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FROM THE LUXEMBOURG AGREEMENT ONWARDS: ANTISEMITISM AND THE NORMATIVE TRAJECTORY OF GERMAN LAW

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Abstract. This article examines how normative logic embedded in reparations law continues to shape contemporary German criminal law, taking the Luxembourg Agreement of 1952 between the Federal Republic of Germany, the State of Israel and the Jewish Conference on Material Claims against Germany (JCC) as its very conceptual point of departure. Against the backdrop of rising antisemitic criminal offenses in Germany, the article focuses on the amendment of Section 46 (2) of the German Criminal Code (StGB; Strafgesetzbuch), which explicitly includes antisemitic motives among the circumstances relevant for sentencing. While this amendment has been criticized as merely declaratory or even 'symbolic', this article argues that such criticism overlooks the deeper legal genealogy of state responsibility that ultimately originates in the Luxembourg Agreement. Antisemitic motives intensify culpability and wrongfulness because they engage the foundational commitments of the post-war legal order that emerged in response to antisemitic state-driven violence. Explicitly naming such motives in sentencing law therefore constitutes a crucial institutional function by shaping investigative practices, judicial reasoning, and normative expectations within the criminal justice system. From a criminal legal perspective, the article develops an account of motives as normative indicators that affect both culpability and wrongfulness. Antisemitic motives, it argues, intensify the *Unrechtsgehalt* of an offense because they negate the equal moral status of the victim and symbolically attack the legal order that emerged in response to antisemitic state violence. The article concludes that the explicit inclusion of antisemitic motives in Section 46 (2) StGB reflects a coherent and legally grounded response to historically specific injustice and underscores the role of criminal law in stabilizing responsibility within the German legal order.

Keywords - *Luxembourg Agreement (1952); Antisemitism; German Criminal Law; § 46 (2) StGB; Sentencing Law; Motive-Based Sentencing; State Responsibility; Reparations*

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Law; Wiedergutmachung; Normative State Identity; Holocaust; Jewish Material Claims against Germany; Transitional Law.

I. The Luxembourg Agreement

The initial commitment of the Federal Republic of Germany to formally accept responsibility for compensating Jewish victims of Nazi prosecution was embodied in the Luxembourg Agreement[2], signed on September 10, 1952, by Chancellor Konrad Adenauer and Israeli Foreign Minister Moshe Sharett. Under the agreement, Germany pledged to provide Israel with three billion Deutsche Marks in financial aid and goods over a period of 12 to 14 years. The treaty marked a historic first step towards post-war reconciliation. Beyond this, Germany agreed to pay an additional 450 million Deutsche Marks to the Jewish Claims Conference[3], which represented collective Jewish compensation claims[4].

The treaty sparked intense debate in both Germany and Israel. Many Jewish critics condemned the payments as immoral 'blood money'[5], while many Germans questioned the necessity or scale of the compensation. Opposition was also evident in the Bundestag, where the agreement was narrowly approved on March 18, 1953. Although the SPD fully supported ratification[6], numerous CDU/CSU representatives abstained or voted against it[7]. In contrast, the German Democratic Republic (DDR) refused to participate in reparations. While it provided assistance to victims of fascism within its borders, it viewed itself as a fundamentally antifascist state and denied any legal responsibility as the successor to Nazi Germany[8].

From the perspective of traditional international law, the Agreement was anomalous. Reparations had historically been linked to armed conflict and imposed

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[2] Transcript of the Agreement can be accessed at https://www.bundesarchiv.de/themen-entdecken/online-entdecken/geschichtsgalerien/das-luxemburger-abkommen/ (last access: 10.12.2025).

[3] For further details on the Hague Protocols, see Rosensaft, The Early History of German-Jewish Reparations, 2001, p. 6.

[4] Individual claims related to persecution or imprisonment during the Nazi period were not affected by this agreement.

