Local Self-Government and Administration

Kay Ruge and Klaus Ritgen

1 INTRODUCTION

Germany has a long tradition in local self-government. The modern approach goes back to the beginning of the nineteenth century at the time of significant reform in the different states, especially in Prussia (reforms developed and implemented by Stein). The principles of local self-government have been strengthened over the past two centuries in the different states with ups and downs. The federal and state constitutions of 1948 and 1949 follow these principles and guarantee strong local self-government. In fact, the cornerstone of the institution of local self-government in Germany is mirrored in the European Charter of Local Self-Government of October 1985.¹ Germany was among one of the first states to sign this charter because its principles reflect and underline the existing system of local self-government in Germany. Therefore, the approaches and practices in the different German states offer a broad basis for studying the functioning of a well-established local self-government and its relationship to state authorities. Moreover, local self-government is

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not uniform across all the 16 states. This opens up the opportunity for comparative research and argumentation on ‘best practice’.

In 2017, there were 11,455 local authorities in Germany, including 107 county-free cities, 294 counties and 11,054 municipalities belonging to a county. These municipalities, cities and counties are responsible for a variety of original tasks as well as for the performance of large parts of federal and *Land* laws. Local authorities are usually entrusted by the *Länder* with the performance of federal or *Land* laws. There are two models to be distinguished here: either the states (*Länder*) transfer tasks to the local authorities so that after the transfer they are, as it were, their own municipal tasks, or the local authorities perform them as external tasks and thus act on behalf of the state. The result of both models leads to a largely decentralised administration in Germany. There are, however, federal administrative authorities as well as numerous regional administrative authorities of the states (see Chaps. 6 and 8). The majority of civil service staff, which includes teachers, professors and police officers, are employed in the state administrative authorities.

The administrations of the local authorities are embedded in the politico-administrative system of Germany and cover significant functions. Two central indicators that underline the weight of the local authorities are the number of personnel and the finances. The local authorities account for 30 per cent of public service personnel (Table 9.1).

This high number of personnel reflects the functions of local authorities to deliver most of the public services in direct contact with the citizens (the number of personnel in the states is only higher due to large numbers of public servants working in the three areas of education, that is schools and universities, police and courts). The first and most important point of

Table 9.1 Civil service staff

<i>Sector</i>	<i>FTE</i> ²	%
Federation	474,100	11.3
Federal states	2,105,200	50.4
Local authorities	1,271,300	30.4
Social security	328,500	7.9
Total	4,179,100	100

Source: German Federal Statistical Office (2019) Finances and taxes. Civil service staff 2018. Special series 14, Series 6, p. 25

contact for citizens and companies regarding most administrative matters is either the town hall of their town or municipality, or the county administration of their county. These services are often organised in centres of administrative services called *Bürgerämter* (one-stop shops).

Insofar as the weight of the local authorities in public finances is concerned, the central budgets of the local authorities cover roughly one-third of public expenditure (excluding social security). However, the expenditure is not only assessed in the central budgets of the local authorities, but also in special budgets established for the different local goods (local public transportation, water provision and sewage, waste collection, institutions of culture, etc.; see Chap. 14). In addition, the local authorities implement a major share of the public investments (often co-financed by the states or out of the federal programmes). (cf. Deutscher Landkreistag 2019; Deutscher Städtetag 2017; Zimmermann and Döring 2019). Table 9.2 summarises the main items of revenue and expenditure of the communes (excluding the three city-states).

The following provides an overview of the very different structures of cities, counties and municipalities (Sect. 2). The special position of municipalities in the German administrative system would remain incomprehensible without looking at the constitutional entrenchment of the local self-government rules, which also result in guidelines for local territorial reforms (Sect. 3). Section 4 proceeds with a description of the main features of the rules governing the organisational aspects of local authorities—the local constitutional law. A brief description of the role of local government associations in Sect. 5 concludes this chapter.

2 CITIES, COUNTIES AND MUNICIPALITIES

The distinction between counties and municipalities is fundamental for understanding the structure of local self-government bodies in Germany (Kuhlmann and Wollmann 2019: 92ff.).

