

ABSTRACTS*

Röper, Erich: EU-related decisions of the Bundesrat beyond parliamentary control.

During the German Federal Constitutional Court's hearings concerning the Lisbon Treaty the parliamentary control of EU institutions was discussed and the discussion primarily concerned the Council of Ministers. According to Germany's constitution the Bundstag's control over EU decisions is marginal. On the one hand, Bundestag statements need only be considered during Council negotiations. Bundesrat statements on the other hand need to be taken into account should Länder competences be concerned. In cases in which legislative powers lie exclusively with the Länder, a representative of the Länder designated by the Bundesrat acts on behalf of the Federal Republic in the Council of Ministers. Lack of parliamentary control is evident on both counts. [ZParl, vol. 40, no. 1, pp. 3 ff.]

Schmitt-Beck, Rüdiger and Thorsten Faas: The election of the Hessian state parliament on January 27, 2008: The return of "Hessian peculiarities".

In sharp contrast to the 2003 election (when the Christian Democrats were able to form a single party government), the 2008 Hessian state election led to a return of "Hessian Peculiarities". The 2008 election was dominated by polarizing campaigns (based on the issues of education, social justice, and crime) fought between two opposing blocs (Christian Democrats/Liberals vs. Social Democrats/Greens), each willing to form a coalition of its own. In the course of the campaign, the Social Democrats (lead by *Andrea Ypsilanti*) were gaining ground and increasing pressure on the Christian Democrats (and its prime minister *Roland Koch*). In the end, the Social Democrats were able to increase their vote share considerably, while the Christian Democrats were faced with massive losses – although they were still Hessian's largest party by a very small margin. The liberals came in third, pushing the Greens aside. The Leftist Party was able to enter Parliament for the first time. The polarization of Hessian's party system precluded the formation of a grand coalition, no other two-party-coalition had a majority in Parliament, and three-party-arrangements could not be agreed on. Given that, the ruling Christian Democrats stayed in office as a caretaker government, which in turn lead the Social Democrats – contrary to their campaign promises – to take steps to install a red-green minority government tolerated by the Leftist Party. Such attempts were launched twice, but both failed due to the refusal of individual Social-Democratic MPs to follow. In the end, the dissolution of Parliament was accepted by all parties as the only feasible alternative. [ZParl, vol. 40, no. 1, pp. 16 ff.]

* Diese sind in deutscher Sprache zu finden auf www.zparl.de beziehungsweise www.politik.uni-halle.de/zparl.

Schultze, Rainer-Olaf and Jan Grasnick: The election of the Bavarian state parliament on September 28, 2008: Accident or the end of a myth?

On September 28, 2008, the governing Christian Social Union (CSU) for the first time in their history lost its commanding two-thirds majority in the Bavarian state parliament. Its share of the popular vote was reduced to 43.4 per cent (a loss of 17.3 percentage points). The landslide loss had far reaching consequences: It changed the structure of the party system, caused the CSU to replace its leadership, and – lacking a parliamentary majority in the legislature – the party was forced to enter into a coalition with the liberal Free Democratic Party and to adapt to the logic of coalition government for the first time in forty-six years. Various short term political events and long term structural social changes are analyzed which led to the seminal defeat of the CSU and ended its far ranging hegemony as Bavaria's "natural" governing party. [ZParl, vol. 40, no. 1, pp. 34 ff.]

Fürnberg, Ossip and Danko Knothe: Election victory devoid of majority: Implications of increased split-ticket voting on mandate distribution and coalition options.

The authors analyze the influence of increased split-ticket voting by turning to the outcome of the 2005 German Bundestag election. The votes cast for CDU/CSU and FDP on the one hand as well as for SPD and Green Party on the other hand were pooled on the constituency level (299 constituencies), thus forming the basis for our empirical study. In a second step, the election results were experimentally simulated achieving systematically higher splitting levels and leading to substantially different results in mandate distribution: large parties (CDU/CSU, SPD) would get up to 100 percent of a political camp's "first votes" (Erststimmen), while the smaller parties (FDP and Greens) would get up to 100 percent of the "second votes" (Zweitstimmen). Consequently this would lead to numerous different coalition building opportunities. The remarkable change of the parliamentary group strengths originates from the possibility of "surplus seats" (Überhangmandate) by intensified split-ticket voting. It is shown that very strongly increased splitting levels could lead to election victories without majorities at the ballot box. A reform of the German electoral system is necessary, not only because of the "surplus seats". Three reform options are discussed. [ZParl, vol. 40, no. 1, pp. 56 ff.]

Hanschmann, Felix: „Eternity is really long, especially near the end“ – a judicial (re-) evaluation of local suffrage for third-country citizen.

