

Legal status and regulation of the German language in the Federal Republic of Germany

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ABSTRACT

Despite being an official language of several countries in Central and Western Europe, German is not formally recognised as the official language of the Federal Republic of Germany. However, in certain situations the use of the German language, including the spelling rules, is subject to state regulation (by acts of Federal Parliament or by administrative decisions). This article presents the content of this regulation, its scope, and the historical context in which it was adopted.

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Introduction

German is an official language of five countries in Central and Western Europe: Austria, Switzerland, Belgium, Luxemburg and Lichtenstein. In addition to this, it is an official language of the Autonomous Province of South Tyrol, Italy, and enjoys a legally recognised status (as minority or auxiliary language) in several other countries in Europe, such as Hungary, Romania, Denmark and Poland, as well as overseas, in Brazil and Namibia.

A careful reader has already noticed that Germany, despite being the country with by far the largest population of German speakers, was not mentioned in the previous paragraph. It is not a mistake; German is undoubtedly the *national* language of Germany, but it is not formally recognised as the official language of the country.

This article is structured as follows: first, we demonstrate that, unlike in some other German-speaking countries, German is not mentioned in the German constitution (Basic Law). Secondly, we present the laws of Germany that impose the use of the German language in certain specific contexts only. The main part of this article discusses various attempts that have been made or proposed in the past to adopt state regulations concerning German spelling (orthography), and which gave rise to many debates which, at least to a large extent, are now settled.

German language in the German constitution (Basic Law)

Strictly speaking, the Federal Republic of Germany does not have a constitution (*Verfassung*). Instead, it has a Basic Law (*Grundgesetz* – sometimes translated as ‘constitution’), adopted in then-West Germany in 1949.

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The context of its adoption was peculiar, and it explains the choice of the unusual name: the Basic Law was adopted on the initiative of the three occupying powers (the USA, the UK and France), rather than the people of (West) Germany. The representatives of West German states were initially reluctant to accomplish this task, fearing that a permanent establishment of a West German state would destroy German unity forever; they fulfilled the occupiers' order in such a way as to make clear their intention was not to establish a permanent state, but only a provisional political entity. This is why the name 'Basic Law' was used instead of 'constitution', as a real German constitution was, in the intention of the authors of the document, to be adopted by all the German people, in a sovereign manner, after reunification. This may also explain why, unlike for example the French constitution of 1958, still in force, the German Basic Law does not designate German as the official language of (West) Germany, thereby leaving the country with no official language at all.

Foreign readers may find it surprising that the 1949 German Basic Law is still in force today, even after the Reunification of Germany in 1990. Although the document has been amended over 60 times¹ since its adoption, none of these amendments mentioned German as an official language. Therefore, *de jure*, today's Germany has no official language at all.

Such a lack of official language specified in a constitution is not uncommon among modern European states. As of 2008, the following EU countries did not have their national language mentioned in their constitutions: Denmark, Germany, Greece, Italy, Luxemburg, the Netherlands, Sweden, Czech Republic, Hungary and the United Kingdom.²

Language is only mentioned once in the German Basic Law, in its Article 3(3) which provides that

[n]o person shall be favoured or disfavoured because of sex, parentage, race, language, homeland and origin, faith or religious or political opinions. No person shall be disfavoured because of disability.³

For a number of years there has been an ongoing debate on amending the Basic Law in such a way as to mention German as the official language of the German Federation. In 2006, a working document (*Ausarbeitung*) entitled 'Language in the Basic Law' (*Sprache im Grundgesetz*),⁴ summarising the debate on the subject, was published by the Bundestag. In 2011, two public petitions were debated in the Bundestag: one – introduced by two associations: *Verein Deutsche Sprache* (VDS) and *Verein für deutsche Kulturbeziehungen im Ausland* (VDA) – advocated for the modification of the Basic Law; the other – introduced by a linguist Anatol Stefanowitsch – was against the idea.⁵ The proponents of the reform suggested that Article 22 of the Basic Law, mentioning the federal capital and the federal flag, should also include a mention of the official language of the Federation. The opponents advanced that the current rules on the use of German in judicial and administrative proceedings (cf. the following section of this article) are sufficient. During the parliamentary debate it was also raised that the introduction of the German language in the Basic Law could be prejudicial for minority languages, and that it could discourage foreign workers from immigrating to Germany.

In 2018, the subject was again introduced in the parliamentary debate, this time on the initiative of the far-right political party *Alternative für Deutschland* (AfD).⁶ Interestingly,

during the first reading some members of the Bundestag chose to speak in dialects such as Oberpfälzisch and Low German.⁷ The project failed to attract the required two-thirds majority of votes.