2.1 *The Various Bodies of Local Self-Government*

A distinction is laid down in Article 28 of the Basic Law. Article 28 (2), first sentence of the Basic Law grants municipalities the right to take responsibility for all matters of the local community. The Basic Law thus ties in with historically developed forms of settlement to which it grants a special status of the ‘right to self-government’, a special constitutional

Table 9.2 Finances of the communes from 2017 to 2022

<i>Revenue/Expenditure</i>	<i>2017</i>	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>2021</i>	<i>2022</i>
	<i>Billion euro</i>					
Revenue	243.80	253.94	264.6	274.8	283.5	290.6
Taxes	95.90	101.21	103.4	107.7	111.8	115.7
<i>Including:</i>						
<i>Property taxes</i>	12.50	12.69	12.8	13.0	13.1	13.2
<i>Trade tax revenues</i>	40.06	42.21	42.2	44.7	46.4	47.7
<i>Share of income tax</i>	36.30	37.92	39.2	40.7	42.8	45.0
<i>Share of VAT</i>	5.51	6.79	7.5	7.7	7.9	8.0
<i>For information only:</i>						
<i>Gross trade tax revenue</i>	48.17	50.72	49.9	50.1	52.0	53.5
Fees	19.41	19.96	20.5	20.9	21.1	21.3
Current allocations from state/ federal government	88.43	91.42	97.1	100.0	104.3	107.4
Investment allocations from state/ federal government	7.42	8.44	10.6	13.0	13.0	12.5
Other revenue	32.63	32.91	32.95	33.2	33.4	33.7
Expenditure	234.07	245.26	259.0	270.7	281.3	291.2
Personnel	59.13	62.12	65.3	67.9	70.3	72.4
Material expenses	49.53	51.14	53.1	54.8	56.4	57.8
Social benefits	58.77	59.07	61.7	64.2	66.4	68.7
Interest	2.71	2.47	2.5	2.5	2.6	2.6
Investments in real assets						
<i>Including:</i>	24.42	27.60	31.7	34.9	37.3	39.5
<i>Construction measures</i>	18.22	20.82	23.9	26.5	28.6	30.4
<i>Acquisition of property, plant and equipment</i>	6.20	6.78	7.7	8.4	8.7	9.0
Other expenses	39.52	42.85	44.8	46.4	48.4	50.2
Financial balance	9.73	8.68	5.6	4.1	2.2	-0.6

Source: Local Government Associations, Deutscher Landkreistag, October 2019: 499. The figures for the years from 2019 to 2022 are based on surveys, statistics and projections

position, also vis-à-vis the *Länder* and the Federation (Engels 2014: 227ff.).

In addition to the municipalities there are the associations thereof (Article 28 (2), second sentence of the Basic Law), which essentially refers to the counties. The counties are not a creation of the Basic Law either, but rather entities whose origins can be found in the early history of German administration. They have a dual nature. On the one hand, a county is an association of municipalities, which are therefore also referred

to as ‘municipalities belonging to a county’. On the other hand, counties—like the municipalities—are also considered local authorities with the constitutional right of self-government.

This general dualism is important for the allocation of municipal tasks (for more on common tasks, see Sect. 2.3 below). Obviously, the counties are predestined to perform tasks, which by their nature have a supra-local reference that goes beyond the boundaries of the municipalities belonging to them. This applies, for example, to ensuring local public transportation in rural areas. Due to their size and administrative power, counties are also more efficient than municipalities.

The general dualism at the local level is suspended when it comes to the structure of county-free cities. County-free cities are considered municipalities that do not belong to an overarching municipal association. The local level in county-free cities is, therefore, not of a dual nature but (in principle) of a singular one.

2.2 Population and Size of County-Free Cities, Counties and Municipalities Belonging to a County

While counties have a comparatively higher degree of homogeneity regarding population (and size of their territory), the population of (county-free) cities and municipalities (belonging to a county) differ vastly.

The largest county-free city is Munich with approximately 1.5 million inhabitants, followed by Cologne with around 1.1 million inhabitants and Frankfurt/Main with roughly 740,000 inhabitants.³ At the lower end of the scale are the county-free cities of Zweibrücken (34,500), Suhl (35,600) and Pirmasens (40,400). The most populated county is the county of Recklinghausen with 620,000 inhabitants, while the least populated is the county of Lüchow-Dannenberg with just under 49,000 inhabitants. In this respect, however, these are exceptions. The vast majority of the 294 counties in Germany have between 150,000 and 250,000 inhabitants and cover an area from 1100 km² to 1500 km². On a national average, 37 municipalities belong to a county. By contrast, the situation is completely heterogeneous among municipalities belonging to a county. There are, for example, some municipalities with less than 100 inhabitants, while others have 100,000 inhabitants.

