

To Federal Constitutional Court
P.O. Box 1771
76006 Karlsruhe

Constitutional complaint and application for the issue of an interim injunction

of

-Complainant-

exercises their fundamental rights under Articles 19 (4) and 93 (4a) of the Basic Law, Article 13 ECHR, Article 2 TEU and Article 8 UDHR, and requests that the following be stated:

to declare contrary to the Basic Law and prohibit the approval of the amendments to the International Health Regulations (IHR) 2005 for strengthening and expanding the powers and enforcement capacity of the World Health Organization (WHO), the approval of the International Pandemic Treaty (CA+) and subsequently the enactment of a ratification law for the ratification of the International Pandemic Treaty (CA+) due to the constitutional and international law violation regulations of the present version of the two treaty texts.

The complainant lodges a constitutional complaint against the approval of the amendments to the International Health Regulations (IHR) 2005 and the International Pandemic Treaty (CA+) in the current version and the enactment of a ratification law to the International Pandemic Treaty (CA+) by the Federal Republic of Germany, alleging violations of its fundamental and human rights under Articles 1(1), (2), 2(1), (2), 5 (1), (3), 11 (1), 19 (2), 19(4)1, 20(1), (2), (3), 23 (1) 1, 24, 25, 38 (1), 79 (3), 93(1) No. 1, 2, 3, 4a and 146 Basic Law, Art.2, 5 (3) TEU as well as Art. 1, 2, 3, 5, 8, 10, 12, 13, 19, 21(1), (3), 22, 28 UDHR, Art. 1 (1), 7, 17, 19, 25a) ICCPR, Art. 12, 15(1)(b) ICESCR, Art. 3, 8, 10, 13 ECHR, Art. 8 and Preamble EU Charter of Fundamental Rights, GDPR and Art. 53 VCLT and requests to be declared contrary to the Basic Law.

Application for interim injunction

The complainant is at the same time applying for an interim injunction with the aim of obliging the state authorities to refrain from acting until the 77th session of the World Health Assembly in May 2024, where the amendments to the International Health Regulations (IHR) 2005 and

the International Pandemic Treaty (CA+) are voted on, to ensure that all regulations of the International Pandemic Treaty (CA+) and all envisaged amendments to the International Health Regulations (IHR) 2005, which conflict with the Basic Law and international law and lead to the loss of the sovereignty of the Federal Republic of Germany and its basic democratic order, are completely eliminated by the time of the vote in 2024 by the international working group on IHR reform and the negotiating group for a WHO pandemic treaty, where the Federal Republic of Germany still has opportunities to participate.

All envisaged amendments to the International Health Regulations (IHR) 2005 and regulations of the International Pandemic Treaty (CA+) that go beyond the recommendatory nature of the WHO, in particular sanctioning, control function, censorship and other enforcement mechanisms, constitute a transfer of sovereign powers to the WHO. Since the extensions of the WHO's powers are multilateral and legally binding conventions under international law, in which 194 states participate, and the final version of the conventions is to be presented to the delegates ready for signature by the next session phase of the World Health Assembly, it is **only** possible to ensure until the 77th session phase in May 2024 that the treaty texts in their final version do not collide with the Basic Law and international law. Later corrections will not be possible. For this reason, it is also requested that an interim order be made that if the regulations in the envisaged conventions that collide with the Basic Law and international law are not completely eliminated by the 77th session of the World Health Assembly, the approval of the amendments to the International Health Regulations (IHR) 2005 and the International Pandemic Treaty (CA+) is prohibited for the Federal Republic of Germany and the Federal Republic of Germany must terminate its membership in the WHO.

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I. Admissibility of the constitutional complaint

1. Right of appeal

The complainant has the capacity to file a complaint. The complainant belongs to the group of persons who, as citizens of the Federal Republic of Germany, may lodge a constitutional complaint pursuant to Article 93 (1) no. 4a of the Basic Law, §§ 13 no. 8a, 90 I of the Federal Constitutional Court Act (BVerfGG).

The approval of the amendments to the IHR 2005 and the International Pandemic Treaty (CA+) not only lead to further substantial loss of power of the German Bundestag, but also to the loss of the complainant's universal suffrage guaranteed under Basic Law and of their pre-constitutional constituent power. The complainant therefore rebukes, in the aforementioned context of Article 20 (1) and (2), Article 146 and Article 38 (1) of the Basic Law, the violation of the principle of democracy, the principle of the rule of law and the principle of the welfare state.

The complainant makes a well-founded claim that the decision of the state authorities, which can be a suitable subject matter of a constitutional complaint, has presently and directly violated their fundamental right or a right equivalent to a fundamental right that is subject to a complaint under Article 93 I no. 4a of the Basic Law and § 90 I of the BVerfGG. Since the German Basic Law can only be defended through the German legal system, the complainant only has the **certain** possibility of judicially enforcing their rights under the Basic Law by filing a constitutional complaint.

Legal action according to § 90 (2) sentence 1 of the BVerfGG is exhausted. The complainant can only proceed against the Federal Government's threatened approval of the envisaged amendments to the International Health Regulations 2005 and the International Pandemic Treaty (CA+) after the decision of the German Bundestag of 12 May 2023 by way of a constitutional complaint, so that administrative court action may be ruled out. Moreover, the constitutional complaint and interim injunction have been filed in due time.

2. General admissibility requirements

The constitutional complaint is admissible because the complainant's rights are violated, inter alia, under Article 2(1) in conjunction with Article 20(1) and (2), Article 38(1), Article 146 of the Basic Law and under the principle of democracy, the welfare state and the rule of law according to the Universal Declaration of Human Rights (UDHR).

The complainant's constitutional complaint refers to a sufficiently qualified transgression of competences in the German Bundestag or, respectively, to the concomitant sufficiently qualified violation of the constitutionally guaranteed right to vote and of the complainant's pre-constitutional constituent power.

Furthermore, the complainant's rights under Article 38 (1) of the Basic Law in conjunction with Articles 20, 23 (1) 1, 25 and 79 (3) of the Basic Law are violated. In the jurisdiction of the BVerfG, Article 38 (1) and (2) of the Basic Law do not only guarantee the subjective right to participate in the election of the members of the German Bundestag; moreover, the bailment of participation extends to the fundamental democratic content of this right (see BVerfGE 89, 155 /171/).

3. Future signing decision

The signing of the two conventions under international law does not merely express the intention of the signatory state to implement the treaty as soon as possible in the case of the strengthening of the IHR and to ratify it in the case of the International Pandemic Treaty (CA+). According to Article 18

of the Vienna Convention (see Federal Law Gazette II 1985 p. 926), the contents of which also claim validity under customary international law, the prohibition to refrain from any action that would frustrate the object and purpose of the treaties in the interim phase between signature and the implementation phase in the case of the IHR and ratification in the case of the International Pandemic Treaty (CA+) enters into force as a direct legal effect.

This pre-effect already encroaches on the complainants' sphere of fundamental rights. By signing the treaties, the German state organs are already restricted in their political options for action to not thwart the agreements of the conventions. Since the German Bundestag approved the motion for a resolution of the traffic-light parliamentary groups for a reform of the WHO on 12 May 2023, the German representative can give their consent to the envisaged conventions in the 77th session of the WHO without further debates in the Bundestag and without prior examination of the treaty texts. This fact alone violates the complainants' fundamental and human rights.

II. Reasons

1. Facts (undisputed)

On 1 December 2021, the 194 members of the World Health Organization (WHO) agreed to **begin the process of developing and negotiating a convention, agreement or other international instrument** under the Constitution of the World Health Organization to strengthen pandemic prevention, preparedness and response. To achieve this goal, they also agreed to establish an Intergovernmental Negotiating Body (INB).

A government-level negotiating body has been established, which has held its first meeting by 1 March 2022 (to agree working procedures and deadlines) and its second meeting by 1 August 2022 (to discuss progress on a working version). Negotiations are currently underway at WHO for a global pandemic treaty to govern both the government response to pandemics and the revision of the International Health Regulations (IHR), the legal framework for public health emergencies, preparedness and response. The amendments to the International Health Regulations 2005 and the draft of the International Pandemic Treaty (CA+) were both the subject of debate during the session (21-30 May 2023) of the 76th World Health Assembly. The texts of the two conventions are expected to be ready for signature at the 77th Session in May 2024. The pandemic treaty and the amendments to the International Health Regulations (IHR) will then be submitted to the members for adoption at the 77th World Health Assembly in May 2024.

On 5 June 2023, the WHO already announced that it would adopt the EU's digital infrastructure as a permanent model for global travel. The heads of government of the 20 most economically powerful countries (G20) decided at their November 2022 summit in Bali that digital health passports should become a permanent feature as a prerequisite for international travel. The German government has agreed to the Bali Declaration 2022. In doing so, it has made its promise to support the introduction of digital health passports without the Bundestag.

Before the start of the 76th World Health Assembly, the traffic-light coalition has introduced a resolution in the Bundestag for a reform of the WHO (see <https://dserver.bundestag.de/btd/20/067/2006712.pdf>). In it, the SPD, Greens and FDP support the planned WHO pandemic treaty and the tightening of the International Health Regulations (IHR). The Bundestag voted in favour of a reform of the World Health Organisation (WHO) on 12 May 2023. The motion of the traffic-light coalition (20/6712) was adopted by a majority of 497 votes in the roll call, without the texts of the IHR amendments and the International Pandemic Treaty (CA+), which are available so far, having been examined for their constitutionality by an independent commission.