An alternative approach to the problem was proposed by Henning Lobin (2021), the director of the Leibniz-Institute for the German Language⁸ and one of the co-authors of this article. He suggested to mention the German language not in Article 22 of the Basic Law, mentioning the capital and the flag of the Federation, but instead in its Article 5, proclaiming freedom of expression, science, teaching and research. The suggested wording is as follows:

The German language forms the basis of the German community. The German Federal Government and “Länder” shall facilitate and promote proficiency in the German language.

In addition to this, according to Lobin, the protection of minority languages should also be enshrined in the Basic Law.

Rules on the use of German language in federal law

Despite the fact that German is not mentioned as the official language of the Federation in the Basic Law, in some contexts the use of German is required by federal law. These include:

- Administrative procedure (i.e., interactions between the administration and citizens) – § 23(1) of the Code of Administrative Procedure (*Verwaltungsverfahrensgesetz*) states that German is the language of the procedure (*Amtsprache*). In some states of the Federation (*Länder*), other languages can also be used in administrative procedure before the organs of state administration; e.g., in the state of Schleswig-Holstein the use of Low German, Frisian and Danish is also allowed in certain areas (§ 82b *Allgemeines Verwaltungsgesetz für das Land Schleswig-Holstein (LVwG)*), and in Saxony, Sorbian can be used (Article I(2)(b) *VwV Dienstordnung*).
- Judicial procedure (i.e., court proceedings) – § 184 of the Courts Constitution Act (*Gerichtsverfassungsgesetz*) stipulates that ‘The language of the court shall be German’ (*Die Gerichtssprache ist deutsch*), while also guaranteeing the right of Sorbians to use the Sorbian language before the home districts of the Sorbian population. According to § 185(2) of the same Act, the obligation to use German in court can be waived if all the persons involved have a good command of a foreign language – in such cases, the (otherwise mandatory) interpreter can be dismissed; in practice, however, this exception is very rarely used, as the parties to the procedure are by definition in conflict, and therefore not inclined to make concessions to accommodate each other. For this reason, contracts in Germany are usually drafted in German (because they need to be translated into German anyway in case of a legal dispute), although there is no obligation to use German in contracts governed by German law (this includes, e.g., employment contracts).

There is an ongoing debate on introducing English as an alternative language of proceedings in specialised commercial courts in order to strengthen Germany’s position as a place for international dispute settlement – such proposals were introduced in 2010 and again in 2014, but none of them was successful. In 2018, in the aftermath

of Brexit, the court (*Landgericht*) of Frankfurt created a chamber for international commercial litigation, where English is the language of proceedings (Schnabl & Gruber, 2022). Moreover, traditionally, in arbitration the parties are free to choose the language of proceedings (§ 1045 of the Code of Civil Procedure).

- In product instructions – According to § 3(4) of the Product Safety Act (*Gesetz über die Bereitstellung von Produkten auf dem Markt*, ProdSG), where specific rules need to be complied with when using or maintaining a product in order to ensure the safety and health of users and other persons, instructions in German language should be provided together with the product. It should be noted that ‘product’ is defined very broadly as ‘a commodity, a substance or a mixture manufactured in a manufacturing process’ (§ 2, 21 ProdSG).
- In food labelling – according to § 2(1) of the *Lebensmittelinformations-Durchführungsverordnung* (LMIDV), implementing an EU Regulation 1169/2011 on the provision of food information to consumers, foodstuffs must be labelled in German when placed on the German market. The mandatory information on the label includes, e.g., the list of ingredients, special storage conditions, allergen information and country of origin.

Moreover, a recently reformed Skilled Immigration Act (*Fachkräfteeinwanderungsgesetz*) requires foreigners to justify a certain level of German language qualification while applying for some types of visas. These include visas for seeking employment for people with vocational qualifications (which require a B1 level according to the Common European Framework of Reference for Languages⁹), as well as visas for training (B1), for studying (generally B2, but depending also on the study programme), and for IT specialists without formal qualifications (B1).

It should be clarified that, although the use of the German language is relatively rarely required by German law, in practice good command of the language is almost universally expected in Germany, in all everyday situations. This expectation may be – at best – relativised in some heavily internationalised urban residential areas (such as certain areas of Berlin), international business relations and sometimes also at universities.

Attempts to regulate German spelling

As shown in the previous section, the use of the German language is required by federal law only in certain contexts. One of these areas is administration, where the rules on language go a step further: the use of an officially approved spelling convention is required. This has been achieved in over a century of top-down standardisation, which is discussed in this section.

Providing a detailed analysis of the various German spelling reforms, as well as their social impact, is not one of the aims of this article. Instead, the authors want to propose a concise synthesis intended for the international audience, as currently a vast majority of literature on standardisation and normalisation of the German language is only available in German. Those readers who want to learn more about the German spelling regulations can consult the rather abundant German literature, including Augst et al. (1997), Böhme (2001), Krome (2024, *forthcoming*), Lohff (1980) and von Polenz (1999).

