

# General Principles and Challenges of Public Administration Organization in Germany

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## ABSTRACT

Germany has a federal system. Most legislation is enacted at the federal level, whereas federal units, the Länder (singular: Land), are responsible for the execution of federal and Länder laws. Consequently, most public administration organizations are operated by the Länder. Most Länder organize their administration at three levels: the local level, where both state organs and autonomous local governments operate; the mid-level, with a concentration of state tasks in a centralised mid-level authority (the so-called province); and the state level, where ministries exercise political leadership and supreme Land authorities perform administrative tasks. Local governments do not only perform the tasks related to local autonomy, as defined in German as the ‘affairs of the local community’, but are also the recipients of delegated first-instance state tasks. Owing to local governments’ autonomy, the Länder authorities are limited to overseeing the legality and must refrain from assessing the expediency of such measures in the field of the affairs of the local community. Länder play a more significant role in supervising the performance of delegated state tasks because, in this field, they may control local authorities in terms of legality as well as expediency. Balancing the correct level of oversight without infringing on local autonomy is often a delicate process. Apart from the territory-bound autonomy of local governments, Germany is rich in other forms of autonomous administrative units, such as chambers and universities. Administrative infrastructure at the federal level is limited to ministries and supreme federal authorities. The Federation operates a full administrative apparatus in very few cases, such as for the armed forces, diplomatic service, or federal police. In all other fields of public administration, administrative functions are performed by Länder organs. When they execute federal law, the supreme federal authorities exercise supervision over legality and, in rare cases, when statutes authorise them to do so, supervision over expediency.

We describe and analyse the structure of the German Länder administration using the Land of Baden-Württemberg as an example.

## KEYWORDS

Germany, public administration, administrative federalism, local government, Länder

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## 1. Overview<sup>1</sup>

On a global scale, the Federal Republic of Germany (Bundesrepublik Deutschland), with its 358,000 km<sup>2</sup> and 84.3 million inhabitants, is a medium-size country. It is one of the six founding members of the European Economic Community and has long held the position of the largest economy in the EU. One of the most striking features of Germany is its federal structure, which is deeply rooted in history. The most significant event in recent decades has been German Reunification. In 1990, the federal units (Land, plural: Länder) on the territory of the German Democratic Republic joined the Federal Republic of Germany, adopting its political, administrative, legal, economic, and social system. Even after 30 years, a certain emotional and factual gap between the East and West remains, though it appears to be narrowing among younger generations.

Germany defines its economy as a ‘social market economy’, a concept of significant political and psychological importance. Germany has a typical post-industrial economy; however, while developing into a service-based economy, Germany did not neglect its industrial sector, which still accounts for 24.4 per cent of its Gross National Product (GNP)—with 2.1 per cent in the primary sector and 73.5 per cent in various service industries. Mechanical engineering, green technology, chemicals, and automobile are among the most important industries. Foreign trade is crucial, as reflected in the popular German self-definition as an ‘export champion’. Over recent decades, China has become Germany’s largest foreign trading partner, raising growing concerns. German capital is the largest source of foreign direct investment (FDI) in most EU member states.

The average gross income was 49,200 euros in 2021. Income distribution is unequal: men earn more than women, and West Germans earn more than East Germans. Although overall income inequality<sup>2</sup> is close to the OECD average, growing disparities are a political concern as they are perceived as a threat to social cohesion. Aside from the gender pay gap, all indicators show an increase in inequality over recent years. Low-income groups are usually supported by direct transfers, whereas tax measures tend to favour middle- and upper-class incomes.

Being a ‘social market economy’, Germany maintains a widespread system of social security. Some parts of this system include compulsory social insurance (health, old age, or unemployment), while others are tax-financed. Until the 1970s, the social system had expanded. In the 1980s, a neoliberal restructuring began. Since then, initiatives to adapt social security to the requirements of the post-industrial economy have been ongoing. Today, the most important challenges are demographic and workplace changes in an ageing society. An increasing amount of employment

1 All statistical data are taken from the Federal Statistical Office (Statistisches Bundesamt) [Online]. Available at: [www.destatis.de](http://www.destatis.de) (Accessed: 12 October 2024).

2 The Gini coefficient for 2019 was 29.7.

occurs outside traditional labour contracts. This is problematic because social insurance is strongly linked to formal employment relationships. Consequently, a growing proportion of low-income job holders remain outside the protection of social insurance, which is facing a revenue shortfall.

Without immigration, Germany's population would have declined over the past several decades. Although birth rates have risen recently, they continue to be lower than death rates. The population density is quite high (232/km<sup>2</sup>), decreasing from West to East. Approximately 77 per cent of the population lives in cities. Germany does not have a primate city. The largest metropolitan region is the Rhine-Ruhr area (Ruhr, Cologne, and Düsseldorf) with 11 million inhabitants. Fifteen cities with more than 500,000 inhabitants are evenly distributed throughout the country. Among these, Berlin is the largest with 3.7 million inhabitants. Berlin draws its importance from being the federal capital and seat of a considerable cultural industry. Underdeveloped rural areas face a grave decline in population; therefore, they are continually depleted of infrastructure. The same is true for some deindustrialised urban areas and large socialist housing estates in East German cities.

Germans are not homogeneous but have strong regional identities. Local dialects are often unintelligible to speakers of other German dialects. The present 16 Länder were shaped after 1945 and do not necessarily reflect regional identity. Germany has been a target of immigration since 1945. After 1945, millions of Germans from the former Eastern provinces, ethnic Germans from Eastern Europe, and Eastern Europeans who did not desire to return to their socialist countries came to Germany. Labour immigration began in the 1960s in the West and in the 1980s in East Germany. Currently, asylum is one of the primary channels of immigration. Consequently, the population is diverse. In 2017, 23 per cent of residents were born outside Germany. Nationality law has followed the factual change towards an immigration country slowly and continued to be a mixture of deterrent and welcoming elements. The same can be said of Germany's immigration policies. Most immigrants integrate well into society and the economy, but a certain percentage live in 'parallel structures'. Religion is considered a private issue with little relevance to public life. In 2021, the percentage of followers of the two major Christian churches (Catholic and Protestant) dropped below 50 per cent for the first time in German history. Individuals without a religious affiliation accounted for 42 per cent, and various Muslim denominations made up 6.5 per cent. The number of Jews is estimated to range from 100,000–200,000.

The central feature of state organizations is federalism. Germany consists of 16 Länder, 13 of which are territorial Länder and 3 are city states; that is, federal states comprise one city only.<sup>3</sup> The 16 Länder vary in size and population; the largest (Bavaria) covers 70,542 km<sup>2</sup> and the smallest (Bremen) spans 419 km<sup>2</sup>; the most populous (North Rhine-Westphalia) has 18 million inhabitants, while the least populous (again Bremen) has 676,000. Generally, the East German Länder are smaller, less populous, and less

3 Strictly speaking, only Berlin and Hamburg are city states. The third Land, Bremen, comprises two municipalities. Nevertheless, the Land of Bremen is traditionally considered a city state.

densely populated than the West German ones. Although each Land may determine its internal organization, German administrative structures are consistent across all territorial Länder<sup>4</sup>. Their three-tier administration consists of the local, mid-level, and state levels. Locally, there are 10,787 governments. The smaller units are called ‘municipality’ or ‘commune’ (Gemeinde), the larger ones bear the title ‘town’ (Stadt). There were 201 municipalities with fewer than 100 inhabitants and four with more than one million. In sparsely populated areas as well as in the suburban areas of large cities, several Länder have experimented with various forms of intercommunal institutions. The middle level is more diverse than the local level. A feature common to all territorial Länder is the ‘Kreis’ or, in some Länder, ‘Landkreis’ (district), which usually comprises between 10 and 20 municipalities. These districts are autonomous bodies. Larger cities exercise the powers of a Kreis as well; they are called ‘kreisfreie Stadt’ (town with district powers) in most Länder. In the 13 territorial Länder, there were 294 districts and 106 towns with district powers. Both districts and towns with district power vary significantly in size and population according to their respective Land. Other administrative formations at the mid-level vary from Land to Land and are, therefore, too heterogeneous to describe in full. The state level is the Land, and local and mid-level authorities are, in the system of German federalism, (autonomous or state) authorities of the Land and not of the Federation. The Federation does not have any direct administrative, financial, or legal access to local or mid-level authorities (Article 84(1)7 Grundgesetz<sup>5</sup>).

