# The Parliamentary System under the Basic Law

Fundamentals / Institutions / Tasks

Excerpt from the Basic Law for the Federal Republic of Germany (Articles 20 – 104)



In Germany, no one rules alone.









Political parties shall participate in the formation of the • political will of the people. They may be freely established. Article 21 / Political parties



The Federal Republic of Germany is a democratic and social federal state. All state authority is derived from the people. It shall be exercised by the people through elections and other votes and through specific legislative, executive and judicial bodies. Article 20 / Constitutional principles - Right of resistance

Save the following provisions, the Bundestag shall be elected for four years. (...) Article 39 / Electoral term – Convening

# **Basic Law**

for the Federal Republic of Germany (Excerpt from the Articles 20 – 104)

II. THE FEDERATION AND THE LÄNDER

## Article 20

## **Constitutional principles**

- 1/ The Federal Republic of Germany is a democratic and social federal state. 2/ All state authority is derived from the people. It
- shall be exercised by the people through elections and other votes and through specific legislative, executive and judicial bodies.
- 3/ The legislature shall be bound by the constitutional order, the executive and the judiciary by law and justice.

### Article 21 Political parties

1/ Political parties shall participate in the formation of the political will of the people. They may be freely established. Their internal organisation must conform to democratic principles. They must publicly account for their assets and for the sources and use of their funds.

#### Article 22 Federal capital – Federal flag

- 1/ Berlin is the capital of the Federal Republic of Germany. The Federation shall be responsible for
- representing the nation as a whole in the capital. Details shall be regulated by federal law. 2/ The federal flag shall be black, red and gold.

## Article 30

Sovereign powers of the Länder

Except as otherwise provided or permitted by this Basic Law, the exercise of state powers and the discharge of state functions is a matter for the Länder.

### Article 31 Supremacy of federal law

Federal law shall take precedence over *Land* law.

Spelling and grammar correspond to the original English version of the Basic Law. The headings of the articles are not an official part of the text. Individual paragraphs have been abridged.

## III. THE BUNDESTAG

#### Article 38 Elections

- 1/ Members of the German Bundestag shall be elected in general, direct, free, equal and secret elections. They shall be representatives of the whole people, not bound by orders or instructions
- and responsible only to their conscience. 2/ Any person who has attained the age of eighteen shall be entitled to vote; any person who has
- attained the age of majority may be elected. Article 39

## Electoral term

1/ Save the following provisions, the Bundestag shall be elected for four years. (...)

The Federal Government shall consist of the Federal Chancellor and the Federal Ministers. Article 62 / Composition

Article 63 / Election of the Federal Chancellor Article 65 / Power to determine policy guidelines -Department and collegiate responsibility

## **Federal Chancellor**

Members of the German Bundestag shall be elected in general, direct, free, equal and secret elections. They shall be representatives of the whole people (...). Article 38 / Elections

Bundestag

## Members of parliament discuss new laws and amendments to laws and vote.

## IV. THE BUNDESRAT

## Article 50

- The Länder shall participate through the Bundesrat in the legislation and administration of the Federation and in matters concerning the European Union.
- Composition Weighted voting
- 1/ The Bundesrat shall consist of members of the Land governments, which appoint and recall them. (...)
- 2/ Each Land shall have at least three votes; Länder with more than two million inhabitants shall have four, Länder with more than six million inhabitants five and Länder with more than seven million inhabitants six votes.
- B/ Each Land may appoint as many members as it has votes. The votes of each Land may be cast only as a unit and only by Members present or their alternates.

## V. THE FEDERAL PRESIDENT

#### Article 54 Election – Term of office

- 1/ The Federal President shall be elected by the Federal Convention without debate. Any German who is entitled to vote in Bundestag elections and has attained the age of forty may be elected.
- 2/ The term of office of the Federal President shall be five years. Re-election for a consecutive term shall be permitted only once. / The Federal Convention shall consist of the Members of the Bundestag and an equal number
- of members elected by the parliamentary assemblies of the Länder on the basis of proportional representation.

#### Article 59 International representation of the Federation

1/ The Federal President shall represent the Federation in international law. He shall conclude treaties with foreign states on behalf of the Federation. (...)

## VI. THE FEDERAL GOVERNMENT

#### Article 62 Composition

The Federal Government shall consist of the Federal Chancellor and the Federal Ministers.

- Article 63 Election of the Federal Chancellor
- I/ The Federal Chancellor shall be elected by the Bundestag without debate on the proposal of the Federal President.
- / The person who receives the votes of a majority of the Members of the Bundestag shall be elected. The person elected shall be appointed by the Federal President.

## Article 64

Article 65

Appointment and dismissal of Federal Ministers 1/ Federal Ministers shall be appointed and dismissed by the Federal President upon the proposal of the Federal Chancellor.

