

Municipalities in the Federal Republic of Germany – Progress and Current Situation

Pitrová, Miroslava

Veröffentlichungsversion / Published Version

Zeitschriftenartikel / journal article

Empfohlene Zitierung / Suggested Citation:

Pitrová, M. (2008). Municipalities in the Federal Republic of Germany – Progress and Current Situation. *Politics in Central Europe*, 4(1), 59-74. <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-62277>

Nutzungsbedingungen:

Dieser Text wird unter einer Deposit-Lizenz (Keine Weiterverbreitung - keine Bearbeitung) zur Verfügung gestellt. Gewährt wird ein nicht exklusives, nicht übertragbares, persönliches und beschränktes Recht auf Nutzung dieses Dokuments. Dieses Dokument ist ausschließlich für den persönlichen, nicht-kommerziellen Gebrauch bestimmt. Auf sämtlichen Kopien dieses Dokuments müssen alle Urheberrechtshinweise und sonstigen Hinweise auf gesetzlichen Schutz beibehalten werden. Sie dürfen dieses Dokument nicht in irgendeiner Weise abändern, noch dürfen Sie dieses Dokument für öffentliche oder kommerzielle Zwecke vervielfältigen, öffentlich ausstellen, aufführen, vertreiben oder anderweitig nutzen.

Mit der Verwendung dieses Dokuments erkennen Sie die Nutzungsbedingungen an.

Terms of use:

This document is made available under Deposit Licence (No Redistribution - no modifications). We grant a non-exclusive, non-transferable, individual and limited right to using this document. This document is solely intended for your personal, non-commercial use. All of the copies of this documents must retain all copyright information and other information regarding legal protection. You are not allowed to alter this document in any way, to copy it for public or commercial purposes, to exhibit the document in public, to perform, distribute or otherwise use the document in public.

By using this particular document, you accept the above-stated conditions of use.

Municipalities in the Federal Republic of Germany – Progress and Current Situation

Miroslava Pitrová

Abstract: *Researching the organization and functioning of public administration, especially self-government, is currently not a key topic of interest among most political scientists. This is why we will try to describe the public administration system in the Federal Republic of Germany in the following article. It will consider the principles on which the German public administration is based and how its second subsystem – municipal authorities – function in relation to the national state administration. Politics as a science offers interesting opportunities and resources for analyses of the way public administration functions. Aspects of the political science of public administration are important in understanding all the connections with public administration. The German example is not typical because there are various types and forms of municipal organization. Due to historical experience and evolution, four basic types of municipal organization developed in Germany, and they will be the main focus of our attention. We will deal with the specific features of municipal election systems, look at the variety of municipal political systems and the possibility of citizen involvement in the administration of public affairs. For political scientists public administration in Germany – its organization and function – is an interesting laboratory where we can study a progression which is very noteworthy. This article cannot explain all the subjects which are connected with this political phenomenon, but it will attempt to explain some of them.*

Key words: *The Federal Republic of Germany, public administration, local authorities, municipalities, municipal organization, municipal elections systems.*

History of public administration in Germany

Germany is the classic example of the “mixed model” of public administration. The municipalities are the lowest units, which are a self-governing administration with national state administration as well. All municipalities have an equal level of autonomy, but from the point of view the mixed model of public administration the municipalities are not equal concerning their significance in the system. Municipalities in Germany are not equal and cannot be so in terms of their area, number of inhabitants, financial power, political influence on the public administration system, etc.

Public administration in Germany in its modern form has existed since the beginning of the 19th century, in connection with the name of L. von Stein. The tradition of local administration has deep roots which go back to medieval times, and it has always been the local administration which survived difficult periods in German history and retained at least partial independence. There was a tendency to limit the autonomy of local Government, and this is why after the end of the Second World War the restoration of modern public administration became a priority (Chander, 1997: 134-135).

The organization of public administration was completely the opposite in the Federal Republic of Germany and in the German Democratic Republic (GDR), two states created after the Second World War.³⁸ Districts became the basis of function in the GDR. They were not decentralized but deconcentrated units of national state administration. From 1945 until German reunification, public administration in the GDR could not have been called democratic. There were two bases of democratic public administration in West Germany: national state administration and self-Government; in the GDR the self-Government component was missing (Heindenreich, 2001: 13).

The transformation of public administration in the east of the reunified Germany proceeded in a different way than in other post-Communist countries, which were looking for a suitable system of public administration organization, and they tried to restore the principles of modern public administration in various reform waves, phases and stages (see three reform phases of public administration in the Czech Republic, etc.). The Reunification Agreement of Germany (1990) stated that the economic, constitutional, political and institutional system of the Federal Republic would be implemented in the former GDR.