According to the German Federal Bank, all public debt (i.e. that of the Federation, the Länder, the local authorities, social insurances institutions, and other public bodies) amounted to 2,000 billion euros in 2021, which is 70 per cent of the gross domestic product of approximately 3,600 billion euros.<sup>6</sup> International capital markets rate German public debt as AAA.

Germany’s public administration at the federal, Land and communal levels is well-integrated into the relevant EU and CoE structures. Despite the federation’s relative monopoly on foreign relations, the Länder have their own political representation and channels of influence within the EU. German public administration is well-represented in European networks such as the European Committee of the Regions, which from a German perspective serves as a representation of the Länder executives, the Council of European Municipalities and Regions, and the Congress of Local and Regional Authorities. These provide strong political forums for local administrations.

German public administration has faced several challenges. First, it must Europeanise and, above all, modernise. Digitalisation favours centralised solutions, which

4 We do not address the city states and their administrative structures. Their main feature is the identity of the state and the municipal level: the city is both a federal state and a local government.

5 Basic Law for the Federal Republic of Germany of 23<sup>rd</sup> May 1949.

6 Deutsche Bundesbank (2023) [Online]. Available at: <https://www.bundesbank.de/de/statistiken/oeffentliche-finanzen> (Accessed: 6 November 2023).

conflict with the traditions of German executive federalism. Second, it must adapt to changing economic and social environments. Decarbonising the economy and society requires active involvement of the state and its executive branch; the population is ageing, becoming more individualist and diverse, and therefore has changing demands regarding public administration. Decades of neglected public infrastructure now necessitate extensive investment in repairs, and public administration is the primary channel for these investments. Third, since the neoliberal era of the 1980s, public expenditure has been viewed more critically, which has placed public administration under financial restraints and created a need to demonstrate the efficiency of its work and its outcomes.

## **2. Public administration and constitutional order**

Germany has a federal system, indicating that both the Federation and Länder are states with separate legislative and executive organs. Consequently, Germany has 17 constitutions: one federal constitution, the Grundgesetz (GG), and one constitution for each of the 16 Länder.

In German federalism, all public powers rest with the Länder unless the Grundgesetz confers a specific power to the federal level (Article 30 GG). In broad terms, most legislation is enacted by the Federation, whereas the Länder are the principal executive (administrative) organization. This implies that most laws are enacted at the federal level, but the Länder may principally legislate in various fields of general and special administrative law. Education, for instance, is a stronghold of Länder legislation. However, the federal level is rarely involved with administration, as the Federation may only exercise its authority if the Grundgesetz expressly permits it. Cases of express federal administrative powers are limited. The situation of the federal level being the principal legislator and the Länder being the principal administrative organ leads to a distinctive feature of German federalism: federal statutes are executed by the Länder. In many fields, the Länder possess considerable discretion when executing federal law and may decide on competent authorities, procedures, and the interpretation of federal law. The federal government is limited to controlling the legality; it must not supervise the expediency with which a Land executes federal law. Under certain circumstances, federal statutes may grant a higher degree of control at the federal level. Federal laws that specifically impact the Länder's executive power require the assent of the Länder in the 'upper chamber' of the federal parliament, the Bundesrat (Articles 84-85 GG). The Federation and Länder bear the costs of their administrative apparatus separately (Article 104a(5) GG). Accordingly, Länder spend a considerable portion of their budget on Germany's administrative infrastructure.

In exercising their duties, the Federation and all Länder must cooperate (Article 35 GG).

One consequence of federalism and the separate statehoods of the Federation and Länder is the principle of separate organs. Each state organ belongs to either the

Federation or a Land. In some cases, the Grundgesetz permits joint activities. Federal and Länder authorities maintain joint employment agencies (Article 91e GG) and can operate joint tax authorities (Article 108(4) GG) and shared computer systems (Article 91c GG).

## ***2.1. The federal constitution***

### *2.1.1. Principles for both the Federation and the Länder*

The Grundgesetz established the basic structures of the German state: democracy, republic, rule of law, social state, and respect for local autonomy. Some Länder constitutions repeat these basic principles, while others do not. Regardless of whether a Land constitution includes these structures, this is inconsequential because the homogeneity clause in Article 28 GG stipulates that all German Länder must arrange their constitutional order according to those principles, with some flexibility. In both court practice and legal scholarship, the basic principles are interpreted and applied based on the Grundgesetz rather than on any parallel provisions in the Länder constitutions. Therefore, we will discuss them under the headings of the Federal Constitution.

The rule of law or, literally, the ‘law-based state’ (Rechtsstaat), has been a central feature of German-speaking state theory and political practice since the 19<sup>th</sup> century. This principle requires that the State must not act arbitrarily but follow rules that bind everyone, including the State and its organs. Although Rechtsstaat is not mentioned among the basic State principles in Article 20(1) GG, its various aspects are embedded in several provisions.<sup>7</sup> The rule of law is a constituent feature of German statehood. From an organizational perspective, the separation of powers in Article 20(2)2, (3) of the GG is of relevance.

German theory differentiates between formal and material Rechtsstaat. The former means that rules are to be obeyed, whereas the material Rechtsstaat, developed after the end of Nazi rule, holds that the law must embody a minimum of natural justice and may be disobeyed if it does not<sup>8</sup>. In administrative practice, the formal Rechtsstaat is more significant and demands that any public authority adhere to the valid law.

The ‘reservation of the law’ and the ‘priority of the law’ principles bind the administration to empowerments in formal statutes: authorities may interfere with subjective rights only if they are authorised by statute, and when doing so, they must not violate this statutory authority. Accordingly, statutes must be sufficiently explicit to guide administrative actions. In this way, the will of the parliament prevails over the will of the administration.

7 One example: Article 20(3) GG subjects the executive power and the judiciary to ‘Gesetz und Recht’, that is, to formal law and a basic idea of justice. This reflects the Rechtsstaat in its formal and material sense.

8 Radbruch, 1946, p. 105.

The most important feature of the Rechtsstaat in public administration is its principle of proportionality. This means that every exercise of public power must bear a reasonable balance between the purpose and means to achieve it, as well as the rights of those affected by the public act in question. Proportionality plays a central role in the judicial control of the administration.

The social state is an objective rule that does not confer special rights or duties on individuals or state organs. However, this principle leads to extensive legislation (mostly at the federal level), which is executed by the authorities of the Länder.

Article 28 GG sets minimum standards for local autonomy that each Land must uphold. Article 28(1) of the GG guarantees the existence of municipalities and districts, as well as freely elected representative bodies within these entities. Article 28(2) GG grants municipalities a minimum of powers (the supposed ‘affairs of the local community’) and provides municipalities and districts with a basic level of financial autonomy. Both guarantees are binding on the Länder, which cannot establish an internal organization without autonomous and democratically elected local and district levels. In city states, this question does not arise, as the city (local autonomy) is simultaneously a Land, that is, a state: the local autonomy and the federal autonomy of the Land converge.