## Power to determine policy guidelines -

Department and collegiate responsibility The Federal Chancellor shall determine and be responsible for the general guidelines of policy. Within these limits each Federal Minister shall conduct the affairs of his department independently and on his own responsibility. The Federal Government shall resolve differences of opinion between Federal Ministers. (...)

## PROCEDURES

## Article 70 and the Länder

power on the Federation.

Article 76 Bills

floor of the Bundestag.

## Article 77 Legislative procedure

- without delay.
- Article 78 Passage of federal laws the Bundesrat consents to it (...)
- Article 82 **Certification – Promulgation**
- in the Federal Law Gazette. (...)



A bill adopted by the Bundestag shall become law if the Bundesrat consents to it (...). Article 78 / Passage of federal laws



Federal Ministers shall be appointed and dismissed by the Federal President upon the proposal of the Federal Chancellor. Article 64 / Appointment and dismissal of Federal Ministers – Oath of office

> Berlin is the capital of the Federal Republic of Germany. The Federation shall be responsible for representing the nation as a whole in the capital. (...) The federal flag shall be black, red and gold. Article 22 / Federal capital – Federal flag

Article 50 / Functions Article 83 / Execution by the Länder

Federal laws shall be adopted by the Bundestag. (...) Article 77 / Legislative procedure – Mediation Committee

VII. FEDERAL LEGISLATION AND LEGISLATIVE

## Division of powers between the Federation

1/ The Länder shall have the right to legislate insofa as this Basic Law does not confer legislative

1/ Bills may be introduced in the Bundestag by the Federal Government, by the Bundesrat or from the

1/ Federal laws shall be adopted by the Bundestag After their adoption the President of the Bundestag shall forward them to the Bundesrat

A bill adopted by the Bundestag shall become law if

1/ Laws enacted in accordance with the provisions of this Basic Law shall, after countersignature, be certified by the Federal President and promulgated VIII. THE EXECUTION OF FEDERAL LAWS AND THE FEDERAL ADMINISTRATION

### Article 83 Execution by the Länder

The Länder shall execute federal laws in their own right insofar as this Basic Law does not otherwise provide or permit.

#### Article 84 Länder administration – Federal oversight

- 1/ Where the Länder execute federal laws in their own right, they shall provide for the establishment of the requisite authorities and regulate their administrative procedures. (...)
- 2/ The Federal Government, with the consent of the Bundesrat, may issue general administrative provisions.
- 3/ The Federal Government shall exercise oversight to ensure that the Länder execute federal laws in accordance with the law. (...)

Articles 70 – 78

Article 103 / Fair trial

Article 92 / Court organisation

Article 97 / Judicial independence

Article 104 / Deprivation of liberty

Article 51 / Composition – Weighted voting

## IX. THE JUDICIARY

#### Article 92 Court organisation

The judicial power shall be vested in the judges; it shall be exercised by the Federal Constitutional Court, by the federal courts provided for in this Basic Law and by the courts of the Länder.

### Article 97 Judicial independence

the law.

Article 103 Fair trial

1/ Judges shall be independent and subject only to

## I/ In the courts every person shall be entitled to a hearing in accordance with law.

#### Article 104 Deprivation of liberty

- 1/ Liberty of the person may be restricted only pursuant to a formal law and only in compliance with the procedures prescribed therein. Persons in custody may not be subjected to mental or physical mistreatment.
- 2/ Only a judge may rule upon the permissibility or continuation of any deprivation of liberty. (... The police may hold no one in custody on their own authority beyond the end of the day following that of the arrest. (...)

- Legend (explanation of colours and symbols) Fields highlighted in light pink refer to the executive Fields highlighted in light blue refer to the legislature Fields highlighted in light yellow refer to the judiciary

into practical policy.

element of the democratic system.

Bundeszentrale für politische Bildung, Bonn 2011



Federal

## **Division of powers**

The division and interaction of the three branches of power is intended to limit the power of the state.\*



- \* Explanation of the interaction of the branches of power (institutional separation of powers): Today, separation of powers is a defining feature of any true democracy. First and foremost, the courts must be independent of the government and must be guided only by the law. In Germany, the highest court, the Federal Constitutional Court (part of the judiciary), can stop the Federal Chancellor (part of the executive) and likewise Parliament (the Bundestag, which is part of the legislature) if they do or decide something that violates the constitution.
- However, the executive and the legislature no longer oppose each other in practice. On the contrary, they interact in terms of personnel (interaction of powers). A parliamentary majority, the governing coalition, elects a member of parliament as head of government (Federal Chancellor), who nevertheless remains a member of parliament. The governing coalition naturally sees no reason to control "its" government in the first place, but rather supports it where it can. After all, the government wants to translate the political programmes and ideas of the parliamentary majority
- The opposing role and essentially also the role of the controller of the government has thus passed from parliament as a whole to the opposition. In this respect, the opposition is an indispensable
- Source: Thurich, Eckart: pocket politik. Demokratie in Deutschland.

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## Tip!

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