[5] On the Israeli public discourse in the 1950s and the moral rejection of reparations, please review Yablonka, The State of Israel vs. Adolf Eichmann (2004).

[6] For more about the SPD's support, review Frei, Adenauer's Germany and the Nazi Past (2002).

[7] Deutscher Bundestag, Plenarprotokoll der 243. Sitzung, 18.03.1953.

[8] Hinz-Wessels/Würz, Luxemburger Abkommen, in: Lebendiges Museum, Stiftung Haus der Geschichte der Bundesrepublik Deutschland, available on-line at http://www.hdg.de/lemo/kapitel/geteiltes-deutschland-gruenderjahre/erinnerung-und-wiedergutmachung/luxemburger-abkommen.html (last access: 15.12.2025).

through peace treaties or adjudicated liability[9]. Germany in 1952, however, was not a sovereign equal negotiating the legal consequences of war. The Federal Republic was a newly constituted state with limited sovereignty, no formal peace treaty, and no direct legal obligation under international law to compensate the State of Israel, which itself did not exist at the time the crimes were committed. The absence of a classical legal framework makes the Agreement all the more remarkable. It was not compelled by judicial enforcement, nor reducible to political expediency. Instead, it emerged from an explicit acknowledgment of responsibility for crimes committed against Jews. This acknowledgment was not framed in the language of collective guilt, but in the language of responsibility for material consequences of injustice. The Agreement's preamble refers to the 'unspeakable crimes' committed in the name of the German people and to the necessity of providing material assistance to Jewish survivors who had been deprived of livelihood, property, and homeland. This formulation is legally significant. It avoids metaphysical claims about inherited guilt while affirming that responsibility for antisemitic persecution persists despite regime change. In doing so, the Federal Republic implicitly rejected a strict doctrine of constitutional discontinuity. Instead, it adopted a concept of normative continuity: although the constitutional order of the Third Reich had collapsed, responsibility for its crimes did not evaporate with the establishment of a new state.

Legal scholarship has increasingly emphasized that this move cannot be understood merely as political symbolism. Responsibility, in this sense, attaches to the state as a legal entity that benefits from continuity of sovereignty, territory, and international recognition[10]. The Agreement can be interpreted as an early expression of a legal culture in which international responsibility and domestic constitutional identity become mutually reinforcing. The Agreement thus functions as an act of legal self-definition: the Federal Republic defined itself as a state that accepts responsibility for antisemitic injustice as a condition of its legitimacy. However, this conception of responsibility must be distinguished carefully from both collective guilt and purely moral atonement. The Luxembourg Agreement did not assert that all Germans were guilty of National Socialist crimes, nor did it reduce responsibility to a symbolic gesture of remorse. Instead, it translated responsibility into concrete legal obligations: payments, deliveries, and institutional

[9] Honig, The Reparations Agreement Between Israel and the Federal Republic of Germany, in: American Journal of International Law, vol. 48 no. 4 (1954), see especially pp. 564-566 on the unique character of the Agreement in international legal history as well as p. 570 on the absence of a formal obligation.

[10] Fuhrmann, International Law, Intertemporality, and Reparations for Past Wrongs, University of Glasgow Working Paper (2025), pp. 1-10.

arrangements designed to address the material consequences of persecution. In this respect, the Agreement exemplifies a core insight of reparations theory: that justice after mass atrocity cannot be achieved solely through punishment of perpetrators or abstract declarations of regret. It requires structural legal responses that acknowledge harm, restore a measure of agency to victims, and reconstitute the normative order that was destroyed.

The Luxembourg Agreement indisputably holds a unique historical position and is frequently invoked as a political milestone or a moral turning point, yet its deeper juridical significance is often underestimated. In legal terms, the Agreement represents neither a classical act of war reparations nor a merely diplomatic settlement between states. Rather, it constitutes a *sui generis* legal construction[11] through which the Federal Republic articulated a conception of responsibility that would later become foundational for its constitutional identity. To understand contemporary legal responses to antisemitism - particularly in criminal law - it is therefore essential to reconstruct the Luxembourg Agreement not as an isolated historical event, but as a constitutive moment in the development of a normative state identity grounded in responsibility for antisemitic injustice.