Early attempts

Even though German is widely spoken, or maybe because of this, there is no single ‘official’ standard of the language. Instead, many varieties – marked, for example, by differences in spelling – have co-existed throughout the ages, despite some efforts towards standardisation, such as Martin Luther’s translation of the Bible (1522). An early spelling advice ‘write like you speak’ (*Schreib, wie Du sprichst*), attributed to Johann Christoph Adelung (1732–1806), still followed by some educators today (e.g. Mattes (2015)), can be quoted to justify the many spelling variants present in pre-twentieth century German. It can be said that the established sound-to-letter correspondences are clearly the backbone of the phonetic system of standard German. Nevertheless, this system is also based on a phonetic letter assignment (graphematics), which is quite regular and has also developed independently from the phonetic system.

Later, Jacob Grimm (1785–1863), one of the famous Grimm Brothers,¹⁰ introduced a competing principle, according to which the spelling should reflect the etymology of each word, which was a noteworthy effort towards introducing a standard German spelling.

The process of standardisation of the German language was characterised, according to Eichinger (2015, p. 169), by the fact that the language of a geographic or political centre did not prevail, simply because there was no such centre. As far as oral language was concerned, Eichinger continues, ‘only the social and political developments until mid-twentieth century have allowed a uniform understanding of norms to become widely established’.¹¹

Unsurprisingly, in pre-unified Germany the political context was not favourable for language standardisation. The absence of uniform German spelling was not generally perceived as a handicap, since individual states cherished their cultural distinctiveness, including the linguistic one. Naturally, there was no single body or organisation with a mandate to decide which of the several spelling variants should be considered ‘official’ in the territories that were about to become parts of the German Empire. This context changed after the Unification and the proclamation of the German Empire in 1871, and spelling standardisation efforts intensified.

This particular historical context can also justify the absence of any mention of the German language in German constitutions (as discussed above in this article). A unified German state did not exist before 1871, and by the time the German language was already ‘fully developed’, unlike, e.g., the French language in 1635, when *Académie française* was established (von Polenz, 1999). This explains also why there is no German language academy, comparable to the famous French institution; instead, the Leibniz Institute for German Language (cf. below in the sub-section about the post-war period) is the central scientific institution for the study and documentation of the German language.

From the unification of Germany to the German spelling unification reform

The so-called First Orthographic Conference (*I. Orthographische Konferenz*), aimed at the adoption of more uniform spelling, was organised in January 1876 on the initiative of the Prussian Minister of Culture, Adalbert Falk (Nerius, 2002). However, the outcomes of this Conference were rejected by the state governments and finally vetoed by the

Imperial Chancellor Otto von Bismarck himself (Zabel, 1997, p. 15). The attitude of the public towards spelling standardisation could be illustrated by a sarcastic note published during the Conference in an Austrian newspaper *Grazer Volksblatt*, the author of which threatened that the federal police would be charged with the task of enforcing the new spelling rules.¹²

Notwithstanding the failure of the First Orthographic Conference, some states adopted their own spelling rules, e.g., Bavaria, Austria or Prussia. The Prussian rules were based on those developed by Wilhelm Wilmanns (1842–1911) for use at Prussian schools. Wilmanns was a close friend of Konrad Duden (1829–1911), Prussian philologist, teacher and lexicographer, the author of the ambitious Complete Spelling Dictionary of the German Language (*Vollständiges Orthographisches Wörterbuch der deutschen Sprache*) (Duden, 1880). This dictionary, first published in 1880, was based on the Prussian spelling rules developed by Wilmanns. Over the next decade, Duden's dictionary gained significant popularity in German-speaking states (Böhme, 2001). Interestingly enough, the first edition only had 28.000 entries.

In 1901, the Second Orthographic Conference (*II. Orthographische Konferenz*) took place in Berlin. During this event, a uniform spelling for all German-speaking states, based on Wilmann's and Duden's work, was finally adopted, although the Conference allowed many variant forms. In 1902, in the aftermath of the Conference, a revised edition of Duden's dictionary (taking into account the outcomes of the Conference and remarks from state governments) was proclaimed by the German Bundesrat as the official and binding source of spelling at schools and in all official contexts, in all states of the Federation.¹³ Austria and Switzerland soon followed suit (Zabel, 1997, p. 15).

Nerius (2022, p. 8) emphasises that the decisions of the Second Orthographic Conference formed the basis of German orthography until 1996 (cf. below) in the entire German-speaking area.

