

Territorial reforms of municipalities and counties in East German Federal States (Länder)
Variations, determinants and dynamics

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1. Local level territorial consolidation/reform in East German Länder - a “special case” of post-socialist transformation

East Germany presents a “special” and contradictory case of post-communist institutional transformation, following 1990, which essentially includes the (re-) introduction and (re-)structuring of local government and its territorial reform and consolidation. On the one hand, like the other countries in Central Eastern Europe, East Germany, between 1945 and 1990, was under Communist rule and, after 1990, underwent the radical transformation from a centralist dictatorial state organisation to democratic decentral government. On the other hand, however, unlike its Central Eastern European counterparts, the institutional transformation in East Germany’s newly (re-)founded Länder has been greatly shaped, in the course of German Unification, by the “institutional transfer” from West to East Germany (see Wollmann 2003: 29 ff. with references).

1.1. Point of departure: the centralist (“Stalinist”) State model

Along with the other Central East European countries, East Germany was, from 1945 until 1990, for almost half a century, an integral part of the (Stalinist and post-Stalinist) Soviet system and, on the top of it, proved to be perhaps the most die-hard adherent to dictatorial Communist Party rule until its very last days.

The German Democratic Republic which was established 1949 on the territorial basis of the Soviet Occupational Zone politically and organisationally experienced a wholesale “Sovietisation” with the imposition of the Soviet (“Stalinist”) State model to ensure centralist Communist Party rule.

- Whereas the traditional two-tier local government structure consisting of counties (Kreise) and municipalities (Gemeinden, Städte) was formally retained, it was turned into local levels that were designed to serve as local agencies and offices of centralist State and Party rule. While the multitude of small municipalities, altogether 7.564 (with an average of 2.200 inhabitants), were left territorially unchanged, the county level saw a sweeping territorial revamping as the number of counties from expanded from 90 to 189 (averaging 60.000 inhabitants) in order to make them more suitable to serve as local operational basis of centralist administration.

- The (five) Länder which, after 1945, were temporarily re-admitted by the Soviet Occupational Force were suspended in 1952 and finally abolished in 1956. In their lieu (14) meso-regional level administrative districts (Bezirke) were put in place to serve as the regional backbone of centralist State and Party rule in line with the oblasti of the Soviet State model (see Wollmann 2003: 21, Wollmann 1997: 260 ff.).

1.2. Unification of the two German States by way of East Germany's "integration" in the (West German) Federal Republic

Making East Germany an exceptional and "special case" of post-communist transformation it was embedded in and driven by the process of German Unification which was essentially effected by way of East Germany's political, social, economic as well as institutional "integration" in the (West German) Federal Republic in which, in constitutional terms, was identified as "accession" (Beitritt). At midnight of October 3rd, 1990, in a historically and internationally unprecedented "logical second", the German Democratic Republic's entire legal and institutional order ceased to be valid, while the whole constitutional, legal, institutional (as well as economic and social) system of the "old" Federal Republic and its, as it were, "ready-made State" were extended and expanded onto East Germany. The historically unparalleled institution transfer (Institutionentransfer, see Lehbruch 1994) was accompanied and promoted, particularly in its early formative stage, by a massive personnel transfer as thousands of West German administrative experts and "aides" (Verwaltungshelfer) commuted or moved to East Germany. A third pivotal transformation were enormous (and still ongoing) financial transfers. Hence, East Germany's transformation was crucially shaped and driven by that powerful triad of institution, personnel and finance transfers which glaringly distinguishes it from the other post-socialist countries. (see Wollmann 2003: 154).

At this point it should, however, be borne in mind that, prior to 1945 and the post-war division, East Germany and West Germany were one national state that was, between 1919 and 1933, democratic federal state with a strong local government level. So, while between 1945 and 1990 the centralist Stalinist state model had made and left its institutional imprint, the reconstruction of decentral government in East Germany could, to some extent, draw on the institutional traces and "memories" of joint pre-Nazi and pre-Communist history.

1.2.1. Some core elements of "institution transfer"

To get a better grasp of the impact that the institution transfer from “West to East” has had has on rebuilding local government in East Germany in general and on territorial reform and consolidation in particular some key features of the “West German model” should be, in brevity, recalled.