The fundamental rights in Grundgesetz bind the Federation, the Länder, and local governments. From the perspective of public administration, the most important fundamental rights are equality enshrined in Article 3 GG and the right to judicial protection in Article 19(4) GG. The Grundgesetz does not expressly recognise a right to good administration, but some parts of this right are covered by the Rechtsstaat principle. This constitutional framework is deemed satisfactory, and there is no relevant constitutional debate on enshrining good administration into constitutions. The right to equal treatment guarantees that public organs ‘handle equal cases equally’, as both doctrine and courts put it. This right, in combination with the rule of law and especially the principle of proportionality, is an effective tool for courts to review acts of public administration. Access to judicial protection against all exercises of public power is guaranteed under Article 19(4). The Grundgesetz does not prescribe expressis verbis the existence of separate administrative courts, but Article 95(1) enumerates the supreme federal courts and mentions, among others, the Federal Administrative Court. This guarantee, together with the federal laws on the organization of the judiciary and administrative courts,<sup>9</sup> makes the existence of separate administrative courts compulsory for Länder.<sup>10</sup> Consequently, Länder cannot reassign the legal control of the administration, for instance, to civil courts or bodies within the administration.

Article 33 of the GG establishes fundamental rules for public employment. All Germans have equal access to public offices, determined solely by their ability and

<sup>9</sup> Judicial Organization Act of 12<sup>th</sup> September 1950; Administrative Courts Act of 21<sup>st</sup> January 1960.

<sup>10</sup> For more detail see 2.2.1.

independent of religious or political affiliations. Executive powers may be exercised by individuals with special public employment status (civil servants), whose rules are to be regulated and developed according to the traditions of a professional civil service. For employment in the federal public service, Article 36(1) GG differentiates between supreme federal authorities, which must employ civil servants from all Länder in appropriate proportions, and other federal authorities which, as a rule, are expected to employ civil servants from the Land where they are seated. In practice, the Land background of a candidate is of little relevance in federal public employment. However, some Länder tend to reserve the higher echelons of their public service for candidates from that Land, which constitutes a violation of the right of equal access to all public offices (Article 33). Nevertheless, in practice, it is difficult to prove.

The Grundgesetz does not enumerate the sources of the law. However, Article 80(1) of the GG authorises federal statutes to empower the federal government, federal minister, or Land government to enact ordinances necessary for implementing those statutes. From a broader perspective, Article 80(1) of the GG can be interpreted as the constitutional acceptance of subordinate law created by the executive.

All these principles are widely accepted and rarely questioned. Legal debates have concentrated on the exact interpretations of these principles and their adaptations to new challenges.

### *2.1.2. Federal administration*

The federal government is at the top of federal executive authority. It consists of the Federal Chancellor and federal ministers (Article 62(1) GG), which means that secretaries of state and similar officeholders are not members of the federal government.<sup>11</sup> The chancellor is elected by the Bundestag (the ‘lower chamber’ of the federal parliament) with an absolute majority. Federal ministers are appointed and dismissed by the Federal President at the request of the Federal Chancellor. The Federal President is a representative organ with little political power and even fewer administrative functions; therefore, it is not a part of the executive.

The federal government may act corporately. In addition, the ministers bear responsibility for their respective portfolios. The Federal Chancellor has a certain right to instruct federal ministers, but rarely utilises it because federal governments are usually coalitions that must solve their internal disputes in different ways. The federal government owes information and responsibility to the federal parliament. That parliament has the usual control rights, such as interpellation and questions, but may use these only to the extent of the federal government and the federation authority. Therefore, the federal parliament may not question the federal minister on issues under the competence of the Länder. Parliament may hold the government politically accountable by electing another Federal Chancellor into office. Given the distribution of power between the federal and Länder levels, the federal government’s role is governing rather than administrative. Therefore, the political responsibility of

11 On the different concept in some Länder see 2.2.2.



the federal government to parliament usually is typically invoked for political reasons rather than for shortcomings in public administration.

The highest administrative layer at the federal level is the ministry. A ministry may be created or dissolved by a mere organizational act of the government; no laws or other normative acts are required. In the early days of the Federal Republic, many federal ministries were both political and administrative. Since the 1980s, federal ministries have increasingly been limited to political conceptual work, such as drafting bills and political programs. Their administrative functions were subsequently transferred to various supreme federal authorities. Most federal ministries have one or more subordinate supreme authorities. The main tasks of these supreme federal authorities are the (comparatively few) administrative procedures in the immediate competence of the federation and control of legality over the execution of federal law by the Länder.

Articles 87-90 GG enumerate the fields of administration in which the Federation may operate a full hierarchy of federal authorities, that is, more than merely ministries and supreme federal authorities: diplomatic service, federal finance, armed forces<sup>12</sup>, border police, certain social insurance, air traffic, railways and telecommunication regulations, waterways, and national roads. These federal authorities execute federal laws and conduct a full range of administrative procedures in their fields. Their internal organization and procedures are regulated by federal statutes and ordinances of the federal government or a federal minister. The staff members are federal civil servants and employees.

Most executive and administrative work is vested in 16 Länder. They differ considerably in their setups and the way they work. Since we cannot shed equal light on all of these, we highlight the common features and take one Land, Baden-Württemberg (BW), as an example. Baden-Württemberg is an average territorial Land without any peculiarities in its administrative structure. Therefore, it reflects all-German structures well. Owing to limited space, we will not address the numerous features that are unique to only one or two Länder.

## ***2.2. The Länder constitutions***

All German Länder have constitutions, none of which are older than 1945. However, approximately half of them were established before the Grundgesetz. The Constitution of Baden-Württemberg dates back to November 1953. Thus, it is a few years younger than almost all other Land constitutions in the old western part of Germany.<sup>13</sup> This is due to the unique history of that Land. The three Länder that currently

12 In connection with the armed forces, we can identify an anomaly in federalism. Generally, the Länder have the territorial jurisdiction over their entire territory. However, the military training areas situated all over Germany are completely outside the Land's administration and are administered by the German army under the command of the Ministry of Defence. Two such areas are under the command of the US and British Army, respectively.

13 Although the Constitution of the Saarland dates from 1947, it had to be thoroughly revised for joining Germany as a result of a plebiscite on 1<sup>st</sup> January 1957.

form Baden-Württemberg<sup>14</sup> were united as late as April 1952, after a lengthy debate and a (narrow) popular vote in December 1951.<sup>15</sup> As a result of its comparatively late enactment, the authors of the Baden-Württemberg Constitution could take the other German Länder constitutions as well as the Grundgesetz into account. However, their function as role models was limited to mere texts because constitutional judicial practice had just begun to evolve in 1953.<sup>16</sup> More recent Länder constitutions can be found in the East: the Länder in the territory of the former GDR enacted their constitutions after the reunification in the 1990s, which gave them the chance to incorporate the standards of the four decades of judicial practice of the Federal Constitutional Court.

All Länder constitutions contain provisions for a monocameral parliament,<sup>17</sup> a government answerable to the Land parliament,<sup>18</sup> and independent courts.

### *2.2.1. Courts, especially administrative courts*

In the German judicial system, which has five court hierarchies (ordinary, administrative, labour, social, and financial courts), only the top layer of each hierarchy is a federal court. All the lower layers are courts of Länder. For instance, administrative courts have three levels: administrative courts, administrative appeal courts, and the Federal Administrative Court. Administrative courts and administrative appeals courts are Länder courts.

Administrative cases end in an administrative appeals court if the law of that Land only is relevant to the decision. If a case involves federal law, the Federal Administrative Court may hear it in the final instance.

Judicial protection is awarded against the decisions of public authorities, as the case may be, by administrative, social, financial, or, in some cases, ordinary courts.

### *2.2.2. Legislative*

Legislation is vested in the legislative bodies of the German Länder. All Länder parliaments are elected by democratic votes in universal, free, equal, and secret ballots, with some differences between them regarding election procedures. Irrespective of

14 Partly following the borders of the various occupation zones, these three Länder between 1946 and 1952 were Baden, Württemberg-Hohenzollern (both French zone) and Württemberg-Baden (American zone).

15 This process was challenged before the Federal Constitutional Court which in 1956 gave the people in the former Land of Baden the right to a new referendum. The referendum took place as late as 1970. Its result confirmed the existence of the united Baden-Württemberg. Due to this history, the constitution of BW contains some rules referring to the unification process. Most of them are without relevance today.

16 The German Federal Constitutional Court commenced working in September 1951, and the constitutional courts of the Länder are accessible to private individuals and companies only after a judgment of last instance of the highest regular courts in the case.