1. The Distinctiveness of the Holocaust

The centrality of Jewish claims within this reparative framework is not accidental. Antisemitism was not one discriminatory practice among others under National Socialism; it was the ideological core of a state-organized project of exclusion and extermination[12]. The Luxembourg Agreement reflects this specificity. While other victim groups would later receive recognition and compensation - often belatedly and inadequately - the early and comprehensive focus on Jewish victims underscores the recognition that antisemitic persecution represented a categorical rupture of legal and moral order[13].

Nonetheless, the Agreement also reveals the limits of law[14]. It did not, and could not, undo the crimes of the Holocaust. Nor did it provide full restitution for losses that were irreparable by definition. Yet its legal significance lies precisely in its acknowledgment of these limits. By framing reparations as partial, imperfect, and nevertheless necessary, the Federal Republic articulated a conception of justice that is compatible with legal realism rather than utopian restoration. This

[11] Bachleitner, The Path to Atonement: West Germany and Israel after the Holocaust (2023).
[12] Friedländer, Nazi Germany and the Jews, vol. 2: The Years of Extermination, 1939-1946 (2007), pp. 1-7.
[13] Zweig, German Reparations and the Jewish World: A History of the Claims Conference (1987), pp. 32 et seqq and pp. 45 et seqq.
[14] Arendt, Eichmann in Jerusalem: A Report on the Banality of Evil (1963), p. 253.

conception would later inform the understanding of *Wiedergutmachung* as a constitutionally permissible, though inherently incomplete, response to unprecedented injustice. In a broader legal-theoretical sense, *Wiedergutmachung* can be understood as an early form of what is now called transitional justice[15].

2. The Preventive Dimension of Reparations

The Luxembourg Agreement thus marks a transition from a purely backward-looking conception of justice to a forward-looking one[16]. It is concerned not only with addressing past harm, but with establishing the normative conditions under which a new legal order can claim legitimacy. In this sense, reparations function as a constitutive act: they signal that the new state understands itself as bound by the consequences of past injustice and committed to preventing its recurrence[17]. This preventive dimension is often overlooked in discussions of reparations, yet it is crucial for understanding their relevance to contemporary criminal law.

The preventive aspect of the Agreement becomes particularly visible when one considers its reception in domestic law. Although the Agreement itself was an international treaty, its implementation required extensive legislative and administrative action within the Federal Republic. These domestic measures ranging from compensation statutes to restitution procedures embedded the principle of responsibility into the fabric of German law[18]. Over time, this embedding contributed to a broader constitutional culture in which historical injustice is treated as a legally relevant fact rather than a closed chapter. The Federal Constitutional Court would later draw explicitly on this culture when interpreting the Basic Law in light of National Socialist crimes.

3. Constitutional Responsibility Beyond Compensation

From a doctrinal perspective, the Luxembourg Agreement anticipates a key move in German constitutional law: the transformation of historical responsibility into a normative interpretive principle. This move does not collapse law into history, nor does it freeze legal development in the past. Rather, it acknowledges that certain historical experiences generate enduring normative obligations. Antisemitism, as the ideological engine of genocide, is one such experience. The legal order that

[15] Teitel, who describes reparations in post-war Germany as a ‘foundational instance of transitional justice avant la lettre’, in: Transitional Justice (2000), pp. 68 et seqq.
[16] *Ibid.*, pp. 28-31.
[17] Elster, Closing the Books (2004), pp. 170-173.
[18] Goschler, Compensation for Nazi Victims (2005), pp. 52 et seqq.

emerged in its aftermath cannot treat antisemitism as a neutral social attitude without contradicting its own foundations.