(see <https://www.bundestag.de/dokumente/textarchiv/2023/kw19-de-weltgesundheitsorganisation-947084>)

During the 76th session of the World Health Assembly (21-30 May 2023), delegates received a new draft of the envisaged pandemic treaty from the International Intergovernmental Commission for the Negotiation of the WHO Pandemic Treaty (INB), dated 22 May 2023. They noted that work on the proposed WHO pandemic treaty and the strengthening of the International Health Regulations (IHR) would continue in the working groups so that the texts of the two conventions can be presented ready for signature at the 77th session in May 2024. At the same time, delegates adopted the resolution "Behavioural sciences for better health" to make greater and more systematic use of behavioural sciences to counter "health-related misinformation and disinformation" and ensure demand for vaccines. On 2 June 2023, the next draft of the envisaged pandemic contract was published by the working group (INB) on the WHO homepage.

III. Legal assessment

1. General

The WHO pandemic treaty was formulated on the basis of an existing "conceptual zero draft". The conceptual zero draft of the pandemic treaty was published on 25 November 2022 (see https://apps.who.int/gb/inb/pdf_files/inb3/A_INB3_3-en.pdf). It already shows quite clearly what the pandemic treaty should look like in the end. The preliminary remarks state that the INB (Intergovernmental Negotiating Body) office prepared the draft taking into account written contributions on a working draft from 30 member states and 36 "relevant stakeholders". It can be assumed that this refers primarily to the pharmaceutical industry and other global corporations and their foundations in the health and IT sectors, which provide most of the funding for the WHO. The previous draft contains commitments on propaganda and censorship, on granting subsidies to the pharmaceutical industry and stockpiling vaccines, on supporting medical patents and on the WHO's right to steer national pandemic response via dispatched teams of experts. The zero draft of the WHO pandemic treaty and also the subsequent two further drafts of 22 May and 2 June 2023 (see https://healthpolicy-watch.news/wp-content/uploads/2023/05/DRAFT_INB_Bureau-text_22-May.pdf and https://apps.who.int/gb/inb/pdf_files/inb5/A_INB5_6-en.pdf) commit the signatory states to (note: all article references to the CA+ in this constitutional complaint refer to the draft pandemic treaty of 2 June 2023):

- Strengthening the central role of WHO as a guiding and coordinating authority (Art.3 CA+)
- Facilitating rapid WHO access to outbreak areas, including through the deployment of expert teams to assess and support the response to emerging outbreaks (Art. 15 CA+),
- Strengthening capacity to build and maintain strategic stocks of pandemic preparedness products (Art. 7 CA+),
- Provision of stocks, raw materials and other necessary inputs for the sustainable production of pandemic products (especially active pharmaceutical ingredients), including for stockpiling (Art. 13 CA+),
- Incentives (money) for pharmaceutical companies in connection with everything feasible around the development, production, production capacities, distribution and stockpiling of their products (Art. 3, 9, 12 CA+),
- Cooperation with the private sector (e.g. pharmaceutical companies) and civil society (e.g. various foundations) in all possible variations (Art. 6, 11, 16, 19 CA+),
- Compensation for vaccine-injured persons only in a limited period (Art. 10 CA+),

- the WHO Director-General may declare regional or global health emergencies on his own authority and without the consent of affected governments (Art. 15 CA+),
- Managing "infodemias" through appropriate channels, including social media, countering misinformation and disinformation (Art. 18 CA+).

The new drafts of the pandemic treaty of 22 May and 2 June 2023 only contain alternative formulations on controversial points. Compared to the "conceptual zero draft" of November 2022, they contain some deteriorations, especially regarding gain-of-function research (viruses from the laboratory) and civil liberties. The principle of human rights and freedom with the right to health has been merged instead of the obligation to promote freedom (Art. 2 CA+). Possible restrictions are already indicated in the new drafts. The regulation limiting killer virus research is toned down compared to the zero draft and only good intentions are required (Art. 9 CA+). Reservation clauses are not provided for in the pandemic treaty. The approval of a 2/3 majority of the World Health Assembly is required to adopt the pandemic treaty. After that, the treaty still has to be ratified in the member states according to their respective laws. Once 30 states have ratified, the pandemic treaty enters into force (Art. 37 CA+).

The International Health Regulations (IHR) are governed by Article 21 of the WHO Constitution. As the name suggests, they are binding regulations that apply to every WHO member country. According to the WHO Constitution, legally binding regulations can be issued by the IHR in five areas:

- Health and quarantine regulations and other procedures to prevent the international spread of diseases
- Naming of diseases, causes of death and practices of public health
- International standards for diagnostic procedures
- International trade standards for the safety, purity and efficacy of biological, pharmaceutical and related products
- Standards for the advertising and labelling of biological, pharmaceutical and similar products subject to international trade

The planned changes to the IHR reform are similar to the pandemic treaty (see https://apps.who.int/gb/wgihhr/pdf_files/wgihhr1/WGIHR_Compilation-en.pdf). The IHR are binding. These reform proposals provide for:

- Deletion of the predicate "non-binding" in the WHO recommendations (Art. 1, 42 IHR)
- Binding reviews of the compliance of recommendations through the WHO Emergency Committee (Art. 48 IHR)
- Governments should ensure compliance with WHO recommendations by non-state actors (Art. 53 IHR)
- Scope of the IHR to be extended to "all risks that may have an impact on public health" (Art. 2 IHR)
- Commitment to respect human dignity and freedom to be deleted (Art.3 IHR)
- The possibility is opened for health documents to contain information on laboratory tests, in general, not only during health emergencies (Art. 23, Annex 6 IHR)

The WHO Director-General may, on his own authority and without the consent of affected governments, declare a regional or global health emergency, even in the case of a potential emergency (Art. 2, 12 IHR)

- The WHO Director-General is given leverage to send teams of experts to affected countries and to enforce their recommendations (Art. 15 IHR)
- It is possible after proclamation of PHEIC: implementation of contact tracing, border closure, travel restrictions, lockdown, forced quarantine, entry ban, flight ban, forced vaccination, vaccination certificate/ID, forced medication (Art. 18, 23, Annex 6 IHR).

The first **six** points were **rejected** by the WHO Review Committee in February 2023. Unless otherwise agreed, the IHR come into being by a simple majority of government representatives in the World Health Assembly and are then directly applicable law without further public or parliamentary deliberation and decision-making. However, there is an "opt-out" right for a certain period of time. This opt-out right has been reduced from 18 to 10 months. This means that if governments want to agree to the catalogue of regulations, they become binding before there can be a public debate and campaign for rejection in a country.

On 22 May, the World Health Assembly held a joint panel of the IHR Reform Working Group and the WHO Pandemic Treaty Negotiating Group. The rapporteur for the IHR Reform Working Group was Dr Abdullah Assiri (Saudi Arabia), one of the two leaders of the Working Group. He made it quite clear that the WHO authorization is about restrictions on freedom. The measures sought are mainly to prioritize the restriction of individual freedoms. Quote from his report:

"The world, however, requires a different level of legal mandates, such as the pandemic treaty, to navigate through a particular pandemic, should one occur, and it will. **Prioritizing actions that may restrict individual liberties**, mandating and sharing of information, knowledge, and resources, and most importantly, providing fund for pandemic control efforts are all necessary during a pandemic. The means to carry out these actions are simply not...currently at hand." (see from min 14, quote from min 17:20 <https://www.youtube.com/watch?v=TL13ZOAwesk>)

The report in German:

"Die Welt braucht jedoch eine andere Ebene von Rechtsgrundlagen, wie den Pandemievertrag, um durch eine bestimmte Pandemie zu navigieren, sollte sie eintreten, und das wird sie. **Die Priorisierung von Maßnahmen, die die individuellen Freiheiten einschränken können**, die Anordnung und der Austausch von Informationen, Wissen und Ressourcen und vor allem die Bereitstellung von Mitteln für Pandemiebekämpfungsmaßnahmen sind während einer Pandemie notwendig. Die Mittel zur Durchführung dieser Maßnahmen stehen derzeit einfach nicht zur Verfügung."

Dr Abdullah Assiri also announced that the final package of proposed amendments to the IHR would be submitted to the WHO Director-General in January 2024. The 77th World Health Assembly in one year's time will then debate and vote on the amendments to the IHR.

Before Dr Abdullah Assiri, Roland Driecq (NL), Co-Chair of the International Negotiating Body (INB) for the WHO pandemic treaty, reported on the status of the negotiations. He was convinced that the timetable of having a treaty ready for signature by May 2024 can be met. He also reported that there are still problems in delineating what is included in the IHR and what should be regulated in the pandemic treaty. There would be overlapping discussion in the two bodies (see from min 8 <https://www.youtube.com/watch?v=TL13ZOAwesk>).

Negotiations on the planned WHO pandemic treaty and the strengthening of the International Health Regulations (IHR), which together would undermine the sovereignty of national governments in health matters, always take place behind closed doors. The negotiations are completely **non-transparent**. The negotiation texts are hardly ever made public. This confidentiality alone is **incompatible** with democratic principles. There was also no reporting in established media about the panel mentioned, although the reports were quite important for the public. The WHO itself also kept quiet on this agenda item in its daily report of

22 May and only put in a link in the margin, without comment, to an advance notice of the panel. Citizens must be informed in good time about such important treaties, which they will have to live with for a long time, before they are concluded. Otherwise, they will not be able to participate effectively in the political decision-making process, which is an inalienable democratic right of the citizens. After the conclusion of the difficult negotiations, it is practically impossible to change the treaty texts.

The amendment to the International Health Regulations (IHR) which is currently being consulted on is intended to remove this adjective "non-binding" (Art 1 IHR) and thus make WHO pronouncements more binding. An analysis of the amendments to the IHR is available on the "Opinio Juris" page (see legal opinion <http://opiniojuris.org/2023/02/27/the-proposed-amendments-to-the-international-health-regulations-an-analysis/>). It also contains links to the original documents.

