – "against forced amalgamations and for the consolidation of local self-government" – (both successful) one in Saxony-Anhalt, which opposed the forced formation of community mergers in the course of municipal reform, but unfortunately without success. The first referendum took place already in 1974 with the "campaign for the citizens' will – against local government reform Ruhr", which, however, failed at the time because of the high quorum.

In many German states, citizens campaigned for a school policy that matched their intentions, besides the known referendum in Hamburg there was another one in Lower Saxony: (process not yet completed) "For good schools in Lower Saxony", "For the preservation of the high school" in Schleswig Holstein (albeit failed), an initiative in Saxony had some success with "The future needs school," the founders wanted to prevent school closures and demanded smaller classes.

Direct Democracy must be accomplished by us citizens

A striking number of initiatives demand and have achieved improvements in terms of direct-democratic instruments, and here again, the Hanseatic City comes in first, with many advances in this direction. It has probably been this fight for the extension of direct-democratic rights that has made it possible for Hamburg referenda to be so numerous and successful above-average. Bremen citizens demanded "more democracy in voting" and were able to achieve a more democratic electoral law, with the possibility of accumulation and mixing".[2] Thuringian citizens, through "More democracy in Thuringia", successfully fought for a facilitation of referenda and plebiscites on a state level. Already in 1995, Bavarian citizens achieved the introduction of the local citizens' decision with their referendum, "More democracy in Bavaria".

Direct democracy: More effective than citizens' initiatives

Apart from the initiatives for popular demands and referenda several citizens of our country are involved in initiatives to give a voice to legitimate requests. For example, there are initiatives to fight "Fracking"[2] in Lower Saxony and Thuringia, a process that is used to bring natural gas out of the ground. In this process, toxic chemicals are pumped into the ground that threaten to cause devastating damage to the environment. The residents of the affected areas are understandably shocked and outraged: They exert resistance. In Thuringia, for example, an initiative, which successfully turned against the cultivation of genetically modified corn four years ago, now joined forces in resistance against this dangerous technology. One third of this beautiful country would become contaminated, an area of orchards and rare plants, which is also used for tourism. Citizens do not want this and are getting active – here as in hundred other examples around the country. There is considerable success in the case of "fracking" in Thuringia: An assessment by the Federal Environment Agency confirmed the concerns as well as the demands of the public protests. The Thuringian government faction must now act accordingly.[3] North Rhine-Westphalia, as well, is about to give no permission for this technology due to public protests which point to its dangers. In other cases citizens often struggle in vain for their requests. The instruments of direct democracy, however, open a way to those initiatives to enforce their interests by means of an effective legal way, i.e. legally binding as well for politicians. Petitions, protests, demonstrations, and long lists of signatures are ignored by the power elite as long as we citizens have no legally binding measures for their enforcement.

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"Catalans seek autonomy"

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back a threatened tax revolt in the Extremadura region, which despite being controlled by Mr Rajoy's Popular Party, said this month that it would only selectively apply a tax increase decreed by Madrid.

But in Catalonia's case, Mr Mas and his allies are threatening to escalate the conflict if Mr Rajoy ignores their fiscal demands. They have raised the possibility of creating a new Catalan tax agency to collect money that now flows into Madrid's coffers. […] •

Source: © *The International Herald Tribune,* 14 September 2012

"Direct democracy is alive ..."
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"... to get the ball rolling for all of Germany"

And at the federal level as well there has to be direct democracy. All previous referenda in Germany were conducted at the local or "Landes" (state) level. Nationwide referenda are still not provided for, although the German Basic Law holds: "All state authority emanates from the people. It is exercised by the people through elections and votes [...]".[4] The parliament of Schleswig-Holstein now starts a legislative initiative to launch nationwide referenda, which will be submitted to the "Bundesrat" (Second chamber of the German Federal Parliament, analogous to the "State Council" in Switzerland, but with less power) with support of the SPD, the Green Party, the SSW, the Pirates and the FDP. Thus coalition has declared the validity of this initiative launched by the *"Bündnis für mehr Demokratie"* (Alliance for More Democracy) in Schleswig-Holstein. Spokeswoman *Claudine Nierth* of the "Alliance for More Democracy" said: "The successful people's initiative in Schleswig-Holstein has got the ball rolling for all of Germany. For the very first time in history it has been possible to push a referendum for the introduction of Germany-wide referenda in one state. Other states will follow suit."[5]

Politicians under pressure

More and more politicians feel encouraged – or compelled – to push for more direct democracy, even though a majority keeps up its rejection. In North Rhine-Westphalia, the new red-green government agreed, to drop the financial taboo for national referenda from the Constitution in its coalition agreement.[6] In case this is put into practice, an important step forward would be taken, as today all referenda addressing topics of state finances are excluded – an unthinkable taboo for Switzerland, in which citizens even vote on the tax rate they are paying. Up to now, this taboo exists in all states except in Berlin and Saxony. In Saarland, however, the grand coalition is planning a relaxation of this restriction. Also, North Rhine-Westphalia plans to lower signature barriers for referenda: According to this plan, popular initiatives, which were rejected by the state parliament will automatically become a referendum and will undergo a plebiscite. Today, the rejection by Parliament simply ended an initiative – unless the founders re-started the collection of signatures from the very start.

Horst Seehofer, Chairman of the CSU and Prime Minister of Bavaria, supports referenda and made this a topic in his election campaign.[7] *Günther Beckstein*, *Seehofer's* predecessor, concurs with this and even goes a further step to call for referenda at the federal level.[8]

Only *Winfried Kretschmann,* the Green Party Minister President of Baden-Wuerttemberg, is deaf on that ear. He was elected on the wings of the "Stuttgart 21" movement and called for a referendum. And now he does not want anything of that? The citizens of Hamburg have managed to enforce better conditions for direct democracy, although the Hanseatic senators felt uneasy about it. Several times they have ignored referenda or reversed decisions. The citizens of Hamburg did not accept that. Why should the citizens of other states not achieve the same? •

1 *www.buergerbegehren-leipzig.de:* Press release "Initiative Bürgerbegehren Leipzig", 28 January 2008
2 *www.bergauf-bergkamen.de*
3 The report: *www.umweltdaten.de/publikationen/fpdf-l/14346.pdf*
4 Article 20 Paragraph 1 of the Basic Law (GG)
5 *www.mehr-demokratie.de: Kieler Landtag für Volksentscheide,* 13 June 2012
6 *www.mehr-demokratie.de: Landesfinanzen sollen vors Volk, 25* August 2012
7 *www.mehr-demokratie.de: Seehofer macht Volksentscheid zum Wahlkampfthema,* 12 May 2012
8 *www.mehr-demokratie.de:* Günther Beckstein, former Bavarian Prime Minister, 6 March 2012

Popular demand and referendum in the German states

km. The following table provides an overview about the possibilities of direct democracy at the level of the German "Bundesländer" (federal states). Yet today, unlike at national level, all of the German "Länderverfassungen" (constitutions of the states) offer different ways to shape the policy of the state in a direct democratic manner, in addition to popular demand and referendum at municipal level.

The procedure is similar in all states: at the beginning there is a popular initiative or an application with quite low barriers that will initiate a popular demand. In each state a successful popular demand is the condition for a referendum. With both methods the procedures and particularly the necessary quorums are still quite different, today. Yet, in nearly every state budgetary popular demands are excluded. Exceptions are the states of Berlin and Saxony. In some states there is already an active direct-democratic life, in particular in Bavaria and Hamburg. But also in Berlin and in the new states of eastern Germany direct democracy is often lived, today.

