

ABSTRACTS*

Schmidt-Jortzig, Edzard: Remuneration and resources in political office. Recommendations of the “Independent Commission on Legal Issues of Members of Parliament”.

The “Independent Commission on Legal Issues of Members of Parliament” (Unabhängige Kommission zu Fragen des Abgeordnetenrechts) was installed by the German Bundestag to review the legal status of the MPs and their financial allowances. The Commission presented a number of proposals to the legislator. Their suggestions as well as the implementation of their recommendations are discussed in this article. [ZParl, vol. 45, no. 2, pp. 247 – 257]

Welti, Felix: Old-age pension for Members of the German Bundestag. The report of the “Independent Commission on Legal Issues of Members of Parliament” and the reform 2014.

Since 1968 Members of the German Bundestag (MdB) are entitled to old-age benefits, which since 1977 are the equivalent to those of civil servants. In 2011, the “Independent Commission on Legal Issues of Members of Parliament” (Unabhängige Kommission zu Fragen des Abgeordnetenrechts – UKA) was commissioned, among other things, to develop a scheme for a contemporary old-age benefit system. In accordance with Art. 48 Abs. 3 Grundgesetz, such a system must provide an adequate and independency-granting remuneration. The UKA stressed the legislative leeway when deciding on an adequate remuneration and pension plan for MPs and proposed three options for the future design, all of which were unanimously considered to be in accordance with the constitution. One model suggests retaining the traditional system with some modifications, another model would contain different components, including mandatory and complementary pension insurances, the third model left provision for old age entirely to the MPs themselves. After a very short debate, in 2014 the Bundestag decided to keep the traditional system and to restrict the option of early retirement for senior MPs. Given that the structure of the MPs old-age pension scheme was hardly discussed, it seems advisable to do so now. [ZParl, vol. 45, no. 2, pp. 258 – 269]

Austermann, Philipp: The development of remuneration and travel entitlements according to the legal provisions for German assembly members.

Members of the German Bundestag and members of the state legislatures (Landesparlamente) receive a salary for their mandate (so-called remuneration). They are also entitled to so-called Members’ allowances (Amtsausstattung), which consist of monetary allowances and benefits in kind. German Members of Parliament normally have the right to use public transport free of charge and/or the right of reimbursement of travel costs. The development

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of the financial compensation for members of parliament from the times of the Kaiserreich to this day shows very clearly how the parliamentary mandate has become a fulltime job. An adequate income and appropriate Members' allowances are key conditions for a true democracy and successful parliamentary representation. A sound financial basis of this kind is essential (a) for enabling everyone to participate in the political life of the State and (b) to secure the inevitable professionalism of the parliamentary mandate. [ZParl, vol. 45, no. 2, pp. 270 – 282]

***Patzelt, Werner J.:* Unpleasant insights into the deep structures of German perceptions of parliament: Reactions to the proposals of the Independent Commission on Legal Issues of Members of Parliament.**

The Independent Commission was installed to submit new proposals on how to remunerate members of the German Bundestag. Welcomed by a vast majority of MPs, the Commission's report attracted fierce public reactions. Documented in press articles, letters to editors, and weblogs these reactions offer revealing insights into deep structures of German perceptions of parliament. This article discusses pertinent findings and puts them into the broader framework of what is known from polls about popular criticism of parliament in Germany. [ZParl, vol. 45, no. 2, pp. 282 – 307]

***Jutzi, Siegfried:* Position-related allowances for parliamentary managers. On the decision of the State Constitutional Court of Schleswig-Holstein of September 30, 2013.**

According to the jurisdiction of the German Federal Constitutional Court (BVerfG) the number of parliamentary functions with additional position-related allowances is limited to prominent positions, such as the President and Vice-President of Parliament and the chairperson of a parliamentary faction, whereas other prominent functions, e.g., the whips of a faction, are not permitted additional remuneration. The ruling of the BVerfG has been widely criticized because the Court did not take into account sufficiently the realities in the different Parliaments. In contrast to the BVerfG, the Constitutional Court of Schleswig-Holstein has ruled convincingly that granting allowances for whips does not impair the principle of equality among MPs inappropriately because the allowance compensates for the restrictions in carrying out the mandate that the additional position entails. [ZParl, vol. 45, no. 2, pp. 307 – 314]

***Oberreuter, Heinrich:* From affair to reform. Changes in the legal provisions regarding Members of Parliament in Bavaria.**