The two regulations together, if adopted as proposed, will give WHO legislative and executive power that trumps that of individual countries in the event of a PHEIC (Public Health Emergency of International Concern). The WHO Director-General can decide when a PHEIC exists. He is to be given de facto unlimited powers to declare (and perpetuate) public health emergencies. He will be able to decide the measures (together with his advisory panel, which he can put together on his own) that countries will have to implement, and he will have substantial resources, which, incidentally, countries will have to contribute, to put in place appropriate surveillance and monitoring processes. This gives the WHO Director-General great power over the world in the health sector, which definitively undermines democratic processes. He is now (as a result) given the authority to not only suspend the basic constitutional orders of all states (separation of powers; principle of legality, etc.) in one fell swoop, but also the classic protective rights of individuals. The version of the amendments to the IHR and the pandemic treaty that has been presented so far completely abrogates the sovereignty of the member states. The measures of the amended IHR also include:

- Introduction of a global health certificate in digital form or on paper, including examination certificates, vaccination certificates, prophylaxis certificates, convalescence certificates, travellers' whereabouts forms and a declaration of the traveller's state of health. (Art. 18, 23,24,27,28, 31,35, 36 and 44 and Annexes 6 and 8 IHR)
- The scope of international health regulations is to be greatly expanded to include scenarios that only have the potential to affect public health. (Art. 2 and 18 IHR)

The Emergency Committee is to be empowered to overrule decisions of sovereign states on health measures and its decisions are to become binding. (Art. 43 IHR)

- To give the WHO the right to distribute billions of dollars to the pharmaceutical hospital-emergency-industrial complex without accountability and democratic control. (Art. 44 A IHR)
- Significantly expand WHO's ability to censor what WHO considers to be misinformation and disinformation. (Art. 44 and Annex 1, page 36 IHR)
- Provision of health products through centrally managed registries and warehouses (13A 44 IHR)

- Shortened emergency authorization of new pharmacological products (Annex 6 IHR)

The above analysis (see <http://opiniojuris.org/2023/02/27/the-proposed-amendments-to-the-international-health-regulations-an-analysis/>) also mentions a number of problems that should be taken seriously.

1. The biggest problem is that there are simple criteria to declare a PHEIC, but there is none that would declare bindingly when this situation is over. The WHO Director-General can declare a PHEIC, but no one has any power to require him to end such a PHEIC. And this state of health emergency entails all the consequences we already know.
2. The previous WHO definition of health is effectively being abolished. This will result in health not being a state of "optimal physical, mental and spiritual well-being" as the accepted WHO definition currently says. This definition is a thing of the past. In future, health will fall under the definitional sovereignty of the WHO. If it is decided that a certain measure be part of all of our health, as was undoubtedly discussed from time to time when talking about the "compulsory vaccination", then it will become obligatory even if one does not agree with it and even if the danger of suffering damage to health and life is considerable.
3. The principle of informed consent enshrined in all medical ethics is to be abolished in the situation of a PHEIC. This will also mean that the current rule of the need to obtain informed consent of the person concerned before any medical intervention will be a thing of the past, at least during a PHEIC, and if not terminated, then for its duration. Because if new vaccines and interventions designed to combat such a PHEIC can be whipped through an emergency approval after an extremely shortened trial period, then it will not be possible at all, and practically not even necessary, to obtain such informed consent. For this, one must have data that can be presented to the person giving consent. However, data is usually not yet available within an extremely shortened trial phase. It is also completely unclear whether the rapidly approved vaccines will have to provide the usual legal proof of safety after the end of a PHEIC.
4. The digitization of the human being becomes possible. It will pave the way for digital tracking and health passports to divide people into classes that have a characteristic (a vaccination, an intervention, a risk potential) and classes that do not (the discriminated). The digitalization of the world will be perfect, because it will end in the digitalization of people. Whoever wants to do something in the future - admission to clubs, concerts, social events, churches, restaurants, access to travel and to other countries - will have to contribute this new digital identity.
5. Truth will no longer be established through discourse but by a select team of WHO experts. This will also lead, as far as health is concerned, to the WHO, or more precisely those experts and AI systems that will work for the WHO and be in its service, determining what the accepted truth is. They will not only easily banish unwanted information to the bottom of a search or delete videos from a platform, but they will also ensure that unwanted information no longer appears at all. Nowhere. This is because actively disseminating information that contradicts prevailing opinion will almost certainly become a criminal offence under the new regime. With the envisaged two treaties, the influence of elected and democratically legitimized politics and referendums will be withdrawn in almost all policy fields during a pandemic.

But what happens when a citizen feels deprived of their human rights? Where do they go then? There is not yet a World Administrative Court before which the WHO can be sued. So you have to go to the

local courts and climb through the tedious official channels. Not everyone will have the stamina or the nerve to go through this gruelling process. It will be extremely difficult to challenge these policy guidelines through the courts. If Germany agrees to the currently envisaged reforms, we will be exposed to the health dictates of a world supreme authority without even being able to defend ourselves against them.

The motion for a resolution of the traffic-light parliamentary groups of 9 May 2023 (see <https://dserver.bundestag.de/btd/20/067/2006712.pdf>) does not mention at all the problems mentioned, which collide with the Basic Law and international law. Although the present version of the two treaty texts contains numerous regulations contrary to the Basic Law, the MPs were probably not informed about this. An independent legal opinion on the reforms by the Bundestag does not exist at present. The motion, without naming the problems, calls for a "sustainable strengthening of the World Health Organisation (WHO)" through reforms to strengthen its "governance, efficiency, independence, capacity, accountability. The Enforcement of rules" should also be advanced so that the WHO can play its "leadership role in global health governance". The motion also calls for "political, human and financial support", up to and including an

"increase in compulsory contributions to a share of 50 per cent of the WHO's core budget by 2030/2031 at the latest" - and that with an annual budget of 50 billion dollars now demanded by the WHO. "May the Bundestag resolve," it continues, "that in order to meet international expectations of the organization [WHO], it needs reforms as well as political, staff and financial support. Germany is committed to strengthening the organization and therefore supports the reform process to improve its structures and core competencies. (...) It is necessary that the two processes for the international regulation of pandemic management take into account and strengthen the leading role of the WHO in pandemic prevention, preparedness and response. Thus, the ongoing negotiations on a pandemic agreement or instrument within the framework of the WHO and the reform of the IHR could help to improve the WHO's assertiveness as well as independence in the event of a health crisis."

How the strengthening of the WHO's "enforcement capacity" is to take place is not made clear in the motion. It remains unclear whether this strengthened enforcement capacity should find its limits in the sovereignty of their population vis-à-vis democratically responsible governments and the national laws democratically passed by the parliaments. The following points, among others, are missing from the document:

- The word "sovereignty" does not appear in the motion for a resolution for the Bundestag, neither literally nor analogously.
- Human dignity and fundamental rights do not occur, neither literally nor analogously.
- Health passports and free travel do not come up, either literally or analogously, although at the meeting of the G20 group - the largest economic nations - in Bali in November 2022, the German government agreed to make health certificates a permanent requirement for travel.
- The lack of jurisdiction against the possible arbitrariness of the WHO does not occur.
- The lack of accountability and liability of the WHO does not occur.
- WHO censorship regulations and practices do not occur.
- The violation of the principle of subsidiarity does not occur.
- The transfer of sovereign rights does not occur.
- The WHO Review Panel and its criticism of the IHR reform proposals in February 2023 do not appear in the presentation of the status of the reform process. The presentation simply stops in December 2022.

The motion for a resolution is silent on all criticisms raised against the planned reforms. Instead of commitments to respect for sovereignty, freedom and fundamental rights, the motion mentions climate at length: "The WHO identifies climate change as the greatest health threat to humanity and considers the Paris Agreement (2015) to be the most important health agreement of the 21st century. In view of this, **the WHO's climate programme** is of crucial importance. In its Global Health Strategy, the German government also underlines the important role of WHO in climate protection and supports the organization's mandate in the field of environment and health." What "the WHO climate programme" is supposed to be is not explained. Nothing is published about it on the WHO homepage either. The WHO does not seem to have a climate programme yet.

According to the motion of the traffic-light groups, the WHO must be enabled to fill a leading and coordinating role. It therefore also states: "This, however, requires the willingness of global health actors to recognize the clear leadership role of the organization and of member states to give priority to a multilateral approach to global and regional health issues". This in itself is a rejection of national sovereignty in health matters, even though the Basic Law does not permit the undermining of national sovereignty, even under a pandemic, and German state authorities must always retain their full capacity to act under any treaty relationship.

The motion rightly points out in detail: "During the COVID-19 pandemic, however, it has once again become clear that the WHO lacks the capabilities to fully fulfil its mandate. In order to meet international expectations of the organization, it needs reforms as well as political, staff and financial support...WHO lacks predictable and flexible resources to fulfil its leadership role in global health policy, to provide the necessary expertise and to respond adequately to acute emergencies. Almost 80 per cent of the WHO budget is voluntary and earmarked...As a result, fewer priorities can be set based on global public health challenges. This is because incoming funding is largely based on individual donor interests, leading to a high risk of donor dependence and vulnerability in WHO funding." This is an admission that the WHO is not an independent organization. In the 1990s, compulsory contributions were frozen. The WHO and the UN as a whole were first starved and then systematically driven into the arms of corporations and their foundations and associations. These like to pursue their own business interests at the global level with their donations to the WHO and the WHO cannot escape this at present, because it receives 80 per cent of its financial basis mainly from corporations and foundations.

According to the traffic-light factions, the share of compulsory contributions in the WHO's core budget should grow to 50 percent by 2030/2031. Even if it were possible to increase the share of compulsory contributions to 45 or even 50 percent, corporate interests would still have a grossly disproportionate influence on the WHO. This is probably the reason why the federal government has chosen the unambitious target of 50 per cent. More is currently not enforceable.