In some states, attempts have been made to address this disparity by merging the small and very small communes into more powerful municipalities. Especially in Hesse, North Rhine-Westphalia and Saarland,

regional reforms in the 1970s led to the creation of larger, more powerful municipalities (see Chap. 16). In Hesse, for example, the number of municipalities decreased from a total of 2691 in 1960 to only 416 in 1978. In particular, the number of municipalities with less than 5000 inhabitants decreased from 2589 to 141. A similar pattern can be seen in North Rhine-Westphalia, where the number of municipalities dropped from 2277 in 1968 to 396 after the implementation of the reform in 1978. In Saarland, which had 345 municipalities before the reform, only 50 existed afterwards.

In the new states of Saxony and Saxony-Anhalt, too, there was a significant reduction in the number of municipalities at the municipal level after German reunification. However, unlike in Hesse, North Rhine-Westphalia and Saarland, the model of the united municipalities was not consistently applied in these states. Here, and also in particular in Baden-Württemberg, Bavaria, Brandenburg, Mecklenburg-Western Pomerania, Lower Saxony, Rhineland-Palatinate, Schleswig-Holstein and Thuringia, together with a few united municipalities, a considerably high number of small and very small municipalities continue to exist, which have been combined into municipal associations acting below the county level to compensate for their lack of capacity. These associations, described as administrative partnerships (*Verwaltungsgemeinschaften*), municipal associations (*Ämter*), or 'double-decker' municipalities (*Verbandsgemeinde*), are essentially distinguished by the fact that they perform most of the administrative tasks of their member municipalities in a quasi-managing capacity and are thus able to provide the necessary administrative structures. The member municipalities of such associations also have their own mayor and a municipal representative body (municipal council). Consequently, self-governing local politics also takes place in these often very small communes.

2.3 *Common Tasks of County-Free Cities, Counties and Municipalities Belonging to a County*

As mentioned in the introduction, there are two groups of tasks that are performed by the local authorities. In addition to their original tasks, there are the tasks that have been assigned to them by the state (Federation, *Länder*). The heterogeneity of the municipalities just described presents a challenge for a legislator who wants to transfer tasks to the local authorities. It is necessary to ensure that only tasks are entrusted to those local

authorities where the performance required for enforcement can be expected.

Where the municipalities perform the tasks of the states, the situation is very heterogeneous when compared to the rest of the country (cf. Lange 2019). In the following, an overview of the tasks typically performed either by the counties or the municipalities belonging to a county is given. The tasks of the county-free cities result from an overview of both bundles of tasks.

2.3.1 *The Common Tasks at the County Level Are Primarily*

- financial support for job seekers according to Social Code Book (SGB) II, including integration/re-integration in the labour market. This task is either performed by local job centres or joint institutions together with the Federal Employment Agency (see Chap. 7);
- authority for secondary schools or vocational schools, adult education centres;
- fire and disaster protection as responsible body over the lower disaster control authorities. The counties each have their own laws on disaster control in an emergency. Although the municipalities are responsible for equipment, facilities and maintenance of the fire departments, the counties set up control centres through which fire departments and emergency services are alerted;
- public health and veterinary inspection;
- county hospitals;
- organisation of the emergency and ambulance services in the rural area;
- public child and youth welfare (SGB VIII);
- ‘classic’ social welfare (e.g. financial support for those of retirement age receiving too little pension, or for those who are unable to earn their living (completely) on their own due to illness (SGB XII);
- waste disposal, including maintenance of landfills and waste consulting; environment protection and nature conservation;
- guarantee of public transportation in rural areas and maintenance of county roads;
- integration of refugees and other migrants (besides communes, social welfare organisations and others);
- economic development (e.g. guaranteeing an extensive broadband supply; own companies for development of commercial zones); and

- miscellaneous administrative tasks, such as motor vehicle registration, weapons law enforcement, issue of building permits, and other matters of regulatory state law ('transferred tasks').

2.3.2 *The Municipalities Belonging to a County Are Responsible for the Following*

- authorities of schools and adult education centres where a county is not responsible;
- nurseries (can also be provided by welfare organisations or private companies);
- kindergartens, nursery schools, after-school clubs;
- fire departments and brigades;
- cultural institutions such as libraries and museums, and other public facilities, namely sports facilities and parks, swimming pools, city halls and communication centres;
- funeral services and cemeteries;
- maintenance of public road network (municipal roads);
- planning sovereignty grants municipalities the power to organise and shape their territory by creating land-use and development plans, whereas the counties issue building permits;
- the municipalities also perform state administrative tasks, for example ID and civil status registration; these services are typically provided in special centres of administrative services (one-stop shops).