However, as mentioned above, many variant forms still existed in the Duden dictionary and in the official spelling, which caused some turmoil in the publishing industry. At the publishers' request, Konrad Duden published, in 1903, a Spelling Dictionary for German Book Publishers (*Rechtschreibung der Buchdruckereien deutscher Sprache*) (Duden, 1903) which was rid of all variant forms. In 1915, both dictionaries – the one for book publishers and the one for the general public – merged into one, thereby marking the final step of the 'first spelling standardization' process.

In contrast to the top-down standardisation of spelling stands the bottom-up effort to standardise pronunciation in theatres, initiated just a couple of years before the Second Orthographic Conference, in 1889. At a conference held in Berlin between German linguists and theatre directors, the 'stage German' (*Bühnendeutsch*) pronunciation was defined. The need for unified pronunciation in theatres emerged earlier in the nineteenth century, with raising popularity of German travelling theatres (*Wanderbühne*): on the one hand, actors (often speaking various different dialects of German) needed to use a uniform pronunciation during plays for aesthetic reasons (some choices in the standardised stage German are in fact based on acoustics in theatre rooms); on the other hand, the use of standardised pronunciation made the performances more understandable and appealing abroad, opening new possibilities for the theatres. In the aftermath of the conference, in the same year 1889, Theodor Siebs (1862–1941) published his pronunciation dictionary *Deutsche Bühnenaussprache*. Stage German is an artificial dialect (based

mostly on North German pronunciation), which was long considered a *de facto* standard in theatres, but later also in media, and by extension in politics and (higher) education. It has certainly affected how German is taught as a foreign language, but also how it is spoken by native speakers in more formal contexts.

The Second World War period: the rise and fall of blackletter script and a failed spelling reform

During the Second World War, the German government also made some efforts to regulate the German language; the most notable of these attempts was the abolition of blackletter script (*Fraktur*), also referred to as ‘Gothic script’. This script, derived from Carolingian minuscule, a calligraphic standard in medieval Europe since the 8th century AD, was widely used until it was gradually replaced by Antiqua (or ‘Latin script’) used today. Antiqua was used in some German printings, such as technical writings, as early as the nineteenth century, but under National Socialism *Fraktur* was considered preferable as a ‘more German’ script. In 1941 this has changed again when the National Socialist German Workers’ Party (NSDAP) declared blackletter a ‘semitic’ script, and Antiqua a ‘normal’ script.¹⁴ The last edition of the Duden dictionary printed in *Fraktur* appeared in 1941. The real reasons for this shift are of more strategic nature: the use of Antiqua was supposed to facilitate the Germanisation of conquered territories in Western Europe, and facilitate the spread of Nazi propaganda (Reibold, 2010).

Another attempt to regulate the German language during the Second World War was the failed 1944 Spelling Reform. It was supposed to enter into application at the beginning of the 1944/45 school year, but it was eventually deemed ‘non-essential for the war effort’ and abandoned, even though some of the planned modifications were actually introduced by the 1996 Spelling Reform.

Post-War period: attempts at a top-down spelling reform in a divided Germany

In the aftermath of World War II, in 1949 Germany was officially split into two states: West Germany (Federal Republic of Germany, abbreviated FRG or BRD in German) and East Germany (German Democratic Republic, abbreviated GDR or, in German, DDR), with two separate legal systems. This division had some impact on language. The Duden dictionary, an official source of spelling since 1903 (cf. above), was also split into two editions: West (published by Bibliographisches Institut AG, with a seat in Mannheim) and East (by Bibliographisches Institut VEB, with a seat in Leipzig). The differences between the two were relatively minor, but nevertheless apparent – most notably, the subsequent editions of the ‘East Duden’ contained more Russian loan words.

In 1954, a group of language experts from both German states, including members of the Duden editorial staff, as well as from Switzerland and Austria, signed the so-called Stuttgart Recommendations for the Renewal of German Orthography (*Empfehlungen zur Erneuerung der deutschen Rechtschreibung*),¹⁵ which can be regarded as a contestation of the well-established ‘monopoly’ of the Duden dictionary. These recommendations were vehemently opposed by the public, including some of the greatest German-language authors of that time, such as Thomas Mann, Hermann Hesse and Friedrich Dürrenmatt. Pressured by the public opinion, the Standing Conference of Ministers of Education

(*Kultusministerkonferenz*, hereinafter: KMK) did not follow the Stuttgart Recommendations. In 1955, the KMK concluded that in cases of doubt, the orthography and rules of the Duden dictionary should apply, thereby confirming the monopoly.¹⁶

In 1956, the KMK established a Working Group on Spelling Reform (*Arbeitskreis für Rechtschreibregelung*), which in 1958 issued the so-called Wiesbaden Recommendations (*Wiesbadener Empfehlungen*).¹⁷ One of the suggested modifications was the introduction of lowercase spelling for certain nouns (currently and historically, all German nouns are spelled in uppercase); it was a source of so many controversies that the idea of a spelling reform was abandoned (Küppers, 1984).