This insight is crucial for evaluating later developments in criminal law, including the amendment of Section 46 (2) StGB[19]. The explicit inclusion of antisemitic motives in sentencing law has not emerged *ex nihilo*. It was the downstream expression of a responsibility initially articulated in the context of reparations. Where the Luxembourg Agreement addressed the material consequences of antisemitic persecution, sentencing law addresses its contemporary manifestations. Both operate on the same normative premise: that antisemitism engages the constitutional identity of the Federal Republic and therefore demands a differentiated legal response.

At the same time, the Agreement also exposes tensions that continue to shape legal debates. The focus on Jewish claims has sometimes been criticized as creating hierarchies of victimhood[20]. While such critiques merit serious consideration, they must be situated within the historical and normative specificity of antisemitic persecution. The early prioritization of Jewish reparations reflects not a denial of other suffering, but a recognition of the unique role of antisemitism in dismantling the legal order itself. Later efforts to compensate other victim groups[21], though often flawed[22], do not negate this specificity. Instead, they underscore the difficulty of translating mass injustice into legal categories without loss or distortion.

The Luxembourg Agreement thus stands as a foundational moment in the legal history of the Federal Republic. It inaugurated a conception of responsibility that is neither purely moral nor exhaustively legal, but normatively constitutive – a conception that has later become integrated into the constitutional jurisprudence and, in transformed form, entered criminal law. Understanding this genealogy is essential for any serious assessment of contemporary measures against antisemitism. Without it, amendments such as the explicit naming of antisemitic motives in Section 46 (2) StGB risk being misunderstood as symbolic gestures rather than as elements of a longer, legally coherent project of responsibility.

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[19] The legislative basis for explicitly naming antisemitic motives was the so-called Act to Combat Right-Wing Extremism and Hate Crime, BGBl. I 2021, p. 441.

[20] Zimmerer, The Competition of Victims, in: Holocaust Studies 24 (2018), pp. 1-17.

[21] For the issue of compensation of Sinti and Roma, refer to BGH, judgment of 7 January 1956, IV ZR 211/55; for the compensation efforts concerning forced laborers, review BVerfG, NJW 2004, 3407.

[22] Such as the compensation of homosexual victims occurred only after the annulment of convictions in 2017 as the convictions were deemed lawful under post-war law.

II. Antisemitism and Constitutional Memory

Antisemitism in the Federal Republic of Germany cannot be understood as a merely contingent social phenomenon[23], nor as one prejudice among others that criminal law happens to encounter episodically. Rather, antisemitism is historically and structurally intertwined with the collapse of law, morality, and political order under National Socialism. This historical experience does not function merely as background knowledge; it is constitutive of the post-war German legal order[24]. The German Basic Law (GG; Grundgesetz) was drafted as a conscious response to the normative failure of law under the National Socialist regime[25], and its central commitment to the inviolability of human dignity under Article 1 (1) GG reflects an explicit repudiation of the antisemitic ideology that culminated in the Holocaust[26]. Any contemporary legal engagement with antisemitism therefore necessarily unfolds under conditions of constitutional memory. This memory is not passive or commemorative but rather normative. The explicit inclusion of antisemitic motives in Section 46 (2) StGB must therefore be understood as a deliberate normative articulation. In essence, the fundamental objective of the amendment is the protection of democratic society and a state governed by the rule of law. On a more tangible level, the provision pursues the identification of such motives at an early stage of criminal prosecution, since the investigations run by the Public Prosecutor extend to the circumstances that are substantial for determining legal consequences of an offense pursuant to Section 160 (3)[27] of the German Code of Criminal Procedure (StPO; Strafprozessordnung). It reflects the judgment that antisemitism is not merely an aggravating circumstance among others, but a form of hostility that implicates the foundational commitments of the Basic Law. Antisemitic offenses do not merely injure individual victims; they symbolically attack the constitutional promise of equal human worth that emerged in direct opposition to National Socialist ideology. This insight has long informed German constitutional jurisprudence, particularly in the case law of the Federal

