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## Review Article

# Spirit of Subsidiarity Principle of Administration in Germany

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### Abstract

The Federal Republic of Germany with its unique history, culture and management style, is among the countries with the strongest national economies in the world. Germany, a nation that continued on its way after taking a big blow from the 1st and 2nd World Wars, is one of the important countries that should be learned and examined today with its civilizational success, political and economic power, local governments and strong position in the global system. The German local government system, based on autonomy, is especially authorized in areas where the law does not restrict them. They successfully provide all local services to their citizens within their own means, within the scope of the principle of locality. In federal governments both the federal state and each of the member states have legislative, executive and judicial bodies with their duties determined by the union state constitution and a system of their own state organization. Germany is also one of the countries that manages federal administrative systems most successfully. In this context, Germany is a country with an independent judiciary, strong political parties and strong local governments. It has a local government system that should be examined and researched by other countries. Therefore, the German model is important in terms of deepening democracy which will be encouraged by "national unity" and localization, increasing transparency and accountability and ensuring effectiveness and efficiency in public service delivery.

**Key words:** Germany, German local governments, federal government, state system, political system, principle of locality

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## INTRODUCTION

### **General information about the German Federal Republic:**

The current 12th Federal President (Bundespräsident) of Germany which is governed by the Federal Republic form of government, is Frank Walter Steinmeier and the Prime Minister is Olaf Scholz. Berlin is the capital city of Germany. Its main cities are Hamburg, Munich, Cologne, Frankfurt and Stuttgart. Its border neighbors are the Netherlands, Belgium, Luxembourg, France, Switzerland, Austria, Czechia, Poland and Denmark. The country has a surface area of approximately 357 thousand km<sup>2</sup> and a population of 84 million<sup>1</sup>. In terms of demographic structure, most Christians, Protestants (29.8%) and Roman Catholics (29.9%) live in Germany. At the same time, 1.3% of the German population, where approximately 34% of non-believers live, are Orthodox Christians. According to the 2017 Pew Research Survey 2017 statistics, people belonging to the second largest religion in Germany are Muslims with a rate of approximately 6.1%<sup>2</sup>. The currency of Germany is Euro (€).

Flag of the Federal Republic of Germany; it consists of three bands colored golden yellow, red and black. These bands are used in the meaning of "Togetherness, Rights and Freedom". There are two types of the three-banded German flag, with and without the eagle motif in the middle. The flag with an eagle motif was first accepted as the official flag and used by government institutions. The German flag with an eagle motif, was used by the Germans against the French in the 15th century to symbolize power and might. However, when the German army was defeated by the French under Napoleon, it was decided to remove the eagle symbol from the flag at that time. Later, the Berlin wall collapsed (1989), East and West Germany were united and Germany was united under a single flag on October 3, 1990. Subsequently, the 'Federal Republic of Germany' was declared and the tricolor flag began to be used as the official flag. Over time, the flag consisting of golden yellow, black and red bands began to represent the freedom, unity and solidarity of the German people. Currently, the flag with the image of an eagle in government offices continues to be used as a symbol of the power of the German State. Germany is one of the best industrial countries after Japan and America and one of the countries with the most important market volume in the European Union thanks to its foreign trade. According to current data, gross financial assets per household in Germany are approximately 58 thousand euros, while real estate holdings of households increased by just under 31%<sup>3</sup>. For this reason, Germany is considered the "world export champion"<sup>4</sup>.

**German political and administrative structure:** For the German people, democratic institutions and governments were very important until the 1970s. Participatory and protest movements increased in the 1970s, paving the way for the development of democratic political culture<sup>5</sup>. The German political system began to take its current shape, especially after the Second World War with the politicization and socialization processes and right and left parties had the opportunity to form governments. Christian democrats and social democrats signed the two-party system together for the first time in this period. Since those days, the German political system has always attracted attention with its participatory feature. For this reason, the German people have great confidence in their political system. On the other hand, while trust surveys conducted in 1976 concluded that 81% of the public was satisfied with the German political system<sup>6</sup>, a study conducted in 2008 states that the rights granted to the German people are greater than the rights granted to the immigrant population<sup>7</sup>. Germany, governed by the Federal Democratic Parliamentary system. The republic was established with the 1949 Bonn Constitution on the basis of federalism, democracy, social and rule of law. The President is the Federal President. Its primary duty is to represent the state. The term of office of the President is five years.