In 1964, the Leibniz Institute for the German Language (IDS) was founded in Mannheim. It is the central scientific institution for the documentation of and empirical research on current language use and the recent history of the German language. Since its creation, IDS was committed to strict empiricism (it was, e.g., a pioneer of computational methods to study language data), and a descriptive rather than prescriptive approach to language (Witt & Kamocki, 2022). With this function, the IDS contributes in particular to the development of methods for modelling language with large quantities of digital text corpora and theoretical classification. It hosts the world's largest corpora of written and spoken German, and develops corpora and tools for corpus retrieval and analysis that provide the empirical basis for modern linguistic research. As a member of the Leibniz Association it is subject to the control of the state and federal ministries for research. The IDS reports annually on its research in the Pact for Research and Innovation and is subject to a 7-yearly scientific evaluation. Today, IDS is also a certified CLARIN research data centre, a member of the NFDI (German National Research Data Infrastructure), and a member of EFNIL (European Federation of National Institutions for Language).

Already in the 1980s, IDS was involved in a planned German spelling reform. In 1987, the institute was commissioned by the KMK to develop a new set of spelling rules in coordination with the Society for the German Language (*Gesellschaft für deutsche Sprache*) in Wiesbaden. However, when a draft of the new rules was submitted to the KMK in 1988, it was found unacceptable and rejected.

Professor Dieter Nerius, deputy chairman of IDS' Committee for Spelling Questions (1992–1997) and a member of the Intergovernmental Commission for German Orthography (1997–2004), estimates (2022, p. 9) that there were about 100 orthographic reform proposals for German in the twentieth century, the contents of which differed to varying extents. None of them, however, got beyond the general discussion stage until the 1996 reform.

The 1996 spelling reform

As various proposals for spelling reforms continued to appear, the International Working Group for Orthography (*Internationale Arbeitskreis für Orthographie*), established in 1980 by joint efforts of four national groups working on the subject, was continuing its work on a revision of German spelling. The group was created by eighty language scholars from both East and West Germany, as well as Austria and Switzerland. It published its first results in 1985, which were then debated during two conferences in Vienna (*Wiener Gespräche*) in 1986 and 1990. The Austrian government invited representatives from all German-speaking territories to participate in these conferences.

Based on the input gathered during both events, in 1992 the International Working Group published its findings in a book (*Internationaler Arbeitskreis für Orthographie, 1992*). The Standing Conference of Ministers of Education (KMK) invited 43 associations to submit comments to this academic proposal; similar hearings took place in Austria and Switzerland. Consequently, in 1993 the International Working Group withdrew one of its most controversial recommendations included in the 1992 book, namely spelling all nouns in lowercase.

During the third *Wiener Gespräch*, also referred to as the Vienna Orthographic Conference (22–24 November 1994), a recommendation was made for an administrative spelling reform based on the revised deliverables of the International Working Group.

On 1 December 1995, the KMK adopted a decision on the new spelling rules for the German language¹⁸; according to this document, the revised spelling was to form ‘an obligatory basis for teaching in all schools’ (*verbindliche Grundlage für den Unterricht in allen Schulen*). The decision was approved by the Standing Conference of Prime Ministers (*Konferenz der Ministerpräsidenten*) on 14 December 1995, and by the federal government on 17 April 1996. Subsequently, state ministries of education issued circulars implementing the new rules.

The same decision of the KMK also repealed all the previous decisions concerning spelling, and especially the 1955 decision according to which the Duden spelling dictionary was to be followed in cases of doubt (cf. the previous sub-section). This means that with the 1995 decision, the ‘Duden monopoly’ was formally abolished.

It should also be noted that unlike the 1902 reform, the 1996 reform was in fact not initiated by the legislator, i.e., a parliament (state or federal); instead, it was based on decisions of the executive (ministries). As such, its vocation was not to change German spelling ‘in general’, but only the spelling used in schools; other areas of life, e.g., media, were not affected by the reform, at least from the formal point of view. Naturally, imposing rules on what schools should consider ‘correct’ spelling would in a long run also influence other sectors and areas of life, and the reformed spelling would be bound to become a ‘new norm’ also for the general public.

Soon after the 1995 KMK decision, the international character of the reform was confirmed; on 1 July 1996, the Joint Declaration on the Reform of German Orthography (*Gemeinsame Absichtserklärung zur Neuregelung der deutschen Rechtschreibung*)¹⁹ was signed in Vienna by the representatives of German federal states, the German Federation, Austria, Belgium, Lichtenstein, Swiss cantons and the Swiss Federation, Lichtenstein, South Tyrol, as well as Romania and Hungary. The signatories declared their intention to introduce the spelling reform by 1 August 1998. Some German states introduced the reform as early as the beginning of the 1996/1997 school year, despite that fact that in Germany a transition period, during which ‘old’ spelling was to be marked as ‘outdated’ instead of ‘wrong’, was supposed to last until the end of July 2005.