[23] Rensmann, Politischer Antisemitismus im postfaktischen Zeitalter in: Interdisciplinary Studies on Antisemitism, 2025, p. 8.
[24] Böckenförde, Die Entstehung des Grundgesetzes als Vorgang der Verfassungsgebung, in: Staat, Verfassung, Demokratie, pp. 49 et seqq.
[25] On the Basic Law as a response to National Socialism and the collapse of law, see Möllers, Das Grundgesetz als die Antwort auf Nationalsozialismus, in: JZ 2011, pp. 257-265.
[26] Di Fabio, Die Kultur der Freiheit, pp. 12 et seqq.
[27] The provision of the 'obligation to clarify facts' states in its third subsection that 'investigations conducted by the public prosecution office are, as a rule, also to encompass those circumstances which are important for the determination of the legal consequences of the act', translation accessible on-line at https://www.gesetze-im-internet.de/englisch-stpo/english-stpo.html (last access: 17.12.2025).

Constitutional Court (BVerfG; Bundesverfassungsgericht), which has repeatedly emphasized that the Basic Law is a response to the collapse of justice under National Socialism.

The upsurge of antisemitic criminal offenses documented by the Federal Criminal Police Office (BKA; Bundeskriminalamt) over the past decade provides an empirical point of departure, but not the normative core, of the present inquiry. Official police statistics show a sustained increase in antisemitic crimes, with sharp escalations following major geopolitical events, most notably after 7 October 2023. Parallel civil society monitoring by RIAS[28] suggests that these figures capture only a fraction of antisemitic acts, as many incidents - particularly verbal harassment, threats, and symbolic intimidation - remain outside the so-called bright field of criminal statistics.

Understanding antisemitism as constitutionally relevant has important implications for criminal law dogmatics. It affects how culpability is assessed, how wrongfulness (*Unrechtsgehalt*[29]) is conceptualized, and how sentencing rationales are articulated. Antisemitic motives express a denial of the victim's equal moral status and thus intensify the normative gravity of the offense. This intensification cannot be captured adequately by reference to general hostility alone. It is rooted in the historical specificity of antisemitism in Germany and in its connection to a state-organized project of extermination of the European Jews. Criminal law, following the constitutional order, thus cannot remain indifferent to this specificity without undermining its own normative foundations.

Accordingly, the amendment of Section 46 (2) StGB constitutes a contemporary expression of a much older legal and constitutional commitment: the commitment of the Federal Republic of Germany to confront antisemitism through law, not merely through political condemnation or moral discourse. This commitment did not originate in criminal law. It emerged in the early years of the Federal Republic through the legal architecture of reparations, most notably through the Luxembourg Agreement. That Agreement marked the first moment in which the Federal Republic transformed responsibility for antisemitic persecution into binding legal obligations. The doctrinal logic inaugurated there - namely, that responsibility persists despite regime change and must be expressed through law - continues to inform contemporary legal responses to antisemitism, including in sentencing law.

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[28] RIAS refers to the Federal Association of Research and Information Centers on Antisemitism (Bundesverband der Recherche- und Informationsstellen Antisemitismus e.V.) with its central aim being a nationwide documentation of antisemitic incidents through its reporting portal that can be found on-line at https://www.report-antisemitism.de (last access: 16.12.2025).

[29] For the foundational doctrine of culpability and the normative assessment of wrongdoing, review Roxin, Strafrecht Allgemeiner Teil I (2020), § 16 paras. 68-74.

Situating Section 46 (2) StGB within this complex trajectory requires a methodological approach that is simultaneously historical, doctrinal, and normative. It requires moving beyond the dichotomy between symbolic legislation and instrumental effectiveness that dominates much of the critical debate. Such a dichotomy assumes that criminal law is either effective in reducing crime or normatively empty[30]. This assumption does not seem substantive, as, in a constitutional order shaped by catastrophic injustice, criminal law also performs a function of institutional memory. It stabilizes normative expectations, structures professional perception within the justice system, and articulates boundaries of tolerable conduct that are inseparable from historical experience.

