

Local level election systems in the German Länder

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## 1. Historical development and overview

When, following 1945, after liberated from the Nazi regime, (West) Germany returned to constitutional government, the reconstruction of democracy was marked, on all three levels of government, federal, Land and local, by the prevalence of the principles of representative democracy that is marked by the election of representative bodies (parliaments, councils) and parliament-/council-elected executives (governments, mayors) in a kind of “local parliamentary system“. During the entire period of the re-founding of democracy in post-war (West) Germany the institutions and procedures of „direct democracy“ remained largely ignored. The scepticism towards, yea aversion against direct democratic („plesbiscitarian“) principles was evoked and deepened by the recollection of the fatal role which (national) referendums played during the late 1920s and early 1930’s in fuelling demagogic propaganda from the extreme right and left and in thus paving the way for Hitler’s seizure of power (see Wollmann 1999b).

When in the post-war period, within their traditional federal legislative competence, each of the newly reestablished Länder adopted legislation on local government, including the local level election system, they in part drew on their respective regional tradition and acted also under the influence of the respective Occupational Force and of the institutional and legal preferences guiding them. In seven (out of 9) Länder different (by and large three) variants local government systems were put in place which hinged on elected local councils and council-elected executives (mayor, magistrat), that is, on a kind of “local parliamentary government“. However, deviating from the prevalence of representative democracy, in two South German Länder (Baden-Württemberg and Bavaria), indicatively located in the American Occupational Zone, during the 1950’s new local government form was installed that revolved around the elected local council and, as a striking innovation, the directly elected mayor in a mix of representative and direct democracy principles in a sort of “local „presidential system“.

This plurality and variance of local government systems largely persists until the late 1980s. During the early 1990s this hitherto remarkably stable institutional setting experienced all but revolutionary changes as all Länder, one after the other, turned to adopt the direct election

of the mayors in significantly drawing on the Land of Baden-Württemberg's model and experience (see Wollmann 2005, 2014). The driving motive for tackling these reforms was the perception of a „democracy deficit“ (seen in the citizens' restriction to the tools of „representative democracy“) as well as of „performance deficits“ (seen as largely caused by the existing elected council and council elected mayor arrangement).

The following treatment will come in two parts. At first, the local council election (as embodying „representative democracy“) and then the mayoral election (as incarnating „direct democracy“) will be taken up. The introduction of binding local referendums as another salient direct democratic tool will not be addressed in this short essay (for a more comprehensive overview on this see Wollmann 1999a, 2001, 2013)..

## 1. Local councils and their election

### *Legal and institutional position of the elected local council*

The legal status of the elected local councils in Germany constitutional setting shows a striking ambivalence (for a detailed discussion see Wollmann 1999c). .

On the one hand, the principle of *representative democracy* is embodied in the elected local councils as an as the “body representing the people” (*Volksvertretung*) as laid down in article 28, paragraph 1 of the Federal Constitution (“Basic Law”, *Grundgesetz*) (“In each Land, county and municipality the people shall be represented by a body chosen in general, direct, free, equal and secret elections“); the constitutions of the Länder have similar provisions.. It should be highlighted that in this article of the Federal Constitution the „representative“ function of the local (county and municipal) councils is mentioned along with the Länder which appears to put them on the same constitutional footing.

Moreover in functional terms the local level councils are given competences and responsibilities (such as the adoption of by-laws, *Satzungen*, a key role in local policy-making, the scrutiny over the local administration and “executive” etc.) which can arguably be seen as typically “parliamentary” powers..

On the other hand, however, in the still dominant constitutional law doctrine the local government level has not been recognized as government level in its own right within the

federal/intergovernmental system. Instead it is considered to constitute an integral part of the administrative level of the Länder (within the federal two-layer structure made up of the Federation and the Länder). Revealingly the local level has, in the German constitutional tradition, been called “local self-administration” (*kommunale Selbstverwaltung*) – reminiscent of the French “libre administration”. In the same logic, the local councils have in traditional constitutional law doctrine been denied the quality of local „parliaments“ as the truly „parliamentary“ status is reserved for the federal and the Länder levels.

