The Federal System: Breaking through the Barriers of Interlocking Federalism?

Roland Sturm

Introduction: ‘the end of federalism as we know it?’

Federalism in Germany today attracts more public attention than it ever has since its ground rules were determined by the Parliamentary Council (Parlamentarischer Rat) who wrote Germany’s constitution in 1948. Politicians of all parties suggest a wide range of measures for a reform of federalism. Some want to reduce the number of Länder, others stress the need for reconsidering the way the Länder are financed. Those discontent with the status quo also believe that it is essential to legislate a new division of responsibilities between the federal government and the Länder, or they want to improve the role of the Länder in the decision-making process of the European Union (EU). Even the Organisation for Economic Co-operation and Development (OECD) in its 1998 economic survey of Germany has criticised the fact that the German federal system makes no use of the economic advantages which federal financial autonomy and flexibility could secure.¹

Does this imply that a major constitutional reform in Germany is about to be made part of this country’s political agenda? Yes and No. Yes, because the crisis of the German federal system seems to demand political initiatives to solve its major problems. No, because it is difficult to envisage the two-thirds majorities required for constitutional reform both in the Bundestag and the Bundesrat.

Further clarification is necessary to better understand this dilemma. This contribution will therefore look at the most important and currently most controversial aspects of German federalism in order to
give the reader information and orientation which helps him or her to understand the ongoing political debate. The first question which will be asked here is what is the political role of federalism today and how has the underlying philosophy of German federalism changed over time? This leads us to the analysis of some institutional aspects of federalism. When we look at the way federalism works in practice, we first notice the number of actors on the sub-national level. Why are there 16 Länder, and could it not be less? Another institutional feature of German federalism is the division of competences in the German political system between the federal government (*Bund*) and the Land level. The Länder have an important role in federal legislation which they exercise via the Bundesrat. Länder politics need to be financed and there is a highly complex set of rules to determine Länder income, which also requires some explanation. Finally, there is the European context for the Länder, in which the Länder – in their perspective – if they are successful become a more important part of political life as major actors in a ‘Europe of the Regions’, or if they fail are reduced to second-class political status as insignificant administrative entities of the German nation-state. In conclusion this contribution will bring together the different aspects which characterise today’s federalism in Germany and the different arguments made for its reform. It has to be left to the reader, however, to judge how radical a reform of German federalism needs to be to rescue its substance. One of the problems of a reform of German federalism seems to be that there is a lack of consensus on the question of what still counts or can be defined as an essential element of ‘true’ federalism? The heated debate, we observe today, mixes arguments and political interests. Still, its bottom line is a consensus that German federalism ‘looks cumbersome and flawed’.

**Concepts of federalism**

Before statehood was re-created in post-war West Germany, i.e. before 1949, the Länder were already established as political actors. Because of this fact, but also because of a certain historical tradition of federalism in Germany, and last but not least because of the strong support for federalism by the Western Allied Powers, the unitary state was no realistic option for West Germany. Even in East Germany, where the Soviet Union established a centralised political system, it took until 1952 to abolish the five East German Länder and to introduce 14 administrative regions (*Bezirke*).