

§ 3 The decision for centralism, decentralisation or regional and local autonomy

I. A constitutional decision or a decision left to the legislator

- traditionally, many constitutions did not even prescribe the existence of regional or local collectivities
- nowadays, many constitutions determine themselves the existence of certain regional and/or local collectivities; some require a minimum of autonomy and competences

II. The different concepts

- *centralism*: concentration of powers, control and responsibility at the central government
 - prevailing in Europe until the last decades of the 20th century
 - historical examples: France, UK
 - still popular with dictatorial and oligarchical regimes
 - extreme version: totalitarian "democratic centralism" in the former socialist countries
- *deconcentration*: shift of decision making within the central government from the central office to regional or local offices
 - common in developing countries
 - does not imply more rights for regional or local communities
- *decentralisation*: transfer of competences and responsibility from the national level to regional and local collectivities
 - by devolution (no or limited supervision) or delegation (with supervision)
 - a process started in many countries in all parts of the world, often supported by the partners of development cooperation
- *regional/local autonomy*: the right of regional/local collectivities to regulate, with their own means and on their own responsibility, all the affairs of the regional/local community within the limits set by the law and under the legal supervision of the state
 - basic ideas: *principle of subsidiarity*, concept of *structured democracy*
 - introduced in the German state of Prussia already in 1808
 - introduced in most European countries at the end of the 20th century
 - introduction in formerly centralist states implies decentralisation

III. The guarantee of local self-government in Germany

Art. 28(2) of the German Basic Law:

The communes must be guaranteed the right to regulate, on their own responsibility, all the affairs of the local community within the limits set by the laws. Within the framework of their statutory functions, the associations of communes also have the right of self-government in accordance with the laws. The guarantee of self-government also comprises the basis of financial autonomy...

- a *constitutional right of the communes and counties* (in some aspects similar to a fundamental right), defensible by legal action before the admin. court and by *constitutional complaint* (against laws) before the Federal Constitutional Court (art. 93(1) no. 4b BL)
- similar guarantees in the Land constitutions with remedy of constitutional complaint to the Land constitutional court

- a constitutional *guaranty of local self-government as a legal institution*
 - includes guarantee of existence of local collectivities but no guarantee of the existence of the individual commune
 - includes guarantee of the formal and material preconditions of local self-government
- *comprehensive jurisdiction of the communes for all affairs of the local community* (= affairs specific to the local community), including
 - territorial jurisdiction
 - right to self-organisation (also concerning human resources)
 - financial autonomy
 - planning autonomy (in particular for urban land use planning)
 - regulatory power (by-laws and regulations)
 - autonomy to cooperate with others (including → transnational cooperation)
- legislator may transfer individual tasks to other authorities, if proportional; the *core area* of self-government is *absolutely protected*
- only *legal supervision*, no functional supervision by the state (control of the legality, not of the expediency of self-governing activities)

IV. The European Charter of Local Self-Government

- drafted by the Congress of Local and Regional Authorities, an influential institution of the Council of Europe (≠ EU!) for the strengthening of local and regional democracy
- signed 1985, ratified by 47 European states
- absolutely *binding core standards plus optional standards* for local self-government in European states
- Additional Protocol of 2009 on citizens' participation
- compliance monitored by a Monitoring Committee, which issues recommendations
- most important *core standards*:
 - principle of local self-government to be recognised in domestic legislation, and where practicable in the constitution (art. 2)
 - guarantee of the right and ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population (art. 3(1))
 - principle of local representative democracy (art. 3(2))
 - right of local authorities to exercise their initiative with regard to any matter not excluded from their competence nor assigned to an other authority (art. 4(2))
 - right to be consulted in planning and decision-making processes for matters concerning them directly (art. 4(6))
 - guarantee of sufficient financial resources (art. 9(1, 2))
 - right of local authorities to cooperate and associate (art. 10(1))
 - restriction of administrative supervision to legal supervision except for tasks delegated by the state to the local authorities (art. 8(2))
 - right to legal protection (art. 11)
- *optional* general commitment to the *principle of subsidiarity* (art. 4(3))
 - preference of acting of those authorities which are closest to the citizen