17 The only second chamber in a German Land, the Bavarian Senate, was abolished by referendum in 1998.

18 In some Länder such as Berlin, Bremen or Rhineland-Palatinate, not only the government as a whole, but single ministers as well are answerable to parliament, that is, a parliamentary majority can oust an individual minister without voting down the government as a whole.

the system applied, the increasing fragmentation of the party system has led to the necessity of forming coalition governments. The old strongholds that some Länder were for Christian Democrat or Social Democrat parties withered. Consequently, the grip on public administration exercised by the dominant party in these Länder weakened and sometimes vanished.

BW applies a unique combination of proportionality and majoritarian principles. Resident citizens elect a new parliament every five years. Every voter has one vote, which they may cast for one of the candidates in their constituency. There are 70 constituencies but 120 seats in the Landtag. The other 50 seats are filled by candidates who came second in their constituency and received a larger share of votes than the other party runners in their province.<sup>19</sup> This system is criticised for being unfair because the results in different provinces may lead to counterintuitive overall results, that is, fewer votes may lead to more seats.

### 2.2.3. Government

The Land parliament elects a prime minister<sup>20</sup>, who in turn sets up a government, which is called 'Senate' in the city states. Länder governments consist of ministers (senators in city states), and some Länder include the secretaries of state.<sup>21</sup> In BW, secretaries of state can be members of the government, as can be 'Staatsräte' (Councillors of State), who have roughly the same position as secretaries of state but work without a salary. All members of the Land government must be confirmed by the BW Landtag. Two differences exist between ministers and secretaries of state (and 'Staatsräte'): only the ministers lead a ministry,<sup>22</sup> and usually only they have a vote within the government. However, the parliament can confer voting rights to some secretaries of state and some 'Staatsräte'.

Land government is a collective body. Its head is the prime minister, who is also the head of state of the respective Land. Although Länder possess statehood, they do not have a separate head of state. Länder's governments make decisions based on their own rules of procedure. The number<sup>23</sup> and exact portfolios of ministries vary from Land to Land; however, in general, there are eight or more specialised ministries in a Land (interior, justice, finance, economy, culture, agriculture, social affairs, and environment), as none of these subjects are positioned together in one ministry with another subject on this list. Larger Länder tend to have more ministries. City-states have ministries for traffic/mobility or city planning instead of agriculture.

19 On provinces see 3.1.2.

20 In the city states, the head of government bears the title of 'First Mayor' (Bremen, Hamburg) resp. 'Governing Mayor' (Berlin).

21 According to Article 43(2) of the Bavarian constitution of 1946, secretaries of state are members of the Bavarian government. Article 59(2)2 of the Saxonian constitution of 1992 permits the membership of state secretaries in the Land government.

22 In some of the larger Länder such as Bavaria or North Rhine-Westphalia, the chief of the prime minister's office enjoys the position of a minister.

23 Article 43(2) of the Bavarian constitution sets a numerical upper limit: the Bavarian government may consist of a maximum of 17 ministers and secretaries of state.

Overall, the Land government has the right to introduce a bill in parliament, and it is the duty of ministries to administer the laws in their portfolio. As mentioned above, the majority of the legislation that Land governments execute is federal law; only a comparatively small proportion is Land law. The ministries under a minister have the highest administrative level for each Land. All these are guided by the minister's decisions, and the minister is responsible towards the Land parliament. Ministers do not decide all cases in person; instead, they discharge their duties by way of deputies (usually the secretary of the state of this ministry) and authorised executives (usually the heads of the ministry's sections). In addition, the minister does not organize the ministry's work; this is done by a Chief of Affairs, usually a secretary of the state, who acts as a professional leader. Nevertheless, the minister can overrule officials' decisions, although this is rare.

The ministries are organized into sections and subsections and are further divided into departments. These subdivisions form a strict hierarchy. Outside the hierarchy, state ministers and secretaries have their own personal offices, comprising a relatively small number of staff responsible only towards the respective ministers or secretaries. They are the closest advisors to their minister or secretary of state, who place special trust in them. Because of the nature of this relationship, the loss of trust by the minister or secretary is sufficient to remove the staff of the personal office from their posts. They appear as 'political civil servants' who may be placed into temporary retirement without further justifications. Other civil servants working in different parts of public administration, including ministries, are usually appointed for an unlimited time and cannot be dismissed from service until they reach retirement age. These government structures are widely considered appropriate and are rarely debated.

#### *2.2.4. Public administration*

In addition to the government, there are no other administrative bodies at the highest level in the Länder.

Their respective central banks ('Landeszentralbank') are not part of the Land administration, but belong to the federal level, that is, to the German Central Bank; this bank operates within the European Central Bank System. Most Länder have a 'Rechnungshof' (court of auditors). This is an independent body working for the respective Land parliament; its members are as independent as the judges, and the court of auditors as a whole is not part of the administration. In addition, most Länder parliaments operate auxiliary organs that are responsible for, for example, equal treatment ('Gleichstellungsbeauftragte'), persons with disabilities, migration, data security ('Datenschutzbeauftragte'), combating antisemitism, or for citizens' rights in general.<sup>24</sup> They are usually independent bodies without executive power resembling

24 In some cases, these organs do not answer to the Land parliament but are subject to a Land ministry. In Thuringia, e.g., the 'Migrationsbeauftragte' (commissioner for migration) is part of the ministry of justice, but without executive powers.

somewhat specialised ombudspersons and channel information to the parliament and its standing committees.

The division between gubernatorial and executive powers in the Länder differs considerably, primarily based on their size. In the larger Länder, ministries perform large gubernatorial tasks such as (1) preparing legislation, (2) enacting subordinate legislation to guide the execution of federal and Land legislation by way of either ordinances (addressed to everybody) or general instructions (addressed to the lower levels of the Land's administration within its portfolio), (3) evaluating existing legal rules, and (4) cooperating with other ministries, parliament, and federal and European institutions to gauge the necessity or expediency of new legislation. In addition, they must provide the means to carry out administrative tasks (money, infrastructure, staff, etc.), and thus participate in executive work. They exercise leadership and control over a considerable number of civil servants, such as the police. Accordingly, they participate in preparing the annual budget and evaluating existing administrative structures. They also supervise the public bodies within their jurisdictions. In smaller Länder, more executive tasks may be vested in ministries because of the lack of staff at lower levels. Nevertheless, all Länder ministries try to avoid too many administrative tasks, which they tend to delegate to the subordinate bureaucracy.

All ministries administer themselves according to the laws of the given Land, the general rules set out by the government, and within the limits of the budget. They choose their own staff, manage their internal organization, organize the necessary equipment, and, at least in part, train their own personnel (e.g. in IT). Hence, political and professional leadership in ministries is *de facto* different, but *de lege* the same. Ministers are in control of the administration and responsible to their respective parliaments; however, they are usually quite detached from the control of the administration on a daily basis.

### **3. Organizational principles and structure of the public administration**

#### ***3.1. Land authorities***

##### *3.1.1. The supreme layer of Land authorities*

The government has the highest administrative authority. The gubernatorial and administrative functions of Land governments and their immediate auxiliary bodies are discussed in Sections 2.2.3. and 2.2.4.

##### *3.1.2. The province as the mid-layer of Land administration*

When the Federal Republic was founded in 1949, most of its Länder had a three-level hierarchy of administration, with the mid-level called 'Regierungspräsident' (head of province) or 'Regierungsbezirk' (province). Bavaria has seven provinces, five in North Rhine-Westphalia, four in Baden-Württemberg, and three in Hesse. In contrast, city-states and the smaller territorial Länder, such as Saarland or Schleswig-Holstein,

never had any use for provinces. After reunification in 1990, the new Länder of Brandenburg, Mecklenburg-Vorpommern, and Thuringia deliberately abstained from creating provinces in their territories, whereas Saxony and Saxony-Anhalt introduced them. More recently, Rhineland-Palatinate (1999), Saxony-Anhalt (2003), Lower Saxony (2004) and, to an extent, Saxony (in two steps 2008 and 2012) abandoned their provincial executive system.<sup>25</sup> Consequently, four of the five largest Länder today have provinces, but none of the smaller ones. The principal motives for the introduction, preservation, and abolition of provinces are traditional and economic reasons, but they do not belong to West or East Germany.