The supreme legislative body in Germany is the Bundestag. The Federal Assembly, called Bundestag in German, consists of two different chambers. Members of the Bundestag, or Federal Assembly, are appointed through 'general elections' held according to the population of their regions to be elected for a four-year term. The Bundesrat, on the other hand, assumes the role of the senate and consists of two representatives from each state, regardless of population ratio<sup>8</sup>. The selection of elected members of parliament representing the German people is a combination of proportional and majority representation systems.

The name of the Federal Parliament is Reichstag. According to Article 20 of the German Constitution, the most important principle is 'the federation of the country'<sup>9</sup>. Areas of jurisdiction of federated states; It consists of issues such as education, legal regulations regarding jurisdictions and regional planning.

**Germany's governance structure:** In Germany, the law requires that the problem in matters related to society be resolved first at the lowest level. However, if such a possibility is not possible, the problem is solved by proceeding with the units one by one. So, according to this understanding, the most basic principle is locality. The concept of subsidiarity comes from the Latin words "Subsidium" and "Subsidiaries"

and generally from the concept of "Subsidiarity"<sup>10</sup>. From a historical perspective, the principle of subsidiarity which also means the principle of subsidiarity, dates back to international political systems and Aristotle in the legal dimension<sup>11</sup>. On the other hand Saint Thomas Aquinas who examined the principle of locality with human dignity. According to Aquinas, small human communities living in city-states should have more respect for the activities of the village people in their field of activity<sup>12</sup>. In the 16th and 17th centuries, when the modern state approach was adopted, the concept of sovereignty came to the fore and the concepts of dichotomy and autonomy were introduced. These concepts are used in the sense of dual structure and administrative autonomy<sup>13</sup>. Administrative autonomy mentioned in this period are expressions that have the same meaning as the principle of locality.

The principle of subsidiarity is written as a binding article in German legal regulations, especially in 'Article 28 of the German Constitution'<sup>14</sup>. In this context, it is important that the decisions to be taken within the scope of the locality principle in German local governments are primarily taken by the administrative institutions closest to the citizens<sup>15</sup>. Thanks to this principle, the ability of member countries with different cultures and social welfare levels to act on some issues in their own countries has become more effective<sup>16</sup>. For all these reasons, local governments are quite strong in Germany.

The Federal Republic of Germany consists of 16 different states with state characteristics and legal entities. Therefore, Germany is a union state consisting of these states. In federal governments, both the federal state and each of the member states have legislative, executive and judicial bodies with their duties determined by the union state constitution and a system of their own state organization.

After 1808, some changes were made regarding city administrations, municipalities and local governments in many states. Prussia 1808, Bavaria 1818, Baden-Württemberg 1822, 1831 Prussian Reform, 1832 Saxony, 1841 Westphalia, 1856 Rhineland and 1869 Slesvig-Holstein are important dates for the development of German local governments<sup>17</sup>.

At the German federal level, the states have high courts, a parliament and a government elected through general elections. The Parliament includes the "State Assembly and the National Assembly". The provincial assembly consists of government officials representing the state, while the national assembly consists of representatives of the people. A state cannot intervene in the federal sphere but if a regulation is necessary, federal laws must give official permission to the requesting state. Problems that fall within the common areas of the state and the federation are resolved through the

enactment of special federal laws<sup>18</sup>. States often deal with issues such as culture, health and education. If any problem arises in the sharing of authority and duties in this regard, the Federal Constitutional Court will be the authority to resolve the problem. Regional governments in Germany differ depending on the size and size of the states. While there are city regions in small German states, there are regional administrations in large German states which are provincial organizations of the state government<sup>19</sup>.

### **Germany local governments in historical perspective:**

Historically Germany has experienced a process of nationalization and stateization from the local to the center. The German government was founded in the 9<sup>th</sup> century on a religious basis and the Holy Roman Empire continued until 1806 but it never represented a true political unity. In addition a real central political unity could not be established for many years in the regions where German was spoken.