The state of Hamburg shows that citizens do not have to accept existing restrictive and rather dissuasive constitutionally arrangements but they can be active themselves to change the state constitution in terms of more direct democracy by means of a referendum. Such constitutional amendments by direct democracy are possible in most states.

Source of the following composition are the constitutions of the states. In some states there exist implementing laws and well-designed handouts of the state governments. On that basis a study group has compiled the table.

Since the question of the administration of public finances facing the ESM is one of the most burning present tasks, the financial rights at the level of the states and municipalities will also "follow", of course. This compilation shall trigger off a reflection on existing possibilities and on new ones that have to be additionally created. A population that meets all the complex requirements in their professional and daily life is also capable of thinking from bottom to top, considering which additions or innovations will follow suit to the federal level. Since 80 to 90% of all German citizens have not agreed to the Afghanistan mission for years – and do not agree today – it is self-evident that Germany can and must develop in direction of direct democracy.

		Approval procedure			Popular demand	Parliamentary procedure	Referendum
State	**Exclusions of topics**	**Structuring of the first stage**	**Application-quorum**	**Decision of admissibility**	**Quorum for popular demand, duration and form of the collection**	**Sovereignity clause; Parliamentary competing legislative proposals**	**Quorum for the referendum**
Baden-Wuerttemberg	Taxation laws, salary laws, state budget; constitutional amendment possible	Application of approval with formulated draft law stating justified reasons or application for dissolution of the state parliament	10,000 of electorate; no time limit; free collection	Ministry of the interior; within 3 weeks	16.7% of electorate (approx. 1,260,000 at present); 14 days; official registration only	Parliament may decide on adoption of the draft law without any modifications, in that case no referendum; or: parliament rejects draft law, then referendum; parliament can put an own draft law to the vote	1/3 of electorate have to agree; simple majority of the votes decides. In case of constitutional amendments a majority of 50% of electorate must agree.
Bavaria	State budget; constitutional amendment possible	Application of approval with formulated draft law stating justified reasons; application for dismissing the state parliament	25,000 of electorate; 2 years; free collection	Ministry of the interior; within 6 weeks from the receipt of application	10% of electorate (approx. 939,000 at present); for dismissal of the state parliament: 1,000,000 of electorate; 2 weeks; official registration only (communities determine where and when voters can subscribe to the lists; initiators are obliged to provide information)	Parliament has to debate popular demand within 3 months (from announcement of its validity); it may adopt draft law without modifications, then no referendum or: parliament rejects draft law, in that case referendum; parliament may put an own draft law to vote.	The draft law with the most votes is adopted. The majority of the votes decides on the dissolution of the parliament. With constitutional amendments a minimum of 25% of electorate has to approve.
Berlin	Budget law, salaries, rates and charges, and also staff decisions; but financial questions possible (judgement in 2009); constitutional amendment possible	Application of approval with complete and justified draft law or other resolution	20,000 of electorate (0.7%); 6 months; free collection; in case of a popular demand aiming at a constitutional amendment or aiming at the premature termination of the legislative period of parliament at least 50,000 of electorate must approve the application	The Senate Administration for Internal Affairs will verify the admissibility of the popular demand. Signatures will be forwarded to district offices for validation. Acceptable requests for petitions can be acceded to within 4 months by the House of Representatives. In case of rejection referendum possible.	7% of electorate (approx. 175,000 at present) in the event of ordinary laws; for constitutional amendments or the dissolution of parliament: 20% of electorate (approx. 500,000 at present); 4 months; official registration and free collection	If a popular demand came into existence, a referendum has to be held within 4 months (within 2 months, if the popular demand aims at a premature dissolution of the parliament). The referendum shall not apply if the concern of the initiative is taken on by the House of Representatives or the House of Representatives approves the early termination of the election period. Competing legislative proposal must be decided by the sixtieth day before the referendum at the latest.	Ordinary draft laws pass if at least 25% of electorate approve. Constitutional amendments require at least 2/3 of the voters, but at least 50% of electorate. A referendum on the premature dissolution of the parliament is successful, if at least 50% of electorate participated and the majority approved.

		Approval procedure			Popular demand	Parliamentary procedure	Referendum
State	**Exclusions of topics**	**Structuring of the first stage**	**Application-quorum**	**Decision of admissibility**	**Quorum for popular demand, duration and form of the collection**	**Sovereignity clause; Parliamentary competing legislative proposals**	**Quorum for the referendum**
Brandenburg	State budget, remunerations and pensions, charges, staff decisions; constitutional amendment possible	Popular initiative with complete and justified draft law or aimed at dissolution of the state parliament	20,000 of electorate (applications for dissolution of parliament, 150,000 of electorate); one year; free collection	The state parliament is obligated to make its decision on the popular initiative within 4 months. Before the decision of the state parliament the initiators have the right to a hearing before the committee responsible.	80,000 of electorate; official registration or registration by letter (also registration in the presence of a notary possible); 6 months; popular demands for the dissolution of the state parliament: 200,000 of electorate; 4 months	Successful petitions for a referendum have to be debated in the parliament within 2 months. Initiative can name 2 experts that have to be consulted by the responsible committee. If parliament rejects draft law, referendum can be requested. Parliament may present competing draft law to vote	Ordinary laws are adopted, if the simple majority of voters approves, provided at least 25% of electorate approve. A referendum on the dissolution of parliament or a constitutional amendment must be approved by 2/3 of voters, representing at least 50% of electorate.
Bremen	Budget, remunerations, taxes, charges, fees and particulars of such bills; constitutional amendments possible	Application for approval with elaborated draft law being specified by grounds	5,000 of electorate; no time limit; free collection	State election commissioner controls whether necessary number of signatures has been reached; senate decides within 2 months about legitimacy	5 % of electorate (presently approx. 25,000), on laws containing constitutional amendments: 20% of electorate (approx.100,000); 3 months; free collection	Citizens can take over draft law within 4 months – also modified in consultation with the elected representatives/ trusted persons – in that case no referendum; (on demand of elected representatives deadline can be prolonged by 2 months); if refused, elected representatives have to apply for the conduction of the referendum within one month. Citizens can submit own draft law.	A law is adopted if the majority of the voters, but at least 20 % of electorate, approve. Laws modifying the constitution need the approval of at least 50% of electorate.
Hamburg	Budget matters, charges, tariffs of public companies, remunerations; modification of constitution possible	Popular initiatives with substantiated draft law or another bill. A draft law or another bill which increases expenses or leads to new or less income, should be accompanied by a covering estimate.	10,000 of electorate (approx. 0,8 %); 6 months; free collection	The citizenship carries out an expert hearing concerning the matter of the popular initiative and decides on the adoption or the refusal of the submitted draft law. If refused, the initiative can apply for the popular demand at the senate within one month	5% of electorate (presently approx. 63,000); 21 days; certified registration and free collection	After the successful popular demand, the citizenship has a time limit of 4 months in order to treat the draft law or the bill (the term does not run from 15 June to 15 August – summer vacation – and can be prolonged on application by the elected representatives). The citizenship can propose a competing legislative.	A referendum taking place on the day of a mayor's election or election of the parliament is achieved if the majority of the voters agree and if the draft law or the other bill gather at least the number of votes which represent the majority corresponding to the elected parliament. Amendments of constitution require the majority of 2/3 of the voters and at least 2/3 of the votes in parliament simultaneously elected. If the referendum does not take place together with an election, it is adopted if at least 20 % of electorate vote and the simple majority of them approve it.
Hesse	Budget laws, laws about charges, remuneration laws; no amendment of constitution possible	Application for admission with formulated and substantiated draft law	2 % of electorate (presently about 87,500); 2 months; free collection	Parliament within one month	20 % of electorate (presently about 875,000); 2 months; only official registration	The parliament can adopt draft law within one month; otherwise referendum; competing legislative proposal of the parliament possible.	Simple majority of votes cast decide about adoption of the draft law

Citizens' participation requires free access to information

Ten to fifteen citizens bring about a popular initiative and a paradigm shift in Hamburg

by Burga Buddensiek, Germany

The ability to hold referenda is relatively new in Hamburg. As late as in 1996 the city state was the last federal state to integrate this type of participation for the people into its constitution. And since then, the instrument is frequently used. Hence five out of seven successful referenda aimed at improving the legislation: Conditions (quorums) were improved for the course, the liability of referenda for the city's government was integrated into the Hanseatic constitution and the law for citizens' participation at the local level (citizens' demand/referendum) was established that way.

