

§ 5 The structure of local government - the example of Germany

I. A different local government law in every Land

- since the field of local government falls into the legislative power of the Länder

II. Types of local collectivities

1) Communes

- the heart of local self-government
- *exclusive competence in all matters* on their territory *unless legal provisions* provide otherwise
- various kinds of communes of different size and different competences delegated by the state (terminology varies in the different Länder)
 - independent cities ["kreisfreie Städte"] are not part of a county but perform all its functions on their territory
- usually performant since *comprehensive territorial reforms* since the 1970s
 - forced mergers, often pushed through against resistance of local population, reduced the number of communes and increased their size and capability
 - see the example of NEUSTADT AM RÜBENBERGE (Lower Saxony): a whole county with 34 communes merged in 1974 to one single commune with one single administration

2) Counties ["Landkreise"]

- associations of communes regulated by law that are territorial collectivities themselves
- perform tasks exceeding the territory or the capabilities of their communes
- support their communes in the performing of their tasks and ensure an appropriate burden sharing (via a county levy)
- in some rural areas citizens identify themselves more strongly with their county than with their commune

3) Other associations of communes ["Gemeindeverbände"]

- general associations of several communes with own institutions on a voluntary basis for achieving a better general performance
 - in most Länder most communes are united in such general associations who take over some of their tasks
- REGION HANNOVER (legal merger of several counties including the capital city of a Land to a new regional collectivity)

III. The institutions of the local collectivities

- different institutions and official titles in the various Länder; however, smaller differences after recent reforms
- representative body: *Municipal Council/City Council* ["Gemeinderat/Stadtrat"] in the commune, *County Council* ["Kreistag"] in the county (elected for 4 to 6 years)
 - detailed regulations on prohibition of participation of councillors in decisions that may cause a direct advantage or disadvantage for the councillors or persons close to him
- head of administration: *Mayor* ["Bürgermeister"] in the commune, *County Administrator* ["Landrat"] in the county (usually directly elected for a term of 5 or more years)
- coordinating committee: *Main/Administrative Committee* ["Haupt-/Verwaltungsausschuss"] in the commune, *County Committee* ["Kreisausschuss"] in the county
- various options of *citizens' participation*, including citizens' initiative and referenda
- the problem of low participation in the local government elections

IV. Voluntary self-government tasks, mandatory self-government tasks and delegated tasks

- communes perform self-government tasks (own sphere of activity) and delegated tasks (tasks delegated to them by law - delegated sphere of activity)
- some self-government tasks are prescribed by law and must meet certain standards
- in particular sanitation, waste disposal, local streets, urban land-use planning, kindergartens
- delegated tasks are always mandatory

V. Administrative supervision

1) Legal supervision of self-government activities

- supervision limited to control of legality
- instruments: requiring information, formal complaint, binding order, substitute performance, temporary substitution of commune institutions by a commissioner
- supervisory decisions are admin. decisions interfering with the constitutional right to local self-government (art. 28(2) BL) and therefore can be challenged by the commune with an action for annulment before the administrative court

2) Functional supervision of the performance of delegated tasks

- control of legality and expediency
- supervisory authority free to issue instructions
- supervisory measures are internal affairs of public administration and therefore cannot be challenged before the courts (except if they encroach on the field of local self-government)