2.4 *State Authority and Local Supervision*

The question of whether local authorities perform original or delegated tasks plays a role, particularly in the state powers of instruction and state supervision of the local authorities (Knemeyer 2007).

The state has no authority to issue directives on the original tasks of the local authorities. Its control is limited to legal supervision only. Therefore, the state can only monitor and check that the local authority is complying with the law in the performance of its tasks (*Rechtsaufsicht*—legal supervision; see von Knobloch and Schimanke).

The state can make it compulsory for local authorities to perform an original task ('compulsory tasks'). In this case, the local authority can only decide on the method used for performing the task, but not on whether it should fulfil the task since it is obligated to do so. A legal supervision remains.

With regard to the tasks delegated, a distinction should be made. If the transferred tasks become the local authorities' own tasks ('monistic system'), the state can not only oblige the local authorities to perform the tasks, but also grant itself a right to issue instructions regarding the method of task fulfilment ('duty to fulfil according to instructions'). In those states where tasks do not lose their state character even after they have been transferred to the local authorities ('dual system'), that is external tasks for local authorities ('matters of mandate'), this right to issue instructions already follows from the remaining public character of the task.

3 LOCAL SELF-GOVERNMENT AND ITS CONSTITUTIONAL FOUNDATIONS

The role of local authorities in the German administrative system is largely shaped by the fact that they enjoy a special status, which is the guaranteed right to local self-government provided by the constitution. Furthermore, the constitution requires that representative bodies (municipal, city or county council) are directly elected by the people in the local authorities. This special form of the right to self-government of the local authorities has a long tradition in Germany and is closely linked to the principle of subsidiarity (Norton 1994: 237ff.; Hendler 1984), which the Basic Law was able to take up in 1949. The involvement or participation of municipal or county citizens primarily takes place through elections, but increasingly also through plebiscitary instruments (Chap. 18). This not only serves to legitimise the administration, but also aims particularly at the quality of the decisions to be taken. The point is to create effective rights of participation for those affected and to involve external expertise, or rather to activate those involved in their own affairs, thus literally meaning 'self'-administration (Decisions of the Federal Constitutional Court: BVerfGE 79, 127; BVerfGE, 138, 1, 18).

3.1 *The Constitutional Guarantee of Local Self-Government Right*

The federal constitution guarantees local self-government in Article 28 (2) of the Basic Law. Furthermore, the constitutions of the states guarantee the right to self-administration. As they largely correspond to the Basic Law in this respect, they are not specifically mentioned in the following.

3.1.1 *Article 28 (2) of the Basic Law as Institutional Guarantee of the Local Self-Government of the Municipalities and Associations of Municipalities (Counties)*⁴

When ‘associations of municipalities’ are mentioned in the Basic Law, they primarily refer to the counties. On the one hand, according to Article 28 (2) of the Basic Law, municipalities and the associations thereof are subject to the legal regulations of the federal and regional governments. The right of self-government exists within the limits of the laws. Therefore, for example, tasks can be assigned to the local authorities by law, or the territorial borders of municipalities and associations of municipalities can be changed (see Chap. 16). On the other hand, legislators must respect the self-government right of the municipalities and the associations thereof in all these actions. In addition, municipalities and the municipal associations can sue for violations of their rights by a federal or state legislator before the state constitutional courts or the Federal Constitutional Court.

In detail, the constitutional guarantee for municipalities and associations of municipalities results in the following legal positions (Dreier 2015: 719ff.).

a) Population and territorial surface

First, according to Article 28 (2) of the Basic Law, municipalities and associations of municipalities in Germany must be guaranteed the right to self-administration. The federal states, therefore, have no authority to eliminate municipalities and the associations thereof on their territory and replace them with other random administrative bodies. However, this does not mean that every municipality or association of municipalities has a guarantee of existence. Instead, state legislators may legally dissolve individual municipalities or association of municipalities or merge them with others.

b) Tasks

The Basic Law empowers the municipalities to take care of all matters of the *local* community. This is their sphere of competence. As far as a local community matters are concerned, the municipalities may act without any further legal mandate. Local matters are those tasks which concern the living conditions and the coexistence of local people or have a specific reference to it.