In 2013 the so-called “kinship affair” (Verwandtenaffäre) shook the Bavarian parliament and triggered the revision of important legal provisions regarding Members of Parliament and led to implementing severe restrictions. Under the new law it has become imperative to present all bills, receipts and credentials related to assistant assignments, be they employment contracts, service contracts or special-order contracts. So far, the Landtag's administrative branch manages the relevant funds. The requirements of disclosure and publication of non-gratuitous employment, investments held and donations that are a part of the legislative body's rules of conduct have been tightened considerably. While the latter reform was

modeled on the Bundestag's rules, the prohibition of employing relatives up to the 4th degree of kinship puts the Bavarian parliament in an exceptional position. It in turn was the model that was followed by the German Bundestag when indexing the remuneration of the Members of Parliament. The affair unleashed severe and abundant, albeit in most cases poorly informed, criticism since it arose from a misunderstanding: In 2000 a grandfathering clause was introduced and remained in effect until the reforms in 2013. It stipulated that existing employment agreements between a Member of Parliament and one of his/her relatives (1st degree of kinship!) were excluded from the ban due to legitimate expectation. [ZParl, vol. 45, no. 2, pp. 314 – 326]

Schultze, Rainer-Olaf: The election of the Bavarian state parliament on September 15, 2013: the federal and the state level hand-in-hand.

In the election to the Bavarian state parliament on September 2013, Premier *Horst Seehofer* and his Christian Social Union (CSU) won 47.7 percent of the total vote. They are once again able to form a majority/one-party government in the Bavarian legislature. Their victory is owed to a variety of factors: (1) The socio-structural and cultural asymmetries in the Bavarian electorate that again worked in favour of the CSU. (2) The comparative advantage of the Bavarian economy vis-à-vis the other Länder in the Federal Republic. (3) Important changes in government policies since 2008, both with regard to style and content. The CSU tried to be more responsive than in the past and to better take into account the electorate's interests and wishes. (4) The context of the almost contemporaneously held federal elections just one week later that allowed *Seehofer* and the CSU to successfully fight the state election campaign almost exclusively on the basis of their federal policy agenda – which in turn hindered the three parliamentary opposition parties to pursue their state centered electoral campaign strategy. The four elections held in Bavaria in 2008/2009 and again in 2013/2014 are therefore an excellent example for studying the multiple interrelations between the four different election arenas from the local and regional to the federal and supranational level. [ZParl, vol. 45, no. 2, pp. 326 – 348]

Faas, Thorsten: The election of the Hessian state parliament on September 22, 2013: Black-Green "Hessian peculiarities".

Although Hesse had left the brief interregnum of so-called "Hessian peculiarities" after the 2009 state elections and returned to a bloc-based black-yellow government of CDU and FDP, the legislative term was nevertheless turbulent. *Roland Koch* resigned after ten years of office as Prime Minister and *Volker Bouffier* followed him. The 2013 state elections coincided with the federal elections. State-specific aspects were consequently rather rare in the campaign. However, coalition issues are always particularly gripping in Hesse. Despite the fact that pre-electoral alliances were in line with the traditional patterns - red-green, black-yellow -, the parties were open for other alternatives. On Election Day, the Christian Democrats came in first. The Social Democrats increased their vote share by seven percentage points after their disastrous 2009 result. The Greens received 11.1 percent, FDP and the Left Party just over five. Turnout was 73.2 percent, up by 12.2 percentage points – a direct result of the merger of the election dates. The outcome of the election gave none of the desired coalitions a majority, so there was a long period of exploratory talks. Ultimately,

the Christian Democrats decided to offer the Greens coalition negotiations. These were concluded swiftly. In January 2014 *Bouffier* was confirmed in his office, now heading a black-green government. [ZParl, vol. 45, no. 2, pp. 349 – 365]

***Koschmieder, Carsten:* Wind of Change? The Pirate Party after two years in the Berlin state parliament.**

After entering the Berlin state parliament, the Pirate Party intended to do many things “differently”, especially in the fields of transparency, involvement of party members, hierarchy within the parliamentary group, and party discipline. They indeed began implementing their ideas, but after two years’ time they have already refrained from some of them. To foster transparency, the Pirate Party’s parliamentarians published many documents, their appointments, and their income. However, today they choose to hold their meetings in private more readily than two years ago. Becoming more and more professional, the representatives are meanwhile less concerned with the participation of ordinary members which is decreasing anyway. The chairmen’s attempt to increase the party’s executive powers was stopped by the parliamentary group, but they were unable to prevent the emergence of an informal hierarchy. The group also developed a de facto party discipline since most parliamentarians generally vote with the colleague who is the expert on the respective topic. Although the Pirate Party has given up on some changes, in many ways it is still “different”. [ZParl, vol. 45, no. 2, pp. 365 – 382]

***Bullwinkel, Bastian and Lothar Probst:* Intraparty decision making processes by way of digital participation. A test of the Liquid Democracy concept.**

