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HISTORICAL EXPERIENCE OF IMPLEMENTATION AND OPERATION OF THE CONSTITUTIONAL COMPLAINT IN THE FEDERAL REPUBLIC OF GERMANY

This article is devoted to one of the most prominent decisions ruled by the Federal Constitutional Court of Germany.

On January 15th, 1958, the Federal Constitutional Court of Germany (FCC) pronounced a judgment that became one of the most quoted in its history because of its value to the understanding and application of fundamental rights in Germany: the famous “Lüth” decision, which was the result of a constitutional complaint brought by Erich Lüth, a former member of the Hamburg Senate.

In the early 1950s, Lüth had decided to call upon film distributors and the public to boycott Veit Harlan’s movie. His reasoning for this appeal was the fact that Harlan had a prominent role in the Nazi propaganda machine, serving it with antisemitic movies. After having lost sev-

eral civil lawsuits, Lüth asserted the violation of constitutional rights. Several years later, he was to be proved correct: The Federal Constitutional Court ruled that Lüth’s complaint was covered by the right to freedom of speech guaranteed in Art. 5 of the German Basic Law (Grundgesetz).

The Court stressed that the fundamental rights, which are implemented in the Grundgesetz are not only important as subjective rights that protect the individual against state intrusions into the private sphere. As a whole they also unfold an objective dimension in representing society’s crucial values. And for that reason, they govern the entire legal order – including civil law. This was indeed understood as a staggering conclusion with which the Court went far beyond the issue at stake.