



RESEARCH NOTE

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Express Constitutional Powers of the Federal President of Germany

Under the constitutions of most states, the executive is organised into various strata of authority with a single individual, who personifies the state, at the top. It is usual to make a distinction between constitutions where the head of state is:

- separate from the head of the executive government, serving mainly as the titular or ceremonial focus of the state (eg Germany);
- constitutions where the head of state is the effective executive officer (eg United States); and
- constitutions where the head of state has more than titular power and while not the effective executive officer enjoys very significant authority (eg France).

This Research Note provides a brief outline of the express constitutional powers accorded to the Federal President of Germany.

Note: Research Notes are also available in relation to express constitutional powers accorded to the President of the United States and the President of the Republic of France.

Election of the Federal President

Germany is a federal republic. Federal legislative power is exercised by a bicameral parliament, made up of an Upper House (Bundesrat) and a Lower House (Bundestag). The Bundesrat, which comprises 68 seats, is made up of delegates from the Laender (states). The Bundestag comprises 662 deputies.

Executive power in Germany is exercised by a Chancellor who heads the federal government. The head of state, the Federal President is elected, without debate, by the Federal Convention. Every German who is eligible to vote for Bundestag candidates and who is aged over forty years is eligible to be elected Federal President. The Federal Convention consists of members of the Bundestag and an equal number of members elected by the diets of the Laender. The term of office of the Federal President is five years, re-election for a second

term is allowed only once. If the Federal President is prevented from acting, or his/her office falls prematurely vacant, his/her powers are exercised by the President of the Bundesrat.

Express Powers to Nominate, Appoint and Dismiss the Chief Executive and Ministers.

Under Articles 63(1) and 63(2), the Federal Chancellor is elected, without debate, by the Bundestag upon the proposal of the Federal President. The person obtaining the votes of the majority of the members of the Bundestag is appointed by the Federal President. Where the Bundestag is unable to agree upon a candidate as Chancellor by the required majority, the President is accorded by Article 63(4) an express power to either, appoint as Federal Chancellor, the person who has received the greatest number of votes short of an absolute majority, or dissolve the Bundestag.

Key Express Powers of the Federal President

- Where the Bundestag is unable to agree on a candidate as Federal Chancellor, appoint the person who has received the greatest number of votes as Federal Chancellor, or dissolve the Bundestag.
- Declare a state of legislative emergency.
- Represent the Federal Republic in its international relations and to conclude treaties on behalf of the federation.

Under Article 67, the Federal President can dismiss a Federal Chancellor at the request of a majority of members of the Bundestag who have passed a vote of no confidence in the Federal Chancellor and elected a successor. Where the Bundestag makes such a request the Federal President must comply.

In the event of the office of Federal Chancellor becoming vacant in a state of defence, express power is accorded to the Federal President under Article 115h(2) to propose a candidate to the Joint Committee.

Article 64(1) accords the Federal President an express power to appoint and dismiss Federal Ministers, but only upon the advice of the Federal Chancellor.

The Federal President, under Article 69(3), may request the Federal Chancellor, or Federal Minister to continue to transact the affairs of his/her office until their successor is appointed.

Express Powers to Dissolve, Adjourn and Convene the Legislature

The Federal President may, under Article 63(4), dissolve the Bundestag. Where the Bundestag is unable to agree upon a candidate as Federal Chancellor, the Federal President is accorded an express power to either appoint as Federal Chancellor the person who received the greatest number of votes short of an absolute majority, or dissolve the Bundestag.

An express power to dissolve the Bundestag is also accorded to the Federal President by Article 68(1). This power can only be

exercised where a majority of Bundestag members fail to give the Federal Chancellor a vote of confidence, and the Federal Chancellor requests the Federal President to dissolve the Bundestag.

Article 39(3) allows the Bundestag to determine its sitting patterns. The President must convene the Bundestag at a earlier date where either one third of the Bundestag Members, the Federal President or the Federal Chancellor demand it.

Express Emergency, Domestic and War Powers

Express emergency war powers accorded to the Federal President are limited, and relate to the promulgation of a state of defence, the issuing of international declarations regarding the existence of a state of defence, the nomination of a Federal Chancellor during a state of defence, and the promulgation of a declaration that a state of defence has ended.

Article 81(1) accords the Federal President an express power to declare a state of legislative emergency. The effect of such a declaration is to accord the Bundesrat the power, for a six month period to pass urgent Government measures into law. Article 81(1) operates where the Bundestag has refused to pass urgent government legislation after having denied the Federal Government a vote of confidence. The Federal President may only declare a state of legislative emergency at the request of the Federal Government and with the consent of the Bundesrat.

Express Powers over the Armed Forces

Under Article 60(1) the Federal President may, subject to Article 58, appoint and dismiss commissioned and non-commissioned officers, unless otherwise provided by law. Basically, Article 58 imposes a requirement that authorisation be obtained from the Federal Chancellor or relevant Federal Minister.

Express Powers over the Judiciary

The Federal President is accorded an express power by Article 60(1) to dismiss Federal judges, unless otherwise provided for by law.

Express Powers over Foreign Relations

Pursuant to Article 59(1), the Federal President is accorded an express power to represent the Federation in its international relations, to conclude treaties on behalf of the federation and to accredit and receive envoys.

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