The smaller Länder, which abolished their provinces, claimed that the lack of this administrative level made their administrative system more effective. Most of the duties of the former provinces are now discharged by either a centralised Land authority ('Landesoberbehörde' or 'Landesverwaltungsamt'), or in a decentralised way, by the local authorities. Both are supervised by and responsible to the pertinent ministries depending on the subject matter at hand. It is not expected that any of the remaining Länder will abandon their three-level system.

Provinces cover the entire territory.<sup>26</sup> These are administrative bodies of general jurisdiction in their respective parts of the state.

The major function of the provinces is to concentrate the executive power of different ministries into one mid-level authority. In a way, their organization mirrors the government's organization: the head of a province bears some similarity to a prefecture in France. The internal departments ('Abteilungen') of the provincial executive administer the jurisdiction of one or two Land ministries each. Provincial executives and Land governments have cooperated closely. The existence of the administrative level of the province relieves ministries of day-to-day routines and problems and allows them to concentrate on gubernatorial tasks.

In some Länder, such as Bavaria, the provinces are both mid-level organs of state administration and layers of provincial self-government. The names and territories of the state and self-governed provinces are identical, but the powers and organs are separate. This double nature of the province demonstrates parallels to the '(vár) megye' in Hungary and the 'województwo' in Poland.

### *3.1.3. Mid-level Land authorities outside the provincial executive*

Although the province's function is to concentrate as much administration as possible in one authority, there are other mid-level state bodies outside the provincial executives. One example is the public prosecutors' office ('Generalstaatsanwaltschaft'). Its jurisdiction does not coincide with the provinces but with the territorial jurisdiction of the Superior Land Courts ('Oberlandesgericht'), of which there are several in the

25 Saxony now has one 'Landesdirektion' (directorate for the state) with three seats located in the former seats of the provinces, as well as directorate-generals (Generaldirektionen). Its administrative structure, therefore, still resembles the old provinces, albeit under one leadership. This can be interpreted as a mixture of the two options: with and without provinces.

26 For the exception of military grounds see fn. 11.

larger Länder and one in each of the smaller ones. Prosecutorial offices are under the supervision of the Minister of Justice of the Land regarding personnel matters, legality, and expediency of actions. However, on a daily basis, supervision of expediency is performed only in general terms, and only exceptional cases draw the attention of the ministry.

Other state bodies outside the provincial government are, for example, the (higher) forest directorates, which have different names even within one Land, such as Baden-Württemberg,<sup>27</sup> the administration of national parks, and the audit offices of the state.

#### *3.1.4. Distribution of first instance administrative competences*

Depending on the subject matter, the competent authority in the first instance is either the local authority, acting under the supervision of the provincial executive or the provincial executive itself. Subject matters in the first-instance jurisdiction of the provinces are typically of a supralocal nature, such as cooperation with foreign administrative bodies, immigration and refugees, public schools and cultural heritage sites, the administration of numerous subsidies for businesses and NGOs, surveillance of medical products and drugs, epidemics, most aspects of regional water management, Natura 2000, the protection of species and the administration of natural heritage sites, urban planning (roads, noise protection, bicycle paths etc.), trans-communal public transport planning, air traffic, waterways, the fight against illegal labour, the protection of workers against social and technical risks, consumer protection, animal protection, crop protection, biodiversity and agriculture, viticulture and oenology, supervision of hunting, fire protection and firefighting, civil protection, money laundering, or the disposal of explosives and munitions.

When a provincial executive supervises the administrative performance (including inactivity) of local authorities, they usually control both legality and expediency. In practically all matters, the provincial executive is similarly supervised by various Land ministries. Accordingly, discretion can only be exercised within the limits of the laws, and the frequently narrow ordinances and general instructions of the supervising bodies.

#### *3.1.5. The local level*

The third (or lowest) level within Land administration can be called local. For historical reasons, the local level has the widest variety of administrative structures between and even within Länder, although these differences have diminished over the last two generations. To provide a more coherent overview, it is necessary to exclude city-states. In all territorial Länder, it is important to distinguish state matters from matters of local self-government in accordance with Article 28(2) GG (see below 3.2.1., 3.2.3.).

27 § 23(2) BW Land Administration Act (LVG BW).

The local level of state (Land) administration consists of districts ('Kreis') and towns with district powers ('kreisfreie Stadt'—these are towns that do not belong to any district). Within a district, there may be municipalities of different sizes, some of which bear the title of a 'town' ('Stadt'). Towns are granted more administrative power and duties than smaller municipalities. Länder apply different terms to distinguish between different types of towns. Therefore, one needs to consult each Land's laws to ascertain their differentiation and the duties that may or may not go with them.

Just as provinces, districts and towns with district powers cover the entire territory of the Land. The same cannot be said at the municipal level. In some Länder, such as Bavaria, certain uninhabited areas do not belong to any municipality, or large water surfaces are not part of a municipality's territory. In other Länder, the entire territory is attributed to municipalities.

The Land may impose the tasks and powers of the lowest level of state administration on districts and towns with district powers, as well as on municipalities belonging to a district, although to a lesser extent. Municipalities belonging to a district usually carry out those tasks of the lowest level that require immediate contact with the citizens but are routine for the administration, such as passport renewals, registrations, the land register, or the public order enforcement office ('Ordnungsamt'). The larger the town, the broader the duties of the state administration tend to become. State administration duties which tend to require more legal knowledge and less social contact with citizens are delegated to the district.<sup>28</sup> Many districts tend to organize their administration in a deconcentrated and decentralised manner, distributing their offices among various towns in their territory.

Most Länder have also tried to use smaller municipalities for state administration. Since these municipalities are often too small to carry out these tasks alone, Länder such as Baden-Württemberg allow them to form administrative cooperatives ('Verwaltungsgemeinschaften'), which carry out some or all of the administrative tasks of their member municipalities for an unlimited time.<sup>29</sup> Usually, an agreement to form such cooperatives requires the approval of the Land government.<sup>30</sup>

For a certain period and for defined affairs, municipalities and towns can collaborate with the district to carry out these duties jointly. Some procedural obstacles must be overcome before reaching a binding agreement.<sup>31</sup> Frequently, it is necessary to establish a common office for joint tasks. These common offices may later become a source of debate among the parties to the agreement, as highlighted by the experiences in many Länder.

The administration in the districts and towns with district powers, as well as in the municipalities belonging to a district, is organized to fulfil the tasks of both the lowest level of state administration and local self-government. Especially in smaller

28 For an example, see the (long) list of duties that are compulsorily settled on the districts in § 19 LVG BW.

29 §§ 15, 17, 19 LVG BW.

30 § 17 LVG BW.

31 For BW see § 16 LVG.



municipalities, both can be done, and often they are performed in the same room and by the same person with different functions. Officials who hand out new passports (thus exercising the task of state administration) might issue municipal tickets for reduced entry to public baths or local zoos (thus acting in the realm of autonomous local self-government), register new cars, or receive fines. Consequently, it is often not recognisable to the private party what capacity the official is acting on in the concrete case. However, for example, in legal protection, it matters in which function officials exercise their powers.

### *3.1.6. Private entities with administrative powers*

Federal and Land statutes may delegate certain administrative powers to private individuals and companies ('Beliehene'). Furthermore, the law empowers districts and towns with district powers to delegate duties to private parties. The law in question must stipulate which office is to administer the delegation under which guidelines, which office controls the private entities and the results of their administrative activities, the manner in which this control is exercised, what possibilities there are for rectifying mistakes, and how to bring a case before a particular court. Examples of private entities fulfilling public tasks include chimney sweepers or the TÜV, a private company specialised in testing the safety of technical installations, machines, and vehicles.