Since 1990 the system in the former GDR has been distributed, and communal self-Government is also guaranteed by the Basic Law (BL, *Grundgesetz*) of the German constitution). The biggest problem of the former GDR and the federal states was their large debts and the imbalance between the financial power and the performance towards of old federal states.

Let us go a back a little in time. After the end of the Second World War, municipalities (*Gemeinde*) became the basic provincial administrative units. In this period there were around 30,000 municipalities of various sizes, in Germany. Thanks to a centralist trend during the 1970s and 80s, the number of municipalities was reduced by nearly one third, to 9,000.

³⁸ The Federal Republic of Germany was established in May 1949, when three western zones were united under one administration. The German Democratic Republic was founded in the autumn of the same year (the country was administered by the Soviet Union) (Škaloud, 2005: 200).

These centralist tendencies resulted in more effective administration and self-Government, and it is no accident that in Germany local autonomy does not function in a territory with fewer than 10,000 inhabitants (Chandler, 1997:135). After reunification in 1990 there were 16,121 municipalities in Germany, but the average number of inhabitants in each of them was about 5,000

(http://www.mvcr.cz/casopisy/s/1999/99_25/25konz.html).

In 2001 the average number of inhabitants was decreasing (13,565) and increasing average number of inhabitants (5, 900). From the economic point of view, the centralist tendencies of decentralization in Germany can be seen in a positive way. But in the Federal Republic decentralization is not a consequence of activity from the top but from the bottom, due to pragmatic considerations of local authorities (Local Finance in the Fifteen Countries of the European Union).

Under Article 22 (1) of the BL the Federal Republic is a democratic, social and federal country. It consists of 16 federal states³⁹ three of which are Free States (*Stadtstaat*), which have a different status: Bremen, Hamburg and Berlin. All 16 federal states, together with the Federal Government (*Bund*), form an integrated state (*Gesamstaat*).

(http://www.gutenachbarschaft.org/downloads/Informationssystem%20Recht%20und%20Verwaltung/2005_recht_staatsaufbau-deby_cz.pdf).

Public administration is divided into three basic levels, the federal, provincial and municipal. Of course, the highest is the federal level (*Bund*), consisting of the Federal Government, Federal Chancellor, Federal President, German Parliament (*Bundestag* and *Bundesrat*) and other bodies of the national state administration.

The next level, i.e. the provincial level comprises individual federal states (*Länder*). In the German system the federal states have a wide range of powers; for example, they have the right to pass legislation (this does not mean citizens have different rights in different states). For every citizen of the Federal Republic of Germany the rights and duties are the same in each one of the 16 federal states), and “Cooperative Federalism” is exercised in Germany, the principle of mutual dependence and cooperation between the federal states and the *Bund*.

Each federal state (*Land*) is divided into a three-level system of elected administration. The districts (*Landkreis*) stand between the lowest and the highest level of administration (from the provincial point of view). On the district level, active and

³⁹ Baden-Württemberg, Freistaat Bayern (Bavaria), Brandenburg, Hessen (Hesse), Mecklenburg-Vorpommern (Mecklenburg-Western Pomerania), Niedersachsen (Lower Saxony), Nordrhein-Westfalen (North Rhine-Westphalia), Rheinland-Pfalz (Rhineland-Palatinate), Saarland, Freistaat Sachsen (Saxony), Sachsen-Anhalt (Saxony-Anhalt), Schleswig-Holstein, Thüringen (Thuringia).

passive suffrage is also granted to people who have citizenship of another state of the European Union (Art. 28 (1) of the BL).

In the administrative hierarchy, the districts are the provincial administrative units standing between the municipalities and the federal state. The statutory deputy of the district is a district councillor (*Landrat*), who is nominated by the elected district council (*Kreistag*). The districts administer the municipalities. The exceptions are towns, which, because of their size have the unique status of district, the *Stadtkreis*. They, of course, do not constitute district bodies, powers are not duplicated, and the district tasks are therefore assumed by the municipal corporation. In the Free Cities (*Stadtstaat*) – Hamburg, Bremen and Berlin – this structure is adapted to their unique status and position in the system.