#### *Constitutional and legal guarantee of the democratic basis of local council elections*

Apart from the (afore-mentioned) provision in article 28 Federal Constitution that „in each Land, county and municipality the people shall be represented by a body chosen in *general, direct, free, equal and secret* elections“.the detailed regulation of the electoral systems have been laid down in the legislation of each Land..

#### *Electoral rights of the citizens in council elections?*

The minimum age to exercise the *active franchise* (right to vote) is 18 years in 6 (out of 14) Länder and 16 years of age in 8 (out of 14) Länder<sup>1</sup>.

The *passive franchise* (right to be elected as councillor) is giving to citizens older than 18 years in all Länder.

In compliance with the EU’s Maastricht Treaty which was signed on February 7, 1992 article 28 of Federal Constitution (Grundgesetz) has been amended stipulating that „in county and municipal elections, persons who possess citizenship in any member state of the European Community are also eligible to vote and to be elected in accord with European Community law“. Thus, EU citizens can vote and be elected in municipal council elections.

#### *Elective period of municipall councils?*

The elective period of the municipal councils is five years in most (12 out of 14) Länder and six years (in Land of Bavaria) and four years (in City State of Bremen)<sup>2</sup>

#### *How are council election candidates nominated?*

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<sup>1</sup> See <http://www.wahlrecht.de/kommunal/>

<sup>2</sup> See <http://www.wahlrecht.de/kommunal/>

Candidates are presented to the voter through „lists“ that are composed and fixed by the political parties in „caususes“ of the party members their local branches (see Holtkamp 2008: 122 ff.).

The leverage which the political parties have gained in deciding the „lists“ reflects and results from a development since the 1950s in which the political parties, until then essentially organised and operating on the federal and Länder levels, have increasingly entered and penetrated the local arenas, at first in the larger cities and then also in the middle-sized and smaller ones (see Holtmann 1999). The interest and disposition of the national parties to reach down to the local level was further prompted by the results the territorial reforms of local government during the 1960s and 1970s which created much larger municipalities more conducive to competition (see Kersting 2002:141). The entry of the political parties in local political arenas, have accelerated and deepened the “politicisation” of local arena which traditional was deemed „non-political“ or „a-political“ rather than political. By the same token, the traditioanl patterns of “consociational” democracy based on non-partisan or all-party consensus („*Konsensdemokratie*“) have been increasingly replaced with “competitive (or majoritarian) democracy” („*Konkurrenzdemokratie*“) (see Bogumil 2001).

However, particularly in smaller and rural municipalities „independent“ groups and „independent voters associations“ (*freie Wählervereinigungen*), also called “city hall parties” (*Rathausparteien*) (see Lehmbuch 1975) play an important (and apparently growing) role (see Göhlert et al. 2008) not least in having the right to propose candidate „lists“ of their own. This applies particularly to the two South German Länder (Bavaria and Baden-Württemberg). Thus, in the Land of Baden-Württemberg the „independent“ („freie“) groups attain a share of one third of the municipal council seats, in smaller municipalities even up to 40 percent (see Wehling 2003: 33). In the Land of Bavaria the „independents“ are the third strongest political grouping (see März 2003: 49).

#### *How are the councillors elected?*

In principle the proportionate systems prevails based on the „lists“ (composed by the political parties or other „independent“, *freie*, groups) and allotting the council seats according to the (proportionate) electoral strength the political party or group has attained.

However the (undifferentiated) “proportionate system” has been “personalized” by way of an „open list“ system in a growing number and in the meantime in all Länder (except the Land of Nordrhein-Westfalen which has been holding on to the “closed” list system)<sup>3</sup>.

The „personalized“ component and related „open list“ system can be effected in breaking up the „closed list“ in two ways.

For one, the voter may „cumulate“ (kumulieren) a number of votes on one candidate (on the „list“). He/she can thus change the place the respective candidate has assigned by the party or group on the pre-fixed „list“ and may thus, in extremis, promote the candidate from the bottom to the top of the „list“. The Länder differ considerable in the details of „cumulation“. In some (6 out of 14) Länder the individual voter can „cumulate“ three votes on a candidate while in others (5 out of 14) the number of votes each voter may “cumulate” on a single candidate depends on the number of councillors that are to be elected.can.