But even though the activists of the national association of "Mehr Demokratie" (more democracy), a nationwide organization committed to direct democracy, had achieved the best conditions for citizens' participation throughout the Federal Republic, they did not want to rest on their laurels. For some time, the deficiencies in the collecting of information for citizens had been discussed and finally they had the time and the capacity to address the issue in the summer of 2011. Like most states Hamburg had also had a *freedom-of-information legislation* since 2009. It indeed granted the citizens a fundamental right to information by the city's authorities, but only on prior request and against payment of expenses. In practice, this often meant that requests were rejected for flimsy reasons or withdrawn by the applicants due to their high cost (up to 500 euro). Occasionally, civic action groups had to obtain their right of insight into planning or other documents in lengthy court proceedings. At the same time some political proceedings aroused the discontent of the Hamburg population with the state government's behavior concerning the Freedom of Information Act: A parliamentary inquiry into the biggest ruins of the city, the Elbe Philharmonic Concert Hall, concluded that the cause of the cost explosion in (by more than 200 million euro – open-ended) was to be found in the poorly designed contracts with the construction company. The contracts, however, have been classified to this day and neither the city parliament nor the citizens are granted access to control them, even though they have to bear the costs. The contracts awarded by the Senate last year with the companies *E.on Hanse* (gas) and *Vattenfall* (electricity) on the partial repurchase of energy networks are kept under lock and key with regard to the trade secret. The exact wording was neither made available to the experts who were invited to attend a hearing, nor to an initiative, which had prepared a referendum for 2013 on full municipal ownership of networks and which had therefore called for a stop to the vote by the Senate.

All these events made it clear that genuine citizens' participation was impossible without free access to information. In the discussion with "Mehr Demokratie" the idea developed for a transparency law to oblige the authorities to automatically make relevant information accessible in a central register of information for anyone interested.

As the national association of "Mehr Demokratie" neither personally nor financially had sufficient capacity to enforce such a project, allies were initially sought. "Transparency International Germany e.V." immediately realized that the transparency law was an effective tool against tax waste and corruption and became an ally, as well as the "Chaos Computer Club", in whose activities the demand for a transparent management has always played a big role. Moreover, the *Pirate Party*, the *ödp* (ecologist party), *The Left*, *Alliance 90/The Greens*, *Omnibus für Direkte Demokratie* (omnibus for direct democracy) and *attac* joined the alliance. Finally a pleasantly diverse group of ten to fifteen people came together in a working group to design a "Transparency Act" for Hamburg. However, as the greatest possible transparency should also apply for the working on the law, it was decided to make this work open to everyone from the start. Thus, all sessions of the working group were held publicly, all meeting minutes and "to do" lists were provided on the homepage and the respective status of the draft was made available in a *wiki* (Internet) to everybody interested in cooperation (in a *wiki* anyone can anonymously or at will make changes and additions). Within a few months the final draft of bill developed which was then revised with the voluntary help of a retired judge of the Constitutional Court and got for now its final touch.

Transparency creates trust

On 28 October 2011 the initiative "Transparenz schafft Vertrauen" (Transparency creates trust) registered for a popular initiative with this draft. Because of the tight schedule (the referendum was planned for the day of the federal elections in 2013) the initiators had only six weeks (the statutory time frame is six months) to collect 10,000 signatures for the initiative, and in the weeks before Christmas, in which the people were busy with Christmas markets and Advent celebrations. However, it was easier than expected. After referring to Elbe Philharmonic Concert Hall and the repurchase of electricity networks, most passersby were quickly convinced that a law to increase transparency of political processes and authorities working in the city was more than overdue. On 9 December 2011 the initiative could submit 15,119 signatures at the City Hall.

After a successful popular initiative the Hamburg Parliament is obliged to deal with the subject of the initiative and to work out a statement on it. Therefore on 28 February 2012 a public hearing on the Transparency Act took place in the Judiciary Committee of the Hanseatic City Parliament. Six experts (law professors from various universities, a professor of the Administration College at the University of Kiel, the lawyer of the journalists' association "Netzwerk Recherche e.V." and the Hamburg data protection officer) discussed the virtues and flaws of the bill with the delegates and representatives of the Transparency alliance for several hours and provided the initiative with valuable information on concrete terms, complements and improvements. More than 150 interested visitors enjoyed a very objective discussion on the issue, based on mutual appreciation and of high professional quality, between experts, politicians and the initiative – a great moment of the maturing of democracy.

Based on the variety of professional information, the initiative began to revise the bill again and again and to discuss it with lawyers and data protection officers. Two months later, on 30 April 2012, they registered for a referendum with the results of this work. Preparations for the popular demand were in full swing when the SPD (currently the only ruling party in Hamburg), signaled their willingness to the alliance to have

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		Approval procedure			Popular demand	Parliamentary procedure	Referendum
State	**Exclusions of topics**	**Structuring of the first stage**	**Application-quorum**	**Decision of admissibility**	**Quorum for popular demand, duration and form of the collection**	**Sovereignity clause; Parliamentary competing legislative proposals**	**Quorum for the referendum**
Mecklenburg-Vorpommern	Budget of Land; charges, remuneration; amendment of constitution possible	Popular initiative with complete and substantiated draft law	15,000 of electorate; no time limit; free collection	State election commissioner decides about admissibility within 6 weeks.Discussion during the next possible session of the state parliament; within 3 months, decision of theparliament; representatives of initiative must be heard in authorized committee	About 8,5 % of electorate (presently 120,000); no time limit, free collection (additional official registration within 2 months can be applied for by the initiators)	State election commissioner decides about realization within 3 months. parliament consults about adoption within 6 months. Initiators of the popular demand have to be heard in responsible committee. Parliament can submit competing draft law for referendum.	Simple laws are adopted if the majority of the voters, but at least 1/3 of electorate have approved. Laws amending constitution need the approval of at least 2/3 of the voters, but at least 50% of electorate.
Lower Saxony	State budget; taxation, remunerations and pensions; constitutional amendment possible	Application of approval in conjunction with formulated draft law stating justified reasons and the cost expected	25,000 of electorate; 6 months; free collection (shall be charged to the quorum of 10% on the petition of referendum)	State parliament reviews admissibility (signature collection may continue at the same time!)	10% of electorate (602,363 at present); further 6 months after announcement of admissibility; free collection	State parliament may consult for 6 months on the adoption of the petition; referendum on rejection competing legislative proposal is possible	The simple law is adopted if the majority, minimum 25% though, of voters approved the draft. On laws containing a constitutional amendment a minimum of 50% of electorate have to approve it.
North Rhine-Westphalia	Financial topics, taxation laws, salary regulations; constitutional amendment possible	Application with formulated and justified draft law with statement of probably resulting cost	3,000 of electorate; no time limit; free collection	State parliament decides on approval and possibility of free collection of signatures within 6 weeks	8% of electorate (aprox. 1,000,000 at present); 18 weeks for official registration; 1 year for free collection	State parliament has to finalize the petition for referendum within 6 months; competing legislative proposal is possible	With simple laws 15% of electorate have to participate in the voting (approx. 2,000,000 at present); the simple majority decides. Laws containing constitutional amendments require a participation of 50% of electorate and require approval of a 2/3 majority.
Rhineland-Palatinate	Financial questions, taxation laws, salary regulations; constitutional amendment possible	Application for admission with formulated draft law	30,000; no time limit; free collection	State parliament decides within 3 months; particulars are regulated by the electoral law	Approx. 10% of electorate (300,000); 2 months; official registration only	State parliament decides on adoption within 3 months; a parliamentary competing legislative may be drawn up within 3 months	On participation of 25% of electorate the simple majority decides on success of the referendum. With laws containing a constitutional amendment the approval of 50% of electorate is required.