Municipal level

In the Federal Republic of Germany, as in other democratic states, municipalities form the basic unit of the system. These are the lowest units of provincial administration. Because the German system of public administration is a classic model of a mixed system, municipalities, apart from the tasks in the sphere of independent scope, implement also tasks in the sphere of transferred scope (i.e. matters of the national state administration). In Germany the basic rights and duties of municipalities are established in the Basic Law, which guarantees the municipalities the right to manage all their own affairs themselves, within the limits set by the law. Also the unions of municipalities have the right to self-Government, within the limits of its legislative scope (Art. 28 (2) of the BL). This constitutional statement of rights in the Basic Law gives considerable powers to municipalities, especially in the spheres where federal law does not have ultimate authority. It is important to say that municipalities make use of their considerable powers.

We do not find a specific reference to municipalities in the Basic Law because individual federal states amend their administrative organization and structure in their own constitution. What is the same for all municipalities is the respect and implementation of the rules of the European Charter of Local Authorities.⁴⁰

When comparing systems of local administration of individual federal states we can see that the defining aspects of the German municipalities are in many ways

⁴⁰ The European Charter of local authorities, is one of the pillars of municipal self-government, which has an international legal character. The document was produced by the member states of the Council of Europe and agreed in 1985 in Strasbourg. The establishment of the Charter was motivated by an attempt to form an integrated European standard of self-government and ensure the protection of rights of local authorities. The preamble of this document already appreciates the fundamental role of local democracy for building a modern democratic society ([Http://www.mvcr.cz/odbor/moderniz/mezinaro/rada_evr.html#charta](http://www.mvcr.cz/odbor/moderniz/mezinaro/rada_evr.html#charta)).

different. On the basis of earlier studies carried out we can identify four basic types of municipal organization in Germany. This segmentation results from the different historical development of the federal states, from the geographical position within the limits of existing territory of the Federal Republic of Germany and the original allocation within the limits of the occupation laws after the end of the Second World War (Wildmannová – Šelešovský, 2001: 6).

Many commentators, e.g. Stanislav Balík, Uwe, Anderson or Wehling, have put forward a typology of individual types of municipal organization in their work. They use four basic categories: a) South German Council Organization (*Süddeutsche Ratsverfassung*); b) Mayoral organization (*Bürgermeisterverfassung*); c) North German Council Organization (*Norddeutsche Ratsverfassung*) and d) *Magistrat* Municipal System (*Magistratverfassung*).

They are the four basic municipal organizations that could be found at the beginning of the 1990s, immediately after German reunification. The North German Council Organization and Mayoral Organization no longer exist. Even though both lasted for a very a short period of time and were basically transformed into the South German Council Organization, we will introduce them briefly. The Mayoral Organization gives the mayor (as in the South German Council Organization) the highest position and in contrast to the North German Council Organization it is based on a dual administration principle (council and mayor) and the mayor is not elected directly, but indirectly by the municipal council. Nevertheless, the mayor has a strong position in the system; he or she is the chief of the administration, acts on behalf of the municipality and chairs the municipal council. This administration model comes from France and originated in Rhineland-Palatinate, the most important federal state of the French occupational administration. This system was partly used for example in Saarland (Wegener, 2004).

The North German Council Organization is a system where the municipal council and monistic principal of administration apply, which are based on the British model of administration in federal states administered by the British, e.g. in Lower Saxony; and partly also in North Rhine-Westphalia and Mecklenburg-Western Pomerania. The municipal administration has only one authority, the municipal council. The mayor chairs this body and is also elected by it. The supreme “administrator” of the municipal council is the officer (director), who does not have any autonomous position, and is fully subordinate to the council. The North German Municipal Organization can be seen as a competition between the mayor and the town clerk, i.e. there are two posts at the very highest position of the administration. This has not testified. In 1999 the North Rhine-Westphalia Federal country stood aside and since then the South German system has been

exerted, as in Saxony-Anhalt. This model became more and more common in the 1990s. Currently there are two basic models in the German communal municipal system: the South German Council Organization and the *Magistrat* Municipal System, with the strong superiority of the system first mentioned (compare Uwe – Andersen, 2003; Wehlig, 1996).

If we look closer at the two applied models of municipal systems, the South German Council Organization is regarded as the most frequently applied of the municipal organizations in Germany, with the mayor having a strong position. He or she is basically elected directly by the citizens of the municipality. From that the higher legitimacy in the system is dedicated, e.g. in the framework of the municipal structures. He or she chairs for example the municipal (or town) council and all its boards, is the supreme representative of the administration, and the supreme representative of the municipality. Opposite him or her is the municipal (or town council) voted by citizens (the originators of this organization are Baden-Württemberg and Bavaria). The South German Council Organization is applied in Saxony and in the federal states with the former North German Council Organization: Lower Saxony and North Rhine-Westphalia, as in Schleswig-Holstein with the former Magistrate municipal system. Brandenburg slightly differs as the mayor here is elected by the members of the municipal council. It also elects other members (*Beigeordnete*) who help the mayor to carry out his or her function. In the municipalities of Saxony-Anhalt there are operative and advisory councils, which are made up of the council and chaired by the mayor. The municipalities in Mecklenburg-Western Pomerania have been directly electing the mayor since 1999. He or she leads the main council and advisory councils (as is the case in Saxony-Anhalt). In North Rhine-Westphalia the mayor is elected directly too, and there is no difference between the municipalities in states with the former Mayoral and South German Organization.