Second, the voter may shift and „jump“ („*panaschieren*“) between the party (group) list by striking out candidate(s) on one list and vote for candidate(s) on another list.

The „personality“ component in the electoral system is liable bound to weaken the influence of the political parties on the nomination and final election of candidates (for details see Kersting 2002: 147).. This vulnerability to being personally struck out from the list of party colleagues makes individual councillors particularly sensitive to the feelings and interests of their electors in the few months before election.

The South German Länder Baden-Württemberg and Bayern were first, in the 1950s, to introduce electoral systems with strong “personality” components (through *kumulieren* and *panaschieren*). It is reported that in these two Länder about 80 percent of the „lists“ are being changed this way.

### *Thresholds?*

Until the early 2000’s in most Länder a „threshold“ of minimum of five percent the votes was set which a party or electoral rroup had to reach in order to attain seat in the council.

However on February 13, 2008 the Federal Constitutional Cort ruled that such „threthold“ was unconstitutional as it was seen to violate the „equal oportuntty“ of the small parties (and groups) to be represented in the local council. Subsequently other Land Constitutional Court

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<sup>3</sup> See <http://www.wahlrecht.de/kommunal/>

followed suit. As result, in the meantime the threshold clause has been rescinded in all Länder<sup>4</sup>.

#### *Council elections held simultanously with other upper level elections?*

In the political practice it is apparently an exception to hold municipal elections at the same time as Land elections, as the electoral issues that are at stake in local level elections should be kept separate from Länder elections. An overlap with federal and EU elections seems possible but hardly occurs. .

#### *Voter turnout in council elections?*

Well onto the 1990s, the *voter turnout* in local council elections was quite high over the years, mostly oscillating between 60 and 70 percent (see Schulenburg 1999: 25). Recently, however, the turnout has significantly decreased and fell, for instance, in Land of Brandenburg in the 2014 election to a historical low of 46.2 percent<sup>5</sup>.

#### *Majority premium?*

Unlike, for instance, in France where a „majority premium“ is afforded to the „winning party“ (in order to assure the latter of a „comfortable ruling“ majority) such „premium“ is unknown in the German poliical and municipal tradition.

#### *Remunderation of councillors?*

Local councillors traditionally act on a “voluntary” (*ehrenamtlich*) basis, that is, they are, in principle, unpaid, but receive (as a rule modest) allowances to cover the costs of attending committee and council meetings.

#### *Cumulation of mandates (cumul de mandats)?*

Councillors may sit as representatives at more than one level of government simultaneously (for instance in the county council, the Land parliament, or even federal parliament), but this is not a common practice, because as a rule local councillors are, besides performing their council functions on a non-paid part-time basis, have a full-time job in „ordinary life“

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<sup>4</sup> See <http://www.wahlrecht.de/kommunal/>

<sup>5</sup> [https://de.wikipedia.org/wiki/Kommunalwahlen\\_in\\_Brandenburg\\_2014](https://de.wikipedia.org/wiki/Kommunalwahlen_in_Brandenburg_2014). See also the data for Land of Niedersachsen where the voter turnout in muniicipal elections fell from 81,1 percent in 1952 to 53,0 percent in 2011, [https://de.wikipedia.org/wiki/Ergebnisse\\_der\\_Kommunalwahlen\\_in\\_Niedersachsen#Wahlbeteiligung\\_2](https://de.wikipedia.org/wiki/Ergebnisse_der_Kommunalwahlen_in_Niedersachsen#Wahlbeteiligung_2)

(lawyer, businessman, worker etc.) which practically rules out taking on another elective mandate at a higher level.

