



COUNTRY REPORT: GERMANY

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- 1. How has parliamentary law-making practice changed during the pandemic in the state you are studying?**
 - briefly describe the new practices**
 - evaluate these practices. In your opinion, do these practices empower, disempower or not change anything regarding parliamentary law-making powers and practice**

During times of crisis, such as the coronavirus pandemic, a notable shift in power dynamics occurs, characterized by the executive branch gaining prominence, commonly referred to as the "hour of the executive". Concurrently, the influence of legislatures, particularly parliamentary bodies, tends to diminish. Even before the pandemic, there were discussions about weakening parliaments, which led to discourses on de-parliamentarisation.² The pandemic has highlighted the susceptibility of parliamentary work to crises, particularly regarding public meetings and the communication function. A comparison of law-making activity in the Bundestag shows that it increased in the first year of the COVID-19 pandemic. The aim of parliamentary activity during the pandemic was to act in a normal condition. This exceptional situation in Germany required the constructive cooperation of the members of parliament. Furthermore, the parliamentary activity during the pandemic was orientated towards acting in a normal state. The foreground of this state of emergency in Germany required the constructive involvement of the members of parliament. Therefore, the continuity of parliamentary activities took priority. The Bundestag continued - as did the legislation, even if only a few minor adjustments were

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² Paul Kirchhof, Entparlamentarisierung der Demokratie? in: André Kaiser/Thomas Zittel (Hrsg.), *Demokratietheorie und Demokratieentwicklung*, Wiesbaden 2004, S. 359–376

made.³ Compared to other European countries, a state of emergency was not declared in Germany. Articles 91 "Elimination of a danger endangering the existence of the free democratic basic order", "State of defense" in Article 115 and 35 "Natural catastrophe" or a "particularly serious catastrophe" may seem appropriate at first glance, but they were not realized by the Bundestag. This was not only for historical reasons, but also because these measures in the respective articles were not appropriate and suitable for the health crisis. Hence, the members of the Bundestag (MPs) quickly realized the challenges posed by this crisis. A crucial question was how and by what means to meet the challenge posed by the pandemic. Although parliamentary scrutiny did not increase, the MPs did not remain inactive. Oral and written questions were submitted to the government weekly.⁴ Although the work of the committees continued, this was at the expense of their working methods. It was therefore essential that important and effective changes were made. To maintain the Bundestag's "ability to act", the previous President of the Bundestag, Wolfgang Schäuble, proposed a constitutional amendment that allowed the plenary to meet in a format that only required a limited number of MPs.⁵

As this proposal was considered unsuitable, only a temporary amendment to the Rules of Procedure of the Bundestag was agreed. The decisive change related to a newly introduced paragraph 126a in the Rules of Procedure, which enabled restricted sessions in the Bundestag since 2020. The introduction of the new section 126a made it possible for the members of the Bundestag to meet in a reduced number. An exception was introduced for this, where only a quarter of the members had to be present. The decision-making quorum was therefore reduced from the previous 50 to 25 percent of the MPs. This measure made it possible, within the meaning of § 67 sentence 1, for those members who participate in the meeting via electronic means of communication to also be present. In addition, the MPs could also authorize votes outside a meeting during meeting weeks in accordance with § 72. Also, electronic devices could be used for votes and resolutions. In addition, public committee deliberations and public hearing meetings can also be held in such a way that the public

³ Siefken, Sven T., & Hünermund, Sebastian (2021). Der Bundestag in der Corona-Krise. Zwischen materieller Mitwirkung und kommunikativen Defiziten. *dms – der moderne staat*, 14(2), 392-411. <https://doi.org/10.3224/dms.v14i2.05>.

⁴ Robert Schuman Foundation. (2020, July). *The Parliament in the time of coronavirus Germany*. https://old.robert-schuman.eu//en/doc/ouvrages/FRS_Parliament_Germany.pdf.

⁵ Robert Roßmann und Georg Mascolo, « Ein Rettungspaket für den Bundestag », *Süddeutsche Zeitung*, 3 April 2020.

is granted access exclusively by electronic means of communication. This allowed members of the Bundestag to often attend plenary sessions at a distance, which limited the number of people present in the chamber at any one time. Each parliamentary group only allowed members to be present for a certain amount of time. The change was an additional sitting, as the number of people present for a vote only had to be checked at the request of a member of parliament.