At the same time, it would be illusive to claim that criminal law can solve antisemitism. Empirical evidence cautions against such expectations. Rising offense numbers after the amendment demonstrate that explicit naming does not produce immediate deterrent effects at the macro level. However, this does not render the amendment futile. Its primary function lies elsewhere: in institutional steering, in shaping investigative priorities under Section 160 (3) of the German Code of Criminal Procedure (StPO; Strafprozessordnung), and in ensuring that antisemitic motives are recognized, documented, and normatively evaluated throughout the criminal justice process. In this respect, the amendment responds to well-documented deficits in the identification and legal treatment of bias motives rather than to a lack of substantive criminal norms.

III. Federal Constitutional Court's Jurisprudence and the Transformation of Responsibility

As previously highlighted, the juridical legacy of the Luxembourg Agreement unfolds within German constitutional law, most notably through the jurisprudence of the Federal Constitutional Court, which transformed reparative commitments into a constitutional principle of responsibility[31]. From its earliest *Wiedergutmachung* decisions[32], the Court emphasized that the Basic Law was adopted in conscious opposition to the National Socialist system of injustice and must therefore be interpreted in light of that historical experience[33]. The

[30] Meier, Symbolische Gesetzgebung im Strafrecht, in: Zeitschrift für die Gesamte Strafrechtswissenschaft (2000), pp. 24 et seqq.
[31] BVerfGE 1, 97; BVerfGE 6, 132; Safferling, NJW 2010, 1401.
[32] BVerfG, judgment of 14 February 1953 – 1 BvR 27/52, BVerfGE 1, 97 (Wiedergutmachung I); BVerfG, judgment of 17 December 1953 – BvR 147/52, BVerfGE 2, 380; BVerfG, judgment of 20 December 1956 – 1 BvR 253/56, BVerfGE 6, 132 (Wiedergutmachung II).
[33] BVerfGE 1, 97 (104); BVerfGE 3, 58 (135).

constitution was thus conceived not as historically neutral, but as a normative response to the collapse of justice between 1933 and 1945[34].

On this basis, the Court upheld extensive restitution and compensation regimes that departed from general principles of equality and legal certainty. These departures were justified not as exceptional privileges, but as constitutionally required responses to extraordinary injustice[35]. The systematic deprivation of legal personhood under National Socialism rendered ordinary legal mechanisms insufficient and necessitated special reparative regimes grounded in Article 1 (1) GG[36]. Central to this jurisprudence is the Court's rejection of a strict doctrine of regime discontinuity. While acknowledging the constitutional rupture of 1949, the Court refused to accept that this rupture extinguished responsibility for past injustice. Instead, it articulated a doctrine of normative state continuity: responsibility persists where a successor state claims legal identity through continuity of sovereignty, population, and international personality[37]. Responsibility thus follows from legal self-understanding rather than moral inheritance. This doctrine extends responsibility beyond individual criminal guilt to the legal order as a whole. The constitutional obligation is not limited to punishment, but includes addressing the structural conditions that enabled systematic exclusion and annihilation[38]. Responsibility thereby becomes an enduring interpretive framework of constitutional law.

The Court's later jurisprudence on freedom of expression further consolidated this framework. In its *Wunsiedel*[39] decision, the Court upheld restrictions on assemblies glorifying National Socialism by explicitly grounding them in Germany's historical experience with antisemitic ideology[40]. The Nazi Regime was conceptualized as a unique negation of the constitutional order, justifying differentiated constitutional treatment[41]. Doctrinally decisive in this regard is the Court's elevation of antisemitism to a constitutional category. Antisemitic ideology is not treated as a mere opinion, but as a historically grounded threat to human dignity and democratic order[42]. This conceptualization shall thus have direct implications for criminal law. Antisemitic motives cannot be regarded as legally interchangeable with other forms of hostility, as they negate the premise of equal