As early as mid-1996, the first dictionaries integrating the new spelling rules were published.²⁰

The aftermath of the 1996 spelling reform

Only after the Vienna declaration was signed, and new spelling dictionaries published, the details of the reform became known to the general public. This caused a wave of

criticism concerning both the content of the new rules, and the way in which the reform was introduced, i.e., with little public consultation. At the 1996 Frankfurt Book Fair over 100 authors signed an open letter demanding for the reform to be cancelled. In 1997, the Society for German Spelling and Language Cultivation – initiative against the spelling reform (*Verein für deutsche Rechtschreibung und Sprachpflege e. V. (VRS) – Initiative gegen die Rechtschreibreform*)²¹ was founded. In the same year, some of the major German news agencies announced that they would not follow the new spelling rules, and a motion against the reform was introduced in the Bundestag.²² In 1998, the Bundestag expressed concern about the reform in a document famously stating that ‘the language belongs to the people’.²³

In the state of Schleswig-Holstein, a public referendum on the matter was organised, with the majority voting for the return of traditional spelling rules. However, in 1999, after a ruling from the Federal Constitutional Court (cf. below), the result of the referendum was overturned by a parliamentary vote (Möllers & Van Ooyen, 2000). Similar referenda were organised by the opponents of the reform in several other states, but were unsuccessful.

In 1998, the Federal Constitutional Court (*Bundesverfassungsgericht, BverfG*) confirmed that the introduction of the spelling reform by the KMK was legal.²⁴ According to the Court, nothing in the Basic Law prohibits state regulations on spelling, and such a regulation may indeed be dictated by public interest, e.g., when language becomes unnecessarily difficult to teach and learn. However, due to the very nature of language, the states cannot regulate it in an arbitrary way.²⁵ Examples of reasonable regulation, according to the Court, include: eliminating existing contradictions in spelling, or defining spelling of new words.²⁶ The Court also found that an act of parliament was not required to introduce new spelling rules at schools; in fact, such decisions should be taken by the competent body,²⁷ and education in the school sector is within the competence of each federal state. The fact that the spelling reform was in fact coordinated with other bodies was not an obstacle to constitutionality, as coordination between the states and the Federation in the area of education is expressly encouraged by Article 91b of the Basic Law. Finally, the Court also ruled that the reform did not significantly affect any constitutional rights, such as, e.g., the freedom of occupation, as it was geared primarily towards schools, and other sectors dealing with written language (such as publishing) were not directly affected, and they were free to decide whether and when they would conform to the new rules.²⁸

Perhaps encouraged by this ruling, in 1999 the Federal Ministry of Interior decided that all official correspondence of all federal administrative bodies should follow the new spelling rules.²⁹

Despite the above, further Federation-wide attempts were made to postpone the reform’s full entry into force. None of them were fully successful, but as a result two states: Bavaria and North Rhine-Westphalia (i.e., two most populous states of the Federation) announced that they would postpone the reform ‘until further notice’. One of the reasons for this was to let the newly established Council of German Orthography (cf. below) the time to work on the revision of the new spelling rules.

The establishment of the council for German orthography and attenuation of the spelling reform

The Vienna Declaration of 1 July 1996 called for the creation of an international body, based at the Institute for the German Language (IDS) in Mannheim, with a mission to maintain uniform spelling in the German-speaking area. Already in its decision of 1 December 1995 (introducing the spelling reform), the German Standing Conference of Ministers of Education (KMK) agreed to the establishment of such a body, called the Intergovernmental Commission for German Orthography (*Zwischenstaatliche Kommission für deutsche Rechtschreibung*). It was effectively established in 1997 and functioned until 2004, when strong resistance to the new regulations on spelling, especially expressed in the media and among the general public, prompted the responsible institutions of the Federal Republic of Germany, with the agreement of Austria and Switzerland, to expand the Commission (consisting of linguists and didacticians) to a much larger body, including representatives of diverse professional groups dealing with written language. The Council for German Orthography (*Rat für deutsche Rechtschreibung*), with a seat in Mannheim, was thus created, with the goal of revising the 1996 regulations and achieving greater public acceptance thereof (cf. Nerius, 2022, p. 12).

The Council is composed of a Chairman and 40 members (18 from Germany, 9 from Switzerland and Austria, 1 from Belgium, Lichtenstein, South Tyrol and 1 observer from Luxemburg).