"Citizen's participation ..."
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talks with the goal of taking over the law. Although representatives of the initiative agreed to negotiate, they continued their preparations of the referendum simultaneously. Due to past experiences there was great suspicion that with these negotiations the ruling party was only trying to play for time in order to overturn the planning for the referendum. But this time it was different: The talks were serious and were extended after only four weeks on all City Parliament groups. In the last meeting of the City Parliament before the summer break, on 13 June 2012, the transparency law was passed unanimously.

A central information registry is being formed

The new law makes Hamburg the transparency capital of the German states. Core of the pioneering law is a *central information registry* which obliges administrations to make all documents of public interest available in the internet, unsolicited and free of charge. This includes Senate resolutions, expert reports, public plans, geographical data and also data on subsidies granted as well as building and demolishing permissions. In particular, the city has to publish all contracts closed by the city exceeding a value of 100,000 euro concerning public services in the widest sense. It also has to publish essential data on companies in case it is a stakeholder, including the annual compensations and fringe benefits of the leading management. All data are provided in a structured and machine-readable form. Personal data and legally well-defined company and business secrets, however, remain protected. In doubt, the decision rests with the *Hamburg representative for data protection and freedom of information.*

Possibly more important than the simplified access to information is the *paradigm shift in the relationship between the citizens and the administrative and political representatives* connected with the transparency law: While, according to the law on freedom of information, the citizen was hitherto an applicant towards the authorities, he now has a *right* to access and is accordingly treated in a dignified way. Citizens are legally entitled to look into the working basis, thus moving from the position of a mere spectator to the position of an active participant. Politics have an enforceable obligation to provide! In Hamburg the expression "official secret" is history, once and for all.

The alliance is aware that it will take a lot of educational work in the coming months and years to root this "new perspective" in the minds and the hearts of the citizens of Hamburg in order to unfold the potential of the transparency law. Since the free Hanse town has a tradition of active and confident participation and since the younger generation prefers the active style anyway, it will be a pleasure to take part in this development. •

km. In his detailed thesis entitled "Direkt-demokratische Elemente in der deutschen Verfassungsgeschichte" (Direct democratic elements in the German Constitutional History, 2006, ISBN 3-8305-1210-4) *Hanns-Jürgen Wiegand* gave evidence that arguments directed against more direct democracy – going round until this day – are flimsy. In the probably most comprehensive monograph about the development of direct democracy in Germany since the Second World War ("Sachunmittelbare Demokratie in Bundes- und Landesverfassungsrecht unter besonderer Berücksichtigung der neuen Länder", 2009, ISBN 978-3-8329-4081-2) *Peter Neumann,* new director of the "Dresdner Institut für Sachunmittelbare Demokratie" (ISUD)) portrayed how the scope for direct democratic co-shaping in Germany has been improved in the course of the last decades.

		Approval procedure			Popular demand	Parliamentary procedure	Referendum
State	**Exclusions of topics**	**Structuring of the first stage**	**Application-quorum**	**Decision of admissibility**	**Quorum for popular demand, duration and form of the collection**	**Sovereignity clause; Parliamentary competing legislative proposals**	**Quorum for the referendum**
Saarland	Financially effective laws, above all taxation, salary, state capacity, budget; no constitional amendment possible	Application for admission with formulated and justified draft law	5,000 of electorate; 6 months; free collection	The state government decides within 3 months.	20% of electorate (approx. 163,000 at present); 14 days; official registration only	Parliament may decide on adoption of the draft law within 3 months; otherwise: referendum; parliament may present own draft law for casting of votes	The majority of 50% of electorate is required for adoption of the law.
Saxony	After judgement the Saxon Constitutional Court (June 2002) no more exclusion of financially important topics; constitutional amendment possible	Application with formulated and justified draft law	40,000 of electorate (1,11% of electo-rate); 1 year; free collection	If the state parliament approves of the application within 6 months, it will be passed as a provincial law. Otherwise popular demand and referendum will follow.	15% of electorate (currently about 450,000); 8 months; free collection; (reimbursement of costs up to 2,000 euro possible)	State parliament must make decision on consent within 6 months; otherwise referendum. State parliament has the possibility to submit a competing legislative proposal.	Simple laws are adopted with simple majority of votes cast. Laws containing a constitutional amendment need the consent of more than 50% of electorate.
Saxony-Anhalt	Budget laws, taxation, salaries; constitutional amendment possible	Either popular initiative or application with formulated and justified draft law; right to reimbursement of costs	Popular initiative: 30,000 of electorate; no time limit; free collection; application: 8,000 of electorate; no time limit; free collection	After popular initiative: state parliament concludes within 6 months. Elected representatives are to be consulted in committees and in proceedings of the state parliament. If the draft law is not adopted, a popular demand is possible. After application: state parliament decides on admissibility within 1 month.	11% of electorate (currently about 21,900); 6 months; free collection	State parliament decides on adoption within 4 months. In case of rejection a competing legislative proposal can be submitted by the state parliament.	Simple laws are adopted if the majority of the votes cast, but at least 25% of electorate agreed. Laws containing a constitutional amendment are approved, if 2/3 of voters, but at least 50% of electorate, agree.
Schleswig-Holstein	State budget, remuneration and pensions, public taxes; constitutional amendment possible	Popular initiative with formulated and justified draft law	20,000 of electorate; 1 year; free collection	State parliament decides within 4 months on the admissibility, if the popular initiative is admissible; elected representatives have a right to be consulted in the Petitions Committee of the state parliament. The state parliament can agree to the draft law (modifications only possible after consultation of elected representatives) – then no popular demand.	5% of electorate (currently about 111,900); 6 months; official registration and free collection	The state parliament can adopt the draft law or an amended version approved by the elected representatives or must induce a referendum within 9 months. A competing legislative proposal can be submitted by the state parliament.	The referendum is successful, if for simple laws at least 25% of electorate (currently 559,900) participated in the referendum and if the simple majority of that agreed; laws containing a constitutional amendment are approved, if 2/3 of the voters, but at least 50% of electorate agree.
Thuringia	State budget, remuneration and pensions, public taxes, personnel decisions; constitutional amendment possible	Application with formulated and justified draft law	5,000 of electorate; 6 weeks; optionally official registration or free collection	The president of the state parliament decides within 6 weeks on the admissibility. State parliament treats the application within 4 months.	8% of electorate (currently about 152,000); 2 months; official registration or at least 10% of electorate; 4 months; free collection (The free collection of the signatures for a popular demand can be excluded by law for certain places.)	The state parliament has to conclude a popular demand within 6 months after its occurrence. The state parliament can adopt the draft law as it stands, then no referendum. If the state parliament rejects the draft law, then referendum. A competing legislative proposal can be submitted by the state parliament	Simple laws are adopted with the majority of the votes cast, but at least 25% of electorate; laws containing a constitutional amendment need the consent of at least 40% of electorate.