Traditionally Germany’s (two tier) local government system is made up of the counties (Kreise) and the municipalities (Gemeinden, Städte). Besides, particularly in urban and metropolitan areas, (“single tier”) county boroughs (kreisfreie Städte) are in place which combine county and municipal functions and play a significant political and functional role on the local level¹. Constitutionally speaking the local government levels are regarded as constituent parts of the Länder level.

While in Germany’s two-tier federal system, made up of the federal (Bund) and the federal States (Länder) levels, the Federal Constitution of 1949 gives an “institutional guarantee” of local government². But it is essentially left to the constitution and the legislation of each Land to regulate local government and to also decide on its territorial structure. Hence, reflecting the federal fabric, there has traditionally been a great variance, from Land to Land, in local government schemes (as well as of territorial reform strategies).

While the local authorities are thus subject, also in the definition of the local government scheme and territorial format, to the legislation of the respective Land, they have been the right of lodge a “constitutional complaint” (Verfassungsbeschwerde) with the (federal respectively Land) constitutional court in defence of the constitutionally guaranteed “local self-government” which also applies to legislation adopted by a Land on territorial reforms (see below)..

¹ About 33 % the total number of local government personnel are employed by *kreisfreie Städte* as compared to 37 % by “normal” (“two-tier”) municipalities and 26 % by counties, figures for 1994, from Wollmann 2008a: 59
² In Art 28 of the Federal Constitution local self government is described as the “right of the municipalities to settle (*regeln*) all matters of the local community (*örtliche Gemeinschaft*), within the frame of the law, in their own responsibility”.

Territorial reform/consolidation in (West German) Länder

During the 1960s and 1970s, similar to policies pursued particularly in Great Britain and Sweden (see Norton 1994: 40 ff.), the Länder individually embarked on territorial and organisational reforms of their county and municipal levels.. In their reform moves the Länder were basically guided by two different principles and goals: On the one hand, they aimed at improve the administrative effectiveness and efficiency of the local administration, particularly, in mirroring the “planning euphoric” zeitgeist of that period, its planning capacity. On the other hand, the democratic and political viability of the local government units were meant to be fostered (see Wollmann 2004a for details and references).

Whereas all Länder agreed on demographically and territorially enlarging the counties, they chose different strategies and “logics” with regard to the municipal level whereby the administrative efficiency” and/versus the local democracy goals were given different weight and accent.

A minority of Länder in which administrative efficiency was emphasised opted for large-scale amalgamation of municipalities and for the creation of “integrated” municipalities, Einheitsgemeinden. Of this reform strategy and “logic” Land of Nordrhein-Westfalen was exemplary. In arriving at municipalities that have an average of 45.000 inhabitants it has fallen in line with what has been labelled, with an eye particularly on England and Sweden, a “North European” pattern of territorial reforms (see Norton 1994: 40 ff.).

By contrast, most Länder, in seeking to strike a more appropriate balance between the administrative efficiency goals, chose “mixed” or “two-pronged” reform strategies in that the predominantly small-size structure of municipalities has retained (in claiming to preserve local democracy), while, at the time, a new layer of intercommunal bodies (labelled Verwaltungsgemeinschaften, Ämter) has been introduced (in order to provide administrative capacity and “muscle” to small municipalities by which they are formed). With slight institutional variance between the Länder, the intercommunal bodies are run by boards and directors that are indirectly elected/appointed by the member municipalities³ with their operations being funded largely by the latter. In view of the persisting small size of the municipalities these Länder can be counted as falling under the “South European” territorial organisation pattern (see Norton 1994: 40 ff.) of which France (with some 35.000

³ As an exception in *Land of Rheinland-Pfalz* so called “community unions” (*Verbandsgemeinden*) have been “invented” as an (innovative) type of intercommunal body which is a kind of “double-decker” municipality with an elected council and an elected mayor on either “deck”.

municipalities, communes, averaging about 1.700 inhabitants) is characteristic (see Wollmann 2004 – 2008a with references). In a similar vein, the formation of intercommunal bodies in most of the Länder is reminiscent of France's intercommunalité which is a response to the traditional multitude of small-size municipalities and an attempt to provide them with operational resources through institutional forms of intercommunal co-operation (see Wollmann).