In accordance with Article 28 of the German Constitution, after the federal and federated state structure, local governments were declared as the third level administrative unit as city local governments, small social units and small city and town governments. Germany which was divided into around 350 political units towards the end of the 17th century, was established as the German Confederation in 1815 and could only achieve national unity towards the end of the 19th century<sup>20</sup>. However, in the formation of the German political union, the autonomy of local units was preserved and unity was achieved mainly through local units "states and units". As a matter of fact, the first German political union, established for the first time on January 18, 1871, under the leadership of King Wilhelm I of Prussia, consisted of twenty-five states<sup>21</sup>. Therefore it is clearly seen that the construction of the nation-state in Germany took place from the local to the center. National Unity began to be achieved towards the end of the nineteenth century<sup>22</sup>.

**German local government system:** Germany is a country with an independent judiciary, strong political parties and strong local governments. It took its current federal form of government with the unification of eastern and western Germany in 1990. There are a total of 80 large and 614 medium-sized cities in the country governed by federalism. According to 2018 data, 77.31% of German people continue their lives in cities. In Germany, where the center is strong in terms of legislation and the states are strong in terms of execution, there are two units consisting of districts and municipalities<sup>23</sup>. We can say that German federalism is very

strong not only in the states but also in the local governments, whose powers are determined by the constitution. The unified state structure in Germany is formed by the merger of states and local governments, districts and municipalities. While the decisions to be taken regarding public policies are determined at the center, the implementation of the decisions taken is made through local governments. For this reason, most of the bureaucracy focuses on the states and resource sharing between the center and the provinces is planned accordingly. In Germany, the next administrative structure after the states are districts, towns or cities independent of the district (Kreisfreie Städte: City-district). Berlin, Bremen and Hamburg are examples of city-states and are administratively divided into different departments. In Germany, there are 27 cities in 16 states, 323 district municipalities, 116 independent municipalities from district municipalities and 12,629 independent municipalities included in the district system<sup>24</sup>.

- **Districts:** In Germany, districts are local governments responsible for the provision of public services and are defined as basic units. Districts work in cooperation with municipalities within the scope of legal frameworks. In this way, they ensure that public services are carried out without disruption

In Germany, district administrations carry out their duties in accordance with the principle of locality, that is, the service is provided by the closest units. The fact that the task sharing between districts and municipalities is regulated by law also ensures that the principle of locality is implemented smoothly and effectively without a hierarchical structure. The duties of regional governments are to ensure coordination between central units and to supervise local governments with their sub-units. Thus, a strong control mechanism ensures the control of the systems regarding whether the legal regulations that constitute the sharing between each other are implemented. Although districts in Germany with a population of approximately 170,000, are local government units, they also provide some services as a part of the general or central government<sup>25</sup>.

The governing bodies of the districts are the district council, district council and district administrator. At the same time, they also carry out the appropriate control of the central government over the municipalities. This situation shows that the central government has a principle of subsidiarity over the municipalities. The municipality which implements the decisions taken from the center, can also be subject to the inspections of the districts with the principle of subsidiarity.

States have their own legislative, executive and judicial bodies. The district administrator, as the executive body of the district administration, comes to power through election, as in Rhineland-Palatinate, or as a state official, as in the Saarland. It plays a role in implementing the decisions taken by the center. They also supervise the central government over the municipalities.

The duties carried out by the district within the scope of the provincial unit are directly under the responsibility of the district administrator and are among the duties for which the district council does not have any decision-making authority. These duties are social, cultural and when necessary, such as building inspection and legal inspection of municipalities<sup>26</sup>.

- **Municipalities:** The foundations of the concept of municipality with today's understanding were laid in Germany in 1808. Municipalities are divided into two within and outside the district administration. The municipalities affiliated with the district are financially and administratively powerless and transfer part of their duties to the district. Municipalities that are not affiliated with the district, on the other hand, are financially and administratively strong and perform many services that do not need the support of the district<sup>27</sup>

In this system, the district is the upper level local government unit. The second type of municipal administration in Germany consists of metropolitan municipalities such as Hamburg, Bremen and Berlin which are independent of the district and are not affiliated to any district, that is which carry out municipal services together with other district officials. It is not in question for the district administration to exercise guardianship authority over them. The guardianship authority belongs to the governors or the state minister of internal affairs. The management models of large cities independent of the district and their rights, powers and responsibilities are the same as those of municipalities under district guardianship. However, their duties consist of the sum of the duties of these municipalities and districts.

