

§ 6 The German parliamentary governing system (short overview)

I. Introduction

- a distinct parliamentary governing system, in which
 - the decision in essential matters is reserved for parliament
 - the government is fully accountable to parliament (can be overthrown at any time)
- a federal system, in which the Länder do not only have their own competences under the Constitution but also participate through the Bundesrat [Federal Council] in the legislation and administration of the Federation and in matters concerning the European Union
- legal disputes between the constitutional bodies can be settled in special proceedings before the Federal Constitutional Courts (cf. [art. 93\(1\) no. 1 BL](#))

II. Constitutional organs

- terminological distinction between simple *state institutions* and *constitutional organs* (= constit. bodies), i.e. those state institutions which have been established, regulated and vested with own powers directly by the Constitution

1) The Bundestag

- the German parliament; most important constitutional organ
 - may be dissolved prematurely only in exceptional circumstances (cf. [art. 63\(4\), 68 BL](#))
- adopts the federal laws ([art. 77\(1\) BL](#)) and decides about the federal budget (cf. [art. 110 BL](#))
- ratifies by law international treaties ([art. 59\(2\) BL](#))
- elects the Federal Chancellor who then forms the Federal Government ([art. 63, 64 BL](#))
- exercises parliamentary control over the Federal Government ([art. 43 ff. BL](#))
- declares in the event of a military threat or attack the state of tensions or the state of defence ([art. 80a, 115a BL](#))
- needs to approve the deployment of the Armed Forces abroad
- participates within Germany in matters concerning the European Union ([art. 23 BL](#))

2) The Bundesrat [Federal Council]

- a federal institution representing the Länder, not a second chamber of parliament
 - consists of members of the Land governments; number of votes of a Land depends on population ([art. 51 BL](#))
- participates in federal legislation ([art. 76 et seq. BL](#))
- needs to approve certain important political decisions ([art. 80\(2\), 84\(2\), 85\(2\), 59\(2\), 115a\(1\) BL](#))
 - e.g. certain federal ordinances, admin. provisions, intern. treaties, the declaration of the state of defence
- exercises certain control functions (e.g. under [art. 53 BL](#))
- participates within Germany in matters concerning the European Union ([art. 23 BL](#))

3 The Federal Government

- consists of the Federal Chancellor and the Federal Ministers ([art. 62 BL](#))
- *Federal Chancellor* elected by Bundestag on proposal of the Federal President ([art. 63](#))
 - determines the general guidelines of policy ([art. 65 BL](#))
 - can only be overthrown by election of a new Federal Chancellor (constructive vote of no confidence, [art. 67 BL](#))
- directs and controls the execution of federal laws
 - adopts ordinances and admin. provisions, organises federal authorities, monitors execution of federal law by Länder
- participates in federal legislation ([art. 76 et seq. BL](#))
- represents Germany in the European Union
- decides - with approval of the Bundestag - about deployment of the Armed Forces abroad

4) The Federal President

- not elected by the people (but by a Federal Convention, cf. art. 54 BL)
- not the leading political institution but a "pouvoir neutre" with functions rather like those of a "state notary"
 - certifies and promulgates the federal laws (art. 82 BL)
 - appoints and dismisses Federal Chancellor, federal ministers, judges and civil servants
 - represents the Federation in international law, e.g. hands over ratification instruments (art. 59 BL)
- however, some political functions
 - proposes candidate for election of the Federal Chancellor (art. 63(1) BL)
 - may dissolve Bundestag after failure to elect a Federal Chancellor (art. 63 IV phrase 3 BL)
 - may dissolve Bundestag after unsuccessful motion of the Federal Chancellor for a vote of confidence (art. 68 BL)

5) The Federal Constitutional Court (introduction)

- see for the details infra, § 8
- 16 constitutional judges in two Senates
 - elected half by the Bundestag, half by the Bundesrat for a 12 years term
- both court and constitutional organ
 - on equal footing with the other constitutional bodies
 - with own rules of procedure and independent budgeting
- highly respected in the population across political camps; has contributed significantly to the consolidation of democracy and rule of law in Germany

III. Federal legislation

- distinction between *exclusive legislative powers* of the Federation (art. 71, 73 BL) and *concurrent legislative powers* (where the Länder may legislate as long as the Federation has not legislated, art. 72, 74 BL)
- bills introduced by Federal Government, Bundesrat or the floor of the Bundestag (art. 76(1) BL)
- in the standard case, the *Bundesrat may object* to a bill adopted by the Bundestag, but the Bundestag can reject the objection (art. 77(3, 4) BL)
- in some cases the Basic Law requires the *consent of the Bundesrat* for a bill to become law; in these cases the Bundesrat has the power to prevent the law
 - such laws have become frequent because they often regulate the admin. organisation and procedure for their execution (cf. art. 84(1), 85(1) BL); this has significantly strengthened the Bundesrat's position
- a Conciliation Committee may be convened, to resolve differences between the Bundesrat and the Bundestag (art. 77(2) BL)
- laws enter into force after *certification and promulgation by the Federal President* (art. 82 BL)

IV. The execution of federal laws

- *generally by the Länder*, in their own right and responsibility (art. 83 BL)
 - administrative structure and procedure in principle regulated by Land law (art. 84(1) BL)
 - many administrative tasks delegated to the counties and communes
- in some cases by the Länder in federal commission [Bundesauftragsverwaltung] (art. 85 BL)
 - in these cases, administrative structure often regulated by federal law with consent of the Bundesrat
- in a few cases by federal administrative authorities
 - e.g. Federal Police, Federal Criminal Police Office, Foreign Service