Hesse is a classic example of the *Magistrat* System. It is based, like the South German Council Organization and the Mayoral Organization, on a dual system of administration. In contrast to the South German Council Organization the statutory body is elected by the council and not by the citizens (*c.f.* the direct elections in Hesse). Citizens elect the town council meeting and the mayor. In contrast to the Mayoral Organization the executive is collegial, i.e. the system of administration operates on a collective basis, where the position of mayor is a member of the *Magistrat* as to the panel compound of the mayor and other members (*Beigeordnete*), who are the elected representatives of the municipal council. To this to the panel belongs the sovereign right of the achievement of the representation on the outside. As was stated, the *Magistrat* System operates also in Hesse and partly in

Schleswig-Holstein. Originally it was extended further, as its principles come from Prussian law (Schubert – Klaus, 2006).

These various types of municipal organization (in the sense of polity) have an impact on the function of the communal politics (politics) and on the actual political result (policy).

Structure and organization of municipality – municipal council

We can see different structures and organizations of the municipalities in the aforementioned division of German communal systems into four (two) basic types. In addition to this division we must consider the *Land* when describing local organization because, as mentioned above, the federal state legislation regulates elections to the municipal council and the mandates of members of municipal councils. However, we can still find features which are common to all local forms of local Government. All the communal institutions (i.e. the law regulations issued by the separate federal state parliaments) know and differ at least between two major bodies – the municipal council and the mayor.

In Germany the municipal council⁴¹ is representative body of the municipality, elected by the voters on the basis of universal, equal, and direct suffrage by a secret ballot in the individual territory. Inhabitants of a municipality who are 18 years older (in some of the federal states the age is lowered to 16, e.g. Mecklenburg-Western Pomerania, North Rhine-Westphalia and Schleswig-Holstein) have the right to vote. As for passive suffrage, there are no differences between the individual federal states. All citizens of the age of 18 and older have the right to be elected (<http://www.wahlrecht.de/kommunal/index.htm>). German citizens and citizens of other European Union member states can take part in communal elections.

The term of office of municipal representatives is, apart from two federal states, the same, i.e. five years. Only in Bavaria and Bremen is the term of office of representatives longer or shorter than in other federal states (Bavaria: six years; Bremen: four years). The municipal council can, according to its needs, exercise its authority with an advisory role, e.g. committees or panels. The municipal directorate (*Gemeindevorstand*) is formed on the basis of the composition of the electoral council. The highest representative of the municipality is usually the mayor.

⁴¹ In German politics the terms Municipal Council and Municipal Board are both indicated by the term *Gemeinderat*. Here we use the term Municipal Council for a collective directly elected body. The Municipal Directorate (*Gemeindevorstand*) is similar to a Czech Municipal Council, i. e. a municipal executive body elected by members of a Municipal Council (Municipal Board).

Mayor

Election of the mayor can proceed in two ways. He or she can be elected directly by citizens or indirectly by the municipal council, and in general this can be seen in two ways. The mayor is the highest political representative of the municipality, its statutory deputy. The mayor is elected indirectly by the municipal council has political support, is not in conflict with anyone who has the respect of municipal council. In this sense the mayor plays more the role of a politician, than the role of a representative of the interests of the municipality. Because it is the municipal council and not citizens that decides who will carry out this function this arrangement raises questions about an unsatisfactory situation where a mayor is indirectly elected.

This is why there is a system for electing the mayor directly in the federal states. The mayor is then seen as a person who really represents interests of citizens because it is the public that gives the mayor his or her legitimacy. The mayor is therefore not subject to his or her party's discipline but the electorate. An effort was made to overcome the gap between the electors and the political representatives of the municipalities, and the function of the mayor then was given special significance. A possible negative factor resulting from this could be the abuse of this important position to promote populist views and thoughts. Fears have been expressed that citizens would decide on the basis of publicity and the popularity of the elected person rather than on the basis of his or her real qualities.