In designing and implementing their territorial reform policies the Länder governments have, in both reform options, typically pursued a tactically “mixed” (as it were, “carrot and stick”) approach in which they, after putting forward a scheme (guideline, Leitkonzept) of the aimed-at territorial structure, at first opened up a broad “participatory” (public hearings etc.) and “voluntary” phase to give the local councils and stakeholders the opportunity to adapt to the Land government's reform scheme, often prompted and “persuaded” by financial incentives (“marriage premiums”). If and insofar consensus was, however, not achieved, it was seen in the Land parliament's power to finalise the reform the reform, in the last resort, by way of binding legislation. Hence, while the approach was, thus, meant to make ample use of (bottom-up) participatory and voluntary elements, the final say was left, in the last resort, to (top-down hierarchical) legislative decision. came, in the last resort, by (topit came finally down with a hierarchical decision. The “carrot and stick” approach was employed in enforcing large-scale amalgamation as well in establishing the Land-wide coverage of intercommunal bodies. The enforcement of territorial reforms by, in the last resort, “hierarchical” legislation has been typical of countries of “North European” reform pattern in which the national parliaments are seen to have the power and legitimacy to redraw local government boundaries even against the will of the local population.

This stands in stark contrast with countries, such as France and Italy, whose “South European” territorial reform pattern (see Norton 1994: 40 ff.) is culturally and politically characterised by the principle of making local level territorial reforms contingent on the consent of the local population and of ruling out corresponding top-down “hierarchical” intervention by national legislation (for France see Wollmann , for Italy Bobbio 2005::). In a similar vein, in such countries the formation of inter-communal bodies is largely left to the voluntary decision by the municipalities concerned, again in stark contrast with German Länder where the of Land-wide coverage with intercommunal bodies is, in the last resort, mandated by binding legislation.

A sort of constitutional and judicial counterweight to the legislative grip of the Land parliaments on the territorial structure of local government can be seen in the judicial instrument of “constitutional complaints”, (Verfassungsbeschwerden) by way of which the municipalities and counties may appeal to the respective Land’s Constitutional Court with the claim that their constitutionally guaranteed right to local government (see Werner 2002) has been violated by legislative reform act.. While it is accepted constitutional doctrine that the individual municipality (or local population) does not have a constitutionally protected right to retain its respective territorial identity, the constitutional courts have spelt out a number of procedural (“due process”) criteria which the Land parliament is held to observe in its decision-making on territorial reforms. Although most of the “constitutional complaints” that were filed by local authorities in (West German) Länder particularly during the 1960s and 1970s were dismissed by the constitutional courts (for lack of constitutionally relevant violations of “due process”), the mere judicial availability of “constitutional complaint” in the hands of local authorities serves as a kind of “Damoclesian Sword” pending over, and possibly restraining political decision-making on local level territorial reforms (for the instructive of a successful “constitutional complaint” in the East German Land of Mecklenburg-Vorpommern see below).

2. Territorial reforms in East German Länder during the “founding period” of the local government level (in the early 1990s)

In subsequently analysing the territorial reforms of the local government levels in the East German Länder the distinction will be made between the “founding period” of the local government structures which, immediately following 1990, was characterised by their dramatic rupture from the “late-Stalinist” state model and the “institution transfer”-driven build-up and reform of local authorities, on the one hand, and a “reform of the reform” phase in which, essentially since the 2000’s, institutions, put place in the “founding period”, have gone through a new round of institutional change and reform, on the other.

As the territorial reforms of municipal and the county levels have been tackled in separate, but closely interrelated strands, they shall be taken up here sequentially.

Table 1: Municipalities territorial/organisational reforms in East German Länder

data	population (in mio)	population density (per square km) (in 1990)	Municipalities				
			total number (in 1990)	founding period (during the 1990s)	consolidati on period (during the 2000s)	average size	percentage of municipaliti es being members of intercommu nal bodies
Länder							
Brandenburg	2,5	88	1.739	1.739	421 (after 2003 reform)	5.900 (after 2003 reform) ---- 1.500 (before 2003 reform)	64 (after 2003 reform) ---- 96,6 (before 2003 reform)
Mecklenburg- Vorpommern	1,7	77	1.149	1.149		1.560	95,4
Sachsen	4,4	241	1.626	547	547	8.100 (currently)	62
Sachsen- Anhalt	2,6	129	1.270		420 (estimated after 2009 reform)	5.000 (estimated after 2009 reform)	Less than 50 (estimated after 2009 reform) --- 83,5 (before 2009 reform)
Thüringen	2,4	151	1.025	1.025		2.300	85,7
East German Länder			7.564 (in 1990)			2.200 (in 1990)	