"Result of the euro rescue is a liquidated economy in Greece and a total loss of confidence in Brussels" (Richard Sulik)

"The dispute wasn't about any limitation of liability, but the question whether the German constitutional bodies may establish an international monster, which is not subject to parliamentary or judicial control. That is what Article 20, paragraph 4, German Basic Law, is for"

The former president of the National Council of the Republic of Slovakia, Richard Sulik, commented on the ESM decision of the Federal Constitutional Court (FCC) of 12 September 2012 in an e-mail to René Schneider. He wrote in wording: "The judges in Karlsruhe missed a chance!"

Richard Sulik continued: "This morning, the Federal Constitutional Court ruled that the permanent rescue fund (ESM) does not violate the German constitution. The honorable gentlemen thus missed an opportunity to show courage and to end this two-year toil [...] called 'euro-rescue'. Until now, the only results are a liquidated economy in Greece, the world's highest unemployment in Spain and a total loss of confidence in the Brussels politicians. By the way, it's surprising what may be constitutional today. The ESM treaty is not terminated, all employees are obliged to confidentiality and enjoy immunity. For the Director-General, who in some cases is permitted to decide on hundreds of billions of euros, and in fact can not be dismissed, the immunity can not even be removed. The ESM can not be sued, and all its premises and documents are inviolable. The real risk, however, is the combination of ESM and the decision of the *European Central Bank* (ECB) to indefinitely buy up government bonds. That is to run in the following manner: the ESM buys government bonds of irresponsible states, deposits them as security for new loans at the ECB, buys again new government bonds with the money and so on. Although this is violating Article 123 of the EU Treaty and is a clear financing by way of the money-printing press, however, nobody interferes in Brussels, where rule breaking is the norm. And so we can look forward to the inflation. Thank you, dear judges in Karlsruhe."

René Schneider answered: "Today the Constitutional Court has betrayed the liberal democratic order, its 'judgement' doesn't deserve the name, it is actually a political resolution of judges who shrank from administering justice. The dispute wasn't about any limitation of liability but the question whether the German constitutional bodies may establish an international monster that is not subject to parliamentary or judicial control. This is something they are never, ever permitted to do, not even if the liability was limited to 10 pfennigs. That is what Article 20 paragraph 4 of the German Basic Law is for." •

Source: *www.muenster-seminare.de/25493.pdf*

(Translation *Current Concerns)*

German-Swiss Tax Treaty

The Federal Government knows well: Obtaining stolen data is clearly criminal

Will Mrs Merkel and Mr Schäuble grant themselves amnesty as inconspicuously as possible?

The so-called tax dispute between Germany and Switzerland (Caution: euphemism! Actually this constitutes criminal and internationally illegal acts of the Federal Republic of Germany to the detriment of the Swiss Confederation) can be represented pyramidal.

The *top of the pyramid* shows the intergovernmental relationship between the two countries, which is severely disturbed due to the German data collection through incitement to data theft, selling (and so on). Switzerland would be well advised to sue Germany at the *International Court of Justice* (ICJ) in The Hague for an injunction and restitution.

The middle part of the pyramid describes the violation of constitutional law in Germany. It is surprising how little Germans revolt when the federal government and the governments of several states, most notably North Rhine-Westphalia, disregard the rule of law! Where is the legal basis for a minister and his subordinates, to instigate a data thief and to buy stolen data? A "dirty" proverb says: "Whoever touches dirt, will get dirty!" – How much cleaner however, does the rule of law sound in Article 20 paragraph 3 of the German Constitution: "Legislation is subject to the constitutional order, the executive and the judiciary are bound to law and right."

The criminal law remains as the *basis of the pyramid,* for the deal between the German state and the foreign criminals are criminal acts, since those acts were not restricted to the receiving of stolen data which unfortunately is not subject to prosecution hereabouts[1].

Mnemonic: There are "criminal or administrative offenses, which were committed in connection to the purchase of tax collection data from bank customers before signing this agreement," *because otherwise they could not be granted amnesty in this form!*

And so we come to the actual dilemma. The fact is well hidden behind Article 17 paragraph 3 of the withholding tax agreement, of 21 September 2011, which has not yet entered into force.[2]

Article 17 of this Agreement, entitled "waiver of prosecution of crimes and offenses, liability" and its paragraph 3 reads as follows:

"Participating in criminal or administrative offenses, which were committed in connection with the purchase of tax collection data from bank customers before signing this agreement, will neither be prosecuted by Swiss nor German law, already pending proceedings will be terminated. Proceedings according to Swiss law against employees of banks in Switzerland are excluded."

We keep thinking: At the latest when Mrs *Merkel* and Mr *Schäuble* negotiated the agreement with Switzerland, they knew that there had been such an offense, and they also knew that both of them – since the f*all of Heinrich Kieber* in 2008 – had been involved. There is no way around this fact. It cannot be excused by the many perversions of justice with which criminal prosecutors used to sweep all other criminal charges against public officials and their criminal suppliers off the table. Rather, these prosecutors themselves must now fear for their rep-

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State purchase of illegally obtained data: "grey area", permitted or liable to legal prosecution?

The German Federal Minister of Justice Leutheusser-Schnarrenberger declared in public that the purchase of illegally obtained data – especially illegally obtained bank client data from Switzerland, which were purchased repeatedly by the federal state North Rhine-Westphalia – is taking place in a "grey area".

"Grey areas" do not exist in criminal law: either an act is liable to prosecution or it is not. Since the incident of *Heinrich Kieber* (Liechtenstein 2008) the purchasers of illegally obtained data ward off accusations with the argument that their actions were "legally acceptable and objectively necessary" (as the then Federal Minister of Interior *Schäuble* stated, see "Financial Times Deutschland" of 18.2.2008). the North Rhine-Westphalian Finance Minister *Walter-Borjans* takes this view even today which is exceptionally audacious. He should know better: the flat tax agreement between Germany and Switzerland, dated 21.9.2011, which has been opposed by the SPD and the Greens so vehemently, includes an amnesty for data thieves and data concealers in Article 17, paragraph 3. •

Source: *Rheinische Post* of 1.9.2012

(Translation *Current Concerns)*

VÖLKERRECHTLICHE VEREINIGUNG

Association for the Advancement of the Proceeding Switzerland against Germany

Reference: Entry pursuant Article 17 Basic Law, proposal for the amendment of the Criminal Code (StGB) – "receiving stolen data"

Dear Sir or Madam

It is proposed to amend the German Criminal Code (StGB).

CC Section 202a Paragraph 1 (Data Espionage) and Section 202b are to be amended as follows. The threat of punishment is: "... shall be liable to imprisonment not exceeding five years or a fine."