With this, the traffic-light coalition quite openly names the WHO's big problem in terms of independence. The WHO, which is dependent on corporations and foundations, can only serve the private interests of its donors. This situation will not change in the foreseeable future. And yet the traffic-light coalition wants to give this organization, which is dependent on the self-interests of the big payers among governments, the corporations and their foundations, the power to tell national governments in a binding way what they must and must not do in matters of health policy. To a large extent, this is not only irresponsible, but represents a complete disregard for the provisions of our Basic Law. Approval of the two conventions in their present form would in effect be a transfer of sovereign rights to the WHO in contravention of the Basic Law, depriving the complainants not only of their human rights, their right to legal protection and their vested right to vote, but also of their pre-

constitutional constituent power. This means that this consent also brings about a change of identity, which the state authorities have no authority to do at all before the eligible voters have been asked.

With its proposal, the traffic-light coalition completely ignores the democratic foundations of the Basic Law. The population was not informed about the project at all. Broad discussions on the reforms by the media have not taken place so far. There has been no discussion of the proposed changes in the political, legal or public spheres. The treaties have also not been analyzed by the scientific services of the Bundestag. An independent expert opinion on the planned changes to the IHR and the Pandemic Treaty (CA+) does not exist to date. In just one month, until 11 May, almost 360,000 people signed an open letter to the Federal Chancellor "Against the WHO takeover". There are not many petitions that find so many supporters. This petition was also completely ignored by the traffic lights. In the meantime, a petition on the pandemic treaty is running at the Bundestag (see https://petitionen.bundestag.de/petitionen/_2023/_05/_12/Petition_150793.nc.html).

In the resolution "Behavioural sciences for better health" adopted by the delegates (see https://apps.who.int/gb/ebwha/pdf_files/EB152/B152_CONF6-en.pdf) at the 76th session of the World Health Assembly, there is also nothing to be found on respect for the free will of human beings or on the limits of what science can say with a sufficiently high degree of certainty to allow divergent theories and assessments to be classified as disinformation and combated. The WHO presumes to define what is truth. The World Health Organisation (WHO), which is predominantly funded by large corporations and their foundations, even describes on its website how it controls and manipulates social media to ensure that only its version of science and truth is disseminated.

The 'combatting misinformation online' page (see <https://www.who.int/teams/digital-health-and-innovation/digital-channels/combatting-misinformation-online>) describes how the WHO was directly involved in the formulation of guidelines for large social media platforms that regulate what can and cannot be said there. It should be noted that the content of the adopted resolution "Behavioural sciences for better health" already largely collides with the Basic Law. For this reason, the German representative should not have given their consent to this resolution. This approval is already a blatant violation of the Basic Law.

The envisaged conventions will be binding under international law. A more efficient and equitable global pandemic management will not be achieved by binding international directives from the WHO Director-General instead of the current advisory recommendations, and not by pandemic declarations already in the case of potential instead of actual emergencies. And certainly not by deleting our core democratic principles of "**dignity, human rights and fundamental freedoms**", as provided for in the current version of the IHR. In this way, the WHO only proves that it wants to abolish democracy and additionally establish strict control and sanction mechanisms for it. Whoever writes like this, as the traffic-light factions do in their above-mentioned motion, either proves that they have not read the two documents and thus have not understood the true dimension and the unconstitutionality of these conventions, or that they themselves are an opponent of our democracy.

IV. Legal assessment

In detail

1. Violation of human dignity and fundamental and human rights from Art. 1(1), 20 (3) Basic Law, Art. 1, 2, 3, 13, 21(1), 22 and 28 of the UDHR

The WHO, as a specialized agency of the United Nations, is subject to the legal standards of the

UN. This means that it is just as obliged as the UN to ensure that respect for the Universal Declaration of Human Rights is always observed in all agreements between it and member states. Where Article 4 of the zero draft of the pandemic treaty still guaranteed respect for human rights and fundamental freedoms and committed all parties to defend and promote them (see https://apps.who.int/gb/inb/pdf_files/inb3/A_INB3_3-en.pdf), the corresponding article 3 of the new draft of 2 June 2023 already sounds very different (see https://apps.who.int/gb/inb/pdf_files/inb5/A_INB5_6-en.pdf). Protection is only granted under certain conditions.

The principle of human rights and freedom is combined with the right to health in Art. 3 of the Pandemic Treaty (CA+), as amended on 2 June 2023, and instead of the obligation to promote freedom, possible restrictions are implied (e.g. to protect the vulnerable or for reasons of equality or diversity). The deletion of the obligation to uphold freedoms and the insertion of restrictions is done in an attempt to justify restrictions on freedoms as used during the last pandemic. In the current version of the International Health Regulations (IHR) under Article 3, the dignity, human rights and fundamental freedoms of persons have already been deleted (see https://apps.who.int/gb/wgihhr/pdf_files/wgihhr2/A_WGIHR2_6-en.pdf). The obligation of states to respect freedoms has been replaced with respect for "equity, inclusiveness and coherence".

The envisaged WHO pandemic treaty (CA+) and the planned strengthening of the IHR in their present form violate the complainant's inviolable right to human dignity constitutive of the Basic Law and their fundamental and human rights under Art. 1(1), 20(3) of the Basic Law, Art. 1, 2, 3, 13, 21(1), 22 and 28 of the UDHR, since the two agreements through their **non-transparent negotiations**, no published negotiation texts and no reporting on the ongoing negotiations by the media, which would allow a broad social dialogue to take place, deprive them also of rights constitutive of the Basic Law as part of the constitutional body of the people and thus usurp the state power assigned to them by the Basic Law and degrade the complainant to a mere object of the supremacy of the WHO, which through its funding acts like an NGO and mainly serves private interests.

2. Violation of the right to community participation and transparency from Art. 1(1), (2), 5 (1), (3), 20 (1), (2), (3), 38 (1) and 146 Basic Law, Art. 19, 21 (1) UDHR, Art. 10 ECHR, 19, 25 a) ICCPR, Art. 15(1)(b) ICESCR.

The envisaged pandemic treaty (CA+) and the strengthened International Health Regulations (IHR) in their envisaged version constitute legal violations of the complainants' inviolable basic and human right to human rights constitutive of the Basic Law, to which the Federal Republic of Germany may not consent in this way under the Basic Law.

The conventions in their current version would render ineffective the complainant's right to exercise their human rights under Art. 1 (1), (2), 20 (1), (2), (3), 38 (1) and 146 Basic Law, Art. 21(1) UDHR and 25a) ICCPR to participate in the shaping of the community during a pandemic, since the decision-making power is de facto transferred to the WHO by an approval of the IHR and CA+ by the German representative. If these conventions are adopted, the WHO will be put in a position to declare pandemics without consultation with the Länder and without any democratic recourse to the German Bundestag. Germany loses its sovereignty through Art. 43 IHR and Art. 3 Pandemic Treaty (CA+) as amended on 2 June 2023.

Thus, the state power guaranteed to the complainant by the Basic Law, the UDHR and the ICCPR is unconstitutionally usurped by a foreign organization that is **not bound by the Basic Law**, such as the

WHO. Citizens must be informed in good time and in detail about such important treaties, which they will have to live with for a long time, before they are concluded. Otherwise, they will not be able to participate effectively in the political decision-making process, which is their democratic right. Up to now, the German population has not been informed at all by the media about the planned pandemic treaty (CA+) and the intended tightening of the International Health Regulations (IHR). Citizens have the right to transparent negotiations in these agreements as well and to always be **fully** informed about the results of the negotiations. International negotiations require transparency.

The WHO even boasts on its website "Combatting misinformation online" (see <https://www.who.int/teams/digital-health-and-innovation/digital-channels/combating-misinformation-online>) that large numbers of videos and other content were censored through its involvement during the last pandemic. Under the heading "Changing social media policy and guidelines", this page reads:

"WHO is working with the policy departments of social media companies to ensure that company policies and guidelines for content providers are fit for purpose. For example, WHO has worked with YouTube to improve their policy on COVID-19 misinformation and to create guidelines for content providers to ensure that medical disinformation related to the virus is not disseminated on their platform. Updates to these policies have resulted in the removal of 850,000 YouTube videos containing harmful or misleading information about COVID-19 from February 2020 to January 2021."

WHO also describes how it is directly involved in censorship measures regarding individual posts on social media "that violate the guidelines". Under the heading "Reporting Misinformation", one reads on the same page: "Social media platforms have also granted the WHO access to rapid reporting systems,

allowing us to flag disinformation on their platforms and thus expedite the reporting and removal of content that violates the policy."

In order to continue censoring worldwide, WHO issued a call for applications for organizations "that would like to partner with WHO in developing and organizing a workshop to train trainers of fact-checkers to strengthen the voice of science and prevent misinformation." From 21 November to 16 December 2022, people could apply (see <https://www.who.int/news-room/articles-detail/call-for-expression-of-interest-for-suppliers>).

At the same time, WHO also called for participation in a scientific fact-checking workshop to train trainers to strengthen scientific knowledge and health literacy to avoid misinformation in health emergencies. From 18 November until 16 December, people could apply (see <https://www.who.int/news-room/articles-detail/call-for-application-cross-check-science-for-factchecking>)

The solidification of WHO infodemic management was already established in the resolution "Behavioural sciences for better health" adopted at the 76th session of the World Health Assembly (see https://apps.who.int/gb/ebwha/pdf_files/EB152/B152_CONF6-en.pdf).

The WHO's ongoing censorship during the COVID-19 pandemic, which it had already carried out and will continue to carry out through appropriate channels to further manage social media and counter misinformation and disinformation, violated and continues to violate the complainant's rights to, inter alia, freedom of expression and to receive and impart information under Art. 5(1) and (3) Basic Law, Art. 19 ICCPR, Art. 19 UDHR and Art. 10 ECHR including health information and the right to health

and science under Art. 15(1)(b) ICCPR. The further entrenchment of WHO info democracy clearly collides with the rights of the complainant under the aforementioned articles, whereby free reporting must always be guaranteed to them and the exercise of censorship is not permitted under Art. 5. (1) Basic Law. This means that art, science, research and teaching are free.