Sources: Wollmann 1997: 291, Laux 1999, own data update

2.1. Most East German Länder: Retaining small-scale municipalities plus creating intercommunal bodies

Although they inherited an extremely small-size structure of municipalities (for instance Land of Brandenburg with, on the average, 1.500 inhabitants and Land of Mecklenburg-Vorpommern with 1.560, see table 1) four of five East German Länder (with the exception of Land of Sachsen), opted, in line with the reform approaches chosen by most West German

Länder during the 1960s and 1970s, for the “mixed” strategies of leaving the small municipalities territorially unchanged and of, at the same, introducing a new layer of intercommunal bodies, called, following the West German examples, Ämter or Verwaltungsgemeinschaften. The reason for not territorially redrawing the multitude of small municipalities was clearly political, as the post-communist East German politicians widely agreed that these should not be impaired as arenas of small-scale, if not “grass-root” democracy in rendering political homage to the significant role which local level civic groups played in bringing down the Communist regime (see Wollmann 2004a).

In the introduction and implementation of the layer of intercommunal bodies the East German Länder essentially followed the kind of “carrot and stick” strategy which their West German counterparts pursued during the 1960s and 1970s. Thus, after putting forward guidelines (Leitlinien) on the planned minimal size of self-standing municipalities and of intercommunal bodies, the Land governments conducted public hearings etc. and opened up a “dead-lined” “voluntary” phase. While, as a result, the regrouping of the small municipalities in intercommunal bodies came about on a voluntary basis, also encouraged and persuaded by financial incentives (“carrots”); largely in line with the government’s Leitlinien. the final decisions were made by binding legislation (“stick”).

The functional “symbiosis” between the intercommunal bodies and their member municipalities largely followed again the model borrowed from the West German counterparts. In providing the latter with organisational capacity and administrative “muscle” the intercommunal bodies carry out local government matters as well as functions delegated to them by the State (Land), such as maintenance of school facilities, of local roads, waste management. They are run by decision-making councils the members of which are not elected directly, but elected/appointed indirectly by the councils of the member municipalities. Their executive functions are carried out by an administrative director who is appointed by the intercommunal council. For their operations the intercommunal bodies have their own staff and budget which financed from the budgets the member communities or through state grants.

At the same time, the member municipalities continue to be territories and arenas of of the elected local government that are politically responsible for the budgetary decisions, urban planning etc. .

In the four Länder under consideration the new schemes of intercommunal bodies went into effect in December 1993 respectively in June 1994 and comprise between 96,8 percent (in Land of Brandenburg) and 83,3 percent of all municipalities (in Land of Sachsen-Anhalt (see table 1).

2..2. Land of Sachsen – an exception in preferring amalgamation

As an exception among East German Länder, the government of Land of Saxony made it clear, following 1990 from the outset, that it would give preference to amalgamating and merging existing municipalities and to create territorially enlarged “integrated” municipalities (Einheitsgemeinden). A significant reason for Saxony’s somewhat deviant reform course probably lay in its settlement structure which is the most highly urbanised among East German Länder. By skilfully combining political “arm-twisting” with financial incentives (“marriage premiums” (see Schnabel 2001: 394) the Land government succeeded in reducing the number of municipalities (on a more or less “voluntary” basis) from 1.600 (in 1999) to 547 - with 60 percent of the remaining municipalities continuing to be members of intercommunal bodies (see table 1).

2.3. Territorial county reforms during the “founding period”

After 1990, the Länder governments were unanimously determined, from the outset, to tackle large-scale territorial reforms of the counties.. The reasons for this resolve of all Länder governments political, functional as well as organisational. For one, as the counties had been redrawn under the Communist regime in 1952 to fit them into centralist State machinery, all agreed that, as organisational heritage of the Communist era, they should be remoulded. Furthermore, because of the small size to which they were reduced in 1952 they were deemed organisationally and functionally unfit to cope with the multiple tasks assigned to them under the new local government model. Guidance was also taken from West German experience of having counties with between 150.000 and 200.000 people (see Wollmann 2004a).

As a result of territorial county reforms that undertaken by the Länder after 1990 and which were completed remarkably fast by 1994 the number of counties came down from 189 to 86 raising the population average from 60.000 to some 150.000.

