

Abstract

This article, written by Katherine Read, gives an introduction to printed and electronic German legal resources available at the Library of the Institute of Advanced Legal Studies and on the Web. Particular attention is given to English language sources where available.

Biography

Katherine Read is part of the Academic Services Team at the Institute of Advanced Legal Studies. She studied German at University and, in 2006, spent two weeks visiting German law libraries in Hamburg, Berlin and Leipzig on a CILIP sponsored trip.

Introduction to sources of German law

German Collections at the Institute of Advanced Legal Studies

The role of the Institute of Advanced Legal Studies (IALS) is “to promote and facilitate, within London and nationally and internationally, research and scholarship at an advanced level across the whole field of law” and the library plays an essential role by “collecting, maintaining and developing extensive research collections of national, international and comparative legal research material to meet the present and future needs of the legal research community”¹ The library serves postgraduate students of the Colleges of the University of London and also other postgraduate students, academics and researchers worldwide. In addition IALS Library provides a subscription document supply service to commercial users who have access mainly to the printed resources. Apart from UK sources, the strengths of the IALS collections include EU materials, European jurisdictions (particularly Germany,

France, Italy and the Netherlands), Commonwealth countries, public international law and comparative law.

The IALS collection policy allocates different jurisdictions to four different levels of research between introductory and comprehensive. Germany is at level 4 which means that the library aims to include the following key resources for Federal law where available. IALS does not have holdings for the individual Länder. All library holdings are included in the online catalogue.²

- Series and individual items of primary and subsidiary legislation together with any consolidated versions.
- All codes, official and annotated
- All series of law reports designed for permanent record. This includes general and specific subject series.
- Selected sources of very recent law reports
- A wide selection of academic treatises and a selection of major practitioner's manuals to cover all major subject areas

A more recent addition has been a subscription to Beck online for German law³ which can be accessed by academic users at IALS Library. This has widened access to very recent materials, particularly legislation, judgments and major commentaries. The focus of this article will be the Constitution, Gesetze (legislation) law reports, journals, book sources and web resources. Emphasis will be given to the availability of English language sources.

A very useful key to German legal abbreviations and legal authorities is available in Kirchner⁴. A new 7th edition was published in 2013.

Background to the German Federal System

Germany has a federal system which comprises 16 Länder (federal states). The legislation is codified and was originally based on Roman law, a feature which distinguishes it from common law.⁵ The German Federal Constitution is known as the *Grundgesetz* or 'Basic Law' and has its place at the top of the legal 'pyramid'. It represents the foundation of all other legislation. "The supreme source of German law states the leading principles of the state, its organization and the individuals' basic rights"⁶

All sources of law below the Constitution including 'Gesetze' and codes must comply with its requirements. Fisher⁷ explains how German law is divided into two main branches namely Öffentliches Recht (Public Law) and Privatrecht (Private Law). Public Law covers the following subject areas:

Staats- und Verfassungsrecht (state and constitutional law)

Verwaltungsrecht (administrative law)

Steuerrecht (tax law)

Strafrecht (criminal law)

Prozessrecht (procedural law)

Völkerrecht (public international law)

Private Law is divided further into Bürgerliches Recht (Civil Law) and Handelsrecht (Commercial) and Gesellschaftsrecht (Company Law). A more detailed general introduction to the German legal system is available online as part of the Globalex guide to legal research in Germany⁸

Federal Constitution (Grundgesetz)

The most up to date source of the Constitution with commentary (Grundgesetz) in German is available as part of the Beck subscription to Staudinger BGB Plus. More detail about the legislation content of the individual Beck databases will be provided in the following section.

Printed sources at IALS

IALS holds an extensive collection of mainly German language texts and accompanying commentaries, both current and historic. Historic texts date back to the German Reich of the late 19th century and are held in the closed basement but can be brought up as required. The most recent one is:

Hans D. Jarass '*Grundgesetz für die Bundesrepublik Deutschland : Kommentar*' (Beck 2011)

In addition the following commentaries are in English

Margaret Barber Crosby '*The Making of a German Constitution: a slow revolution*' (Berg 2008)

Werner Heun '*The Constitution of Germany: a contextual analysis* (Oxford Hart 2011)

Donald Kommers et al. '*The Constitutional Jurisprudence of the Federal Republic of Germany*' (3rd rev. ed. Duke University Press 2012)

An additional source of reference might be:

Aalt Willem Heringa and Philipp Kiiver, '*Constitutions Compared. An Introduction to Comparative Constitutional Law*' (3rd ed. Intersentia 2012) which features the Constitution, federalism, parliaments and law making for several jurisdictions including Germany.

