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Abstract

German constitutional law has only recently introduced provisions on the status of the federal capital Berlin. The new Art. 22 (1) of the constitution came into force with the 2006 constitutional reform and states the following in just three short sentences: First, Berlin is the capital of the federal republic. Second, the federal government is charged with the 'representation of the state as a whole' (Repräsentation des Gesamtstaates). Third, a statutory law is supposed to define in greater detail the status of the capital and its relations to the federal government. Irrespective of its wording, Art. 22 (1) has mostly been referred to as the constitutional recognition of a 'symbol of the state'. It has however not triggered any scrutiny of the largely informal modes of governance concerning the federal capital; thereby extending cold war state practice, when the status of Berlin was at the heart of the German Question and any formal regulation on the status of Bonn as the seat of government was feared to impact claims for reunification. To date, German law lacks substantial provisions in statutory law on governance and finance of the capital. Instead, most of these issues are settled by treaties between local and federal government. The article argues that any reading of Art. 22 (1) must reflect this

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dramatically changed context and therefore cannot be limited to a new frame for old administrative routines. The challenges arising from the constitutional status of capitals as well as a variety of solutions can be analysed in a comparative perspective. Yet, the meaning and scope of constitutional provisions on federal capitals has changed significantly over the 19th and 20th century. The model of federal districts, established by the U.S. Constitution and widespread throughout the world, is alien to European constitutions. In consequence, European constitutions of federal states have to cope with the conflicts arising from the special status of a capital city (such as the hegemonic threat) in more indirect ways. With the decrease of confessional and ethnic tensions, however, the key aspects of the capital in the constitution are no longer questions of territoriality and status, with one important exception: the European Union. In the nation states, the most contentious issues in capital politics now include urban planning, financing, and the relations between state and cultural life. Since these issues are located more on the administrative field rather than on the level of the constitution, it is at least from a constitutional point of view crucial to determine the legal forms and instruments that shape the relationship between the state and its federal capital. (HRK / Abstract übernommen)