Table 2: Counties in East German Länder

data Länder	population (in mio)	population density (per square km)	Counties			
			1990 number	founding period: reforms in 1993/1994	consolidation period (during the 2000's)	population size
Brandenburg	2,5	88	38	14		average 143.000
Mecklenburg- Vorpommern	1,7	77	31	12	5 (failed 2007 Reform)	average 375.000 (failed 2007 reform)
Sachsen	4,4	241	48	23	10 (after reform 2008)	(after 2008 reform) ranging between 216.000 and 356.000
Sachsen- Anhalt	2,6	129	37	21	11 reform 2007	
Thüringen	2,4	151	35	17		
East Germany			189	86 (1994)		

Sources: Wollmann 1997: 291, Laux 1999, own data compilation

3. New round of territorial reforms since the early 2000's

Since the early 2000's a new round of territorial reforms has picked up momentum in some Länder in what might be labelled "reforms of reforms" as some territorial structures that had been put in place in the first wave of reforms encountered growing criticism and were seen to need some repair..

3.1. Territorial municipal reforms since the 2000's

The call for a new round of municipal territorial and organisational reforms has been largely ignited and fuelled by an increasingly negative assessment of the institutional and functional

combination of intercommunal bodies and their member municipalities that was the pivotal concept and “logic” core and “logic” of the territorial reforms embarked by most East German Länder. The rationale and logic of mutual complementarity and functional “symbiosis” was increasingly questioned insofar as it was premised on the assumption and expectation that the preservation of small municipalities would be good for local democracy, while the creation of intercommunal bodies would provide the required administrative “muscle”. The intended symbiosis was critically seen as foundering on both scores.

With regard to the multitude of small-size municipalities there appears to be growing evidence that particularly in the very small ones the local democracy potential has thinned out and dwindling since it is becoming, for instance, more and more difficult to attract a sufficient number of candidates to conduct proper local council as well as mayoral elections. Thus, in some small municipalities council elections had even to be called off and mayoral position remained vacant because of the lack of candidates (see Mier 2005:6, BLPB 2008:1)⁴. Furthermore, due to continuing outmigration (of younger people) that leaves the aging and aged population behind small municipalities are demographically, socially and also politically “bleeding out”.

At the same time, the intercommunal bodies, instead of generating the originally expected capacity and efficiency gains, showed functional shortcomings both in their internal operation and in the interaction with their member municipalities. (see Mier 2005: 5). Tensions and conflicts have emerged exist between the intercommunal body, particularly its executive director, on the one hand, and the municipal council and its mayor, on the other. In sum, the “transaction costs” in operating the “symbiosis” (through internal and interorganisational co-ordination, conflict resolution etc.) have proved to be (unexpectedly) high. On the top of it, as the layer of intercommunal bodies has been added to the existing two tiers local government, that is, the counties and municipalities, the subregional/local space has become institutionally “overcrowded”.

Against this backdrop, in recent years in some Länder a new round of municipal territorial reforms has been opened in which the merger and amalgamation of the existing small municipalities and, thus the formation of larger “integrated” municipalities

⁴ See BLPB 2008: 1. For instance in the local elections held in Land of Brandenburg in 1998 in one third of the municipalities there were just as many councillors candidates as there were seats. In 11 (small) municipalities (out of 1474) no council could be elected. In a similar vein in 152 (small) municipalities no mayor could be elected for lack of candidates.

(Einheitsgemeinden) has given priority formation while the existing intercommunal bodies are reduced, if not phased out.

Land of Brandenburg was the first East German Land to conspicuously back off from its from its initial political pledge to retain the existing municipalities, however small, and to set on amalgamation..

In 2002 the Land of Brandenburg government put forward a reform guideline (Leitbild) which set the minimum size of municipalities at 5.000 inhabitants and that of intercommunal bodies (Ämter) also at some 5.000. The reform strategy typically employed a “carrot and stick” approach of, first, holding public hearings (involving local stakeholders and local citizens), of, then, entering in a “voluntary phase” for “voluntary” implementation and adaptation by the municipalities concerned and of, at last, finalising the reform project by binding legislation. The reform which went into effect in 2004 drastically reduced the number of municipalities from 1729 to 421, thus raising the average size from 1.500 to 5.900 inhabitants, while the number of intercommunal (Ämter) was cut down from 152 to 54 with still 56 percent of the municipalities being members of intercommunal bodies (see table 1).