Likewise, an equal number of MPs from the opposition and majority could be absent without this having a negative impact on the result of the vote. In addition, sessions were shortened or even postponed if the program was not very tight. This contributed to the mechanism of speeding up procedures and allowing more time for discussion. Not only did shortened meetings played a crucial role in the Bundestag during the COVID-19 pandemic, an expansion of video conferences and remote exchanges, which were already in use before the crisis, was also made possible. The committees were therefore given the opportunity to vote electronically and had access to meetings via live broadcasts. What was new compared to other European parliaments was that the Bundestag only had to extend this mechanism to all sessions. This hybrid format became an everyday norm for most meetings.⁶

Independently of the Bundestag, the powers of the Federal Ministry of Health determined by Section 5 Paragraph 2 of the IfSG Act were expanded, making it possible to issue regulations without the consent of the Bundesrat. This was linked to the fact that most laws relating to medical resources and the operation of the health system must be approved by the Federal Council. However, this consent was waived during the pandemic.⁷

To assess the influence of the Bundestag's practices in more detail, it is necessary to take a closer look at what was positive or negative in this exceptional situation. To start with the positive aspects, it can definitely be stated that the members of parliament and the Bundestag had to make important decisions. Considerable powers were granted and thus legislation was not abandoned. The continuity of the Bundestag's work was maintained⁸. In addition, the scrutiny and legislative function was exercised, and practice was adapted to the pandemic situation. It can therefore be summarized that strict adherence to the rule of law has taken place in this extraordinary situation.

Robert Schuman Foundation. (2020, July). *The Parliament in the time of coronavirus Germany*. https://old.robert-schuman.eu/en/doc/ouvrages/FRS_Parliament_Germany.pdf.

⁸ Zeitschrift für Parlamentsfragen (ZParl), Heft 4/2021, S. 725 – 741, DOI: 10.5771/0340-1758-2021-725

However, it must also be said that there were also negative developments generated by pandemic. The different perspectives led to political actors taking up, confirming, and reinforcing criticism of decision-making processes. Surprisingly, this consensus did not produce the desired results, as the reactions of MPs were often less favorable than expected. To summarize, it can also be said that there was no obvious paradigm shift. Although at first glance there were new changes, these functions already existed and were adapted to the situation. Therefore, only minimal changes followed, which maintained the existing workflows.⁹

2. Looking at formal changes and the practice of law-making in your state under study, has respect for the rule of law increased, decreased or perhaps not changed at all during the pandemic? Please, elaborate on that question.

During the pandemic, significant shifts occurred in both vertical and horizontal power structures. The establishment of the "pandemic situation" led to a reconfiguration of the separation of powers, favoring the executive branch. Following that, the Bundestag experienced a reduction in its decision-making authority, indicating a relative weakening, but it did not completely cede its powers to the executive. During the initial six weeks of this exceptional situation, the Bundestag witnessed minimal controversial debates. The voting and decision-making processes within the parliamentary system were deemed lengthy and impractical, prompting a swift decision to grant extended powers and ordinances under the Infection Protection Act to the Federal Ministry of Health (BMG). While the government appeared to manage the COVID-19 pandemic positively at first glance, it is imperative to scrutinize why the rule of law in Germany suffered during this crisis. In the context of the pandemic, crucial decisions had to be delegated to members of parliament, which ultimately lay in the hands of only a few members of parliament. Consequently, growing criticism emerged regarding the limited ability of MPs to scrutinize government and administrative decisions within the constrained timeframe, which both the opposition and the Alternative for Germany (AfD) party capitalized on.¹⁰

⁹ Sven T. Siefken (2023) The Bundestag in the Pandemic Year 2020/21 – Continuity and Challenges in the Covid-19 Crisis, *German Politics*, 32:4, 664-685, DOI: 10.1080/09644008.2021.2024806

¹⁰ Bayerlein, M., & Metten, A. (2022). The impact of COVID-19 on the support for the German AfD: jumping the populist ship or staying the course?. *Politische Vierteljahresschrift*, 63(3), 405-440.

Within a remarkably short period, contact restrictions were enforced, an unprecedented measure against the population. Moreover, some measures were instituted without a specified time limit, eliminating any possibility of deviation. Consequently, the parliament found itself paralyzed and refrained from intervention. Some of the measures introduced by Section 126a, such as online meetings in committees, proved ineffective due to Germany's lack of preparedness for such a rapid shift towards digitalization. This was because Germany was not sufficiently prepared for online meetings, as there was a lack of investment, infrastructure and political measures that would have enabled a rapid and comprehensive transition to digitalization. In addition, the hygiene regulations during the pandemic contributed to the fact that the legislature was only able to act to a limited extent, as physical distancing could only be guaranteed to a limited extent. Moreover, the pressure on judges was also very prominent, as legal protection was limited at the beginning of the pandemic, which only enabled more activity against the virus afterwards with more knowledge.¹¹

Also, the resistance to the partial disempowerment of the Bundestag was hardly noticeable until October 2020, and there was also little reaction from the parliamentarians.¹² This problem of disempowerment was only discussed in more broadly discourse on disempowerment from October 2020 onwards. In the course of the pandemic, especially in the first months of 2021, no clear regulations and announcements were made as to when people would regain their fundamental rights and the corresponding debates were only held when they were considered too problematic by various parties. In March 2021, officials from the CDU and CSU then resigned from their posts as they were involved in many public corruption cases, including the politician Niklas Löbel, who had arranged a deal between various companies for the procurement of coronavirus face masks during the coronavirus pandemic. He and his company received a commission of €250,000 for the deal. The investigation into these allegations against the MPs, including cases of bribery, continued in the course of 2021. It can therefore be stated that the Covid pandemic has also had an impact on corruption cases among politicians. In addition, parliamentary

¹¹ Münch, U. 2020. Wenn dem Bundesstaat die Stunde der Exekutive schlägt: der deutsche (Exekutiv-)Föderalismus in Zeiten der Coronakrise. In *Jahrbuch des Föderalismus 2020: Föderalismus, Subsidiarität und Regionen in Europa*, Hrsg. Europäischen Zentrum für Föderalismus-Forschung Tübingen (EZFF), 207–226. Baden-Baden: Nomos Verlag.

