

## 2012 World Conference against A- and H-bombs in Hiroshima

### Session II: German steps against nuclear weapons and step out from civil use of nuclear energy

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## Dr. Peter Becker, Rechtsanwalt

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- Born in Berlin in 1941
- Married, three daughters
- Studies in Marburg, Munich and at the International Faculty of Comparative Law
- Research associate at the University of Mainz with a focus on corporate and commercial law
- Lawyer since 1971 in Marburg
- 1972 - 1981 city councilor and member of the operating committee of the Stadtwerke Marburg
- 1986 notary and lawyer specialized in administrative law
- 1987 PhD
- Represented in numerous successful party and policy disputes before the Federal Constitutional Court (numerous clauses, testing law, Census, representing 146 municipalities in the eastern German power dispute) and before the European Court of Human Rights (constitutional integrity in public service)
- Lecturer at the Humboldt University in Berlin for Energy Law (since WAS 2003/04)
- Managing editor of the Journal of New Energy Law (ZNER)
- Founder of German IALANA and president 1989-2010
- Co-president of International IALANA since 2011
- Member of the Board of the Bar Association of Kassel (1985 - 2010)
- Company founder and partner of counsel at Becker Büttner Held

## I. Dr. Elke Koller vs. German Federal Republic

- German government agreed in the coalition contract between conservatives and liberals 2009 that the last US nuclear weapons should be withdrawn from German territory. But NATO doesn't agree.
- So a German female pharmacist, Dr. Koller, decided to sue against German government to withdraw the last US nuclear bombs and to stop collaboration in the NATO nuclear planning stuff: the "nuclear participation".
- Dr. Koller lives about 4 km from the German air base Büchel near the river Mosel. Here a German air battalion protects the last 20 nuclear bombs from the type B61, with flexible detonation force within a range of 0,3 to 140 kt. The Hiroshima bomb had 12,5 kt. The production date was about 1965 - veterans.

- German soldiers train how to install the bombs, how to fly with and to bring them to the destination.
- German IALANA supports Dr. Koller in a claim against the government. The arguing is as follows:
- German constitution provides an article 25, which foresees that the common rules of international law are part of German national law. Such a rule is the interdiction of violence in art. 2 p. 4 of the UN-chart.
- Another part of the common rules of international law are the rules of human international law for warfare. All of you remember that the ICJ based his sentence that the threat of use and the use of nuclear weapons are generally illegal.

- The use is illegal because the bombs
  - cannot distinguish between soldiers and citizens
  - cause unnecessary harm
  - would violate the region of states which are neutral or not involved in the conflict.
- In consequence states are interdicted to subsist nuclear warfare.
- But international and national common rules of international law bind only states - in general. German constitution provides in art. 25 another rule based on the experiences of Second World War and its causes: Common rules of international law awards rights and obligations to the citizen.
- This was openly discussed in our parliamentarian council who wrote the constitution, and one of the most prominent professors argued that "*we should make a further step from the traditional opinion of international law which binds only states. Art. 25 should state that international law gives rights and obligations to the citizen.*"

- In German constitutional law it is common opinion that the citizen has an own right to claim that the state violates the interdiction of force. So we started the law suit against the government before the courts of administration.
- One last hint: A German professor, member of the scientific council of German IALANA, has written an opinion where he shows that the citizen has an own right to claim in cases concerning the interdiction of force based on European and international law. So you might use the German claim for other law suits versus nuclear weapon states all over. You find it on [www.ialana.de](http://www.ialana.de).

## II. The German step out from civil use of nuclear energy

### The first step out contract and legislation 2000/2002

In 1985 the greens became part of the government of Hessen together with social democrats.

They claimed the ministry of Environment and the overview on nuclear plants.

For years they tried to change security requirements.

But the green authority in Hessen did not come to a success because legislation on the subject of nuclear energy and the survey on running of plants lies in the competence of the federal state.

In 1998 social democrats and greens won the election.

The green secretary of state from Hessen became secretary of state in the federal authority.

In Hessen he had developed an act for step out. He transferred this experience into the federal authority.

Scientific examination of the question of damages as result of closing nuclear plants found that was a constitutional risk.

So the greens decided to come to a contract with the runners of nuclear power plants.

The utilities agreed because several federal states were very severe with their overview standards and they wanted to finalize this practices.

So in 2000 the first contract was signed.

In 2002 the first step out act was edited. It foresaw that every plant had 32 years of running time. Several plants had to close immediately.



## The step out from the step out

In 2009 the conservatives and the liberals won the elections.

One year later they negotiated a second treaty now foreseeing a prolongation of running nuclear plants:

- plus 8 years for elder plants
- plus 14 years for the younger

But the government made a legal mistake:

Five federal states decided to go to the constitutional court.

My law firm received the authority to defend the interests of the five federal states before the Bundesverfassungsgericht (court of constitution).

## Consequences of Fukushima: step out from step out from step out

At March 11<sup>th</sup>, a Friday, the first Fukushima-reactor exploded.

At the following Monday the government published a “Moratorium” for the eldest reactors: They had to be disconnected for the next three months.

But the legal base was highly doubtful: A rule in the law concerning civil use foresaw that in case of danger the authorities could decide to disconnect the plant.

But the danger had risen in Japan and not in Germany.

Nevertheless the authorities could argue that the risks of civil use had to be estimated on a new background of experience.

The chancellor installed an ethic commission for a new estimation of nuclear energy.

This commission decided after one month of reflection by recommending to come back to the first step out act.

Only three months later, on 30<sup>th</sup> June 2011, the Bundestag agreed to come back to the act from 2002:

The eight eldest nuclear plants had to be disconnected. The remaining nine plants became fixed final running dates, from 2015 for Grafenrheinfeld and 2022 for the last three.

The act passed with the consent of the parties of christian union, liberals, social democrats and greens: a great coalition.

But this decision was only possible on the base of the German legislation for the renewable energies 1990 and 2000. Now the German state is on the way to energy change. 2050 80 % of energy should come from renewables.

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*Becker Büttner Held*

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**Thank you for your attention!**

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