

# Administrative Federalismus in Germany

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# Federalism in Germany

## Three levels:

- **Central:** Federal State (main city: Berlin)
- **Provincial:** 16 Federal Countries („Laender“)
- **Local:** Cities, towns and communities

# Distribution of State Obligations

	<b>Constitutional Rule (Presumption)</b>	<b>Constitutional Exception (Enumeration Principle)</b>	<b>Emphasis in the constitutional reality</b>
<b>Legislature</b>	Federal countries Art. 70 GG	Federal state Art. 71 - 75, 105, 106 GG	Federal state's legislature is predominant, almost no own competencies of the Federal states
<b>Executive</b>	Federal countries Art. 83 GG	Federal state z. B. Art. 86-90, 108 Abs.1 GG	Administration by Federal states is predominant
<b>Judiciary</b>	Federal countries Art. 92 GG	Federal state Art. 92, 95, 96 GG	Only Federal Constitutional Court (BVerfG) und upper Federal courts, apart from that courts of the Federal states

# Division of Competencies

- Principle of separation
- Basic prohibition of mixture administration
- Obligation of administration types
- Presumption of competencies for the Federal Countries (subsidiarity principle, Art. 83 GG)
- Enumeration principle for competencies of the Federal State

# Rights of Ingerence of the Federal State

- Presumption of the federal state's law (Art. 31 GG)
- Ruling of the set-up of administration authorities and of the administration procedure
- Decree of general administration rules on the basis of federal state's general law
- Supervision by the federal state (law-, subject-supervision)
- Notice of defects
- Means of force (federal force Art. 37, federal intervention Art. 91 GG)

# Rights of Ingerence of the Federal Countries (Laender)

- Influence of the federal countries on the federal state by the Upper House of Parliament (Art. 50 GG)
- Participation of the federal states in the process of decision on the EU-level (Art. 23 GG)
- Competencies of the Federal Constitutional Court (BVerfG, Art. 93 Abs.1 Nr.2, 3 und 4 GG)

# Rules and Exceptions (Art. 83 GG)

- **1. Principle:** The federal state has only the competencies assigned. The federal countries have the rest of the competencies.
- **2. Principle :** The federal laws are executed by the federal countries by the federal countries` own administration (Art. 84). Other forms of administration are only allowed by regulation in the federal constitution (GG).
- **Reservation of other regulations:** Exceptions of these two principles can be ruled or permitted.

# Types of administration in the execution of federal laws

- **Administration on the federal countries` level (Art. 83 ff GG)**
  - Länder administration - federal oversight (Art. 84 GG)
  - Execution by the Länder on federal commission (Art. 85 GG)
- **Administration on the federal state´ s level (Art. 86 ff GG)**
  - direct (Bundeseigenverwaltung, Art. 87 I)
  - indirect (by federal corporations and self-ruling federal upper authorities, 87 II, III)



# Länder Administration - federal oversight (art. 84 GG)

- The federal countries regulate the installment and procedure of administration authorities, as far as not otherwise normed by the federal state law with consent of the Upper House of Parliament
- General administration rules of the federal state
- Legal supervision of the federal state
- Competence of the Upper House of Parliament and of the Federal Constitutional Court (BVerfG)

# Execution by the Länder on Federal Commission (art. 85)

- The federal countries regulate the creation and administration procedure, as far as not otherwise normed by the federal state law with consent of the Upper House of Parliament
- General administration rules of the federal state
- Special control of the federal state (lawfulness- und effectiveness)
- Claim of report and presentation of the files
- Sending of representatives to all federal countries' authorities Beauftragten zu allen Landesbehörden
- Right of the federal state to directives
- Federal regulation of the administration education

# Matters of execution by the Länder on federal commission

- Federal laws of defence (Art. 87b II)
- Laws about atomic energy(Art. 87c)
- Air traffic (. 87d II possible)
- Federal waterways (nach Art. 89 II Satz 3, 4 possible)
- Federal motorways, federal maor roads(Art. 90 II)
- Laws about money(Art. 104a III)
- Administration of taxes, that belong partly or on the whole to the federal state (Art. 108 III)

# Federal own administration (art. 87)

- Foreign affairs service
- Administration of railways (1993 Privatisation, Art. 87e, 143a GG)
- Mail, Telekommunikation (1994 Privatisation, Art. 87f, 143b GG)
- Execution of air traffic(Art. 87d I GG)
- Federal water roads(Art. 89 II Satz 1 GG)
- Federal major roads(Art. 90 III möglich )
- Central administration authorities of the federal state des Bundes (Federal Criminal Office BKA, Protection of the Constitution Office)
- Federal Border Guard

# Indirect federal administration

- By federal corporations and self-ruling federal upper authorities, 87 II, III, 88
  - Social insurance offices, Federal Bank
  - Federal Lawyers` Chamber
- By independent upper federal authorities (Art. 87 III Satz 1 GG)
  - Federal Administration Authority, Federal Statistical Office, Federal Office of Traffic, Federal Cartel Office etc.

# Division of Spending Federal state

## – Federal countries

- Connectivity between responsibility for administration- and finance-responsibility (Art. 104a I)
- Exceptions:
  - Execution by the Länder on federal commission (Art. 104a II)
  - Money spending laws (Art. 104a III)
  - Finance helping (Art. 104a IV)
  - Joint venture obligations (Art. 91a, 91b )
  - Administration of taxes (Art. 108 IV, FVG)

# Costs of the execution by the Länder on federal commission

- The federal state pays for the spending that is caused **by** the acting of the administration (Art. 104a II GG)
- The federal countries pay for the spending causes **for** the acting of the administration (personell, costs for rooms etc., Art. 104a V GG)

# Money spending laws (Art. 104a III)

- Federal laws, that grant money
- And are executed by the federal countries,
- Can regulate, that the money can be partly or on the whole given by the federal state (Art. 104a III).
- Execution by the Länder on Federal Commission takes place, when the Federal State is responsible for at least half of the spending (Art. 104a III 2).
- The law needs agreement, if the Länder are responsible for at least 1/4 of the spending (III 3)

Examples: savings bonus, housing bonus, housing benefit



# Finance Helping

The federal state can grant finance help to the federal countries (Laender) for the following purposes:

- Defence against a disturbance of the macroeconomical equilibrium
- Compensation of different economic power in the federal area
- Improvement of economic growth: urban development funding, financing of hospitals, social housing, communal traffic routes

# Cooperative Actions

- Common planning and financing of specific tasks (Art. 91a, 91b GG)
- Federal law that requires approval for closer definition of community task, procedure and institutions
- Common framework planning by the administration of the federal state and the Laender
- Determination of the financing and the part of the federal state
- Planning in detail and execution by the administration of the federal countries (Laender)