In February 2006, the Council submitted its recommendations for revisions of the reform to the KMK. The most controversial rules were abandoned, and only some undisputed modifications were retained. In March, the KMK accepted the recommendations.³⁰ The revised spelling rules (which, to a large extent, were a return of the pre-reform spelling) were officially introduced in schools in August 2006, with a one-year transition period. The decision was accepted by all federal states without exceptions.

Nerius (2024, *forthcoming*) argues that the reform, as well as the subsequent regulations from 2006 onwards, had a major influence on the linguistic research conducted in connection with the orthographic reform, and contributed significantly to the development of a broad field of research on writing. They thus promoted the development of the relatively young sub-discipline of written linguistics.

The role of the Council did not finish in 2007; in fact, its new prerogative was recognised in 2010, when the KMK authorised the Council to unilaterally adopt some minor modifications in 'official' spelling.³¹ This power has been used mostly to standardise spelling of some foreign lexical borrowings.

In 2016, upon the Council's recommendation, capital 'ß' was introduced in the official spelling.

The Council for German Orthography is currently in its 3rd term of office (2017–2023). According to its statutes, it is the central body entrusted with the task of further developing spelling on the basis of the orthographic rules to the extent necessary, as well as carrying out impact assessments. This is done in working groups addressing various societal needs, educational requirements and research findings. The basis for further development of the official spelling rules is formed by (a) empirical observations on key topics (e.g., acquisition and use of punctuation, gender-equal spelling (of gender-neutral language), foreign word neologisms), (b) the enquiries sent to the Council's

office, especially concerning problems related to comprehension and application and (c) recent research findings. The general objectives are to observe and further develop German spelling using corpus and computer linguistics methods, to preserve its uniformity of in the German-speaking world, and to offer clarification in cases of doubt. Therefore, the official German spelling rules are in a dynamic process of standardisation and codification, while guaranteeing systematicity in the content and textual presentation of the rules.

Conclusion

The legal status of the German language evolved throughout the ages, affected by the winds of history. Although German is undoubtedly the national language of Germany, it is not recognised as the official language of the Federal Republic in the Basic Law. This is, in the authors' view, unlikely to change in the foreseeable future, despite the fact that a constitutional reform aimed at introducing an official language is being occasionally discussed.

The laws of the Federal Republic of Germany require the use of German only in certain specific contexts, most notably in administrative and civil proceedings. One can notice that the list of situations where the use of German is mandatory tends to expand, also under the influence of EU law, which, e.g., require the use of national languages in food labelling. According to the authors, this is attributable more to a growing number of increasingly detailed statutory provisions than to a real shift in the legislator's attitude towards the German language.

Another issue of relevance in discussing the legal situation of German in the Federal Republic of Germany is spelling standardisation. Since historically German was spoken in a geographically widespread and politically divided area, varying spelling conventions came to existence. Only after the Unification of Germany (1871) did it start being perceived as an obstacle, in particular to efficient administration and education. The first spelling reform, which laid the foundations for the current spelling, took place at the very beginning of the twentieth century, by means of an Act of Parliament recognising the 'monopoly' for the famous Duden dictionary. Despite many failed proposals for further reforms, this monopoly lasted until 1995. In 1996, in coordination with other German-speaking countries and territories, another reform was introduced by means of an administrative decision (formally limited to school education and administration). This reform met with stark resistance from the public opinion; in order to mitigate this resistance, an international body, the Council for German Orthography, was established in Mannheim, which in 2006 recommended for the most controversial rules of the 1996 reform to be revoked. The Council has since been granted the power to unilaterally adopt minor modifications in official spelling. Today, the Council continues its work, based on empirical observation and computational methods, to further ensure the uniformity of spelling in the German-speaking world.

Occasionally, voices calling for a bolder spelling reform can be heard; the authors of this article, however, believe that the current solution, with the key role of the Council for German Orthography, maintains the delicate homeostasis in the living organism that is the German language.