Numerous political initiatives and memoranda of intent have recently dealt with granting municipal suffrage to third-country nationals. However, no concrete bill has been implemented so far. In legal discourse, the legitimacy of voting rights for third-country nationals is negated generally by reference to two rulings of the German Federal Constitutional Court (FCC) in 1989. In these rulings the FCC declared the introduction of municipal suffrage for third-country nationals unconstitutional. The analysis shows that developments in international law, European law, and constitutional law, over the past twenty years have shaken both the reasoning underlying the judgments and the legal literature that until today largely follows the arguments of the court. In particular, a re-evaluation of municipal suffrage for third-country nationals is brought about by the revision of Article 28 paragraph 1 of the German Basic Law, which now grants municipal suffrage to EU citizens. Moreover,

granting individuals the right to vote and stand as a candidate in elections to the European Parliament in the Member State in which one resides contributed to the re-evaluation, and, finally, through the emergence of international law-based transnational citizenship that guarantees legal status below domestic citizenship. [ZParl, vol. 40, no. 1, pp. 74 ff.]

***Hermsdorf, Fred:* Principle of democracy versus equality of votes. The method of “Mehrheitstreue” used at parliamentary elections.**

Using the “Mehrheitstreue” method to apportion votes in an election to the different parties brings to the forefront the representation of all possible coalitions and the proximity to proportionality. Mathematical considerations, show that these demands are largely fulfilled. Since every possible coalition enabled by the electors is reflected in the composition of the parliament it is ensured that the rule of majority as the base of every democratic decision process is kept with. Applying the results found by the mathematical considerations on parliaments consisting of five parliamentary groups and on the votes of the German Bundestag till 2005 supports these statements. [ZParl, vol. 40, no.1, pp. 86 ff.]

***Hartleb, Florian:* Against globalization and democracy. The NPD as a new social movement set in a European context?**

For a long time meaningless, the German “National Democratic Party” (NPD) is cast in a new light: it is modernized and its programme is internationalized. As a new social movement the party is practising an active politic of demonstration, arousing interest in some East-German regions. However, there are limits to the party’s popularity. One of these limits lies in their own weaknesses and the other is rooted in Germany’s recent experience with totalitarian National Socialism. The NPD links itself to the new dimension of globalization in the present European democracies by taking a confrontational stance on the economic, political, and cultural dimensions of globalization. However, a closer analysis reveals that the NPD positions itself in continuity with the ideology of National Socialism. In a European context, the NPD is not a unique phenomenon. International developments within right-wing extremism implicate a type of fascism as a new social movement. [ZParl. vol. 40, no. 1, pp. 96 ff.]

***Gruber, Andreas K.:* Catalysts for career. Career functions of youth organizations of political parties.**

Roland Koch, Guido Westerwelle or *Andrea Nahles* are prominent examples of influential politicians who have advanced to senior positions in their parties after having had a career in the parties’ youth organizations. It is common to infer from a small number of cases the meaning of youth organizations for party careers without, however, setting the meaning of these organizations in a more general framework of political career paths. The quantitative-empirical analysis imbeds the degree of influence of the youth organization in a phase model of political careers. This approach draws on the political careers of 134 German high-level politicians and 81 young members of federal and state parliaments. The analysis shows that youth organizations exert significant influence on political career paths. They bind politically interested citizen to the respective parties at an early stage. In addition, their

members manage to take over strategic party functions more often and at a far quicker pace. Former youth officials are relatively young when switching to professional politics. The great majority of high-level and young talented politicians consider participation in youth organizations helpful for their own careers, and many consider this to be vital and indispensable. Overall, youth organizations act as a starting point and catalyst for political careers. [ZParl, vol. 40, no. 1, pp. 109 ff.]

Cordes, Malte: On the participation of political parties in media industry – a discussion of the decision of the German Federal Constitutional Court of March 12, 2008 – 2 BvF 4/03.

Federal states ruled by the CDU unleashed a wave of legislative initiatives to push back the influence of political parties in the media industry. The CDU and FDP firmly believe that the credibility of democracy and the independence of the fourth estate are jeopardized if political parties hold media shares. However, the Second Senate of the German Federal Constitutional Court decided that it would be unconstitutional to prohibit political parties from acquiring broadcasting shares unconditionally. Nevertheless, the parties generate significant revenues through investments in print and broadcasting media. This has a significant impact on equal opportunities in political competition. Moreover, there is a risk that published opinion, influenced by the parties, is passed off as the public opinion, i.e. as an outcome of public discourse. Finally, the decision of the Constitutional Court raises concern because it leaves conflicts of interest between parties and the State Media Institutions unconsidered, and because diverse ownership structures lead to statistical phenomena that are also not accounted for. [ZParl, vol. 40, no. 1, pp. 123 ff.]

Limpert, Martin: How political parties cease to exist: Dissolving and merger.