In most of the cases these concerns did not materialise because (regarding position of a mayor) focus on the municipal directorate and council is necessary. Even when they are elected directly mayors cannot be seen as an apolitical because they work in a specific political environment, and their opinions and actions are shaped by their surroundings. These are the possible arguments for or against the direct election of a mayor.

On the basis of various relevancy of a mayor in the individual federal states his or her duration in office is different. The terms of offices of mayors do not have to correspond with the term of office of the member of municipal council (in many states it does not correspond). This strengthens the position of mayor in the system even more (<http://www.bpb.de/files/IOTZDB.pdf>). Because in most of the federal states the mayor is now elected directly, the duration of his or her term of office and the various opportunities for his or her recall are the biggest differences between individual federal states (Balík, 2003: 76).

Even the used terminology is varied (e.g. in towns which are not part of districts the mayor is called supreme mayor. The names for representatives of local

authorities differ also on the basis of the size of the municipality) (Heidenreich, 2001: 9-11).

Municipal election systems

We can describe the municipal electoral system as a proportional representation system, which can be modified in individual federal states. The basic principle of most German municipal elections is proportionality and candidate lists systems (except North Rhine-Westphalia and Schleswig-Holstein, where a mixed member proportional electoral system applies). The proportional representation system is the most common type of electoral system in the world. Its basic principle is that no individuals are nominated and the system is first of all a competition between political parties and their lists of representatives, compiled with or without voter involvement (Kubát, 2002: 280-292). These are the unifying elements of the German municipal elections.

Each voter has as many votes as there are seats in the municipality or district. The number of elected representatives depends on the number of inhabitants of the given seat – between eight to 80 councillors. Voters can distribute their votes among candidates on different lists of representatives (in the South German Council Organization). In connection with German municipal elections there is a possibility of ticket-splitting. This means that German voters have the right to up to three preferential votes. They can indicate their preferences for either the candidates (or a candidate) on one list of representatives or on the lists of different political parties (in the North German Council Organization). This principle is called cumulating. By launching the principles of cumulating and ticket-splitting the federal states believe that citizens will be more interested in elections in general, there will be an increase in voter turnout and consequently a greater legitimacy of the elected councillor (<http://www.bpb.de/themen/AJ4EYZ.2.0,Wahlen.html>).

In accordance with the technique of seat allocation we can divide the federal states into three basic groups. The basic difference is the mathematical method of seat allocation, which is one of the most important variables that affect proportionality and disproportionality of the chosen electoral system.

In general there are two possible methods for calculating seat allocation, either a divisor method or a quota method, and in the German municipal election system we can find both.⁴²

⁴² There are three basic types of divisor methods: d'Hondt, Sainte-Laguë and Imperiali methods. There are five types of quota methods; Hare, Drop, Hagenbach-Bischoff, Hare-Niemeyer and Imperiali (Cabada - Ženíšek, 2003: 19-20).

In the following overview all the German federal states except three municipal states – Berlin, Hamburg and Bremen – are listed. These cities are not typical. The municipal authorities are partners for provincial Governments but they do not have distinct local particular features; therefore we will not include them in the municipal electoral system or systems (in the case of Berlin compare <http://www.wahlrecht.de/landtage/berlin.htm>; <http://www.polixeaportal.de/index.php/Main/Artikel/Dossier/1/kapitel/133993/Dossierid/133990/n1/Themen/n2/WahlenParteien/id/133982/name/Wahlrecht:+Klassisches+Bundessystem> or the reform of the electoral law in Hamburg).⁴³

The divisor method

a) For allocating seats in Baden-Württemberg, Bavaria and Saxony the d'Hondt divisor method is used without a closing clause, and the open list proportional representation system (*Verhältniswahl mit freien Listen*).⁴⁴

In Saarland and Schleswig-Holstein the d'Hondt method is used also, but with a closed list proportional representation system. In Saarland a party must receive a minimum level of five per cent of the vote in order to be included in the calculation. In Schleswig-Holstein there is either a limit of five per cent or one constituency seat.

b) In Bremen and North Rhine-Westphalia the Sainte-Laguë divisor method is used. The closed list system and five per cent threshold is used in Bremen. The same list system is used in North Rhine-Westphalia, although the threshold is set for approximately one constituency seat.

The quota method

In municipal elections in Brandenburg, Hesse, Mecklenburg-Western Pomerania, Lower Saxony, Rhineland-Palatinate, Saxony-Anhalt and in Thuringia the proportional representation system with open lists is used, but the Hare-Niemeyer quota method is applied. Only in Thuringia is a five per cent threshold applied; Rhineland-Palatinate 3.03 per cent. The other states in this group have not applied this limit.