Electronic Sources in English

There are two main sources for the text of the Constitution in English. The first is provided by the Deutscher Bundestag (Federal Government). It has been updated to 2010 and can be downloaded free of charge directly from the site. ⁹

The second, 'World Constitutions Illustrated' is a subscription source which is part of Hein Online. It provides full text access to current and historic versions of the Constitution. This includes versions from the previous GDR and the German Reich. Many of the historic documents are accompanied by translations into English and a few are also offered in French. It is accompanied by references to a selection of commentaries and articles many of which are available in full text. A summary of the contents is accessible from the IALS Electronic Law Library. ¹⁰ Hein may be used onsite by all academic visitors.

Primary Sources: Statutes (Gesetze) and Codes

Beck provides the most comprehensive electronic source of statutes and codes. It includes the following individual databases:¹¹

- Sartorius Plus: Includes the full text of the Constitution and otherwise covers federal and regional by-laws concerning constitutional and administrative law.
- Schönfelder Plus: Laws and regulations covering civil law, penal law, employment law, traffic law and procedural law
- Staudinger BGB Plus: Comprehensive commentary on the Bürgerliche Gesetzbuch (Civil Code) with links to the relevant legislation.
- Das Deutsche Bundesrecht (Nomos): This provides the most comprehensive set of German legislation currently in force. It has had uninterrupted publication since 1949. It comes with introduction and commentary and this includes commentary to less well known legislation which may not be available in other publications. It is a main source of reference for the legal profession in Germany.

Statutes

The official sources of statutes are the Reichsgesetzblatt (historic laws before 1945) and its successor the Bundesgesetzblatt. IALS holds an unbroken run of the

Reichsgesetzblatt from 1899 to 1945 in the closed basement. The Bundesgesetzblatt is divided into two parts. Teil I covers laws and administrative orders. Teil II covers international agreements. IALS does not hold the printed series but it is accessible online from 1949 (Teil 1) and 1951 (Teil 2).¹² The free access option allows the user to see the full text and also the indices (Fundstellennachweis) from 2005 until 2013 but does not permit any printing, editing or keyword searching. It is also possible to have a subscription for the enhanced service but IALS does not offer this at present. Free public access is only for private reference and permission is required to reproduce the documents.

English language sources

Gesetze-im-internet¹³ is an official information source for legislation provided by the Federal Government (Bundestag). It is mainly in German but does give access to a selection of Acts in English.¹⁴ In each case users can see how up to date the Act is but the German original remains the official document. Other sites which have offered translations in the past are no longer being updated but have been included in the web sources section at the end of this article as they may still be of use where no recent version exists.

Codes (Printed Sources)

IALS holds two major commentaries on the Civil and Criminal codes:

J. von Staudinger '*Kommentar zum Bürgerlichen Gesetzbuch*' (13th ed. Beck 2006). Current edition is available to academic users as part of Beck online.

Adolf Schönke et al. '*Strafgesetzbuch: Kommentar*' (28th ed. Beck 2010)

IALS also holds a selection of texts from the *Kurz-Kommentar* series (shorter commentary). The following titles focus on the codes.