There is no such regulation for the counties in the Basic Law. However, according to a general clause, some state constitutions as well as county codes of the *Länder* transfer the right to perform all supra-local public tasks to the counties.

c) Autonomy

Article 28 (2) of the Basic Law guarantees the municipalities and the associations thereof the right to regulate their affairs ‘on their own responsibility’ within the boundaries of the legal framework. This principle of autonomy forms the core of the right to self-government. In this context, autonomy means freedom from state regulation regarding the methods, that is regarding if, when and how tasks are to be performed (BVerfGE 119, 331, 362); comprehensive state control is thus excluded (BVerfGE 138, 1, 17). This autonomy refers first and foremost to the original tasks of the local authorities and, thus, to the affairs for which they are already responsible.

d) Right to cooperate

The principle of autonomy includes the power of local authorities to decide for themselves whether a certain task can be performed autonomously or together with other administrative bodies (the so-called right to cooperation, BVerfGE 138, 1, 17ff.). This right of intermunicipal cooperation is further developed by the federal states in their own laws (Oebbecke 2007). Intermunicipal cooperation can take place institutionally, for example through an administration association jointly supported by several local authorities (especially in the legal form of a *Zweckverband*), or it can be regulated by contract.

3.1.2 Principles of Financial Autonomy (Article 28 (2), Third Sentence of the Basic Law)

Article 28 (2), third sentence of the Basic Law is also a part of the constitutional recognition of the municipal self-government guarantee that applies equally to both the municipalities and associations of municipalities. It determines that principles of financial autonomy are included in the self-government guarantee. This rule, which was only integrated into the Basic Law in 1994, stipulates that an entitlement to minimum funding is part of the municipal self-government guarantee. This complies with the jurisdiction of the constitutional courts in some states and the Federal Administrative Court (Henneke 2018: 1142ff.). The Federal Constitutional Court has repeatedly emphasised that under Article 28 (2), third sentence of the Basic Law ‘the state’ is bound to provide the municipalities with the funds necessary to fulfil their tasks. The term ‘state’ stands primarily for the federal states (BVerfGE 138, 1, 19). There is no scope in this chapter to further elaborate on the financing details of the local authorities (see Werner 2006; Schweisfurth and Wallmann 2019).

4 FUNDAMENTALS OF LOCAL CONSTITUTIONAL LAW

4.1 *Introduction*

In every state there are municipal and county codes which primarily contain regulations on the organisational rights of municipalities and counties ('local constitutional law'). These municipal and county codes, which in some federal states have also been incorporated into a single law, are supplemented by laws that regulate the local right to vote ('local electoral law'), the right to levy local taxes ('local taxation law') and the cooperation between local authorities.

4.1.1 *Elections and Forms of Direct Democracy at the Local Level*

a) Elections

The voting right is granted to German citizens who have reached the age of 18. However, the voting age in some states is 16, depending on the local electoral law. Article 28 (1), third sentence of the Basic Law extends the voting right to citizens of other Member States of the European Union, while third-country nationals are not entitled to vote at local level. These guidelines apply equally to the right to stand as a candidate ('eligibility of candidates'). But in this respect, the right to vote in the local government elections of the states occasionally requires a voting age of 18 (instead of 16), or a longer residency in the local authority (six months instead of three), than for the exercise of the voting right. Members of the local representative bodies are directly elected by the citizen (city, municipal or county councillor) as well as mayors and, in most states, county commissioners too. In addition, the municipal law also foresees the establishment of various advisory boards, particularly advisory boards for foreigners and integration. However, the advisory boards have no rights of decision, though in many cases they have rights of proposal or rights of consultation.

The duration of the electoral period for the local representative bodies is now five years in almost every state, with the exception of Bavaria, which is six years. In addition, some differences exist in the rules that determine the design of each respective electoral system, especially as Article 28 (1), second sentence of the Basic Law allows for considerable flexibility. For this reason, the right to vote in local government elections differs substantially from federal and state electoral law.

b) Local consultations and other direct democratic instruments

In addition to the right to vote, there is also the right of consultation (Neumann 2007). Through ‘referendums’ citizens have the opportunity to take binding decisions in place of the local representative bodies. In fact, since the 1990s, the respective regulations have been incorporated into all the municipal charters at both municipal and county level. Obviously, due to their complex procedures, such instruments cannot replace the continuing resolution of the local representative body, but only supplement it on a case-by-case basis. Hence, under Article 28 (2), second sentence of the Basic Law, the local level has a clear precedence over representative democracy.