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**Municipal bodies and organizational structure:** The organs and duties of municipalities differ both between states and between cities. This difference has led to the formation of three different structures within the municipalities:

- **Assembly-strong president:** The assembly is elected by the people for 5 years, the president for 8 years. In some places, the assembly elects one of its members as the chairman for 5 or 10 years
- **Assembly-professional city manager:** The assembly elected for a 5-year term appoints a city manager for a 6, 8 or 12-year term
- **Assembly-magister model:** The Assembly elects an executive committee where some of its members have a mandate of 6 or 12 years and some of them have a mandate of 6 or 9 years. Magistrates serve alongside the municipal councils in the capacity of a joint executive committee<sup>29</sup>

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**Financial structure:** 106 of the German constitution; the article has a direct impact on the distribution of public financial resources. In addition, the constitution provides that the federal state, states and municipalities receive a share of the total income tax and value added tax which are the two most important sources of income in Germany<sup>30</sup>. It is known that a certain budget and resources should be available wherever public services are provided. For this reason, the state should make certain arrangements in its financial structure. In Germany, this regulation is carried out through Constitutional regulations, which are the legislative power at the center.

The 106 of the German constitution; the article stipulates that local governments receive a share of the total income tax and value added tax, which are the most important sources of income. This distribution shows that the principle of transparency in German public administration is in operation. In Germany, which is governed by federalism, local policies are created by the center. However, the executive ensures that some of the shares received by the center within its structure are transferred in order to Decouple the budget between the states. The shares that the states and municipalities will receive are primarily distributed and Decoupled between the states. Then it is Decoupled Decoupled among the municipalities between each state. This leads to a fair

distribution related to the area of the service. In this context, municipalities derive their income primarily from local taxes, then from income and value-added taxes, as well as from fees that municipalities receive from services offered to citizens<sup>29</sup>.

**Income-expenses:** Approximately 25% of municipal revenues are accounted for by grants received from the federal government and the states, about 25% by participation shares due to infrastructure investments and a third by tax revenues. Municipalities are given a share of the income tax collected within the municipality boundaries at a rate of 15%<sup>30</sup>. When looking at municipal expenses, approximately one-fifth of the expenses are social benefits, health, sports and recreation expenses and the rest of the expenses are infrastructure, housing, transportation, schools and other economic development services<sup>31</sup>.

**Expenditure roles and responsibilities of German local governments:** Local governments within federal state systems are dependent on federated states or states. In federal systems, although states maintain their independence in legislative and judicial matters, local governments can never benefit from this right. The reasons for not being able to use them are due to the fact that these powers are used by higher bodies that have the right to sovereignty, both in federal and central state systems. The services provided by local governments in the country consist of the local governments, own services and the services transferred to local governments by the federal and state governments<sup>32</sup>. In Germany, as a rule, the legal regulations regarding the duties of local governments are made by the state parliaments; They must take into account the autonomy of local governments and provide them with income sources commensurate with their duties. Political responsibility for expenditures is not determined. For this reason, the determination of roles and responsibilities cannot always be made clear.

**Resource structure of German local governments:** Although the issue of autonomy is defined by the constitution, the autonomy of revenue generation in local governments is not mentioned. Tax revenues were distributed among local governments with some regulations. Apart from these, although local governments have their determined revenues and shares, they do not have tax autonomy<sup>33</sup>. In Germany, where the "separation procedure", is applied where taxes are shared between the state and local governments, local governments have special revenues in order to fulfill the duties assigned to them by federal or state laws. Customs

duties and indirect taxes of the federal government, wealth, motor vehicles, inheritance and transfer taxes of the states, real estate and trade taxes belong to local governments. Income, corporate tax and value added tax are shared.