At the same time they are not allowed to hold a post in the administration of a local, regional or federal authority as this regarded to be incompatible with the constitutional principle of separation of powers

## 2. Mayoral elections

Table Direct election and recall of the mayor

Land	legislation in force since	direct election		length of elective terms		„recall“ procedures				
		Mayor	Landrat	Mayor	Local council	„recall“ procedure in place?		„recall“ procedure provisions		referendum vote on „recall“ initiative
						Mayor	Landrat	popular initiative (minimum requirement) in percent of electorate	council initiative (minimum requirement of council votes)	Minimum requirement of yes-votes in percentage of electorate
Bad.- Württ.	1.4.56	+	-	8	5	-	-	----	----	----
Bayern	15.1.52	+	+	6	6	-	-	----	----	----
<b>Brandbu rg</b>	<b>5.12.93 bzw. 20.5.98</b>	+	-	<b>8</b>	<b>5</b>	+	-	<b>25 respectively 15</b>	<b>2/3 majority</b>	<b>25</b>
Hessen	20.1.91/ 20.5.92	+	+	6	5	+	+	----	2/3 majority.	25
<b>Meckl.V orpom</b>	<b>13.6.99</b>	+	+	<b>7/9</b>	<b>5</b>	+	+	----	<b>2/3 majority</b>	<b>33,3</b>
Ns	22.8.96	+	+	5	5	+	+	----	¾ majority	25
Nord rhein- Westf	17.10.94	+	+	5	5	+	+	----	2/3 majority.	25
Rheinl- Pfalz	5.10.93	+	+	8	5	+	+	----	2/3 majority	30
Saarl	16.6.94	+	+			+	+	----	2/3 majority.	30
<b>Sachs</b>	<b>12.6.94</b>	+	+	<b>7</b>	<b>5</b>	+	+	<b>33,3</b>	<b>¾ majority.</b>	<b>50</b>
<b>SachsAn halt</b>	<b>12.6.94</b>	+	+	<b>7</b>	<b>5</b>	+	+	----	<b>¾ majority</b>	<b>30</b>
Schles- Holst	23.7.96	+	+	6/8	5			25	2/3 majority	33,3
<b>Thü ringen</b>	<b>12.6.94</b>	+	+	<b>6</b>	<b>5</b>	+	-	----	<b>½ majority</b>	<b>30</b>

Source: Wollmann 2001



As was already mentioned since the early 1990s in a sweeping sequence of legislative acts all Länder have adopted the direct election of the mayors in following the example of the two South German Länder of Baden-Württemberg and Bavaria where the directly elected mayor had been put in place already during the 1950s (see Wollmann 2005, 2014). It should be recalled and repeated at this point that the adoption of the direct election of the mayor was accompanied in practically all Länder by the introduction of binding local referendums as another core element of local direct democracy (see Wollmann 1999b, 2001, 2013).

*Right to vote and to be elected in mayoral elections?*

The right to vote in mayoral elections is – like in local council elections – given to citizens older than 18 years in 6 (out of 14) Länder and older than 16 years 8 (out of 14) Länder.<sup>6</sup> As a rule, the age for being elected mayor (passive franchise) ranges between 18 years (minimum) and 64 years (maximum).

In the mayoral elections (just as in the council elections, see above) it has been stipulated since 1992 in all Länder that persons who are citizens in any member state of the European Union are also eligible to vote and to be elected in accord with European Community law.

*Particularl (professional) qualifications required for becoming a mayoral candidate?*

In all Länder no additional educational, professional and the like qualification is required for running for a mayoral office. At first glance this might appear surprising in view of the fact that the directly elected mayor is the (sole) chief executive („CEO“) of the local authority who, as it were monocratically, directs and controls the entire local administration – without, *nota bene*, any kind of „city manager“ or „city director“ besides him/her. Particularly in big, but also in middle-sized cities this „monocratic“ executive leadership of the mayor calls for and requires great operational, organisational, managerial etc. skills. If nonetheless the existing legislation of the Länder refrains from formally demanding any „qualifications“ (exams etc) of a would-be mayoral candidate the reason for this restraint is essentially a *political* one as the direct democratic election of the mayor is seen to give him/her an essentially *political*. vocation and mandate in the definition and understanding of which the requirement of any „technical“ qualification would seem to be out of place.