Thomas Fischer (erl.) '*Strafgesetzbuch und Nebengesetze*' (56th ed. Beck 2009)

Klaus Hopt (et al.) '*Handelsgesetzbuch : mit GmbH & Co., Handelsklauseln, Bank- und Börsenrecht, Transportrecht (ohne Seerecht)*' (35th ed. Beck 2012)

Otto Palandt '*Bürgerliches Gesetzbuch*' (71st ed. Beck 2012)

English language sources

Michael Bohlander trans. '*The German Criminal Code: a modern English translation*' (Oxford: Hart 2008)

Charles E. Stewart trans. 'The German Commercial code and code of Civil Procedure' (Dobbs Ferry N.Y. Oceana publications 2001)

Also of interest may be the following article which is from a book by Miller & Zumbansen¹⁵:

Giesela Rühl, 'Preparing Germany for the Twenty-First Century: the reform of the Code of Civil Procedure' 259

Law Reports

There are two key facts to remember when searching for German cases. Firstly it is not possible to search for cases using the names of relevant parties. This is because published cases are anonymised. The party names are not generally available to readers and the defendant (in a criminal case for example) is referred to as the Angeklagte. Published cases are identified by a location reference (Fundstelle) and are allocated a popular, sometimes amusing, name related to the subject of the case. The location reference provides an abbreviated name of the court where the case was decided, a date and the type of judgment, a link to a free online full text source and a reference for a published series where available¹⁶. Decisions which are not made public have a reference called an Aktenzeichen which gives the court and a case number.

Secondly, case decisions (Entscheidungen) in Germany do not have a role of precedent in later decisions to the same extent as they do in Common Law jurisdictions. Freckman and Wegerich¹⁷ explain that courts now have a "dominant position in legal practice" but that the German legal system "is generally unfamiliar with the theory of binding effects of precedent". The courts are bound by the written law as required by the Constitution when making decisions but they do refer to some precedent decisions, particularly from older cases. Case reports are available only in German and the courts do not offer a translation service.

Printed sources

IALS subscribes to several current printed series of law reports and also has an extensive historical collection. There are currently 42 closed titles and 8 current titles. These are published according to the court and include official reports from the Supreme Court for civil and criminal cases (Bundesgerichtshof BGHZ and BGHSt) and from the Constitutional Court (Bundesverfassungsgericht BVerfGE). Other series held cover cases from special courts. The following are included in collections at IALS.

Entscheidungen des Bundesverwaltungsgerichts (BVerwGE) – Administrative law

Entscheidungen des Bundesarbeitsgerichts (BAGE) – Industrial law

Sammlungen der Entscheidungen des Bundesfinanzhofs (BFHE) – Finance law

Entscheidungen des Bundessozialgerichts – Social insurance

Entscheidungen des Bundesgerichtshofes in Strafsachen – Criminal law

Another feature of German case reports is that many appear in journals instead of dedicated law reports series. These can be generalized legal journals or legal periodicals which focus on more specific subject areas. The more generalized titles feature *Neue Juristische Wochenschrift* and *Monatsschrift für Deutsches Recht* and cover civil law cases with related commentary. The more specialized group includes the following:

Gewerblicher Rechtsschutz und Urheberrecht (copyright and intellectual property)

Die Öffentliche Verwaltung (public administration)

Die Aktiengesellschaft (company law)

Neue Justiz (Development of laws in the newer Länder which were previously part of the GDR.

Electronic subscriptions and web sources

Beck online includes two groups of journals which include full text law reports and commentaries. These are *Neue Juristische Wochenschrift* and *Gewerblicher Rechtsschutz Plus*.

It is also worth browsing the web sites of the various Federal courts which provide assistance with obtaining full case reports and background information about the work of the courts. There is usually a page in English which gives background information about the role and work of the court. Case reports are often available online for non - commercial purposes, usually from approx. 2000 onwards although the exact year varies from court to court and some older cases can be ordered from the court. Commercial use often requires payment of a fee or permission from the court.

- The *Supreme Court*¹⁸
- The *Constitutional Court*¹⁹ (Press releases in English are available for a selection of recent cases)
- The *Administrative Court*²⁰
- The *Social (Insurance) Court*²¹
- The *Financial Court*²²
- The *Federal Labour/Employment Court*²³

Journal Sources

The following examples represent a selection of the journals available to IALS users. Further details of holdings for individual titles including online access where possible are available from the IALS List of Serials²⁴. A more comprehensive list of current titles can be viewed on the LibGuide for Germany.²⁵ This guide is one of a selection prepared by IALS library staff to feature collections for different jurisdictions.

The main source of online journals is provided as part of Beck Online. This has already been mentioned in the context of journals which provide case reports. In addition to the titles previously mentioned, the Beck subscription gives access to an English language journal, "*International Review of Intellectual Property and Copyright Law*" which includes articles and opinions on international issues but also English summaries of a small selection of German cases in the relevant fields. IALS also holds the printed journal.