See the following table.

⁴³ The latest change to the Hamburg electoral system came into operation on 28 July 2007 and it was initialized in referendum and in 2004 ratified by citizens, who wanted to extend the possibilities to be express their opinions on the structure and form of the candidate lists. The municipal elections in 2008 will be held according to the new electoral system. (http://www.hamburgischebuergerschaft.de/cms_de.php?templ=mit_sta.tpl&sub1=93&sub2=145&sub3=200&cont=200)

⁴⁴ There are two types of candidate lists in the list proportional representation system: the closed and open lists; i.e. the type of the list indicates to what degree the voter is able to intervene into the structure of the candidate lists. Using closed lists voter decides for the party which formed the list, without the possibility to influence its structure. Open lists (sometimes called flexible lists) give the voter this possibility in various ways (Cabada-Ženišek, 2003: 19-20).

Table No. 1: Municipal elections systems

Federal State (Bundesland)	Voting period	Suffrage active – passive	Electoral system	Threshold	Electoral methods (quota, divisor)	Mayor (supreme mayor) term of office
Baden-Württemberg	5 years	18/18	Open List Proportional Representation System	-	d'Hondt	8 years
Bavaria	6 years	18/18	Open List Proportional Representation System	-	d'Hondt	6 years
Brandenburg	5 years	18/18	Open List Proportional Representation System	-	Hare-Niemeyer	6/8 years
Hesse	5 years	18/18	Open List Proportional Representation System	-	Hare-Niemeyer	6 years
Mecklenburg-Western Pomerania	5 years	16/18	Open List Proportional Representation System	-	Hare-Niemeyer	5/7 years
Lower Saxony	5 years	18/18	Open List Proportional Representation System	-	Hare-Niemeyer	5 years
North Rhine-Westphalia	5 years	18/18	Mixed Member Proportional Systems (closed list system)	one direct vote	Sainte-Laguë	5 years
Rhineland-Palatinate	5 years	18/18	Open List Proportional Representation System	3.03%	Hare-Niemeyer	5/8 years
Saarland	5 years	18/18	Closed List Proportional Representation System	5%	d'Hondt	8 years
Saxony	5 years	18/18	Open List Proportional Representation System	-	d'Hondt	5 years
Saxony-Anhalt	5 years	18/18	Open List Proportional Representation System	-	Hare-Niemeyer	7 years
Schleswig-Holstein	5 years	16/18	Mixed Member Proportional Systems (closed list system)	5per cent or one direct vote	d'Hondt	6/8 years
Thuringia	5 years	18/18	Open List Proportional Representation System	5%	Hare-Niemeyer	5/6 years

Sources: <http://www.wahlrecht.de/kommunal/index.htm>;

<http://www.bpb.de/files/IOTZDB.pdf>

The elements of direct democracy in municipalities

Another relevant principle of municipal autonomy and importance is citizens' opportunity to participate on forming municipal opinion in referendum (in Germany it is called a popular initiative or citizens' decision/referendum; i.e. direct participation in municipal decision-making). After the reformatory steps in North Rhine-Westphalia there are currently popular initiatives embedded in the constitutions of nine federal states (Balík, 2002a: 170).

Popular initiative (Volksinitiative)

The popular initiative is one of the tools of direct democracy and is one way citizens can participate directly in the legislation process; i.e. the basis for initiating, abolishing or changing a law or another political decision. In some federal states (e.g. Baden-Württemberg) popular a initiative is formally called A Request for Popular Demand Approval (*Antrag auf Zulassung eines Volksbegehrens*) (<http://www.mitentscheiden.de/2117.html>). This form of popular initiative in Germany can be used only at the federal state level. Citizens are allowed to initiate a proposal (draft law) or introduce a relevant proposal themselves to the state parliament (*Landesparlament*). In cases where a requested number of signatures is collected within a given time limit the federal state parliament is obliged to deal with the issue or hear the citizens views and make a decision

(<http://www.bundestag.de/dasparlament/2006/10/Beilage/003.html>).

Volksentscheid und Volksabstimmung (Citizens' decision and referendum)

The second element of direct democracy is the *Volksabstimmung* (translated as a citizens' decision, which is a specific type of referendum), which is a term similar to *Volksentscheid* or *Bürgerentscheid* (at the municipal level). All these terms can be used as synonyms. Article 29 of the BL lists the cases in which the *Bund*, federal state or municipality are obliged to hold a referendum.