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<sup>6</sup> See <http://www.wahlrecht.de/kommunal/>

However, in the political and administrative practice of the mayoral electoral process such administrative qualification and expertise has increasingly become a *factual* requirement of would-be mayoral candidates. The Land of *Baden-Württemberg* where the directly elected mayor has been in place since the 1950s is a case in point. Over the years it has become an accepted practice and a decisive criterium in the eyes of the (local) citizens that mayoral candidates have gone through a professional (often administrative) training and at least have acquired practical administrative experience before running for a mayoral office. In fact, striving for and occupying the position of a mayor has become a career pattern for which ambitious young people prepare themselves by way of appropriate education, training and practice and which they are set to pursue for a life-time by starting, in a kind of apprenticeship, to be a mayor in a smaller town and by then seeking election (and subsequently re-election) in a larger city.

#### *How are mayoral candidates nominated?*

Regarding the question how mayoral candidates are nominated three types of procedures can be found in the German Länder<sup>7</sup>. One Land (Baden-Württemberg) provides for the “self-nomination” of candidates, that is, any citizen residing in the respective municipality may declare his/her mayoral candidacy. In another Land (Bavaria) the right to nominate mayoral candidates is reserved for the (local) parties and (local) political groups. In most Länder (10 out of 12) parties, groups as well as single citizens can propose mayoral candidates (see Holtkamp 2008).

It is evident that giving the political parties a prominent role in the nomination process fosters the (party) politicisation of mayoral elections and of local politics at large. By contrast, the exceptional case of solely self-nomination in Baden-Württemberg is liable to to „personalize“ and concomitantly „de-politicize“ the mayoral contest (Wehling 2003).

#### *Electoral procedure?*

The mayoral election is decided by the majority of the local electorate. If in the first electoral round none of the candidates achieves an absolute majority of the votes a second („run-off“) round takes place between the two candidates who did best in the first round. The second round is decided by simple majority of the votes.

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<sup>7</sup> <https://de.wikipedia.org/wiki/B%C3%BCrgermeister>

*Simultaneous (synchronised) or „staggered“ (non-synchronised) mayoral and council elections?*

In regulating the direct mayoral election it is a crucial question whether the mayoral election should be held simultaneously („synchronically“) with the council election or should take place on different („non-synchronised“) dates. The pertinent legislation of the Länder differs significantly. Eight (out of 14) *Länder* have opted for the „non-synchronised“ system and six (out of 14) *Länder* for the „synchronised“ one<sup>8</sup>.

The *Land of Baden-Württemberg* where, since the 1950s, the direct election has been based on the „non-synchronised“ mode offers instructive evidence on the intentions and consequences of this electoral formula. From the outset a main motif was to „decouple“ the political life cycle of the elected mayor from that of the elected council and thus to „de(party-)politicise“ the former. In fact the development over the years has shown that the „non-synchronised“ arrangement has fostered the emergence of a non-partisan profile of the mayor and has corroborated the consensus-oriented (or consociational) democracy (*Konkordanzdemokratie*) which characterises the political culture of *Land of Baden-Württemberg* (Holtkamp 2008, Bogumil, 2001). At the same time the non-synchronised election arrangement has facilitated the occurrence of „cohabitation“ (in the French terminology) if and when the council majority and the mayor pursue conflicting goals and strategies. In the case of such „cohabitation“ the mayor and the council majority are indeed called upon to seek compromises etc.

By contrast, in *Länder* which have opted for the „synchronised“ electoral scheme (such as the *Land of Nordrhein-Westfalen*) this was done with the explicit intention to institutionally ensure the political congruence between the council majority and the mayor and to forestall „cohabitation“-type conflicts. At the same time, the „synchronised“ electoral system incites and promotes the pattern of competitive democracy (*Konkurrenzdemokratie*) by potentially drawing lines of conflict and confrontation between the council majority plus mayor, on the one side, and the council minority, on the other, in other words, as it were, between (local) *government and opposition*..