By exercising broad-based censorship, the WHO is an organization that violates the Basic Law. With its censorship, it basically wants to manipulate public opinion in favour of its donors. The Basic Law prohibits Germany's membership in an organization that is contrary to the Basic Law (cf. Art. 23 (1) Basic Law). Germany must always retain its full capacity to act (see CETA ruling 2 BvR 1368/16). Germany may only participate with its membership in such organizations that respect the democratic, constitutional, social and federal principles and the principle of subsidiarity (cf. Art. 23 (1) Basic Law). The new conventions are basically an attempt to make free debate impossible and to eliminate the free democratic basic order. The complainants can only defend this gross violation of their rights to information and transparency with their right under Article 20 (4) of the Basic Law. Therefore, membership in the WHO is not permitted for Germany under these circumstances, which are contrary to the Basic Law, and it must be terminated immediately.

3. Violation of the guarantee of legal recourse from Art. 19 (2), (4), 20 (1), (2), (3), 23, 24, 38 (1), 79 (3), 93(1) No. 1, 2, 3, 4a Basic Law, Art. 8, 21 (1) and (2) UDHR, Art.13 ECHR

Article 19(4) of the Basic Law, Article 8 of the UDHR and Article 13 of the ECHR contain the so-called guarantee of legal recourse for everyone: "If someone is injured by public authority, legal recourse is open to him. Insofar as no other jurisdiction is established, ordinary legal recourse shall be available."

The guarantee of legal recourse has the effect of benefiting the German state and the complainants. The German state, because of the exercise of its sovereign power, only needs to answer to German courts, not to courts outside of Germany. Also, the complainant could seek justice only in German courts because of possible arbitrary actions by the WHO. This actually follows from the sovereignty of the Federal Republic as circumscribed by the Basic Law and from the principle of democracy, because the German courts are also bound exclusively by the constitution and democratic laws. The Basic Law establishes the Federal Republic of Germany as an independent state, i.e. with **no one** legally above it. The German state organs may only legally bind themselves to foreign wills to the extent that the Basic Law itself provides for it, such as to European integration according to Art.23 (1) Basic Law and to arbitration courts "for the settlement of interstate disputes" according to Art.24 Basic Law.

According to the current IHR reform, the WHO Director-General should be able to declare regional or global health emergencies on his own authority and without the consent of affected governments, even in the case of a **potential** emergency. With his decision, the WHO Director-General can not only suspend the basic constitutional orders of all states (separation of powers; principle of legality, etc.) in one fell sweep, but also the classic protection rights of individuals. This regulation would violate the complainant's vested right to vote according to Article 20 (2), 38 (1) Basic Law and Article 21 (1) and (2) UDHR, as it does not matter whom they elect, they have no influence whatsoever on the decisions and actions of the WHO and no representative elected by them can effectively defend their rights.

According to the current version of the IHR reform (see https://apps.who.int/gb/wgihhr/pdf_files/wgihhr2/A_WGIHR2_6-en.pdf), the WHO Director-General should even be given the power to send teams of experts to affected countries and to enforce their

recommendations. By eliminating any democratic control, this proposal opens the door to possible arbitrariness by the WHO. So far, there is no regulation at all on how and where the complainant can take legal recourse if their rights are violated or they suffer considerable damage as a result of possible wrong decisions by the WHO or the arbitrariness of the expert team, although the legal recourse to which they are entitled is inviolable according to Art. 19 (2), (4), Art. 8 UDHR and Art. 13 ECHR. The complainant cannot hold anyone liable for the damage caused by the possible wrong decisions of the WHO or expert teams, and no jurisdiction is provided for this either. As the negotiations stand, the WHO bodies (Director-General, Board of Advisers, Expert Teams, Committees) are neither liable nor accountable. It is completely unclear whether the German courts can still provide legal protection for the German population in these cases against the arbitrariness of a semi-private organization that has absolutely no democratic legitimacy. Due to the lack of jurisdiction and democratic control of the WHO, constitutional complaints on the part of the complainant in these areas will also be completely pointless, as state legal protection under Article 93 (1) Nos. 1, 2, 3, 4a of the Basic Law no longer exists for a citizen during a pandemic according to the current state of negotiations.

To deprive the German state and its population of their own courts and to transfer them into a state of no jurisdiction is prohibited by the principle of democracy laid down in Article 20 (1) and (2) and Article 79 (3) under the Basic Law. According to Article 20 (3) of the Basic Law, German legislation is bound to the constitutional order. The German state organs are therefore prohibited from submitting to a democratically non-legitimized organization, such as the WHO, while at the same time handing over the population, and thus also the complainant, to the arbitrariness of the WHO without any rights whatsoever, and thus giving up the sovereignty of the Federal Republic of Germany during a pandemic and cancelling the complainant's legal claim. **For this the Basic Law contains no authorization.** According to the Basic Law and the rulings of the Federal Constitutional Court, the Federal Republic of Germany must always retain its full capacity to act, even during a pandemic. This is even stipulated as a condition for the conclusion of international treaties by the Federal Constitutional Court (see CETA ruling 2 BvR 1368/16). The Federal Republic of Germany may only give its consent to an international agreement if this condition is met.

4. Unconstitutional transfer of competence to the WHO (identity complaint)

from Art. 1 (1), 20 (1), (2), (3), 38 (1), 23 (1) 1, 24, 79 (3), 146 Basic Law, Art. 21 (1), (3) UDHR Through the envisaged pandemic treaty (CA+) and the tightened International Health Regulations (IHR), decisions that until now have been made on the basis of democratic processes are outsourced to a democratically non-legitimized organization. Effective participation of the Federal Republic of Germany in decision-making is not assured. The resolutions, decisions and interpretations of the WHO Director-General together with his advisory body are not controlled or corrected by any democratically legitimized body. Neither the national parliaments nor the European Parliament can exercise effective control here. The changes to the IHR and the pandemic treaty will give the WHO legislative and executive power. The lack of jurisdiction and accountability deprives the WHO of any democratic control. However, the decisions of the WHO are to be binding on the Federal Republic of Germany. The Federal Republic of Germany is obliged to abide by and implement these non-democratically legitimized decisions, which are even incontestable. In both conventions, the states are accountable to implement all decisions quickly. They are also monitored by various WHO bodies to see whether they have fulfilled their obligations under the two conventions. Numerous articles contain regulations (see, among others, Articles 3, 6, 7 and 19 of the Pandemic Treaty, version of 2 June 2023) that require the rapid implementation of the conventions. No independent monitoring mechanisms are provided for the WHO and it is neither accountable nor liable.

The Pandemic Treaty (CA+) and the tightened International Health Regulations (IHR) establish a new, independent, non-democratically legitimized "international organization" whose main activity is to abolish almost all legal and administrative regulations within the scope of the Convention and to re-regulate almost all areas of law and life.

The WHO, endowed with far-reaching powers, changes the organization of state power in such a way that state power can no longer be effectively exercised by the people in the sense of Article 20 (2) of the Basic Law. The citizens cannot rule by majority will. The principle of representative rule by the people is undermined by the WHO, because the rights of the Bundestag in the constitutional structure are substantially diminished and even rendered meaningless. This results in a loss of substance of democratic power for the constitutional body which came into being directly according to the principles of free and equal elections (cf. BVerfG, judgement of the Second Senate of 30 June 2009 - 2 BvE 2/08 marginal no.210). The act of election loses its meaning in the scope of application of the WHO, because the elected state organ here no longer has a sufficient degree of tasks and powers in which the legitimized power to act can have an effect (cf. BVerfG, Judgment of the Second Senate of 30 June 2009 - 2 BvE 2/08 marginal no.175).

"The right of citizens to determine in freedom and equality, by means of elections and votes, the personnel and content of public authority is the elementary component of the principle of democracy. The right to free and equal participation in public power is rooted in the dignity of the human being (Article 1(1) Basic Law). It is one of the principles of German constitutional law laid down as immutable under Article 20 (1) and (2) of the Basic Law in conjunction with Article 79 (3) of the Basic Law".

s. BVerfG, Judgment of the Second Senate of 30 June 2009 - 2 BvE 2/08 marginal no.210

It would be wrong to focus on the violation of the principle of democracy "only" by the WHO in the context of the identity complaint. A creeping erosion of the sovereignty of the people (Art. 20 para. 2 sentence 1 Basic Law) does not only occur through the WHO, but through a multitude of comparable (partly already concluded, partly planned) free trade agreements (CETA, JEFTA, EUSTA, MERCOSUR etc.), the **cumulative** effect of which cannot be foreseen in the constitutional assessment. What is decisive here is the **overall balance of** the shifts in competences.

- rightly Herdegen in Maunz/Dürig Basic Law, Art. 79 marginal no. 195 (as of editing: July 2014)

It is important to mention here the pending constitutional complaint by Prof. Dr. Wolfgang Weiß, University of Speyer, against the EUSFTA, as this constitutional complaint in particular is about the change of identity that has taken place as a result of the approval of the EU-Singapore Free Trade Agreement by the German state bodies. It is remarkable that the Federal Constitutional Court has not yet decided on this existential question of the Federal Republic of Germany since 2019 (see https://www.mehr-demokratie.de/fileadmin/pdf/Stop_EU-only/2019-05-16_Verfassungsbeschwerde_Schriftsatz.pdf).

The legislator may be authorized by Basic Law to transfer sovereign rights to the European Union, but not to a democratically non-legitimized, almost private organization, such as the current WHO.