Notes

1. See the information on the website of the Federal Ministry of the Interior and Community: <https://www.bmi.bund.de/EN/topics/constitution/constitutional-issues/constitutional-issues.html> (last access: 21.12.2023).
2. Cf. https://www.bundestag.de/resource/blob/190280/97303c1606acf2ccfb1949e4b5a79b2a/Sprache_im_Grundgesetz-data.pdf (last access: 21.12.2023).
3. English translations of German laws quoted in this article come from the online database gesetze-im-internet.de, provided by the Federal Ministry of Justice. Where an ad-hoc translation is provided by the authors of the article, the original German term is also mentioned in parentheses.
4. Reg. Nr.: WF III – 064/06 <https://www.bundestag.de/resource/blob/424326/4931dfacebf45522c24c2a0842fb8569/wf-iii-064-06-pdf-data.pdf> (last access: 21.12.2023).
5. https://www.bundestag.de/webarchiv/textarchiv/2011/36382677_kw45_pa_petitionen-206798 (last access: 21.12.2023).
6. <https://www.bundestag.de/dokumente/textarchiv/2018/kw09-de-deutsch-landessprache-544508> (last access: 21.12.2023).
7. See: *Aktuelles* on the website of the Verein Deutsche Sprache: <https://vds-ev.de/arbeitsgruppen/deutsch-in-der-politik/deutsch-ins-grundgesetz/> (last access: 21.12.2023).
8. For more information about the Institute, cf. below, in the sub-section dedicated to the post-war period.
9. For more information about the Framework, see <https://www.coe.int/en/web/common-european-framework-reference-languages/level-descriptions> (last access: 21.12.2023).
10. For a more detailed account of Brothers Grimm contribution to German linguistic and especially lexicography, see Bär et al. (2013).
11. Translation by the co-authors; original German: *Was das Sprechen angeht, werden erst die gesellschaftlichen und politischen Entwicklungen bis zur Mitte des 20. Jahrhunderts eine weitgehende Durchsetzung einer einheitlichen Normvorstellung erlaubt haben.*
12. Grazer Volksblatt, 11 January 1876, p. 7, available at: <https://anno.onb.ac.at/cgi-content/anno?apm=0&aid=gre&datum=18760111&seite=7>.
(*Gerettet!*) *Endlich werden wir Deutsche eine einheitliche Rechffchreibung erhalten. Preußen, respektive sein Kultusminister Dr. Falk, hat die Sache in die Hand genommen. Am I I. d. tritt in Berlin eine „orthographische Konferenz“ zusammen. Da» Ende wird sein, daß ein Polizeibefehl durch das deutsche Reich gehen wird zur „Regelung“ der Schreibweise, und daß die Gendarmen über den Vollzug wachen werden. Das Zeug dazu haben sie ja.*
13. BVerfG, Urteil vom 14. Juli 1998 – 1 BvR 1640/97, para 5.
14. *Erllass des NSDAP-Regimes von 3. Januar 1941.*
15. Available at: [https://www.ortografie.ch/vorschlaege/empfehlungen\[1954515\].php](https://www.ortografie.ch/vorschlaege/empfehlungen[1954515].php) (last access: 21.12.2023)
16. Beschluß der Kultusministerkonferenz vom 18./19.11.1955, Bundesanzeiger Nr. 242 vom 15. Dezember 1955, S. 4.
17. Available at: [https://www.ortografie.ch/vorschlaege/empfehlungen\[19581015\]wiesbadener.php](https://www.ortografie.ch/vorschlaege/empfehlungen[19581015]wiesbadener.php) (last access: 21.12.2023).
18. Beschluss der KMK vom 1. Dezember 1995 zur Neuregelung der deutschen Rechtschreibung.
19. Available at: https://www.rechtschreibrat.com/DOX/wiener_erklaerung.pdf (last access: 29.03.2023).
20. E.g., Duden – Die deutsche Rechtschreibung 26. Auflage, Bibliographisches Institut & F. A. Brockhaus AG Mannheim.
21. <http://www.vrs-ev.de/portrait.php> (last access: 29.03.2023).
22. BT-Drucks 13/7028, available at: <https://dserver.bundestag.de/btd/13/070/1307028.pdf> (last access: 21.12.2023).

23. BT-Plenarprotokoll 13/224, S. 20567, available at: https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/1998/07/rs19980714_1bvr164097.html (last access: 21.12.2023).
24. BVerfG, Urteil vom 14. Juli 1998 – 1 BvR 1640/97.
25. Idem, para 123–124.
26. Idem, para 124.
27. Idem, para 136.
28. Idem, para 154.
29. Bundesverwaltungsamt – Bundesstelle für Büroorganisation und Bürotechnik – Heft 237, Juli/August 1999 S. 3 (mentioned in: Deutscher Bundestag, Rechtsverbindlichkeit der Verwendung der deutschen Rechtschreibung in Schulen und anderen Einrichtungen, WD 10–3000 – 001/20, available at: <https://www.bundestag.de/resource/blob/691396/0fe6c9cce82af97036faec0bc3dcdf1c/WD-10-001-20-pdf-data.pdf> (last access: 21.12.2023)).
30. <https://www.kmk.org/aktuelles/artikelansicht/kultusministerkonferenz-stimmt-empfehlungen-des-rats-fuer-deutsche-rechtschreibung-zu.html> (last access: 21.12.2023).
31. <https://www.kmk.org/presse/pressearchiv/mitteilung/ergebnisse-der-kultusministerkonferenz-am-9-dezember-2010-in-bruessel.html> (last access: 21.12.2023).

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