Section 259.1 is to be amended as follows. The following sentence is appended after sentence 1: "Whosoever unlawfully obtains data according to section 202a or intercepted data according to section 202b or acquires them for himself or another, sells, supplies to another, disseminates or makes otherwise accessible with the purpose of enriching himself or a third party, shall also be liable to punishment."

A comparison of the current wording and the amendment are enclosed as an appendix of this petition.

Reasoning:

Minister of Justice Mrs *Sabine Leutheusser-Schnarrenberger* has publicly stated that the purchase of unlawfully obtained data – especially unlawfully obtained bank client data from Switzerland which have repeatedly been purchased by the state of North Rhine-Westphalia – takes place in a grey area (see "Rheinische Post" of 01.09.2012). Others rate such business between the German state and foreign criminals as "criminal", illegal and unconstitutional (violation of article 20.3 Basic Law). The purchasers defend themselves by claiming their actions were "legally acceptable and factually necessary" (according to the Federal Minister of the Interior Wolfgang Schäuble, see "Financial Times Deutschland" of 18/02/2008). Consequently, it requires a legal clarification in order to establish legal certainty. At the same time the threat of punishment in sections 202a and 202b CC shall be lifted to the range of sentences of section 252 CC to stress the worthlessness of data offenses more than before and enable the criminal judge to do more justice in each individual case. No costs will arise for the federal and the states' governments because of the amendment.

Yours sincerely
Schneider

(Translation Current Concerns)

"The Federal Government knows well ..."

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utation, because their crime of perversion of justice[3] has not been time-barred yet.

So Mrs Merkel and Mr Schäuble want to grant themselves and their cronies amnesty as inconspicuous as possible, as long as it is in their power. We do not want to speculate about what it will be like after the 18th election of the "Bundestag" (Chamber of the German Parliament) in autumn 2013. That is why the highest German "dealers of stolen data" chose an early stage ("before signing this agreement") and not the effective date of the agreement as a precaution. If the agreement enters into force, Mrs Merkel, Mr Schäuble, Mr *Steinbrück* and their cronies might be unpunished, while their colleagues from North Rhine-Westphalia together with entourage, which after the signing of the agreement on 21 September 2011 were involved at offenses defined in the agreement, of course, "will be trapped"!

What else can Mrs *Kraft* and Mr *Walter-Borjans* do than lament against better judgment, that their crooked dealings with foreign criminals were not at all punishable? Both are in the "dilemma": They know that they have committed an offense and are going on to do so, but they have to deny it, because they are not able to benefit from the amnesty, according to Article 17 paragraph 3 of the agreement, at least not with offences committed after 21 September 2011. Therefore Mrs Kraft and Mr Walter-Borjans with their comrades of the SPD and the *Greens* must stop the agreement in the Bundesrat (Federal Council), because only then Merkel & Companions will also join the choir that everything was "legally in order and factually required".[4]

When the agreement enters into force, there will be a legal basis a prosecutor will not be able to get around, because as soon as Article 17 of the withholding tax agreement on approval law once becomes federal law, there is no way around prosecuting the offender from North Rhine-Westphalia according to "law and justice" (Article 20 paragraph 3 GG).

In Merkel's Germany, this constitutional matter naturally is of course not "without alternative" and the potential successor to the revered Chancellor will certainly find a way out of the dilemma, or "pig trap," as the too academic word "dilemma" in the SPD state of North Rhine-Westphalia is often translated.

Source: René Schneider. *Dilemma, Zwickmühle Schweinefalle,* 14.09.2012 (excerpt)

www.staatsklage.de. No.25495

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1 See, instead of many: *Gangster unter sich: Daten-Diebstahl, Daten-Schmuggel und Daten-Missbrauch. Oder: Der Untergang des Rechtsstaates in Deutschland.* tax law updates, 16 July 2010, *http://www.muenster-seminare.de/24656.pdf*

2 Source/URL: preprint of the Agreement of 21 September 2011, *www.news.admin.ch/NSBSubscnber/message/attachments/24360.pdf*

3 Source/URL: *www.gesetze-im-internet.de/stgb/_339.html*

4 See Wolfgang Schäuble, in: *Financial Times* of 18.02.2008

(Translation *Current Concerns)*

Preserving cultivated land in difficult farming conditions

Stopping the overgrowth by trees and shrubs can only be achieved by careful interaction between scientists and practitioners

by Michael Götz, agricultural freelance journalist LBB Ltd., Eggersriet SG

ab. Countless countries in the world have neglected to take care of and protect small and residual farmland while globalization and forced industrial farming advanced. Once the land has grown wild, it is difficult to bring it back and use it for the self-supply of the population. In Switzerland legal priority was given to forest protection instead of cultivated land. So the fields in the mountain regions became overgrown with bushes and trees. It took a process of several years of careful cooperation between scientists and practitioners to find the way to regain arable land. This example is of fundamental significance also to developing and emerging countries. In every single country the presence of local poisonous plants must be clarified in detail, a question to which experienced farmers of the older generation can certainly contribute before small ruminants such as goats or sheep come to graze. Michael Götz has vividly illustrated this process of recovery under Swiss conditions and he mentions all important details, so the article has become a teaching play and should be studied carefully. While earlier the protection of the forest was almost always a top priority, preservation of arable land and hence agricultural use is of higher significance today.

Cultivated land is a landscape, which man has shaped over centuries. Today it is therefore regarded now as a cultural asset worth protecting. Agricultural land is included in particular. As for the maintenance of arable land we do not mean the fertile, easily accessible areas, but the hardscrabble, mostly steep slopes in the mountainous area, so called marginal agricultural land, which can be cultivated only with great effort.

Residual areas are hardly paying

"In former times farmers took their time", says *Christian Gazzarin* working at the R*esearch Station ART* in the Swiss village Tänikon. In those days large families still lived on the alpine farms, jointly harvesting the hay, not leaving any steep areas unused. Today, the farmer uses machines for his work. He starts making hay on the fertile areas and neglects the areas which are difficult to cultivate. Thus the latter are not always mowed depending on weather conditions; and in the course of time they become overgrown with bushes – which means they beome wild – or with trees. The public authorities try to promote the exploitation of these "residual fields", by means of direct payments; in reality the desired full cultivation is not everywhere achieved anymore. To cultivate steep marginal land led to a good payback per unit of time, but was often only a "side" income when compared to the other, production-oriented activities of the farms. To gain feeding stuffs for livestock had priority for the farmer.

Does it ever make sense to cultivate the steep, poor revenue areas and thus to preserve the areas for cultivation? There were many differing views, explained *Christian Flury*, head of the *Agroscope* research program *AgriMontana*, which deals inter alia with the maintenance of the cultivated landscape in the mountainous area. Some see no disadvantages in an overgrowth by trees and shrubs – wilderness could be quite attractive, they claim. Others say that farmland and production capacity are getting lost. According to them the overgrowth by trees affects the livelihood of the population in mountain regions. Again, others complain about the loss of biodiversity. Plants, which are on the red list, are often found on extensively used meadows in steep slopes. If forest grows there, the habitat of threatened species will get lost.