[34] Krajewski, *Völkerrecht,* (2017), § 3 para. 28.
[35] BVerfGE 6, 132 (198).
[36] Maunz/Dürig, GG, Art. 1 para. 83.
[37] BVerfGE 23, 98 (106); Ipsen, *Staatsrecht I*, 2016, § 12 paras. 40–43.
[38] See Safferling, *Internationales Strafrecht*, 2nd ed. 2020, pp. 58–61.
[39] *Wunsiedel Decision*, BVerfGE 124, 300 (2009).
[40] BVerfGE 124, 300 (327).
[41] Möllers, *Juristische Methodenlehre (*2022), § 9 para. 54.
[42] BVerfGE 124, 300 (340); Safferling, NJW 2010, 1401 (1404).

human worth underlying the constitutional order and thus intensify the *Unrechtsgehalt* of the offense[43]. At the same time, the Court has emphasized the limits of historically informed differentiation. Constitutional responsibility does not authorize purely symbolic or expressive criminal law; differentiated treatment must remain functionally justified and doctrinally constrained[44].

IV. Conclusion: Responsibility as a Continuous Legal Commitment

As portrayed, the inclusion of antisemitic motives in Section 46 (2) StGB can only be understood adequately when situated within the longer legal genealogy of responsibility that has shaped the Federal Republic since its inception. From the Luxembourg Agreement of 1952 through the jurisprudence of the Federal Constitutional Court to contemporary criminal sentencing law, a continuous normative commitment becomes visible: the translation of historical responsibility for the Nazi injustice into binding legal form. Responsibility, in this sense, became an interpretive principle that informs legal doctrine beyond the confines of reparations law.

In this context, the amendment of Section 46 (2) StGB represented a transformation of this responsibility. It did not seek to reopen historical guilt or to instrumentalize criminal law symbolically. Rather, it embedded constitutional insight into the structured evaluation of criminal wrongdoing. By explicitly naming antisemitic motives, sentencing law acknowledges that antisemitism is not an ordinary bias, but a historically saturated form of hostility that implicates human dignity, public peace, and constitutional identity. This recognition is doctrinally controlled, proportionate, and consistent with established principles of culpability and proportionality.

At the same time, the persistence of antisemitic offenses underscores the limits of criminal law as sentencing provisions cannot eradicate social prejudice. Their function lies elsewhere: in normative clarification, institutional steering, and the reinforcement of constitutional commitments within legal practice. Measured against these functions, the amendment of Section 46 (2) StGB cannot be dismissed as symbolic legislation. It constitutes a legally coherent response within a constitutional order that understands itself as historically responsible.

Notwithstanding a wide range of political, legislative, and societal measures[45], antisemitism has demonstrably intensified again in recent years. This development

[43] Roxin/Greco, *Strafrecht AT I (*2020), § 12 para. 89.
[44] BVerfGE 124, 300 (346); Alexy, *Theorie der Grundrechte*, (1985), p. 75.
[45] See the National Strategy against Antisemitism and for Jewish Life (NASAS; Nationale Strategie gegen Antisemitismus und für jüdisches Leben), from 30.11.2022, available on-line at:

has been further aggravated in the aftermath of the Hamas terrorist attacks against Israel on 7 October 2023 and the ongoing armed conflict in Gaza. These developments underscore that antisemitism, functioning as a *bridging ideology*, poses a distinct and substantial threat to the democratic constitutional order. Ultimately, the legal treatment of antisemitism in Germany reflects a distinctive constitutional posture. It is neither backward-looking fixation nor abstract moralism, but an attempt to ensure that the legal order remains conscious of the conditions under which it emerged. The continuity from 'Luxembourg' to contemporary criminal law demonstrates that responsibility for the Holocaust is not a closed chapter, but an enduring legal task. Criminal law, in its restrained and doctrinally embedded form, is one site at which this task continues to be carried out.

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