At the federal level these issues involve matters of citizenship or the questions of international or interstate character (e.g. a new federal organization or change of constitution). The Basic Law allows local plans changes, which are conditioned by holding a referendum. The voters in the federal state (or states) themselves decide about the possibility of establishing a new state, reducing a state's size, or generally the reorganization of the state's structure. And, under certain circumstances, the Federal Council and Federal Parliament. The Basic Law specifies the situations where requests for change can be allowed, to reach the change or, on the other hand, when status quo should be maintained (Art. 29 of the BL).

The principles of popular legislation (*Volksbegehren*) and citizens' decisions (*Volksentscheid*) are legalized in the constitutions of each federal state. On a municipal

level these instruments of direct democracy are called *Bürgerbegehren* or *Bürgerentscheide* (*Bürger* = citizen). Thus, citizens are able to co-determine in questions connected with their citizenship (in municipal, regional or district questions).

It is within the competence of each federal state to reduce or modify these matters. Citizens are not allowed to express their opinion on all questions. For example, in Baden-Württemberg initiating a referendum in the matters of budgets and economic planning, local building regulations or municipal local planning (<http://www.buergerbegehren.de/go/bawue.htm>) is not permitted.

Conclusion

Federal states have an important position in the political system of the Federal Republic of Germany. From the political science point of view the specific status of federal states is shown by the possibility of own legislative process and regulation of the state communal structure. It is primarily the federal states which establish the form of the communal system. It is in the competence of each state to modify the conditions under which the basic signs of the communal system – the term of office the municipal council (electoral period) and the supreme municipal representative, the method of electing the municipal council and the mayor; the rights and duties of municipal representatives – will be established. The constitution does not control the sphere of communal politics, so the attributes of the German communal system are exclusively in the competence of the state. The position (strong v weak) of municipalities is not established by the highest state level – the Bund, but by the particular federal state. The article shows that the basic organizational structure of individual federal states is formed by the German municipal system.

At the end of last century (in the 1990s) there was a heated discussion because of the changes in the electoral system of the German federal states (in some of them this discussion continues) and there were big changes made in the communal systems of many federal states. That is why it is possible that the aforementioned typology of the communal systems can be modified with time. In these debates a principle which was enforced and emphasized by the European Union played an important role, i.e. bringing the administration of public affairs closest to the citizen, i.e. to the communal level. There was an aim to strengthen the citizen's feeling of participation in the administration of public affairs, increase the numbers in electoral participation and with that an increase in legitimacy of political leadership on communal level. With this closely relates the question about the way of mayor election. The importance of municipalities and communal politics has been growing since the German reunification; especially in connection with the increasing influence of citizens on forming and influencing politics on communal level (direct elections of mayors or element of direct democracy).

The ways which federal states establish and modify functioning of communal politics inside their political structure then influences their structures. This is why communal politics and its forming is an important topic on German political scene. It is difficult to define the direction which German municipalities and communal politics will precede after all the reformatory steps which they have passed and still are going to pass. Definitely this development should not stay out of political scientists' interest and should remain researched.

References

- Balík, Stanislav (2002a): Obecní volby v Německu. Zastupitelská demokracie na komunální úrovni. *Politologický časopis*, vol. 9, no. 2, pp. 169-181.
- Balík, Stanislav (2002b): Čtyři základní typy obecního uspořádání v Německu? Debata nad jejich vzájemnou konvergencí, *Středoevropské politické studie*. Brno, Mezinárodní politologický ústav, vol. 4, no. 1, pp. 1-15.
- Balík, Stanislav (2003): Debata nad podobou nejnižší úrovně veřejné správy ve Spolkové republice Německo. In: Fiala, Vlastimil - Říchová, Blanka a kol., *Úloha politických aktérů v procesu decentralizace evropských zemí*. Sborník z konference konané v Olomouci 9. 12. 2002, Nakladatelství Moneta.
- Cabada, Ladislav - Ženíšek, Marek (2003): *Smíšené volební systémy*. Dobrá voda u Pelhřimova, Vydavatelství a nakladatelství Aleš Čeněk.
- Grundgesetz der Bundesrepublik Deutschland.
- Heidenreich, R. (2001): Postavení obcí v SRN, ČR a Rakousku, In: Wildmannová, Mirka - Šelešovský Jan a kol., *Územní samospráva v ČR, Rakousku a SRN*, pp. 9-15, Brno, Masarykova univerzita.
- Chandler, J. A. (ed.) (1998): *Místní správa v liberálních demokraciích*, Brno, Doplněk.
- Kubát, Michal (2002): Volby a volební systémy, In: Cabada, Ladislav - Kubát, Michal a kol., *Úvod do studia politické vědy*, pp. 268-321, Praha, Eurolex Bohemia.
- Local Finance in the Fifteen Countries of the European Union (1997, 2002), Brussels, Paris, DEXIA.
- Schubert, Klaus – Klein, Martina (2006): *Das Politiklexikon*. Bonn, Dietz.
- Škaloud, Jan (2005): Spolková republika Německo, In: Dvořáková, Vladimíra a kol., *Komparace politických systémů I.*, pp. 199-241, Praha, Nakladatelství Oeconomica.
- Wehling, Hans-Georg (1999): Kommunalpolitik, In: Weindenfeld, Werner – Korte, Karl-Rudolf (Hrsg.) *Handbuch zur deutschen Einheit*. Bonn, Campus Verlag.