The procedure for direct democratic decision-making at the local level is two-tiered. At the first tier, a so-called citizens’ initiative takes place. If it is declared admissible and receives the necessary support from the citizens, the local representative body must then decide if it wants to allow the initiative. If the application is rejected, a referendum follows. The objective and contextual applicability of direct democracy at the local level is limited; certain matters cannot be made subject of citizens’ initiatives and referendums. The list of matters for which such instruments are not allowed varies from state to state. Referendums typically exclude personnel matters and the internal organisation of the local administration. The budget statutes are also regularly excluded.

4.2 *The Local Bodies*

As local authorities, the municipalities are only capable of acting through their bodies. The core of local constitutional law is based on the regulations defining the bodies of a local authority, how they are created, the relationship between them, and what specific tasks they must perform. Despite a harmonisation of local constitutional systems, there are still differences between the states in these matters. Most states have now at least reduced the number of their local bodies to two. Thus, the local representative body only has to face one executive body. This dualism has been implemented in the states of Bavaria (at municipal level), Baden-Württemberg, Hesse, Mecklenburg-Western Pomerania, Rhineland-Palatinate, Saarland (at municipal level), Saxony, Saxony-Anhalt, Thuringia and Schleswig-Holstein. In most of these states, the executive body is organised monocratically and is represented by a mayor or a commissioner of the county. It is only in Hesse where its implementation is still in the hands of a college, namely the municipal board (Section 65ff. of the

Municipal Code of Hesse, HGO) or the county committee (Section 36ff. of the County Code of Hesse, HKO), which consists of the respective mayor or commissioner of a county and the deputies.

By contrast, the local authorities in the states of Brandenburg, Lower Saxony and North Rhine-Westphalia have three bodies. In Bavaria and Saarland (only) the counties have a third body. In these states, besides the representative body and the mayor or commissioner of the county, there is another body to which a certain number of deputies or members of the representative body belong, in addition to the respective chief administrative officer.

The following description is limited to the role of the local representative bodies and the respective chief administrative officer.

4.2.1 *The Local Representative Bodies*

The main body of every local authority is the local representative body, that is the municipal and city council as well as the county council (Ehlers 2007). The council is the central leading body of the local authority (BVerfGE 47, 253, 275). Article 28 (1), second sentence of the Basic Law, stipulates the representation of the people in the municipalities and counties. This body takes precedence over all others at the local level.

a) Internal organisation

The size of the local representative bodies varies in the federal states and depends on the number of inhabitants.

There is also a diverse range of regulations determining whether the respective chief administrative officer belongs to the representative body and which function he holds. According to the local public law in a number of states, the respective chief administrative officer (mayor or commissioner of a county) is by virtue of office a member and chairman of the local representative body. In other states, however, the chief administrative officer is part of the representative body, but not its chairman. Lastly, there are states where the chief administrative officer is not a member of any representative body.

Political groups are usually formed in the municipal and county councils as in the case of parliaments (Suerbaum 2007). Similarities to parliamentary law exist insofar as, according to the local law of all states, the formation of committees is stipulated. With regard to committees, a distinction should be made between mandatory and optional. In some states, it is foreseen that committees not only consult but also make decisions on behalf of the representative body.

b) Competences

The formation of a representative body at municipal and county level is stipulated by constitutional law as mandatory (Article 28 (1), second sentence of the Basic Law). Consequently, the most important management and control tasks for each local authority must be reserved for the representative bodies.

Beyond the area of the constitutionally mandatory statutory tasks, the state legislators are free to decide on which body they wish to assign the tasks and the range of tasks, which entails a wide variety of regulations. In principle, however, the representative bodies are responsible for all matters unless they are explicitly assigned to another local body, particularly to the chief administrative officer or the above-mentioned ‘third’ body (municipal board or county committee).