A further English language title worth noting is the freely accessible web title *German Law Journal*²⁶ which started in 2000. It provides commentary on German, European and international jurisprudence. It is also available as part of Hein online. An English language book has been published in association with the journal²⁷ and this includes chapters with contributions from different authors. Chapters worth highlighting include ones which examine German constitutional and private law.

A useful source worth noting for English language articles on German company law, partnership law and employee participation is the IALS published title *Amicus Curiae: Journal of the Society of Advanced Legal Studies* which is both a printed title and freely available online.²⁸ Volumes from recent years have included a selection of articles on these topics mainly written by Frank Wooldridge.

Printed German language journals held at IALS include the following titles:

Archiv des Öffentlichen Rechts

GRUR: Gewerblicher Rechtsschutz und Urheberrecht

GRUR: Internationaler Teil

Juristenzeitung

Neue Juristische Wochenschrift

Der Staat

Wirtschaft und Wettbewerb

Zeitschrift für das Gesamte Familienrecht

Book Sources

The following German and English language texts represent a sample of the current editions held at IALS. Please refer to the LibGuide²⁹ for Germany and the library catalogue³⁰ for additional titles and historic sources.

German language

In addition to the previous books mentioned which focus on the Codes and related commentary, IALS holds the following titles:

Alfred Hueck '*GmbHG-Gesetz.... Gesetz betreffend die Gesellschaften...*' (19th ed. 2010)

Helmut Köhler and Joachim Bornkamm '*Gesetz gegen den Unlauteren Wettbewerb...*' (28th ed. Beck 2010)

Leo Rosenberg '*Zivilprozessrecht*' (17th ed. Beck 2010)

English language

Michael Bohlander '*Principles of German Criminal Procedure*' (Oxford Hart 2012)

Howard Fisher, '*The German Legal System and Legal Language*' (5th ed. Clarus Press 2013)

Nigel Foster and Satish Sule, '*German Legal System and Laws*'. (4th ed. OUP 2010)

Anke Freckmann and Thomas Wegerich, '*The German Legal System*' (Sweet and Maxwell 1999) (useful basic introduction)

Burkhardt Meister et al. '*The German Limited Liability Company*' (7th rev. ed. Beck 2010)

Web Resources

The following represents a selection of additional sites, which have not been mentioned in previous sections.

German Working Papers in Law and Economics³¹ is a current free to access journal which offers full text articles in English or German.

Humboldt Forum Recht³² is an internet journal produced by law students at the Humboldt University in Berlin. Most but not all articles are in German and the site has an English interface and English keywords can be used to search.

Globalex³³ includes a 2nd guide to German commercial and business law which looks at available English translations³⁴

LibGuide to the Bodleian Law Library German collections in Oxford³⁵

Virtuelle Fachbibliothek Recht (Virtual Law Library) ³⁶ is maintained from the State Library in Berlin. The interface with background information about the project is available in English but the documents offered are in German. It is currently undergoing an update to introduce a new Discovery System but is due to be completed within a couple of months.

Parlamentspiegel.de ³⁷ gives an overview of the regional governments of the Länder. It is only available in German.

Joachim Rudo, a German lawyer, offers full text legislation in English which covers German copyright, telecommunications, energy, business and antitrust laws.³⁸

The following site is apparently no longer being updated but I have included it because it does offer a large collection of German legislation in English translation:

Centre for German Legal Information³⁹ gives full text access to legislation, cases and articles but the most recent documents are from 2009.