Similarly the Land of Sachsen-Anhalt, in August 2007, laid out guidelines (Leitbild) stipulating that the future self-standing (“integrated”) municipalities (Einheitsgemeinden) should not have less than 10.000 inhabitants, while the smaller municipalities should be grouped in so-called “union communities” (Verbandsgemeinden), conceptually borrowed from the West German Land Rheinland-Pfalz⁵. Land of Sachsen-Anhalt’s government proceeded, too, in the sequence of “participatory” as well as “voluntary” phases and, in the last resort, by way of binding legislation (the deadline of which is envisaged in late 2009). It is expected that the existing number of municipalities will be cut from 1.270 to some 420.

In both Länder the recent rounds of territorial municipal reforms have been seen serious conflicts during the public hearings as well as during the legislative process. The phalanx of critics and opponents has been particularly made up of local politicians from municipalities which faced losing their self-standing status and political positions and also from intercommunal bodies which were about to be reduced in numbers and positions. In Land Sachsen-Anhalt citizens made use of the “popular petition” (Volksbegehren) procedure

⁵ See above footnote

through which, in a type of advisory referendum, the Land parliament can be requested to put certain matters on its agenda and deal with them. The popular petition, signed by 40.000 citizens, the territorial reform Act was challenged on constitutional grounds, but was dismissed by the Land parliament on July 13, 2007.

Both Länder have seen a spree of constitutional complaints (Kommunale Verfassungsbeschwerden) which were lodged by local authorities with the respective Land Constitutional Court questioning the constitutionality of the reform legislation.

In Land of Brandenburg some 530 constitutional complaints were addressed to the Land's Constitutional Court in 2003, but were, without exception, dismissed (see BLPB 2008:3).

In Land of Sachsen-Anhalt, in April 2008, a very detailed constitutional complaint, signed by almost 180 (out of 1270) municipalities, has been submitted the Land's Constitutional Court. The ruling by the Court is not expected before mid-2009. The hope of the plaintiffs to be successful before the Court has been raised by a ruling which was handed down by the Constitutional Court of Land of Mecklenburg-Vorpommern in July 2007 (see below).

3.2. Territorial county reforms since the 2000s

As was said earlier, all East German Länder were resolved immediately after 1990 to carry out a reform of the county level by sweeping amalgamation. Taking effect in 1994, the total number of counties in East German Länder was cut from 189 to 86 (see table 2).

Since the early 2000s in some Länder a political debate has emerged and gained momentum in which a new round of county reforms ("reform of reforms") was demanded. Particularly three arguments have been advanced. For one, reference has been made to the profound socio-economic changes (ongoing outmigration especially of younger people, declining birth rates, economic depletion etc.) that have particularly hit rural and peripheral areas which calls for territorial and organizational readjustment of the counties. Moreover, in the face of chronic budgetary squeeze territorial county reform is seen as a crucial remedy to cut administrative costs. Furthermore, county territorial reform is perceived as a necessary step to pave the ground for further territorial reforms on the municipal level as well as for redefining the

functional profile of Land administration, possibly by transferring public functions from the latter to the (territorially enlarged) counties.

In the subsequent public debates criticism and opposition have been voiced, on the county level, particularly by the “heads of counties” (Landräte) and county government associations as well as by the representatives of the (single-tier) county boroughs (kreisfreie Städte) which faced with the possibility of being “downgraded” to the status of “ordinary” (two-tier) municipalities (kreisangehörige Städte).

Land of Sachsen-Anhalt was the first East German Land to open a new round of territorial county reforms. Entering into force on July 1, 2007 the reform reduced the number of counties from 21 to 11 with a size between 96.000 and 247.000 inhabitants. The county reform was seen as a precondition for tackling and pushing the territorial and organisational reform of existing system of the municipalities and intercommunal bodies (see above 3.1).

Land of Sachsen followed suit in embarking upon a new round of territorial county reform. As of August 1, 2008 the number of counties was drastically slashed from 22 to 10. Taking into consideration that, in 1990 Saxony had 48 and has now 10 counties, the number of counties has been reduced, in the sequel of two reforms, by as many as 80 percent. At the same time, the number of (single-tier) county boroughs (kreisfreie Städte) was cut from seven to three which proved a particularly controversial in the public and political debate, nourished by the pride such municipalities, often on historical grounds, take in their “county-free” status. Only three municipalities managed to “survive” as county boroughs, among them Leipzig, Saxony’s capital city with some 500.000 inhabitants With an average size between 216.000 and 356.000 Saxony’s counties are currently the demographically largest in the East German Länder..