Measures of the AP 2014/17 that have an impact on keeping open the areas under cultivation:

- Direct payments for areas under cultivation, especially payments for slope cultivation
- Direct payments for security of supply
- Direct payments for biodiversity
- Direct payments for landscape quality

Ecological services as a new branch of business

Obviously, there is no recipe to apply when it comes to the question, wether land in mountainous regions should be used for agricultural purposes. "Each farm, almost each lot of land is a special case", says *Christian Gazzarin*. There is no uniform answer to the question how the area of a mountain farm should be used. While farmers in Switzerland are using uncut, low revenue areas for grazing robust cattle, sheep or goats, machinery cooperatives in Austria, for example, offer to mulch plant residues in steep slopes as a service. Common to all these procedures is that they contribute to maintaining the land open for cultivation. Here the Agrarian Policy regulations (*AP 2014/17* are coming into play, "The direct payments according to *AP 2014/17)* are based on the rendered services", explains Christian Flury. The fundamental question will be, "What services have I rendered and what sort of quality am I striving for on this piece of land?". The farmer should decide what procedures he would like to apply. Finally it is not decisive to comply with regulations such as a ban on fertilization or the earliest time of mowing. The achievement in itself and

1. Blackberry scrubs slowly growing along a pasture grazed by cattle (picture: M. Götz)

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"Preserving cultivated land ..."
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the quality of the vegetation must be corright. Such a system fits with the self-image of the farmer as an entrepreneur. For entrepreneurial companies, the environmental services could become a business branch.

Sheep and goats against the overgrowing by forest

Two examples are to show how farmers deal with the marginal revenue areas overgrown by bushes and trees, today. Both phenomena are not limited to the Alpine regions only, but occur also in lower regions, where steep slopes are to be found. Christian Gazzarin is not only business economist at the ART in Tänikon, but also keeps a herd of 20 to 30 Engadine sheep and two goats as a hobby near St. Gallen. From time to time he lets them graze on slope areas owned by his neighbors in the mountain region (*class 1*). In contrast to cattle, sheep and goats eat the young shoots and leaves of blackberries and hence drive back the shrubs. Without this "leaning by grazing" also young growth would occur, and the pasture would be increasingly overgrown by trees. This would eventually cut the farmers off from direct payments because the areas are no longer used as farmland.

Mulching of blackberry shrubs alone had not provided any long-term success to the neighbor. Because the roots stay in the soil, the root balls come forth a few weeks later, and a new "thorny carpet" develops. Where the sheep and goats are grazing regularly, blackberries are no longer found, two years after the mulching. The pasture is evenly grazed. The ferns and nettles remain, as the sheep do not eat them. Christian Gazzarin mows them down with his motor scythe. In the meantime he made his sheep also graze where the shrub cover had advanced. The sheep began to eat the young stems and branches of ash and hazel trees and to peel them off, so that they die with time. So with some patience the agricultural area can be recovered even if the process of overgrowth has advanced.

2. A steep slope after mulching. The roots of blackberry bushes remain in the soil. (picture: Ch. Gazzarin)

3. A sheep eating young blackberry sprouts. (picture: Ch. Gazzarin)

Project "Forest Ingrowth in the Valais"

The Canton of Valais has started a project on how to deal with the overgroth of arable land by shrubs and trees. The project leader is *Céline Müller* from the department of forest conservation. "The project could be a guide for entire Switzerland", says *Peter Gresch*. He is a lecturer at the FIT for spatial planning and environmental issues and is accompanying the project as a technical expert. In the center are the communes, because they are responsible for the cultivation. Their task is to identify key areas where the ingrowth of forest should be prevented or reversed, and to organize the cultivation of this land.

Clearing woodland is only possible due to a revision of the Federal Forest Act which led to more flexible ways in conserving the forest. Prior to that, forests that had grown for more than 20 years could not be cleared without replacement. Newly, the communes have the possibility to define a "forest determination line" in the zone plan. Within this specified area, forest which has spread into farmland, may be cleared again even if it has existed for more than these 20 years. "It's a matter of not losing the key areas forever", says Peter Gresch. While earlier the protection of forests was the main concern, today the protection of farmland prevails.

"Negotiation" of key areas and their use

Is it worthwhile for farmers to participate in the project? After all, it concerns areas whose profit does not cover the expenses. On the one hand, there are the interests of the public, the protection of biodiversity and of valuable habitats of wildlife and plants. Cultural values are also concerned such as low mountain pastures, special forest pastures, terraced landscape and hedgerows, as well as single objects. As an example, Peter Gresch mentions a chapel, built on a hill, which in early times was visible from far away and now has disappeared in the forest. On the other hand, the farmers are interested in managing their terrain with a reasonable effort. The ag-

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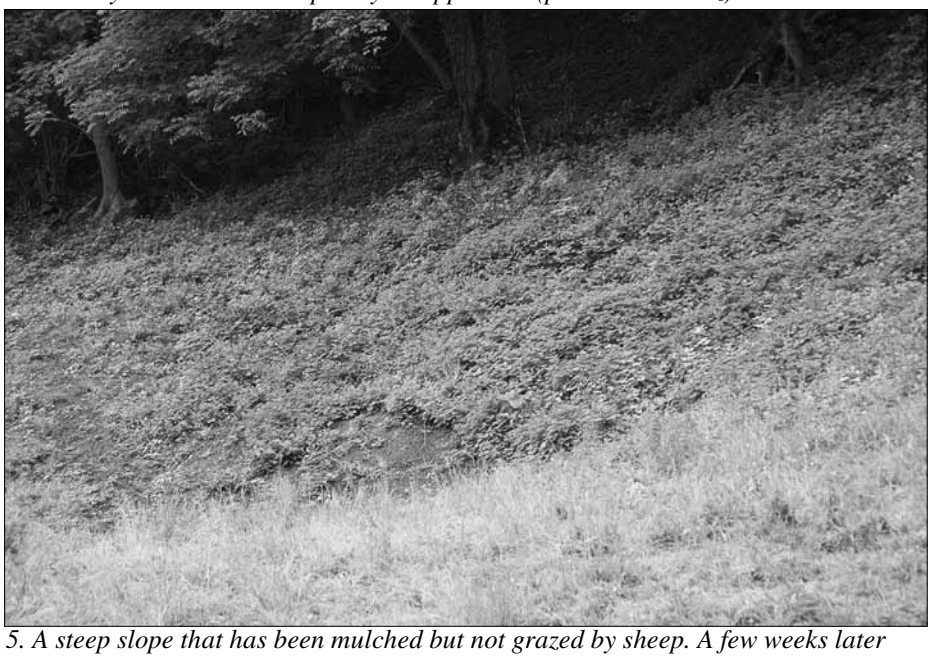
4. The same slope two years after mulching and regular grazing by sheep. The blackberry bushes have completely disappeared. (picture: M. Götz)



5. A steep slope that has been mulched but not grazed by sheep. A few weeks later blackberry bushes and stinging nettles sprawl. (picture: M. Götz)

6. Engadine sheep are well suited to preserve the landscape. (picture: M. Götz)

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ricultural land should not be too steep and free of obstacles. The profit must remunerate the labour. Therefore it did not merely depend on the amount of direct payments, but also how the use of key areas would be "negotiated" with the commune, the project expert explained.

The right to use new areas

"There is enough money available for rural economy", says Peter Gresch, with regard to the available resources provided through *AP 2014/17* and the increased promotion of agricultural areas. On the one hand, several federal promotion instruments can be considered for the same areas (see box: Measures of the *AP 2014/17*), on the other hand maintenance measures can be adapted to the objectives. So it may be useful, for example, not to mow every year, but work together with forestry companies, which are responsible for the clearing of bushes. Last but not least, the participation in the forest ingrowth project could be interesting for farmers, as they obtained the rights to additional farmland. If the declared areas are not managed by their owners, the right of use can be transferred to other farmers. The central focus of the project in the Valais is – as mentioned – the commune. Its task is to ensure the utilisation of key areas along with the integration of the farmers. Those can take the chance and take part in the decision on key areas and their usage.