80 per cent of the World Health Organization's (WHO) budget comes from earmarked donations, according to its financial report of 24 April 2023 (see https://apps.who.int/gb/ebwha/pdf_files/WHA76/A76_INF2-en.pdf). On 23 May 2023, the Rockefeller Foundation and the World Health Organization announced a partnership to expand global pandemic preparedness (see press release:

<https://www.rockefellerfoundation.org/news/therockefeller-foundation-and-world-health-organization-announce-partnership-to-expand-global-pandemic-preparedness-in-era-of-climate-change/#:~:text=In%20January%202022%2C%20The%20Rockefeller>). This fact again proves the WHO's dependence on private donors. The WHO represents private interests through its main donors, which according to the financial report of 23 April 2023 are mainly NGOs, foundations, and corporations, because the donors can determine, according to the WHO constitution, what the donated sum should be used for.

s. Article 57 of the WHO Constitution

"The Health Assembly or on its behalf the Council may receive and administer gifts and bequests to the Organisation provided that the conditions attached to such gifts or bequests appear to the Health Assembly or Council to be acceptable and consistent with the objectives and policies of the Organisation."

The transfer of sovereign rights under these circumstances is in no way covered by Art.23 and 24 of the Basic Law. According to the Basic Law, the constitutional identity of the Federal Republic of Germany and the full capacity of the German state organs to act must always be preserved. This was pointed out by the Federal Constitutional Court not only in its ruling on CETA of 13 October 2016 (see 2 BvR 1368/16 -, marginal no. 1-73 http://www.bverfg.de/e/rs20161013_2bvr136816.html), but also in its ruling on CETA of 09 February 2022 (2 BvR 1368/16 -, marginal no. 1-197, http://www.bverfg.de/e/rs20220209_2bvr136816.html) and even affirmed it as a condition for the conclusion of international treaties.

According to the Basic Law, the constituted power is not entitled to release the constituted state. By agreeing to the motion for a resolution of the traffic-light parliamentary groups, the Bundestag opens the way to an unconstitutional change of identity of the Federal Republic of Germany and the release of the constituted state. The Bundestag is not allowed to remove the constitutional order according to the Basic Law.

With the IHR and the CA+, the sovereign nation state with its state legal system is annulled, at least within the scope of application of these conventions, because the decision-making power is transferred to the non-democratically legitimized WHO by agreeing to the two treaties, in which the representation of the Federal Republic of Germany is not ensured when decisions are taken. This means that the complainant no longer has any democratic opportunities for participation within the scope of this agreement. Their rights under **Article 1 in conjunction with Article 79(3) of the Basic Law and under Article 38(1) in conjunction with Article 20(1) and (2) of the Basic Law and Article 79(3) of the Basic Law and under Article 2(1) in conjunction with Article 20(1) and (2) and Article 146 of the Basic Law and Article 21(1), (3) UDHR** are violated.

The democratic principle of the Basic Law cannot be weighed up; it is inviolable (cf. BVerfGE 89, 155 <182>). The German constitutional bodies are not allowed to participate in the erosion of democracy in the EU at their political discretion (cf. BVerfG, Judgment of the Second Senate of 30 June 2009 - 2 BvE 2/08 cf. marginal no.225). Then they must not participate in the undermining of democracy by a semi-private organization such as the WHO.

According to the Basic Law's understanding of democracy, European unification should also be realized in such a way that sufficient space for the political shaping of economic, cultural and social living conditions in the individual member states is preserved. **This applies to those areas that protect the living conditions and thus the fundamental rights of citizens.**

s. BVerfG, Judgment of the Second Senate of 30 June 2009 - 2 BvE 2/08 - Leitsätze/Nr.3

With the amendments to the IHR and the pandemic treaty, strict market liberalization (neoliberalism) is to be consistently enforced mainly for the pharmaceutical companies by eliminating all democratic instances. According to Article 20(3) of the Basic Law, the legislature is "bound by the constitutional order, the executive power and the judiciary are bound by law and justice", but nothing more! On the contrary, the BVerfG emphasizes time and again, especially in the rulings on European integration ("Maastricht", etc.), that the German state power, which abides by the Basic Law and the laws, must otherwise be left its full freedom of action. On the one hand, this is a matter of sovereignty. The Basic Law establishes the Federal Republic as an independent state, i.e. with no one above it. The German state organs may legally bind it to foreign will only insofar as the Basic Law itself provides for it, such as to European integration (Art.23 (1) Basic Law), to "intergovernmental institutions", collective security systems (NATO) and to arbitration courts "for the settlement of intergovernmental disputes" (Art.24 Basic Law). However, freedom from foreign domination is also demanded by the democratic principle (Art.20 para.1 and 2 Basic Law), since the German state receives its legitimacy only from the constitution by the people through elections and votes. It would be undemocratic to bind the German state to legal rules as provided by the binding decisions of the WHO, which were created for it without support in the Basic Law and which go beyond what is binding for it according to the Basic Law and the laws of parliament.

cf. Prof. Axel Flessner, TTIP und das deutsche Grundgesetz, 28. 05. 2014

https://www.mehr-demokratie.de/fileadmin/pdf/TTIP_und_das_deutsche_Grundgesetz__by_Axel_Flessner_.pdf

The Federation is not permitted to decide on a change of identity of the Federal Republic of Germany. According to the Basic Law, only those entitled to vote have the right to decide on a change of identity of the Federal Republic of Germany. For a change of identity, the Basic Law would have to be "freely decided" by those entitled to vote, because only the constituent power is entitled to release the state constituted by the Basic Law, not the constituted power. Article 146 of the Basic Law and Article 38 paragraph 1 sentence 1 of the Basic Law create the conditions for the citizens entitled to vote to replace the Basic Law. Article 146 of the Basic Law confirms the right of those entitled to vote to give themselves a constitution, from which the constituted power emerges and to which it is then bound. This means that the state authorities are obliged to let the eligible voters vote on it before changing their identity. Without a replacement of the Basic Law by a free decision of those entitled to vote, the consent of the Federal Republic of Germany to the agreements with the WHO constitutes an unlawful release of the constituted state and at the same time an unlawful elimination of the democratic principles currently prevailing in the Federal Republic of Germany.

cf. BVerfG, Judgment of the Second Senate of 30 June 2009 - 2 BvE 2/08 marginal no.179 and 226

The tightened International Health Regulations (IHR) and the planned pandemic treaty (CA+) are, by their effect, political treaties that overrule the prevailing democratic and social principles of the Basic Law in the Federal Republic of Germany and, in the process, eliminate the democratic control bodies. The new WHO conventions disempower the national parliaments and, thus, also the Bundestag. The approval of these treaties in their present form by the Federal Republic of Germany in the 77th session of the World Health Assembly would be an unconstitutional change of identity. **Until the Federal Government has created a change of identity by the electorate "in free decision", its approval of the above-mentioned conventions in the present version is unconstitutional and not permitted.**

5. Violation of other fundamental rights, the Basic Data Protection Regulation and international law from Art. 1 (1), 2 (1), (2), 3, 20 (1), (2), (3), 38 (1), 79 (3), 146 Basic Law, Art. 1,

2, 3, 5, 12 UDHR, Art. 1 (1), 7, 17 ICCPR, Art. 12 ICESCR, Art. 8 ECHR, Art. 8 EU Charter of Fundamental Rights and GDPR

The right to privacy (Art. 12 UDHR, Art. 17 ICCPR, Art. 8 ECHR) and data protection concerns of the complainant (Art. 8 EU Charter of Fundamental Rights) are hardly taken into account in the proposed amendments, although these concerns are indeed serious as they concern the global digital exchange of health data, including genomic data, which are strictly protected by the rights to health and privacy. Article 8 of the EU Charter of Fundamental Rights already states that personal data may only be processed fairly for specified purposes and with the consent of the data subject or on a lawful basis. Without clear data protection regulations that correspond to the EU Data Protection Regulation, the two conventions are not ready for approval by the Federal Republic of Germany. Intervention with automated decision-making is not permitted in the EU. Without this decision-making, it is not possible to process this data properly.

The World Health Organisation (WHO) announced on 5 June that the WHO is adopting the expiring EU immunization certificate as a global standard (see press release <https://www.who.int/news/item/05-06-2023-the-european-commission-and-who-launch-landmark-digital-health-initiative-to-strengthen-global-health-security>). In June, the legal basis for the EU Covid digital certificates expires which allows proof of (mandatory) vaccinations or tests. The WHO is now adopting this digital infrastructure as a permanent model for global travel. The compulsion for all those wishing to travel to follow current WHO vaccination recommendations thus becomes a permanent feature. Compensation clauses are only foreseen for the purchase contracts as a last resort and for a limited period of time. According to Art. 10 (4) CA+, vaccination victims can only receive compensation for a limited period of time, which the states determine with the pharmaceutical companies in the purchase contract.

Digital health certificates as a permanent requirement for international travel have also already been decided by the heads of government of the 20 most economically powerful countries (G20) at their 2022 summit in Bali. According to the Bali Declaration of the G20 Heads of State and Government, adopted at their meeting on 15 and 16 November 2022, digital immunization certificates are to be used internationally on a permanent basis to enforce restrictions on freedom of movement and travel. (see under point 23 in the BALI Declaration <https://www.bundesregierung.de/resource/blob/975254/2143372/c32dd4674a573a180c1ecc615729ac75/2022-11-16-declaration-g20-deu-data.pdf?download=1>) The German government has also agreed to the Bali Declaration, thereby committing itself to support this project without the approval of the German Bundestag. The introduction of global health certificates in digital or paper form is detailed under Art. 18, 23, 24, 27, 28, 35, 36, Annexes 6 and 8 IHR as amended on 15 November 2022. (see https://apps.who.int/gb/wgihhr/pdf_files/wgihhr1/WGIHR_Compilation-en.pdf)

The WHO's plan to permanently introduce digital health and vaccination certificates, which also means compulsory vaccination, violates the complainant's rights under the provisions of the GDPR, Art. 7, 26, ICCPR, Art. 1 (1) (2), 2 (1) (2) and Art. 1 (1) and 2 Basic Law, because no one may be subjected to medical or scientific experiments without voluntary consent. As the practice with the conditionally approved COVID-19 vaccines has already shown, without a public digital vaccination certificate, the complainant will be subjected to endless discrimination, as the WHO is prepared to market pharmacological products, mainly vaccines, with an extremely abbreviated approval procedure in the event of a pandemic and to prescribe them as compulsory, without taking into account the countless possible vaccination damages, which it itself listed during the last pandemic.