Conclusion

It has only been possible to provide a brief introduction to the collections at IALS. The focus has been on current sources and more historic materials have not been covered in depth. Readers are welcome to contact IALS for further assistance. Details of our library reference services are available at <http://ials.sas.ac.uk/library/library.asp>

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- ¹ IALS Collection Development Policy
http://ials.sas.ac.uk/library/docs/IALS_Library_Coll_dev_policy_2_May_2008.pdf accessed 4th March 2014
- ² <http://catalogue.ulrls.lon.ac.uk/search~S6/> accessed 17th March 2014
- ³ http://ials.sas.ac.uk/library/eservice/info/beck_online.htm accessed 15th March 2014
- ⁴ Hildebert Kirchner *Abkürzungsverzeichnis der Rechtsprache* (7th ed. Berlin De Gruyter 2013)
- ⁵ Anke Freckmann and Thomas Wegerich, *The German Legal System* (Sweet and Maxwell 1999) 1
- ⁶ Nigel Foster and Satish Sule, *German Legal System and Laws*. (4th ed. OUP 2010) 50
- ⁷ Howard Fisher, *The German Legal System and Legal Language* (5th ed. Clarus Press 2013) 73
- ⁸ Rita Exter and Martina Kammer (with update by Sebastian Omlor), *Legal Research in Germany between print and electronic media: an overview*. Published July/August 2012
<http://www.nyulawglobal.org/globalex/Germany1.htm> accessed 13th March 2014
- ⁹ <https://www.btg-bestellservice.de/index.php?sid=e4036d7990f16c161609cdf456ec9524&navi=1&subnavi=68&anr=80201000>>
Accessed 13th March 2014
- ¹⁰ http://ials.sas.ac.uk/library/eservice/info/World_constitutions.htm accessed 13th March 2014
- ¹¹ Beck online (n 3)
- ¹² <http://www1.bgb1.de/> accessed 14th March 2014
- ¹³ <http://www.gesetze-im-internet.de/index.html> accessed 14th March 2014
- ¹⁴ http://www.gesetze-im-internet.de/Teilliste_translations.html accessed 14th March 2014
- ¹⁵ Russell A. Miller and Peer C. Zumbansen, *Comparative law as transnational law. A decade of the German Law Journal*. (OUP 2012)
- ¹⁶ A sample citation: **Sirius case available at BGH, Urteil vom 5 Juli 1983, Az 1 str 168/83, Volltext= BGHSt 32, 38**. This provides details of a free online source, a court case reference and a citation to the printed series
- ¹⁷ Freckmann (n 5) 37
- ¹⁸ http://www.bundesgerichtshof.de/DE/Home/home_node.html accessed 3 March 2014
- ¹⁹ <http://www.bverfg.de/> accessed 3 March 2014
- ²⁰ <http://www.bverwg.de/> accessed 3 March 2014
- ²¹ http://www.bsg.bund.de/DE/Home/home_node.html accessed 3 March 2014
- ²² <http://www.bundesfinanzhof.de/> accessed 3 March 2014
- ²³ <http://www.bundesarbeitsgericht.de/> accessed 3 March 2014
- ²⁴ <http://ials.sas.ac.uk/library/slist/slist.htm> accessed 7 March 2014
- ²⁵ <http://libguides.ials.sas.ac.uk/germany?hs=a> accessed 10 March 2014
- ²⁶ <http://www.germanlawjournal.com> accessed 10 March 2014
- ²⁷ Miller (n 15)
- ²⁸ <http://journals.sas.ac.uk/amicus> accessed 12 March 2014
- ²⁹ LibGuide for Germany (n 25)
- ³⁰ Library catalogue (n 2)
- ³¹ <http://www.bepress.com/gwp/> accessed 19th March 2014
- ³² <http://www.humboldt-forum-recht.de/> accessed 19th March 2014
- ³³ <http://www.nyulawglobal.org/globalex/index.html> accessed 19th March 2014
- ³⁴ Martina Kammer and Anne Scharrenberg) (with update by Sebastian Omlor) *German Business and Commercial Laws: Guide to translations into English and select auxiliary sources* Published September 2012 http://www.nyulawglobal.org/globalex/Germany_Business1.htm> accessed March 25th 2014
- ³⁵ <http://libguides.bodleian.ox.ac.uk/law-german> accessed 22nd March 2014
- ³⁶ <http://www.vifa-recht.de/en/> accessed 22nd March 2014
- ³⁷ <http://www.parlamentsspiegel.de/ps/suche/index.jsp> accessed 22nd March 2014
- ³⁸ <http://www.rudo.de/> accessed 22nd March 2014
- ³⁹ <http://www.cgerli.org/index.php?id=61> accessed 22nd March 2014