Furthermore, private and public interests are intertwined in specialised administrative fields. In these fields, stakeholders are organized by law in chambers with compulsory membership: enterprises in the chambers of commerce, the various crafts in chambers of crafts, and the various liberal professions in separate chambers, such as the chambers of advocates, physicians, or architects. Some chambers have a three-level hierarchy, starting at the local or district level, followed by the Land level, and finally, the federal level. Most chambers are public authorities and have a legal personality rooted in public law, but their will is formed not by civil servants but by the members of the community in question. Thus, they may qualify as public law organizations for civil society.

In addition, there is a significant number of tasks, most of them in social welfare, which are carried out by state or municipal entities, as well as by private parties. Examples include firefighting, healthcare, nursing, education, and caring for socially disadvantaged groups. Private parties in this field, such as private hospitals, nursing homes, infant schools, and schools, must conform to minimum legal requirements and operate under the (permanent) supervision of the state (usually the second or third level of administration), depending on the tasks at hand, for example, regarding hygiene, building requirements, employment requirements, etc. In some fields, private operators require a licence, and the licencing procedure helps public authorities organize their control over these private parties.

In addition, state administration organs cooperate with private experts in different fields, such as with environmental protection organizations, with interest representation organizations in the business sphere or the liberal professions (which

further the private interests of those groups, for public interest see above, ‘chambers’), or with private initiatives in the cultural sector. Some are granted special rights by law; for example, the right to initiate or be heard in administrative procedures. Similarly, certain stakeholder associations can or should be heard or consulted in some procedural settings, from prisoners to victims of accidents, from parents of schoolchildren to self-organizations of the elderly, from organized neighbours to sports organizations, and many more.

Finally, public entities may also own private companies. For example, the Federal Republic owns the Deutsche Bahn and the Länder; provinces, districts, and municipalities own shares in companies providing electricity or water. Other business interests differ among the Länder; for instance, BW owns a brewery and holds a majority stake at Stuttgart Airport.<sup>32</sup> Districts and municipalities must comply with certain limitations to avoid financial losses. They must approve the risks of the business and must not be overruled by private co-owners.<sup>33</sup>

### **3.2. Local self-government**

#### *3.2.1. Constitutional functions and framework*

Within the organization of public power, one of the main functions<sup>34</sup> of local self-government is administrative decentralisation. As a legal concept, the principle of local self-governance can be described as the autonomous task fulfilment of public entities through their own organs, under the purely legal supervision of the state. Another function of local self-government can be described as encouraging citizens to participate in public affairs, which is connected to the political term self-government in the sense of democratic participation in local public administration.<sup>35</sup> In this regard, local self-government facilitates the bottom-up construction of democracy.<sup>36</sup>

Grundgesetz establishes local self-government as an institutional guarantee rather than a collective fundamental right.<sup>37</sup>

Regarding the contents of local self-government, the wording of the Article 28(2) GG enshrines the entitlement of municipalities to regulate and administer the ‘public affairs of the local community’ independently and within the framework provided by law. Thus, the federal constitution itself differentiates between local issues (for which local governments enjoy universal autonomous jurisdiction) and public issues beyond the local level (which fall within the competence of the state, usually the Land, and in

32 For a complete list of BW Land property in business enterprises see the website of the BW Ministry of Finance. *Beteiligungen und Landesbetriebe im Überblick*, Baden-Württemberg Ministry of Finance, 2023.

33 For the conditions of such business and the different legal possibilities for cities see, e.g., §§ 102, 103 Local Self-Government Act BW.

34 Sachs, 2018, pp. 1059–1060.

35 Article 28(2) GG provides for a decentralized public administration on the basis of civic participation: Decisions of the Federal Constitutional Court (BVerfGE) 107, 1 (11).

36 BVerfGE 11, 266 (275).

37 BVerfGE 48, 64 (79).

rare cases the federation). Thus, the ‘public affairs of the local community’ define the constitutionally protected scope of local government autonomy. The ‘public affairs of the local community’ can be described as covering all issues deriving from the local community or being closely connected to it and, therefore, having an impact on local citizens as a community and the way they live together.<sup>38</sup> In contrast, the Land legislator must be granted a certain degree of discretion while defining the legal framework, as the circumstances of local communities continuously change due to technological progress (e.g. public transport or infrastructure), but also economically or in terms of demography. It is important to note that many public issues are simultaneously connected at both the local and regional or even supra-regional levels. Therefore, the legislature’s aforementioned discretion is subject to limited judicial review. The legislator is entitled to define standardised tasks and is not obliged to consider each municipality or group of municipalities.<sup>39</sup> However, the legislature must treat municipalities equally when distributing money or goods.<sup>40</sup> The principles described above are enshrined in the Land constitutions. Article 71 of the Constitution of BW contains wording similar to Article 28 of the GG, entitling municipalities to govern their (local) affairs independently within the framework provided by law.

Therefore, the legal supervision of decisions by the local government is limited, as provided by the relevant laws in each Land in accordance with the constitutional guarantees related to local self-governance. In the constitutionally protected ‘public affairs of the local community’, Land authorities may supervise local governments only for legality but are barred from controlling the expediency of local decisions and measures.

### 3.2.2. *Structure of local self-government and terminology*

In the Land of Baden-Württemberg, the all-German structure of the local, mid-, and state (Land) levels bears the following features, related to a total of 11.1 million inhabitants. There are 35 districts, nine towns with district powers (‘Stadtkreis’—this is the term used in BW for a town with district powers; in most other Länder, the term is ‘kreisfreie Stadt’), and 1,101 municipalities (‘Gemeinde’).

Among the latter, 315 are titled town (Stadt) as they have an urban character. The title of a town is conferred by the Land government.<sup>41</sup> The criteria for the term ‘urban character’ are met if the municipality has at least 10,000 inhabitants and possesses public infrastructure of the relevant size. Towns with more than 20,000 inhabitants can apply for the title of a Large District Town (Große Kreisstadt), conferred by the Land government. Ninety-five towns qualify as Große Kreisstadt.

The district reform (‘Kreisreform’) of 1973 integrated 65 districts into 35 new, larger districts. Currently, they represent more than 80 percent of the total population. The remaining 20 percent live in one of the nine towns with district powers.

38 BVerfGE 79, 127, 151.

39 GG/Hellermann, 54. Ed. 15.2.2023, GG Article 28 Rn. 41.

40 BVerfGE 137, 108.

41 § 5 BW Local Government Act.

### 3.2.3. *Tasks of the local government*

Among the ‘affairs of the local community’, i.e. in the original jurisdiction of the local government, German doctrine and legislation differentiate between three main types of tasks. The first category consists of the optional tasks, which the local government may or may not assume on the basis of a free choice (*‘freiwillige Aufgaben’*). Typically, these tasks relate to cultural issues, such as municipal libraries, museums, community halls, theatres, and adult education facilities. Many of these optional tasks are regulated by Land legislation. If the local government elects to assume such a task, it has to fulfil them within the framework of the relevant Land laws, e.g. on libraries or theatres.

Obligatory tasks (*‘Pflichtaufgaben’*) are prescribed by law.<sup>42</sup> Unconditional tasks (*‘unbedingte Aufgaben’*) must be fulfilled by any local government. Examples include local elections and the organization of a local fire brigade. Conditional tasks are compulsory only under certain circumstances, such as the adoption of a land-use plan. In obligatory tasks, the local government’s margin of discretion can differ depending on the following conditions: The *‘Pflichtaufgaben ohne Weisung’* (obligatory tasks without instruction) must be fulfilled, but the local authority is free to decide about the ‘how’. However, the exact extent of discretion can be limited by the instructions of the Land or binding criteria linked to financial contributions. In cases of obligatory tasks with instructions (*Pflichtaufgaben nach Weisung*), the Land—usually through legislation, and in rarer cases by administrative means—also prescribes how a task has to be fulfilled. A typical example in this regard is the organization of local elections.