¹² Schäfer, K. 2021. Welche Rolle sollten Parlamente in der Corona-Krise spielen? *Gesellschaft, Wirtschaft, Politik*, 70 (1), 31–37.

decisions on how to deal with the coronavirus crisis were made too late and often in a questionable manner.¹³

Respect for the rule of law has not only declined in political circles, but also in society. This was particularly jeopardized by increased and more frequent populist attitudes in society and among citizens. The measures taken by the government during the coronavirus crisis were not satisfactory for every citizen in society.¹⁴ Citizens felt that the government had failed. Due to the state of emergency, one party distanced from its actual party program. For such potential voters, the rejection of the government's political measures was taken up by the AfD's anti-elite rhetoric.¹⁵ During this time, voters have turned away from the established parties and looked for an alternative that expresses the same dissatisfaction.¹⁶ During the pandemic, the AfD proved to be the one alternative party that specifically addressed dissatisfaction and incorporated it in its programme. Citizens who questioned the government and expressed criticism of the measures were able to find their voice through the AfD. During the election campaign, the AfD took up the COVID-19 response and linked it to the Merkel government's handling of the pandemic. Over the course of three years, there were extensive demonstrations against the COVID-19 restrictions in Germany. Many of these protests took a violent turn: Supporters of the "Querdenker" movement physically attacked several journalists and repeatedly clashed violently with the police. In addition, "Monday Walks" were launched to voice criticism of the government every Monday.

In conclusion, it can be stated that while the Bundestag has adhered to all legal provisions during the handling of the coronavirus pandemic, there has been a slight decline in the rule of law. This decline has affected not only events but also society and its politics. However, considering that this was Germany's first health crisis and comparing it to other countries internationally, it can be asserted that Germany managed the pandemic quite effectively. Upon closer examination of the quality of democracy and the lawful functioning, it can be argued that the rule of law did not deteriorate significantly.

¹³ Fährmann, J., Aden, H., & Bösch, A. (2022). Exekutive in der Pandemie: Machtzuwächse, Sachzwänge und Gefahren für Demokratie und Rechtsstaat. In Springer eBooks (pp. 93–123). https://doi.org/10.1007/978-3-658-35393-3_4

¹⁴ Bayerlein, M., & Metten, A. (2022). The impact of COVID-19 on the support for the German AfD: jumping the populist ship or staying the course?. *Politische Vierteljahresschrift*, 63(3), 405-440.

¹⁵ Schulte-Cloos, J., & Leininger, A. (2022). Electoral participation, political disaffection, and the rise of the populist radical right. *Party Politics*, 28(3), 431-443.

¹⁶ Steiner, F., & Michelsen, D. (2021). Die AfD in Thüringen: Völkischer Nationalismus als Programm. *Fakten und Analysen* | 2020, 79.

Table 1: Formal changes

Country_Name	Reference: Name_legal act changing formal rules of law-making (in original language)	Name_Chamber concerned (in original language)	Short description of the content of the reform (in English)	Which year? 2019, 2020 or 2021
GERMANY	Änderung des § 126a - Besondere Anwendung der Geschäftsordnung aufgrund der allgemeinen Beeinträchtigung durch COVID-19	Deutscher Bundestag	allowed the Bundestag to have a quorum with just a quarter of its members and electronic participation in meetings. Committees can vote electronically outside of meetings and public committee deliberations can only take place electronically.	2020

Source: own

Table 2 : Law-making practice

Country Name	Chamber Name (in original language)	Year	Number of ALL legislative bills	Number of resolutions/decisions/statements (various non-legislative measures)	Number of fast-tracked legislation (debate limited and/or shortened legislative process, including omnibus laws)	Most common forms of fast-track measures	Number of decree laws/gov decisions (no parliamentary consent)	Number of working days (parliamentary plenary sessions)	Number of oral questions to the government	Number of written questions	Number of small inquiries	Number of large inquiries
GERMANY	Bundestag	2019	221	111 Entschließen	NA	NA	NA	66	1.393	6.640	3.603	12
		2020	248	115 Entschließen	1. German Omnibus Act- COVID-19- March 2020 2. Occupational Safety and Health Inspection Act- June 2020 3. SanitStoG- September 2020	short-time work program (Kurzarbeit), reduced number of MPs	NA	64	1.458	7.104	3.275	11
		2021	239 (223 (election period 19), 16 (election period 20))	107 (election period 19), 4 (election period 20)	NA	short-time work program (Kurzarbeit), reduced number of MPs	NA	46	976	5.989	2.361	3

Source: Own