Wildmannová, Mirka - Šelešovský Jan a kol. (2001): *Územní samospráva v ČR, Rakousku a SRN*, Brno, Masarykova univerzita.

Internet documents

Andersen, Uwe – Wichard, Woyke (Hg.) (2003): *Handwörterbuch des politischen Systems der Bundesrepublik Deutschland*. Lizenzausgabe Bonn: Bundeszentrale für politische Bildung. In: http://www.bpb.de/wissen/01831888225042315718740341663869,5,0,Gemeindenkommunale_Selbstverwaltung.html#art5 (March 3rd, 2008).

Das neue Wahlrecht zur Hamburgischen Bürgerschaft In: <http://fhh.hamburg.de/stadt/Aktuell/weitere-einrichtungen/landeszentrale-fuer-politische-bildung/downloads/6-stimmen-fuer-hamburg-pdf,property=source.pdf> (September 11th, 2007).

Pöttsch, Horst (2005): *Die deutsche Demokratie*, pp. 32-35. Bonn, Bundeszentrale für politische Bildung, In:

<http://www.bpb.de/themen/AJ4EYZ,2,0,Wahlen.html> (September 10th, 2007).

Wegener, Alexander (2004): *Deutsches Kommunalrecht*. In: <http://www.kommunaler-wettbewerb.de> (February 13th, 2008).

Weixner, Bärbel Martina (2006): Direkte Demokratie in den Bundesländern. *Das Palament*, Bundeszentrale für politische Bildung, No. 10 / 2006. In:

<http://www.bundestag.de/dasparlament/2006/10/Beilage/003.html> (November 20th, 2007).

Internet sources

<Http://www.bmbf.de> (October 11th, 2007).

<Http://www.bmu.de/allgemein/aktuell/160.php> (October 9th, 2007).

<Http://www.bpb.de> (January 22th, 2008).

<Http://www.buergerbegehren.de/go/bawue.htm> (October 12th, 2007).

<Http://www.bundesregierung.de/Webs/Breg/DE/Homepage/home.html> (November 24th, 2007).

Http://www.deutsche-staedte.com/bundeslaender_fr.html (May 16th, 2007)

Http://www.hamburgische-buergerschaft.de/cms_de.php?templ=mit_sta.tpl&sub1=93&sub2=145&sub3=200&cont=200 (November 3th, 2007).

Http://www.lfu.bayern.de/komma21/zeitung/pdf/k21_akt_1_2005.pdf (November 11th, 2007).

<Http://www.mitentscheiden.de/2117.html> (September 17th, 2007).

[Http://www.mvcr.cz/odbor/moderniz/mezinaro/rada_evr.html#charta](http://www.mvcr.cz/odbor/moderniz/mezinaro/rada_evr.html#charta) (September 13th, 2007).

[Http://www.polixea-portal.de/index.php/Main/Artikel/Dossier/1/kapitel/133993/Dossierid/133990/n1/Themen/n2/WahlenParteien/id/133982/name/Wahlrecht:+Klassisches+Bundessystem](http://www.polixea-portal.de/index.php/Main/Artikel/Dossier/1/kapitel/133993/Dossierid/133990/n1/Themen/n2/WahlenParteien/id/133982/name/Wahlrecht:+Klassisches+Bundessystem) (December 10th, 2007).

[Http://www.wahlrecht.de/kommunal/index.htm](http://www.wahlrecht.de/kommunal/index.htm) (November 8 th, 2007).

[Http://www.wahlrecht.de/landtage/berlin.htm](http://www.wahlrecht.de/landtage/berlin.htm) (November 10th, 2007).

Miroslava Pitrová is a Ph.D. candidate at the Department of Politics and International Relations, Faculty of Philosophy and Arts at the the University of West Bohemia in Pilsen, Czech Republic.

E-mail: mpitrova@kap.zcu.cz