The introduction of digital health certificates not only violates the Basic Law, but also the guidelines the WHO has given itself. On 27 August 2021, the World Health Organization has published a guideline aimed at the governments of its member states for the introduction and technical specification of digital vaccination certificates under "Digital Documentation of COVID-19 Certificates: Vaccination Status: Technical Specification and Implementation Guidelines". There, the WHO openly admits that the digital vaccination certificates pose ethical problems because people who do not want to or cannot get vaccinated are disadvantaged. And no one should be discriminated against. The WHO document explicitly says so on page 24:

"Individual vaccination status is personal data and care must be taken to ensure that no one is forced to disclose their vaccination status or publicly display a vaccination certificate in order to gain access to a public space or activity. Such a practice and/or the lack of a vaccination certificate itself could lead to stigmatization of people without a vaccination certificate and increase the risk of disadvantages." (see https://www.who.int/publications/i/item/WHO-2019-nCoV-Digital_certificates-vaccination-2021.1) This WHO finding is not reflected in the current version of the IHR and the pandemic contract (CA+).

The WHO, without any democratic legitimacy, is also to be given leverage under Art. 15 of the Pandemic Treaty (CA+) and Art. 12 and 15 of the IHR to send teams of experts to affected countries, which

help enforce their recommendations. This violates the complainants' rights under, inter alia, Art. 1 (1), 2 (1), (2), 20 (1), (2), (3), 38 (1), 79 (3), 146 Basic Law, Art. 1 (1)

ICCPR and Art. 5 UDHR. Enforcing recommendations means taking coercive measures. This is clearly torture, which is strictly prohibited under Art. 1 (1) Basic Law, Art. 3 ECHR, Art. 5 UDHR and Art. 7 ICCPR.

The approval for pandemic-related products is to be accelerated according to Art. 14 in the version of the Pandemic Treaty of 2 June 2023. By shortening the approval of new pharmacological products, the WHO is striving to combat future pandemics quickly without taking into account the numerous possible damages. The mobilization of WHO funds without democratic control imposes incalculable costs on countries, and the WHO has no accountability (see Art. 44 A IHR). It is also completely unclear whether the new pharmacological products with shortened emergency approval will have to provide the safety data after the PHEIC has ended. This fact violates the complainant's rights under Art. 1 (1), 2 (2), 3 Basic Law, Art. 1, 2, 3, 5 UDHR and Art. 7 ICCPR.

Combating the causes of pandemics is not mentioned at all in the drafts of the Pandemic Treaty and the International Health Regulations to date, although this should be the primary duty of the WHO. According to the experience of recent years, the emergence of pandemics is often due to so-called "gain-of-function" research, which makes pathogens more infectious, dangerous and deadly for humans (see study on the origin of the 2021 coronavirus pandemic by Prof. Dr. Roland Wiesendanger, University of Hamburg, published at: <http://doi.org/10.13140/RG.2.2.31754.80323>).

The zero draft of the pandemic treaty still provided in Article 8: "Measures to establish international standards for laboratories and research institutions carrying out work to genetically modify organisms to increase their pathogenicity and transmissibility, and to monitor and report on it, in order to prevent accidental release of these pathogens, while ensuring that these measures do not create unnecessary administrative hurdles for the Research."

(see https://apps.who.int/gb/inb/pdf_files/inb3/A_INB3_3-en.pdf).

This was deleted in the new drafts of the pandemic treaty of 22 May and 2 June 2023. Instead, there is a much softer passage in Article 4 of the new draft that does without new or stricter international standards:

"The Parties shall take measures to strengthen biosafety in laboratories to prevent accidental exposure, misuse or release of pathogens in laboratories through biosafety training and practices, regulate access to sensitive locations, strengthen transport security and cross-border movement, in accordance with applicable regulations and standards."

This fact is already a blatant violation of the complainant's rights under Art. 1(1), (2), 2(1), (2) Basic Law, Art. 3 UDHR and EU Charter of Fundamental Rights/Preamble. According to the study by Prof. Dr. Roland Wiesendanger, there were considerable safety deficiencies in the virological institute of the city of Wuhan even before the outbreak of the coronavirus pandemic, which have been documented. Since absolutely safe laboratories do not exist, it is high time for the WHO to finally do its job here and fulfil its duties towards the world's population. In order to prevent further pandemics, the WHO should first ensure monitoring of these laboratories with the new contracts and immediately begin negotiations with the operating states to close these laboratories.

Especially with regard to the ethical aspects of so-called "gain-of-function" research, we need broad discussions in our society. "This can no longer remain a matter for a small group of scientists but must urgently become the subject of a public debate," says the author of the abovementioned study, Prof. Wiesendanger. The closure of the highly dangerous laboratories would have to be included along with other commitments in national prevention plans. If nothing is done by the two conventions to curb the highly dangerous effect of gain-of-function research, then the treaties are only there to intensify control over peoples.

The above-mentioned approaches of the IHR and the pandemic treaty (CA+) will, as they stand, lead to encroachments on numerous human rights, including the right to health (Art. 12 ICCPR),

the principle of informed consent and the right to access safe and effective medical products, as well as the right not to be subjected to medical or scientific experiments without free consent, which is part of the prohibition of torture (Art. 1 (1) Basic Law, Art. 5 UDHR and Art. 7 ICCPR).

It would be contradictory on the part of the Federal Republic of Germany to agree to such WHO regulations and orders which deprive the complainants of fundamental and human rights and only leave the right of resistance from Article 20 (4) of the Basic Law because of the abolition of constitutional order against possible arbitrary actions of the WHO. The two agreements with the WHO, if approved by the representative of the Federal Republic of Germany, would **no** longer be open to attack by all citizens of Germany, and thus also by the complainant, according to the principles of democracy, through elections, votes, changes of government or protest actions, although the Federal Constitutional Court itself, in the judgment of the Second Senate on the Lisbon Treaty (BVerfG, judgment of the Second Senate of 30. June 2009 - 2 BvE 2/08 -, marginal no. 1421) repeatedly confirms the immutability of the principles of democracy "the right of citizens...to determine public authority in terms of personnel and subject matter through elections and votes":

Paragraph 211 Lisbon BVerfG ruling

b) **The right of citizens to determine, in freedom and equality, by means of elections and votes, the personnel and content of public authority is the elementary component of the principle of democracy.** The right to free and equal participation in public authority is anchored in the dignity of

the human person (Article 1 (1) of the Basic Law). It is one of the principles of German constitutional law laid down as immutable under Article 20 (1) and (2) of the Basic Law in conjunction with Article 79 (3) of the Basic Law" ..

Paragraph 212 Lisbon BVerfG ruling

aa) **Insofar as binding decisions are made for citizens in the public sphere, in particular on interventions in fundamental rights, these decisions must be based on a freely formed majority will of the people.** The order established by the Basic Law is based on the intrinsic value and dignity of the human being who is capable of freedom. This order is rule by the rule of law on the basis of the self-determination of the people according to the will of the respective majority in freedom and equality (cf. BVerfGE 2, 1 <12>). **Accordingly, the citizens are not subject to any political power which they cannot avoid and which they are not able to determine in principle in terms of personnel and subject matter in equal shares in freedom.**

Paragraph 213 Lisbon BVerfG ruling

bb) Self-determination of the people by means of elections and votes according to the majority principle is **constitutive for** the state order established by the Basic Law."

The norms of general international law, in particular the universal human rights from Art. 1 (liberty, equality, fraternity), 3 (right to life and liberty), 8 (right to legal protection), 21 (universal and equal suffrage), 22 (right to social security) and 25 (right to welfare) TFEU as well as the principle of democratic legislation according to Art. 28 (social and international order) UDHR and Art. 1 (1) (right of self-determination of peoples) ICCPR (ius cogens) need to be implemented and shaped in practice. Art. 28 (social and international order) UDHR and Art. 1 (1) (right of self-determination of peoples) ICCPR (ius cogens) require national parliaments elected by the citizens for their practical implementation and shaping as well as their legislative enforcement and protection at national state level. However, as has been explained, the intended agreements with the WHO will disempower both national parliaments and the European Parliament.

Due to the non-observance of human rights within these planned conventions, there is already a constitutionally verifiable collision. This examination is therefore to be carried out within the constitutional review of the planned treaties with the WHO, which is indisputably to be carried out here.

6. Violation of the right to self-determination in further areas from Art. 1. (1), 2, 5 (1), (3), 11 (1), 19 (2), 20 (1), (2), 38 (1), (2), 146 Basic Law, Art. 2 TEU, Art. 10 ECHR, Art. 1, 2, 3 and 19 UDHR, Art. 1 (1) ICCPR

The One-Health concept puts human health, animal health, environmental concerns, food, travel, housing and everything else under a single umbrella, and the WHO is to be used as the central decision-maker and overseer for all of it. One-Health is based on the premise that a wide range of life and environmental issues can have an impact on health and therefore fall under the 'potential' to cause harm. The One-Health agenda encompasses medicine, food and agriculture, communications, research, economics and security, civil society, public policy and regulation, global trade, research, non-communicable diseases (basically all human medicine), mental health, agricultural land use, disaster preparedness and response, disease surveillance, human-animal bond (the relationship with pets) and much more.