An even more “radical” territorial county reform has been initiated by the government of Land of Mecklenburg-Vorpommern. Because of its significant political and constitutional repercussions it deserves being presented in some details.

In December 2003 the Land government put forward a reform scheme which aimed at creating five “macro-counties” (Grosskreise) by amalgamating the existing 12 counties and by “downgrading” all five county boroughs (kreisfreie Städte) (including the Land capital

Schwerin and the time-honored Hanse cities of Rostock, Wismar and Stralsund) from their (traditional) (single-tier) “county-free” to an “ordinary” (“within county”) municipal status. The population size of the envisaged “mega counties” would have been to between 230.000 and 490.000 inhabitants.

In public hearings and political debate the reform scheme encountered strong opposition from the counties, the county association and particularly from the county-free cities among which the cities of Rostock, Wismar and Stralsund, against their background as historic Hanse cities, were especially irked and outraged by the prospect of losing their “county free” status. Notwithstanding the extended public debate and local level opposition the Land government’s reform scheme was adopted by the Land parliament on April 5, 2006 and was scheduled to enter in force on October 1, 2009.

A number of counties and county boroughs, by way of constitutional complaint, brought the territorial reform legislation before the Land’s Constitutional Court claiming that, both in procedure and in substance, it violated their constitutionally guaranteed right to local self-government. In a conspicuous, widely publicized and discussed ruling handed down on July 26, 2007, the Land of Mecklenburg-Vorpommern’s Constitutional Court declared the legislation to be unconstitutional and, hence, invalid (see Büchner et al. 2008). While acknowledging that it lies, in principle, in the legislative power of Land parliament to redraw the existing territorial boundaries of local government units, the Court held, in conformity with the accepted constitutional doctrine and jurisprudence, that the Land was bound, in its legislative decision-making on local government boundaries, to observe “due process”. Among the “due process” looms large the obligation to “weigh” between the “public interest” (öffentliches Interesse) which may, for the sake of administrative efficiency and economy reasons, justify (possibly even large-scale) amalgamation, on the one hand⁶, and the safeguarding and strengthening of local democracy, on the other⁷. The Court ruled that Land government and Land parliament did not adequately comply with the procedural (“due process”, “weighing”) requirement. While basing its decision, thus, first of all on “procedural” grounds, the Court additionally (and remarkably) ventured upon some “substantive” reasoning regarding the maximum geographic size of counties that could be constitutionally acceptable. At this point the Court’s basic argument was that, in order to

⁶ In the words of the Constitutional Court ruling at hand: „rational task fulfilment”, *rationale Aufgabenerfüllung*

⁷ In the words of the Constitutional Court’s decision: „civic democratic decision-making”, *bürgerschaftlich-demokratische Entscheidungsfindung*

exercise and realize its (quasi-parliamentary) “representative” function and operational responsibility the elected council and its committees must be accessible for its members and citizens within a reasonable and viable geographic distance. The Court implicitly indicated its opinion that the size of “macro-counties”, as envisaged in the incriminated territorial reform legislation, would geographically not provide such “accessibility”.

In reaction to the Court ruling, the Land government has, in June 2008, submitted a revised reform scheme in which it proposes to have, by way of amalgamation, six or seven counties (in lieu of five, as originally envisaged) and to retain the “country-free” city status for the historic Hanse City of Rostock as well as for the Land’s capital City of Schwerin. At the time of writing (February 2009) the parliamentary process is still pending.

In the meantime, the government of the Land of Brandenburg which also considered to resume and step up territorial county reform as a follow-up has halted such legislative intentions – apparently also in response to the verdict of Mecklenburg-Vorpommern’s Constitutional Court⁸.

4. Concluding and comparative remarks

In order to adequately capture the profile and dynamics of the fundamental changes which the territorial and interorganisational structure of the East German municipalities and counties has undergone since 1990 it is analytically useful to distinguish between the institutional founding (or first round reform) period and a subsequent institutional adaptation (or second round reform or “reform of reform”) period in which the individual East German Länder have possibly reacted to, and learned from the institutional shortcomings emerging from the founding phase. .