Keeping open the areas under cultivation

Keeping open the arable areas is serving three main goals, says *Patricia Steinmann*, Department of Eco-programmes and Etho-programmes of the FOAG, namely the preservation of production areas, the preservation of half-open landscapes for tourism, and third, encouraging the biodiversity by supporting open areas. With increasing overgrowth by trees rare species of animals and plants get lost. With *AP 2014/17* new instruments for the maintenance of open cultural land are provided: The direct payments for cultivated areas are intended to replace the existing direct payments. They are made up of zone-related payments and payments with regards to the slope, the alpine pasture and summering. Basic payments for the security of supply are intended to replace animal-related RGVE posts. What has been called eco-payments so far will now be named

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biodiversity-payments. The basis is the existing eco-quality-ordinance. The incentives for the biodiversity program shall be increased. •

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(Translation *Current Concerns)*

8. Photo of low mountain pastures in Niederwald/Valais, taken in 1970. (picture: P. Gresch)

7. A young ash tree browsed by sheep. (picture: M. Götz)

9. The same mountain pastures in 2007. The overgrowth by trees has remarkably increased in the past 40 years. (picture: P. Gresch)

"Voglio fare il Cittadino" – I want to be a citizen

Introductory lesson from a Ticinese civics teaching material

mw./ts. "Do never forget and also remind your friends of it: to know the community in which you live, from the ground up, also means to understand the whole structure of our democracy." This sentence marks the point, what the concerns of the civics teaching material are, that was issued in Canton Ticino, entitled "Voglio fare il Cittadino", in English "I want to be a citizen". The sentence shows that with this work the reader receives much more than a civics teaching material. This valuable work gives an introduction to the basics of direct democracy that not only appeals to the intellect, but also touches the heart. It will up to the finest facets introduce to the young people the living structure of direct democracy by the example of a Ticinese community, to help them to become able to fulfill their role as active citizens in community, state and federation. And it aims at reminding us Swiss, whether young or old, in which unique democracy we are allowed to participate: a democracy that is vivid only by citizens exercising their political rights and responsibilities and contributing to a decent living together. Even for our friends in other states "Voglio fare il Cittadino" will facilitate access to the understanding of direct democracy. Because the building of direct democracy must begin in the commune, in the smallest community.

To preserve this valuable achievement, it must be our greatest concern, to establish the will and the ability to citizenship (being citizen) in our young generation. Eros Ratti, a connoisseur of Ticino communities, as there is hardly a second, tackles this task in a marvelous way. In conversation with the 18 year old "Cittadino" who has a strong desire to become a citizen, he tackles his constructive work as a civics teacher with great understanding for the young people and with a good portion of humor. A deeply touching and delightful reading for anyone who reads Italian – and a must to translate this unique reference work about the understanding of direct democracy into the other national languages.

In 16 lessons Eros Ratti brings students and other readers closer to the operating of the Ticino communities, in a varied and attractive way, with many illustrative examples and beautiful illustrations. After Current Concerns has already presented in part the fourth lesson about the communal assembly as one of the core elements of direct democracy (see No. 17 of 30.4.2012), the book, that has been transmitted into English by a group of translators of the cooperative Zeit-Fragen, will be printed chapter by chapter in the next issues.

At the beginning we place the introductory lesson titled "I want to be a citizen: but how?" The willing reader learns what electric light and water have to do with citizenship and how essential the equal treatment of citizens is with respect to the use of public services. But also how conscientiousness and the ability to take decisions, that affect also other people, independently, is a significant part of citizenship in a democracy.

Voglio fare il Cittadino,
ISBN 978-88-905070-0-7

I want to be a citizen: But how?

My perplexity

My name is „Young Citizen", and I was born at the end of the 20th century, and I will be eighteen years old in a few days.

Since my childhood I have had an obsession: I have wanted to be a "citizen". Maybe because of my name, maybe because fate wants it, or maybe because I have always been different.

It is clear that I have succeeded in spite of many adversities. What surprised me and in a way somehow dampened my initial enthusiasm was the absence of any guiding principle on how to become a citizen.

I knocked on doors in Bellinzona (government building), I inquired in some municipalities; I phoned known people, I tried the internet and via e-mails.

No one could give me the information requested.

I wondered why?

In truth, I came to the conclusion – and this is already an answer to my question – that the 'occupation' of a citizen cannot be found in any – no matter how accurate – directory of professional training. It is a profession that must be learned very slowly and must be learned independently, based on the little information that you have been given by your family or school, or the little that you learn from the society in which you live.

But I can say that I, unlike many others, have been lucky. A gentleman from Ascona, whom I met by chance on a walk with my girlfriend on the lakefront, advised me to turn to *Eros Ratti* with my concerns, who is residing in Gambarogno. I met this gentleman a day later; you can read the results in the following documents, which include his answers.

Thanks to him I actually have learned "to be a citizen". I hope you will also be as lucky, so enjoy reading the documents provided below!

Your "young citizen"

Answer given by Eros Ratti

Dear "young citizen",

I will gladly answer your questions, because I remember in fact (what a coincidence) that I felt the desire to be a citizen already in the primary school of Indemini.

And not because of the conscientious and diligent teaching of Senor Pedroni, but because what I experienced every day at that time in the thirties within the family and at school raised many questions.

In my answer I refer above all to electric light and water: you certainly wonder while you're reading this what electricity and water have to do with the desire to be a citizen?

Sure there are correlations.

As a young boy I usually spent the summer holidays with my grandmother in the plane in Gerra Gambarogno, and I wondered why there was electric light and water in her house. Even then, these differences seemed to me not right.

Why did I have to go to the well at the other end of the village to drink water?

Why was it necessary to light a kerosene lamp with difficulty to have a little light in the evening to do my homework?

I found the answers to these questions much later, when I had learned to be a citizen.

If you want to do the same, read the pages I attached to this letter several times over and over again, ad nauseum; this is the only way to learn to be a citizen.

Enjoy your reading, dear "young citizen", and I congratulate you for the wonderful choice you have made.

Eros

Primary and secondary pupils

Well and washhouse

Fundamental Considerations

(Or a first clue of an education towards a democratic citizen)

The initial response and particularly the description of Eros' experiences as a student in all their fullness and excitement indicate the way of an education towards a democratic citizen. They explain the "differences" that can exist between the citizens of a state, depending on whether they live in this or that commune.

In this case differences are related to two different public services, water and power supply; differences that do no longer exist in today's Swiss democracy, but unfortunately they still exist in other places somewhere on this planet.

This observation draws our attention immediately to one of the core issues belonging to the basics of education for democratic citizens: the equal treatment of the citizens with regard to the use of public services.

This equal treatment may not only be written down on "paper", but the services must actually be available and really put to practice for the citizens. These objectives are to be realized, be it through a conscious and responsible decision of the interested citizens within the structures of their local community, or in special cases by the decision of the entire citizenry of a state in the known forms of solidarity.

Finally, it can be said that democracy – here and in other areas – requires the following on the part of the citizens: "a balanced sense of duty as an incentive to consciously seize their decision-making opportunities and simultaneously to bring the necessary skills to take an independent decision – depending on the circumstances – which also affects their fellow citizens."

Notice! Never forget it, and remind your friends: Knowing the community in which you live, through and through, means at the same time that you understand the entire fabric of our democracy.