The Pirate Party organisations in North Rhine-Westphalia and in Berlin use the Internet to implement intraparty Liquid Democracy. Their aim is to give as many party members as possible the opportunity to participate in the party’s decision making processes. At the same time they want to tie decisions of the regional executive board and the regional parliamentary party to the political intent of the party base. LiquidFeedback is the key digital tool to achieve these goals. A selected number of case studies reveals, however, a rather great discrepancy between ambition and reality. Despite the rather low thresholds of digital participation fewer party members participate in intraparty decision making by way of the Internet than by party conventions. Furthermore, decisions made by way of digital participation within the Pirate Party have little, if not to say no influence on the final decisions taken by the executive board or the parliamentary party in the state legislatures. Against this background the claim of the Pirate Party to represent a new model of intraparty participation by using the tools of LiquidFeedback must be questioned. [ZParl, vol. 45, no. 2, pp. 382 – 401]

***Steinberg, Rudolf:* Direct Democracy in Political Parties. Considerations on the occasion of the referendum of the SPD.**

The referendum of the SPD on the coalition agreement between CDU/CSU and SPD for the Federal Government in the autumn 2012 raises several questions. Should it also be used on other matters and in other political parties? After the Federal Constitutional Court con-

firmed the legality of the instrument might plebiscites strengthen the weak democratic structures within the political parties in Germany? And would it even be advisable to invite non-members to participate to strengthen the linkage-function of political parties? To answer these questions a look at the French primaires 2011 before the nomination of *François Hollande* as socialist candidate might be helpful. There are good reasons to assume that introducing direct democracy within the political parties will reduce the request for direct democracy on the Federal political level. [ZParl, vol. 45, no. 2, pp. 402 – 415]

Oswald, Michael: Party ban in spite of insignificance? The NPD, her strategy, and the prospects of the new attempt to ban the party.

Germany is still in a state of consternation: The murders for which members of the National Socialist Underground (NSU) are standing on trial currently have set the political scene in turmoil, and their shock waves have rocked the society like no other event in recent history. Debates about right-wing extremism have reached an unfading crescendo. The party that is most connected to this movement is the National Democratic Party of Germany (NPD). Parts of society, many politicians and spokespersons demand that the party should be banned. However, this only conceals, covers and denies the fact that right-wing extremism is an ongoing part of German society – and that it calls for different counter-strategies. There is little doubt that its members and activists are extremists. Still, the NPD is marginalized, even within the Neo-Nazi-movement and there is not the slightest possibility that it will be successful in even one of its strategic goals. [ZParl, vol. 45, no. 2, pp. 440 – 460]

Edinger, Florian: Exemption of the South Schleswig Voters' Association from the 5-percent threshold is constitutional. On the decision of the state constitutional court of Schleswig-Holstein of September 13, 2013.

In Schleswig-Holstein, one of the 16 German federal states (Länder), the Danish national minority's political participation is ensured by the South Schleswig Voters' Association (Südschleswigsche Wählerverband, SSW) which is exempted from the 5-percent threshold in the elections to State Parliament. Since the 2012 election, the SSW is part of the government coalition, together with the Social Democratic and the Green Party. The constitutional court of Schleswig-Holstein had to decide whether the 5-percent threshold and the exemption of the SSW is constitutional. The court affirmed the 5-percent threshold as well as the exemption of the minority's party. The purpose of the exemption is to integrate the ethnic minority into the democratic system of Schleswig-Holstein. Therefore its party has the right to act as any other political party, including the right to be part of a government coalition. [ZParl, vol. 45, no. 2, pp. 460 – 464]

Haug, Volker M.: Each and everyone to the European Parliament? A critical review of the German Federal Constitutional Court's ruling on the election threshold.

The ruling of the German Federal Constitutional Court's on the election threshold of the European Electoral Law fails to clearly establish an Electoral Law that can provide for a functional and operational parliament. Numerous national centered stands are taken in the ruling which are in stark contrast to the pro-European spirit of the Grundgesetz. It does

not appreciate adequately the importance of the EP as a democratically and directly legitimized organ of integration and representation for about half a billion people. The Court furthermore lacks in understanding the political dimension of the EP's and its factions' mode of operation. In addition the ruling disregards former verdicts of the Court and the distinction between the authority realms of the constitutional jurisdiction and the legislature, whose interests and motivations are depicted in a partial and negative manner. Here, the Court takes its prerogative of interpretation in regard to the Grundgesetz to such an extreme that its actions bear more resemblance to that of a political agent than that of a supervising organ. [ZParl, vol. 45, no. 2, pp. 467 – 489]