### 3.2.4. *Organs of local authorities*

#### 3.2.4.1. Municipal council

The *‘Gemeinderat’* (municipal council) is the democratic representation of citizens and, therefore, the most important organ of the municipality. It consists of representatives elected by resident German and EU citizens over a five-year period. The number of members varies according to the municipality size. A small municipality with less than 1,000 inhabitants operates with a council of no more than eight members, and this number increases in several steps for larger municipalities, with the largest cities, comprising more than 400,000 inhabitants, having 60 representatives on their municipal council.<sup>43</sup>

Although the press tends to address councils as ‘municipal parliaments’, the municipal council is not legally a parliament; it is an administrative body that is

42 It must be noted that the fact that the Land legislation makes a certain task compulsory for local governments does not address the nature of that task as belonging to the ‘affairs of the local community’. These tasks still form part of the constitutionally protected autonomy of municipalities, towns and, to a certain extent, districts.

43 § 25 (2) BW Local Government Act. The only municipality in BW with more than 400,000 inhabitants is the Land’s capital, Stuttgart.

entitled to instruct the local administration by way of rule-making (byelaws) or individual decisions.

In the Land of Baden-Württemberg, as well as in other South German Länder, the legal framework for local governments provides for a mix of monocratic and collegial elements. The mayor, council, and municipal administration are all local self-governing institutions. The decisions are made by the municipal council and the mayor. The council adopts normative provisions as municipal byelaws ('*Gemeindesatzung*'), controls the municipal administration and the mayor, and makes decisions regarding municipal employees, unless the latter task is delegated to the mayor, for example, under a certain salary threshold. Finally, the council establishes a municipal budget.

#### 3.2.4.2. Mayor

The 'Bürgermeister' (mayor), who is styled 'Oberbürgermeister' (head mayor) in towns with district powers or in large district towns, has three main types of functions and corresponding powers. The mayor is the chairman of the municipal council and is entitled to vote in both the council and its committees. The second function of a mayor is to manage municipal administration. Third, a mayor represents a town or municipality.<sup>44</sup> The term of office lasts for eight years, and re-election is possible.

Although the council functions as the central political organ of the municipality, the practical aspects of policymaking at the local level require a strong mayor with the ability to integrate. The concept of a powerful mayor, characteristic of the South German 'communal constitution' (the German expression for systems of local government), provides that the mayor is the sole member of the municipal council involved in all three phases of local decision-making: (1) the preparation (drafting) of decisions, (2) the adoption of legally binding decisions in the council, and (3) their enforcement. In addition, the mayor is entitled to make decisions instead of the municipal council in urgent cases. Such decisions cannot be suspended before an urgently (without deadline)<sup>45</sup> convened meeting of the municipal council.<sup>46</sup> In practice, the municipal council often defines a certain amount of money as the threshold below which a mayor may adopt measures of the above type. The fact that the term of office of the mayor differs from that of the municipal council underlines the powerful position of the mayor, as well as the control functions of the municipal council over the mayor.

#### 3.2.5. *Structure of Municipal Administration*

The administration of a municipality is organized into offices with specific tasks and powers. This legal framework was enshrined under the Local Government Act. The mayor is the head of the municipal administration. A typical structure in BW is the division of the municipal administration into four larger units with numerous subunits, depending on the size of the municipality and the scope of the optional

44 §§ 42–44 BW Local Government Act.

45 The regular deadline for the mayor to convene a council meeting is at least seven days.

46 § 43 (4) BW Local Government Act.

tasks the municipality decides to assume. The four units typically are the main office ('Hauptamt'), where different types of tasks are concentrated, such as public communication, contact with the municipal council, human resources of the municipal administration, culture, education, sports, etc. More specific tasks are organized within the remaining units, among which one, the treasury ('Stadtkämmerei'), is responsible for public finances. A third unit called Office for Public Service and Social Affairs ('Amt für Bürgerservice und Soziales') deals with individual cases in all relevant specific fields. This unit conducts administrative procedures for citizens and residents. Environmental, building and construction issues, town development and planning and public buildings are often organized in a unit called Office for Construction and Environment ('Bau- und Umweltamt').

### 3.2.6. *District, District Council and District Administrator*

The 35 districts in BW are public entities that unite the municipalities within their territory. Their main aim is to enable smaller municipalities to fulfil public tasks for which their capacities are insufficient or which transcend municipal boundaries<sup>47</sup>. An example is public transport between municipalities. Typical examples of the capacity size-related shared tasks of small municipalities within a district are waste management, social and youth welfare services, hospitals, as well as vocational and special schools. Districts safeguard uniform and standardised public services for all citizens in their territories by deciding on the nature and extent of optional tasks and financing them. Relevant examples include sports facilities, cultural services, and nurseries.<sup>48</sup>

Similar to the municipal council, each district has a district council ('Kreistag') with elected representatives serving for a period of five years.

The district administration is headed by the district administrator ('Landrat'), who chairs the district council and its committees, but does not have the right to vote. The district administrator also manages the District Administrative Office ('Landratsamt') and represents the district. The district administrator is elected by the district council for eight years and has a dual nature: (s)he is the head of the autonomous district administration and a civil servant of the district; simultaneously, (s)he is also the head of the lowest administrative level of the Land ('untere Verwaltungsbehörde'). This position is analogous to that of mayors in towns with district power.<sup>49</sup>

### 3.2.7. *Decentralisation on the local level*

As municipalities are increasingly burdened with a growing number of optional and obligatory tasks, their financial situation has become a permanent topic in each Land in recent years. Studies have shown that municipalities with a population above 50,000 develop a growing tendency to outsource the fulfilment of their tasks. Outsourcing

47 § 1(1), (2) District Administration Act BW (Landkreisordnung für Baden-Württemberg).

48 For a detailed lists of all types of tasks (optional tasks as well as obligatory tasks with and without instructions) in BW see Landkreistag Baden-Württemberg, 2023.

49 § 15 Land Administration Act BW.

varies according to the legal form. The mildest type is a (decentralised) public law entity that fulfils the task. Formal privatisation transfers the task to a legal entity in private law owned entirely or partially by the municipality. Material privatisation is the strictest form of privatisation and means that a certain task is fulfilled by a private enterprise on the basis of a contract with the municipality. The tendency to outsource and privatise is driven by the liberalisation of certain economic sectors through EU legislation. Typical fields include public transport, waste management, water management, and the local and regional energy sectors. The economic pressure on local authorities to outsource tasks is often criticised because of the social and long-term financial risks for the municipality itself as it withdraws from the local economy. Citizens actively use the possibilities of legally and politically challenging outsourcing decisions.<sup>50</sup> It is important to note that the broad field of local self-government, as described above, allows municipalities to choose outsourcing as a type of task fulfilment. Therefore, outsourcing triggers not so much questions of legality as of financial and political expediency, for which there is no outside control in the realm of local self-administration. There is ongoing discussion in Germany in this regard, as numerous municipalities have realised that outsourcing often leads to weakened control over relevant tasks. Therefore, many municipalities are considering re-communalisation, and some have already entered this path.<sup>51</sup>

## **4. Current challenges in public administration**

### ***4.1. General challenges<sup>52</sup>***

The question of outsourcing, as mentioned above, is one of the current challenges to public administration. This relates to the wider question of who bears the costs of administration in a federal system of two-level statehood with an additional local self-government. Most modifications to the Grundgesetz occurred in the field of revenue distribution and financial allocation to various public actors.

In addition, the German Constitutional Court occasionally declared norms to be inconsistent with the Grundgesetz, and thereby triggered additional administrative tasks such as the recalculation of all land and building taxes. The Länder differ and will continue to differ in this regard, but they are all currently concerned with installing a new system to charge this tax in the future.

### ***4.2. Digitalisation***

The tax case highlighted a generally pressing challenge for public administration: Germany lags behind in terms of digitalisation. This is true for federal and Länder administrations, and for local governments. One reason for this is that many people

50 Klus, 2013, pp. 107–203.

51 Bogumil and Holtkamp, 2013, pp. 90–105.

52 A general overview, including present problems and overviews, is presented in part 1.

(specifically among older adults) are not accustomed to using computers when dealing with administration. Digitalisation is also progressing slowly within the administration.