In the founding period institution building and institutional reform of East Germany’s local government structures, including their territorial and interorganisational setting, have been shaped by transformation-specific factors and features among which, in line with the other Central East European post-communist transformation countries, the high value given to the rebirth of local democracy loomed large and in which, at the same time, revealing East

⁸ See Thiede 2007: „Abschied von der Gebietsreform“ (Farewell to territorial reform)

Germany as a “special” case of post-communist transformation (see Wollmann 2003), the “institutional transfer” (Lehmbruch 1993) from West Germany’s “ready-made state” to East Germany was crucial. By contrast, the subsequent institutional adaptation or “reforming the reform” period can be characterized as the “normalisation” and consolidation of the institutional development in which the initially created institutional structures, not least the territorial and interorganisational setting, have come to stand the “practice test” that might suggest or even urge to tackle “reforming the earlier reform”.

A political rationale and logic that guided the territorial and interorganisational restructuring of the municipal level in the East German Länder at the very beginning of the secular system change and radical institutional transformation was, for one, to safe-guard local democracy as a basic achievement of the political turn-around (Wende) (explicitly by retaining small-scale municipalities) and, at the same time, to provide them with operational capacities (by introducing an institutional frame and incentive for intercommunal co-operation). While, in combining the preservation of small-scale municipalities with institutionalizing intercommunal cooperation, the East German Länder followed the example of most West German Länder as well as beyond with what, in comparative analysis has been called the “South European” pattern of local government setting (see Norton 1994: 40 ff.) of which France (see Wollmann 2004b, 2008b: 399 ff. with references), but also Italy (see Boblio 2005) are exemplary. But unlike France and Italy where the institutionalizing of intercommunal cooperation and the formation of intercommunal bodies have been largely left to the voluntary decision and discretion of the municipalities, and, by contrast, in conformity with (and actually borrowing from) the West German counterparts, the East German Länder have geared the persisting existence of small-size territorially unchanged municipalities decidedly to the creation of a coherent and Land-wide coverage of intercommunal bodies and to put it in place, in the last resort, by (“top down”) binding Land legislation. The “symbiotic” institutional arrangement of small-size municipalities plus a layer of inter-communal bodies, established by the Land governments through “carrot and stick” strategy, in the last resort via compelling legislation, may be seen (at perhaps even internationally learned from) as a workable strategy, at least for a transitional stage, in the search for balancing local democracy and administrative efficiency.

The “practice test” which this “symbiotic” arrangement has subsequently gone through has however, in the assessment of an obviously growing number of East German Länder, revealed serious shortcomings of the underlying rationale and logic, while, correspondingly, the alternative rationale and logic of, instead, giving priority to the creation of territorially enlarged “integrated” municipalities (Einheitsgemeinden) and of, thus, setting on the “classical” form of democratically elected, territorially viable and multi-functional local government (see Wollmann 2004b). This move which, in the “second round of reforms”, was first pushed by Land Brandenburg comes closer to the large-scale amalgamation strategies that were pursued, during the 1960 and 1970s, besides a few West German Länder, most pronouncedly by England and Sweden in which has been, in comparative terms, been identified as the “North European” pattern (see Norton 1994: 40 ff.). Moreover it falls in line with a trend towards local government amalgamation which has recently gained momentum, with Denmark, arriving at an average municipal size of some 55.000 inhabitants, presenting an almost extreme case (see Vrangbaeck in this volume, see also Dexia 2008: 249 ff.). Finally, also the regrouping and restructuring of the municipalities and intercommunal bodies (intercommunalité) that is taking place in France the wake of the legislation (Loi Chevènement) of 1999 can be interpreted as trend pointing, at least in the long run, at some form of territorial consolidation and (quasi-) amalgamation of the local government levels (see Wollmann 2008b: 401 ff. with references).

This trend towards stepped-up merger and amalgamation has become even more pronounced on the county level, as is evidenced in a growing number of East German Länder. At the same time, however, the political (and, in the German constitutional fabric, also constitutional) limits to territorial enlargement has become manifest most recently and spectacularly in the ruling handed down by the Constitutional Court of Land of Mecklenburg-Vorpommern; in this the Court argued that that territorial “oversizing” of local government units may, because of inadequate geographical accessibility of the councils for the the councilors as well as citizens, jeopardize the appropriate functioning of local democracy in a politically and constitutionally unacceptable manner..

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