Annex 1 of the IHR and Art. 5 of the Pandemic Treaty Version of 2 June 2023 describe the implementation of One-Health in detail. Parties should promote and implement the One-Health

approach at national, regional, and global levels as appropriate. The Parties commit to regularly assess One-Health capacities and strengthen One-Health surveillance systems. The implementation of One-Health surveillance mechanisms using data collected from human, animal and environmental sources are to be shared. Countries must also develop "innovative financial incentives and systems" to fund the proposed action plan and ensure "sustainable funding". Genomic surveillance, the introduction of data tools to detect pathogens and the assessment of climate-related outbreak risks are to support the implementation of the One-Health agenda.

The regulations of the One-Health agenda violate the complainant's rights under Art. 1 (1), 2, 5 (1), (3), 19 (2), 20 (1), (2), 38 (1), (2), 146 Basic Law, Art. 2 TEU, Art. 10 ECHR, Art. 1, 2, 3 and 19 UDHR. As all areas of life are considered and controlled as a threat to public health through the implementation of the One-Health agenda, the complainant loses their right to self-determination in all areas. Their right to vote under Article 38 of the Basic Law and their pre-constitutional constituent power under Article 146 of the Basic Law are completely undermined by this agenda. All information and science will also be controlled, monitored, and also censored by the WHO info-democracy (see Art. 44 and Annex 1 IHR, Art. 18 CA+). As a result, there will no longer be any possibility of coping with the pandemics, of developing other alternatives, perhaps even better ones, than prescribed by the WHO via its private donors.

The complainant not only loses their security of supply in all areas, but also the opportunity to participate in a democratic state.

Since the implementation of the One-Health agenda will result in the expropriation of agricultural land, the destruction of peasant farming, the mass killing of animals, the promotion of genetic engineering in food and the fast-track approval of pharmacological products according to the current agenda guidelines, the complainant's basic needs will no longer be secured. They will lose their fundamental rights to freedoms under the Basic Law, the TEU and the UDHR and, in general, their right to self-determination to decide freely on their political status and to freely shape their economic, social and cultural development, which is their vested right under Art. 20 (2), 38 (1), (2), 146 and Art. 1 (1) ICCPR. The complainant's right to self-determination under Art. 1 (1) ICCPR is *ius cogens*. The One-Health agenda of the IHR and the Pandemic Treaty (CA+) is a clear violation of *ius cogens* and Art. 53 VCLT.

If the WHO's proposed amendments to the IHR as currently drafted come into force, the WHO will have unilateral power to make decisions in all areas and its dictates will supersede and override all local, state and federal laws. As they stand, the IHR completely abrogate the sovereignty of member states. The abrogation of the sovereignty of the Federal Republic of Germany in this case is neither covered by Art. 23 nor by Art. 24 of the Basic Law. It is not permissible to give up the sovereignty of the Federal Republic of Germany to the constitutional power for the implementation of an ideology of an organization which mainly represents private interests, without first fully informing those entitled to vote and without fulfilling its constitutional duty under Article 2 (1) in conjunction with Article 20 (1) and (2) and Article 146 of the Basic Law, from which it follows that a referendum on the constitution must be held in the event of a change of identity. In the event of an unauthorized change of identity by the constituted power, the provisions of Article 20 (4) automatically come into force for the complainant if they do not obtain a remedy from the Federal Constitutional Court by decreeing that the state authorities are obliged to ensure that all envisaged provisions of the envisaged conventions which conflict with the Basic Law and international law are completely eliminated before signing. Otherwise, the Federal Republic of Germany is obliged to immediately terminate its membership in the WHO.

7. Violation of the principle of subsidiarity from Art. 20 (1), 23 (1) 1, 28, 79 (3) Basic Law, 5 (3) TEU

The two agreements with the WHO would also unconstitutionally interfere with the unalterable, arg. Art. 79 (3) of the Basic Law, rights of the federal states and municipalities and thus of their inhabitants if they have not previously consented to the planned agreements in full knowledge of their treaty texts. Federal bodies may not conclude a binding treaty without this consent of the federal states and municipalities, which forces the citizens in the federal states and municipalities to fulfil the treaty against their will. From the subsidiarity requirement, which is also a constitutive element of the EU, see Art. 5 (3) TEU, and legally the primacy of the *lex specialis*, cf. Papinian, Dig. 50, 17, 80: *in toto iure generi per speciem derogatur, et il lud potissimum habetur quod ad speciem directum est* (in all law the general is held in check by the particular, and that is held to be strongest which is directed to the particular), the elementary violation of the Constitution and EU principles results directly if, as is to be feared because of the secrecy, the informed consent of the affected federal states and municipalities to the agreements with the WHO is lacking, because the implementation of the prescribed measures by the WHO necessarily takes place on the territory of a municipality which has to bear the consequences of the same and can best assess the particular advantages and disadvantages for its inhabitants

and therefore alone is allowed to negotiate the details of the treaty and must give the final approval to them. The EU would immediately raise the subsidiarity complaint with a binding general treaty regulation without the participation of the affected regional authorities and would thus put an end to its own treaty negotiations, arg. Paulus, Dig 50, 15, 173 § 3: *dolo facit, qui petit, quod redditurus est*, analog (with malice he acts who promises what he will then revoke).

The implementation of any health measure during a PHEIC takes place at the state or municipal level and therefore it affects state or municipal sovereignty. It is a violation of the constitutional principle of federalism if neither the state and/or the municipal electorate with referendum nor the federal parliament and the municipal, district or city council have approved it. The federal government is also not allowed to authorize the WHO to negotiate or even conclude international treaties on the competences of the federal state and municipal sovereignty without a detailed individual authorization of the citizens in the federal states and municipalities concerned, which is difficult to imagine. After all, the implementation of the prescribed measures in the event of a declared PHEIC by the WHO affects countless things in the infrastructure of each municipality. Thus, every citizen, and thus also the complainant, would have their rights to state participation violated **threefold**, as an (electoral) citizen of the municipality in which they live, of the federal state to which they belong, and of the Federal Republic of Germany. For this threatened violation of the subsidiarity principle alone, the complainant's application for an interim injunction is justified and absolutely necessary, since democratic control of the WHO's prescribed measures in the event of a proclaimed PHEIC would be completely undermined by the two conventions with the WHO in their current version, which are legally binding under international law. For this reason, the two agreements, the IHR and the Pandemic Treaty, **cannot be** approved by the Federal Republic of Germany in their current form.

V. Interim relief

1. Application for interim relief

It is requested that it be established that the German representative to the WHO is obliged to ensure in the working groups of the treaties that all violations of basic law and international law during the current consultation phase, where changes are still possible, are completely eliminated by the time the treaties ready for signature are presented at the beginning of 2024.

2. Justification

The application for interim relief under § 32 of the BVerfGG is admissible and well-founded. In view of the timetable of the two conventions with 194 states and the WHO, the Federal Republic of Germany has only a few months to eliminate the blatant violations of the Basic Law and international law that already exist in the current versions of the two conventions through the working groups that meet on an ongoing basis. The two conventions should be ready for signature by the contracting parties at the beginning of 2024 and adopted at the 77th session of the World Health Assembly in May 2024. The IHR will be adopted and brought into force without a decision by the Bundestag. Due to the simple adoption procedure of the IHR, the new regulations for pandemic times can become binding under international law rather quickly. Therefore, legal protection can only be guaranteed during the consultation phase by means of an interim injunction. If the application for a temporary injunction were to be rejected, there would at the same time be a threat of irreparable damage - both to the German Bundestag and to the complainants. The consequences to be weighed in one-stage legal protection proceedings are also to the detriment of the Federal Government. The Federal Government is the body that represents the Federal Republic of Germany in the working groups of the two Conventions. If the version of the IHR and the Pandemic Treaty (CA+) continue to have blatant

violations, the German representative is prohibited from giving his or her consent and the Federal Republic of Germany must immediately terminate its membership in the WHO.

VI. Conclusion

The dignity of human beings and their rights to freedom are laid down in the Basic Law. Basic rights may not be restricted arbitrarily and without limits. The Basic Law sets narrow limits on restrictions for the state and its organs. It is a matter of secured, substantive law. The proposed amendments to the IHR and the Pandemic Treaty must be examined for their compatibility with the duties of the state to respect, protect and realize human rights, including ensuring that membership of international organizations such as the WHO does not prevent the state organs of the Federal Republic of Germany from fulfilling these duties. It must be ensured under any contractual relationship that the Federal Republic of Germany always retains its full capacity to act. This also applies to international treaties (see CETA ruling 2 BvR 1368/16).

The amended International Health Regulations (IHR), which can only be adopted by the World Health Assembly with a simple majority without further approval by the German Bundestag, as well as the International Pandemic Treaty (CA+) in their current form violate ius cogens and Art. 53 VCLT. Even negotiating a transfer of important sovereign rights to the WHO without first asking those entitled to vote is unconstitutional and constitutes a change of identity, because **"insofar as binding decisions are made for the citizens in the public sphere, in particular concerning encroachments on fundamental rights, these decisions must be based on a freely formed majority will of the people."** (see BVerfG, 2 BvE 2/08 para. 212) This ruling of the Federal Constitutional Court clearly establishes that the Federal Government is not entitled to transfer sovereign rights, even to an organization which, through its funding, mainly represents private interests, without first fulfilling the constitutional duty of state authorities under Article 2 (1) in conjunction with Article 20 (1) and (2) and Article 146 of the Basic Law, from which it follows that a referendum on the constitution must be held in the event of a change of identity.