4.2.2 The Chief Administrative Officer

All local authorities in Germany have a chief administrative officer. In the counties, the officer is called the commissioner of the county (*Landrat*). In the municipalities, the chief administrative officer is referred to as the mayor (*Bürgermeister*) in the cities, and, in accordance with the relevant state law, in larger municipalities he/she is referred to as the lord mayor (*Oberbürgermeister*). Except for smaller municipalities, the chief administrative officials are employed full-time and are salaried.

a) Direct election of the chief administrative officials

Mayors employed full-time are directly elected by the people. It is only in the case of voluntary mayors of smaller municipalities that an election by the representative body is foreseen according to the local constitutional law of some states (e.g. in Brandenburg). The commissioners of the counties are also directly elected in the majority of states, but not all.

b) Responsibilities

As already indicated, the local government codes of the states also exhibit considerable variations in the assignment of responsibilities to the bodies. The basic premise is that chief administrative officials are responsible if no competence of the representative body exists. The chief administrative officials are usually responsible for executing the council’s decisions and for managing all the ongoing administrative matters. They are also responsible for the external representation of the local authority.

c) The commissioner of the county as lower state administrative authority

One feature deserves special mention regarding the commissioner of the county. In some federal states, the commissioner of a county is not only the chief administrative officer, he also acts as the lowest tier of the regional authority (Meyer 2007: 702).

5 THE LOCAL GOVERNMENT ASSOCIATIONS

The interests of local authorities in the federal state and at European level are represented by the three local government associations at the federal level: the German Association of Cities (*Deutscher Städtetag*—DST) as the leading representative of the county-free cities; the German County Association (*Deutscher Landkreistag*—DLT) as representative of the 294 counties; and the German Association of Towns and Municipalities (*Deutscher Städte- und Gemeindebund*—DStGB) as representative of all municipalities belonging to a county. There are also corresponding regional associations at state level. In addition to their respective headquarters, the three local government associations at federal level each maintains a European office in Brussels.

Unlike many state constitutions, the Basic Law does not provide for any participation or consultation rights of local government associations. As regards draft legislation by the federal government, the procedure on participation and consultation is set out in the Joint Rules of Procedure of the Federal Ministries (GGO).⁵ According to Section 41 GGO, the opinions of local government associations at federal level are to be obtained before drafting a legislative proposal that affects the concerns of local authorities. The impacts on the budgets of the local authorities must be listed separately in accordance with Section 44 (3) GGO. In compliance with Section 47 (1) GGO, the ministry responsible forwards the draft legislation prepared on this basis to the local government associations as early as possible if local issues are involved.

In the Rules of Procedure of the German Federal Parliament, Sections 66 (2), 69 (5) and 70 (4) contain provisions on the participation of the local government associations.⁶ Essentially, in any matter of crucial interest that affects the municipalities and associations of municipalities, the local government associations at federal level should be given the opportunity to issue a statement before decision-making. Substantial interests are adopted if the relevant legislation is fully or partially implemented by the municipalities (or associations of municipalities), their public finances are directly affected or their administrative organisation is influenced.

6 LESSONS LEARNED

Germany observes the principles laid down in the European Charter of Local Self-Government. Moreover, the municipalities and especially the counties are the main operational level for implementing the state laws. This weight at the communal level is underlined by the number of personnel and size of the communal budget: the communal level covers around one-third of the public service personnel and public budgets (excluding social security). Based on their traditional roots of the early nineteenth century, the modern communal administration and local self-government contribute significantly to the quality of public service delivery and to legitimisation acceptance of public administration in general. The decentralised system with a wide range of responsibilities and decision-making authority has provided the basis that facilitates initiatives and approaches to modernising public administration and reforms in various fields.

NOTES

1. Council of Europe. European Treaties Series No. 122. Strasbourg October 15, 1985. <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007a088>.
2. FTE = full-time equivalent.
3. The two largest cities in Germany are Berlin with roughly 3.6 million inhabitants and Hamburg with around 1.8 million inhabitants. However, these two cities and Bremen are, at the same time, state-constituted federal states ('city-states', see Sect. 2.4).
4. The fundamental text of Article 28 (2) of the Basic Law: 'Municipalities must be guaranteed the right to regulate all local affairs on their own responsibility, within the limits prescribed by the laws. Within the limits of their functions designated by a law, associations of municipalities shall also have the right of self-government in accordance with the laws. The guarantee of self-government shall extend to the bases of financial autonomy; these bases shall include the right of municipalities to a source of tax revenues based upon economic ability and the right to establish the rates at which these sources shall be taxed'.
5. GGO in German: https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/themen/ministerium/ggo.pdf;jsessionid=59DE0A808AAB54FE2E6A222EF25B74B.2_cid364?__blob=publicationFile&v=2.
6. Rules of Procedure (German Federal Parliament) in English: <https://www.btg-bestellservice.de/pdf/80060000.pdf>.

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