The Act on Political Parties provides four different ways in which political parties can cease to exist: they can dissolve themselves; they can be forced to dissolve by means of judicial procedures to ban them; they can be disbanded due to existing legal provisions; or they can merge with another party. Where a party is disbanded, it ceases to exist – that is to say the whole of the party and all of its sections are dissolved. Just as a party may decide to disband, it may also decide to re-form itself. However, the establishment of organisations aimed at pursuing the anti-constitutional tendencies of a party banned by the Federal Constitutional Court, or aimed at continuing existing organisations as substitutes, is prohibited. An association loses its legal status as a party if it has not taken part either in Bundestag elections or in elections at Land level for six years. When the merger took place forming the Left party, it was the Left Party. PDS into which the new party was merged. This means that, from a purely legal perspective, the new Left party is the formal successor to the PDS. Nevertheless, a new party has emerged, as desired by the party itself; this desire cannot be ignored since it is a constitutional right. [ZParl, vol. 40, no. 1, pp. 140 ff.]

Edinger, Florian: Voting a secretary out of office who opted-out of her parliamentary group. The decision of the Constitutional Court of the Saarland of December 3, 2007 – Lv 12/07.

A secretary of the Landtag of the Saarland resigned from her party and her parliamentary group. She joined the Left Party, which at that point was not represented in the state parliament. In the Landtag of the Saarland, secretaries are part of the Presidium. Against her will, the Landtag replaced her as a secretary by another member of the parliamentary group. The Constitutional Court of the Saarland dismissed her action of having her re-installed in that position. The Constitution stipulates that members of the Presidium are appointed according to the representation of the parliamentary groups. According to the Act on the Landtag, members of the Presidium are elected for the duration of the legislative term, but this does not rule out the possibility of parliament replacing a member of the Presidium in order to guarantee that every parliamentary group is represented. The decision makes clear that not only committee members but even Presidium members are appointed according to the relative strengths of the parliamentary groups. Nevertheless, explicit rules for the replacement of Presidium members are advisable. Most German state parliaments have such rules. [ZParl, vol. 40, no. 1, pp. 155 ff.]

Deter, Gerhard: The memory of politics – The Press Documentation Division of the German Bundestag.

The Press Documentation Division of the German Bundestag has existed since 1949. The task of the division's staff is to select from the publications they examine articles relevant to parliamentary work, documenting the political, social, economic and cultural events of the day. Among other things, they compile a press folder each day in order to help inform Parliament, its Presidium, its bodies and its many staff. The extensive Press Archive allows users access to 25 million articles. This makes the Bundestag's Press Documentation division one of Germany's most important information and documentation facilities. [ZParl, vol. 40, no. 1, pp. 160 ff.]

Dieter Noblen: Equality of votes as *idée fixe* or: A Return to Weimar? On the decision of the Federal Constitutional Court on the German electoral system.

In July 2008, the Federal Constitutional Court declared part of the German electoral system unconstitutional. It obliged Parliament to reform the electoral law by June 2011 at the latest. The Court found the so called negatives Stimmgewicht (the negative weight of the vote, which may result by subtracting the single member constituency seats from the number of list seats that parties gained by the proportional distribution of seats at the Land-level) incompatible with the constitutional principles of equal and direct suffrage. On the one hand, one can agree with the decision precisely because voters rarely foresee whether their vote actually exert an effect contrary to their political will. Accordingly, the electoral system is likely to lack the transparency on which the legitimacy of elections relies. On the other hand, the Court argues on the basis of outdated concepts and dogmatic considerations about electoral systems, arguments which may be used to defend a system of pure proportional representation such as known under the failed Weimar Republic. In regard to proposed reforms of the electoral law, it seems important to oppose this tendency and to

maintain or even strengthen the constraining effects of the current electoral system on both electoral behavior and the party system. [ZParl, vol. 40, no. 1, pp. 179 ff.]

Bernhardt, Otto and Anne Deter: Sentenced to success. The opinion-forming process in the grand coalition since 2005 taking financial policy as an example.

The grand coalition established in 2005 at the federal level may serve as a role model over the next few years for similar constellations at Land level and at federal level. Closer examination of this alliance reveals that grand coalitions are a marriage of convenience with special rules. Since World War II, Germany has experienced two grand coalitions at the federal level, both sharing the belief that they could not afford to fail prematurely. Failure, it was believed, would reinforce the population's latent dissatisfaction with the democratic system and encourage even more people to vote for parties on the margins of the political spectrum. Against this background, compromises are ultimately the only means to ensure sustainable results. In order to bring about such results, informal bodies have been established to facilitate opinion-forming processes both within the two parliamentary groups and between the grand coalition's parliamentary groups. The meetings of such groups have become more or less institutionalised, as can be seen from the example of financial policy. Opinion-forming processes which transcend the strict separation of powers between the executive and legislative branches have become more or less normal in grand coalitions, as opposed to a temporary phenomenon broad about by special circumstances. [ZParl, vol. 40, no. 1, pp. 196 ff.]