*Council majority premium for the winning mayoral candidate?*

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<sup>8</sup> See <http://www.wahlrecht.de/kommunal/>

A council majority premium as it is legally provided in Italy's municipal election system for the winning mayoral candidate (in order to ensure him/her of a „ruling“ council majority) is unknown in the pertinent German legislation.

#### *Voter turnout?*

In recent years the voter turn-out in local elections has overall noticeably decreased. In council elections it has come down to oscillate around 50 and 55 percent (see above).

Where direct elections of mayors have been held “non-synchronically” available data suggest that the voter turnout was on the average lower, in part considerably lower than in the respective council elections. Based on data on voter turnout in 70 big cities with more than 100.000 inhabitants (see Konrad Adenauer Stiftung 2011: 8-26)<sup>9</sup> in the „synchronically” held elections the voter turnout was around 50 percent while it was noticeably lower in „non-synchronised” mayoral elections - in some cases down to 30 percent, in an extreme case even to 23 percent. Thus, the earlier expectation that the direct election of mayors would elicit and lift the voter turnout has so far been not met and appears to have been, on the contrary, refuted.

#### *Cumulation of functions (cumul de mandats)?*

Since the introduction of the directly elected mayors it has been legally ruled out that an elected mayor can, at the same time, sit as an elected deputy in a Land or the federal Parliament. In this regard, the role of the elected mayor is perceived primarily in his/her *executive* function which, under the constitutional principle of the the separation of powers, is seen incompatible with simultaneously holding a parliamentary mandate.

#### *Recall procedure*

In another conspicuous direct democratic innovation since the early 1990s in 11 (out of 13) Länder<sup>10</sup> the introduction of the direct election of the mayors was accompanied and complemented by provisions to remove („recall“) a sitting mayor from office by way of local referendum (see Wollmann 2001). While such “recall” procedure has no precedent in German institutional history, the US local government practice in which the “recall” of local position holders have a long tradition obviously served as inspiring example.

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<sup>9</sup> See Konrad Adenauer Stiftung 2011: 27 ff. also for data on the municipalities between 50.000 and 100.000 inhabitants which, at this point, are not being taken into account

<sup>10</sup> Interestingly the two Länder which have so far refrained from installing a „recall“ procedure are Baden-Württemberg and Bavaria that, during the 1950s, were the first (and only) to provide for the direct election of mayors.

In the Länder concerned two variants of the “recall” procedures have been installed in the two stage sequence of initiating and deciding the „recall“ process.

For one, consistent with the “fully fledged” direct democratic logic the local citizens are given both the right to initiate the procedure (with a certain number, “quorum”, of signatures required for such a motion) and the right to make the final decision on the „recall“ motion by way of local referendum. This, as it were, „pure” direct democratic variant has adopted in three (out of 11) *Länder*, that is, in the (East German) *Länder* of *Brandenburg* and *Sachsen* and in the (West German) *Land* of *Schleswig-Holstein*..

The other *Länder* have put down an „incomplete“ version by reserving the right to initiate the recall procedure to the local council (which decides on such a motion with a qualified majority vote of its members), while the citizens decide on the council’s motion by way of referendum. This variant of the “recall” procedure is a kind of mix of representative democracy (with the elected council’s decision to initiate the „recall“ process reminding of a parliamentary „no-confidence“ motion) and of direct democracy (with the final say on the „recall“ motion lying with the local citizenry).

Since its introduction the “recall” procedure has been initiated quite frequently (be it by council decision or by the citizens themselves) and has resulted quite often, by way of a successful referendum, in the removal of a sitting mayor from office. Between 1995 and 2006 some 36 recall procedures led to the destitution of the sitting mayor (for detailed data and analyses see Fuchs.2007). The practice shows that this „direct democratic innovation“ has enlivened the local political process and swayed on the „power triangle“ between the citizens, the elected council and the directly elected mayor.

### 3. *Concluding summary*

In comparative terms, in eyeing the recent moves in the regulation of the local level electoral systems the development in Germany, that is, in the German Länder, may be highlighted a the perhaps most advanced and differentiated case of combining and mutually complementing the principles of representative and direct local democracy.

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