Since there are serious inequalities between East and West in many issues such as unemployment, per capita income and access to health services, the income structures of municipalities also differ accordingly. While the rate of tax revenues and transfers in the revenues of municipalities in the West is 42 and 28%, in the East these rates vary as 20 and 55%, respectively<sup>34</sup>.

In places where income levels are high, especially in municipalities in the West, local governments have a high capacity to generate equity, so local governments have more financial autonomy. On the other hand, in regions with low income levels, dependency on the center increases as municipalities have limited equity generation capacity.

#### **Comparison of German and Turkish local governments:**

When Germany and Turkey are compared in terms of local governments, it is seen that there are many differences in terms of the number of local governments and their autonomy, financial structures, duties and powers, personnel status and supervision. For example, while Germany, which has different state orders, is a federal state, our country has a unitary state order. Unitary state structure is also called simple state structure or single state structure. In other words, unitary state structure refers to the management of political authority and administration from a single place; In other words, it is a form of government in which the legislature, executive and judiciary are one. Germany is the country with the deepest and strongest local government tradition among European countries. The federal state principle of the constitution in Germany, It means that not only the federal state but also 13 federated states and 3 large free cities have state status. States are given limited sovereignty rights in some areas and this right is exercised by the legislative, executive and judicial powers of the states. Their constitutions accept this division as an important element of the separation of powers and balance of powers system. In Turkey, administration is divided into two: Centralized and decentralized administration.

According to the 1982 Constitution, "Turkey, in terms of the central administration establishment, divides into provinces, according to the geographical situation, economic conditions and the requirements of public services; Provinces are also divided into other gradual divisions." Decentralization is divided into two categories: Decentralization in terms of service and location<sup>35</sup>.

Local governments; It has 3 different forms, Special Provincial Administration, Municipality, Village'. Turkey's current population is around 86 million with an annual growth of 0.507%. In other words, Turkey has a population of 1,065% of the world's population<sup>36</sup>.

In our country, local governments operate under the control of the central government with certain boundaries and limited autonomy. Although, both Turkey and Germany are the largest countries in Europe in terms of population, they have different numbers of local governments. Even though the population of Turkey is approximately 86 million and the population of Germany is approximately 83 million, according to TÜİK data, 76.8 percent of the country's population lives in provincial and district centers<sup>37</sup>. In our country, while 64.9% of the population lived within the municipal borders in the early 2000s, the number of special provincial administrations was 81 and municipalities and districts constituted the majority of local government organizations in our country. If we need to draw the general framework of local governments in Germany, it is possible to divide local governments into two main groups. The first group includes local governments in rural areas and this group has a two-tiered structure. Municipalities are at the first level and districts are at the second level. In the second group, municipalities (independent cities, city districts) that are separate from the district, independent and outside the district organization are included. These are generally city municipalities with a population of over 100 thousand.

#### **CONCLUSION**

The Federal Republic of Germany which came out of the first and the second World Wars after taking a blow and continues on its way, has managed to become one of the exemplary countries with its history, economy, culture and local governments. It has both political and economic privileges among other countries in Europe. Germany has the distinction of striving for global peace. The most important principle for local governments in the Federal Republic of Germany is locality and it has always been important for the political system. German local governments have tax autonomy, so levels of transparency and accountability at the local level are high. It gave the central government the ability to determine the basic policies and standards regarding public service delivery and the roles and responsibilities regarding public service delivery to local governments. While local concentration of roles and responsibilities deepens "local autonomy" and democracy. Providing public service delivery financing largely through shares and transfers received from

the central government also necessitates “national unity”. Therefore, the German model is important in terms of deepening democracy, which will be encouraged by “national unity” and localization, increasing transparency and accountability and ensuring effectiveness and efficiency in public service delivery.

### **SIGNIFICANCE STATEMENT**

The purpose of this review is to raise awareness about the success of the Federal Republic of Germany by providing all local governments to their citizens with their own means and within the scope of the locality principle, setting an example for other countries. Germany, which survived the First and Second World Wars and continued on its way, has managed to become one of the exemplary countries with its economy and local governments. German local governments have a management approach with high transparency and accountability at the local level. The most important reason why the German model is taken as an example is that it deepens democracy and attaches importance to transparency. In this context, the principle and importance of locality are emphasized in this review.

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