Furthermore, federalism is averse to centralised and uniform solutions. Consequently, each Land experiments with its own solutions, and often, the solutions chosen by the various Länder are not compatible. Local autonomy has the same effect on the digitalisation of local governments: there are as many systems as there are local entities.

For example, the introduction of the electronic land register started in December 1993, but until today, the Länder differ in the software they use and the ways in which they make use of it. Until today, it was necessary in the Land of Schleswig-Holstein to write a letter or visit the respective office in person to obtain a legally valid extract from the land register.<sup>53</sup> Legally, non-binding perusal of the same material can be obtained digitally by way of commercial providers, sometimes at considerably higher costs. The project for a unified electronic land register for all German Länder remains in its early stages, although its advantages are clear.<sup>54</sup>

### ***4.3. Personal infrastructure: employment***

Another challenge for public administration is demography, with respect to the lack of a skilled workforce. A shortage of skilled labour is noticeable in the entire labour market. In public employment, the situation has worsened. Owing to the age structure, a large proportion of public employees and civil servants will retire in the next 10–15 years. The significant demand for employment in public services competes with the substantial demand in the private sector. Salaries in the private sector tend to be higher than those in the public service sector. However, public services offer a higher degree of job security.

Public employment faces a second problem, in addition to replacing large proportions of the workforce. The public sector must become more diverse to reflect the diversity of society. Upgrading public employment diversity may also help recruit suitable employees because it will make public employers more attractive to the labour market.

One way to recruit more applicants for public administration may be to extend the number of civil servants with a special status ('Beamte'). However, this is contrary to Länder's efforts to augment the number of employees and concurrently reduce the number of civil servants. Generally, it is more expensive to fill a position with a civil servant than with an employee. During the last three decades, the Länder have attempted to recruit teachers in public schools or the local and district workforce (except for leaders) as employees, rather than civil servants. If this tendency

53 Elektronisches Grundbuch [Online]. Available at: [https://www.schleswig-holstein.de/DE/landesregierung/themen/digitalisierung/elektronisches-grundbuch/elektronisches-grundbuch\\_node.html](https://www.schleswig-holstein.de/DE/landesregierung/themen/digitalisierung/elektronisches-grundbuch/elektronisches-grundbuch_node.html) (Accessed: 24 May 2023).

54 Einführung [Online]. Available at: <https://www.grundbuch.eu/einfuehrung/> (Accessed: 24 May 2023).



is reversed in the interest of filling positions, then older and more experienced employees will be superior to younger and less experienced civil servants. Owing to a more mobile workforce, the Länder may also have to compete with each other for the best candidates, a phenomenon previously known merely from the fringes of public service, for example, from leading university professors. Poorer Länder may have to push themselves to the limit to fill open positions. This is even more true for towns and districts, where salaries are somewhat lower than those of the Federation or a Land.

#### ***4.4. Material infrastructure: public buildings***

The need for more resources arises when many public office buildings, schools, etc., need thorough modernisation. Many public edifices were built after the WWII. Planning new buildings must consider the wider use of remote work. During the COVID-19 pandemic, remote work has also expanded public services. Many public employees and civil servants want to continue using this system. Furthermore, reducing commuting between homes and workplaces is a means of fighting climate change. Therefore, many investments in public buildings now require a vision of the evolving German public service.

Often, tearing down buildings and constructing new ones may be the most effective solution. This is not an easy task: buildings have to bring together hitherto separated offices, fulfil the conditions for easy public access and sustainability, and fit within the limited spaces available in the inner cities. A split between an inner-city front office and a big office building with back-offices on the outskirts may be an option, although this also requires an adjustment of administrative procedures.

#### ***4.5. Financial infrastructure: distribution of public revenue***

Another challenge is the sufficient financing of tasks and duties within the federal structure of state administration. Traditionally, the number of tasks fulfilled at the lower levels of public administration is not commensurate with the taxes and other revenues generated at those levels. In the case of local self-governments, the demand for compensation paid by the Federation or the Land for burdening local self-governments with the execution of state and other tasks is a regular topic of political debate.

The abovementioned challenges can only be faced properly if all levels of public administration are financially well-equipped. Local self-governments incurred a total financial deficit of 5.8 billion euros for the year 2022. The financial projections for 2023 are also negative. Germany does have the financial capacity to properly equip the entire public sphere. Nevertheless, the allocation of financial resources to several levels of public administration is under constant pressure. One stress factor is the public debt clause, which was introduced in Article 109(3) of the GG in 2009. This public debt clause strictly limits new loans to the entire public sphere (Federation, Länder, local authorities, and public social insurance bodies). Consequently, the expenditure necessary to finance the modernisation and reform of public administration must be paid more or less completely from the current state revenue and cannot be financed

through credit. This limits the capacities, especially of the Länder and local levels, to react in time and proactively to challenges such as digitalisation, workforce, demography, or climate change.

#### ***4.6. Climate change***

Finally, climate change poses a challenge for public administration. There are several aspects of this challenge: (1) Fighting climate change and its consequences requires local action but a global perspective. German public administration is traditionally organized according to the principle of subsidiarity, which assigns many administrative tasks at low levels. These levels may be adequate for local action, but because of the smallness of their geographical jurisdiction, they are not well-equipped for a global perspective. The fragmentation due to federalism makes it even more difficult to implement Germany-wide strategies against climate change, because this implementation requires constant close cooperation among the many agents of political will-forming and public administration. (2) Public administration contributes to climate change. Public authorities must become aware of the necessity to reduce the ecological impact of, for example, their buildings, as mentioned before, or their behaviour and routines, such as official trips or avoiding the use of paper when a completely electronic procedure is possible. (3) Fighting climate change is a task that affects practically all fields of life and most fields of public administration. Public authorities need to get used to including climate interests in their daily work even if they are not active in open climate-related fields. For instance, it is evident that local governments will have to consider the danger of increasing inundations when planning areas near riverbeds. However, climate awareness is also desirable and even necessary when awarding social aid. Authorities may prioritise aid for climate-neutral behaviour over other expenditures, such as by helping low-income households with free public transport tickets rather than contributing to the petrol consumption of a car.

#### ***4.7. ‘Good practice’ in German public administration?***

There may be no single area of public administration where one of the German Länder or the Federation has developed what could be called a ‘best practice’. This is partly due to the German system of federalism: laws are enacted by the Federation but executed by the Länder, which combines an input legitimization with output achievements or the urge for ‘best practice’, being of lesser importance. However, the greatest achievement of the majority of German administration is that it runs smoothly, is up to the tasks, and is rather ‘bürgerfreundlich’ (this German word literally means ‘friendly to the citizen’ and describes an attitude of the public administration which is polite, friendly, helpful, accessible, and most of all, open to the needs and wishes of the individual citizen). This overall positive state of public administration permits further development to be implemented in rather small steps, without much public attention or even public outcry, and with high professional standards.

The setback of this setting for relatively slow but constant development is the inability, or at least the problematic attitude, towards significant changes and challenges, which we have mentioned a few times. Still, it was quite an achievement to integrate most of the more than one million people who came into Germany in 2015/16 into German society, and to do so in a legal, professional, and humane manner.

The sudden influx of many refugees in 2015/16, as well as the severe inundations in the Ahr and Erft valleys in 2021, yielded another lesson regarding ‘good practice’. Although public authorities are, traditionally, slow and fragmented over a larger number of entities (Federation, Land, local government, autonomous bodies, etc.), they managed to react rather quickly and adequately with the help of long-standing close ties of cooperation between the public sphere and civil society. Associations, churches, trade unions, local units of political parties, and many similar agents rushed to assist the public organs because of the long traditions of cooperation; public and private activities could be coordinated quite smoothly, albeit after an initial phase of turmoil.

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