

Voichuk Alina Yuriivna

# The emergence and development of German parliamentarism

UDC 321.72+328.1+342.53(430)  
DOI <https://doi.org/10.24195/2414-9616.2024-4.5>

Voichuk Alina Yuriivna  
PhD, Assistant at the Department  
of Political Science  
Taras Shevchenko National  
University of Kyiv  
Volodymyrska str., 64/13, Kyiv, Ukraine  
ORCID: 0000-0002-1925-1307

*German parliamentarism is characterized by the supremacy of the parliament in the legislative sphere and its leading position in the system of higher state authorities. The process of formation of the German parliament has a long history. The key stages of parliamentary development included the establishment of the first parliaments in the Middle Ages, the impact of revolutionary events, the peculiarities of the Weimar Republic and the formation of the Federal Republic of Germany. The parliament of the Federal Republic of Germany is bicameral. The upper house is called the Bundesrat (Federal Council). The lower house is called the Bundestag. German parliamentarism is characterized by legal and informal features. The formal features of German parliamentarism are the separation of powers, the parliament's function of controlling the government, and the special status of parliamentarians. The division of state power in Germany is flexible. The Bundestag is assigned the function of controlling the activities of the government. In order to effectively perform this function, deputies have the right to receive comprehensive information about all aspects of state policy. For this purpose, special tools of parliamentary control are provided, such as «Small and Large Inquiries» and «Hour of Questions to the Government» («Topical Hour»), which allow deputies to receive answers to their questions and express comments on the work of the government. In order to exercise effective parliamentary control over the activities of the government, it is also envisaged to create special committees. The legal status of deputies of the Federal Republic of Germany is determined by the Basic Law of the Federal Republic of Germany of 1949. The main constitutional principles of the status of German deputies are the principle of a free or mandatory mandate, parliamentary indemnity, parliamentary immunity, and the incompatibility of a parliamentarian's mandate with other activities. The informal features of German parliamentarism are not directly enshrined in legislation. They concern the parliament itself and are manifested in its structure, the level of professionalism and discipline of parliamentarians, their activities in national (rather than personal and narrow group) interests. These features largely depend on the party and electoral systems and the actual mechanisms of parliamentary functioning.*

**Key words:** parliament, parliamentarism, Bundestag, Bundesrat, Germany, separation of powers, legal status, deputies.

**Introduction.** The German model of parliamentarism is often used as an example for other countries. Compared to other European states, German parliamentarism has a unique history. The history of German parliamentarism is the path from the creation of the land estates to the modern Bundestag. Today, the Bundestag is one of the most stable and influential parliaments in the world, which plays a key role in shaping Germany's domestic and foreign policy.

Among the numerous studies and publications that highlight the issue of German parliamentarism, the works of the following researchers deserve special attention: O. Bandurka, A. Georgitsa, V. Hrobova, O. Skakun, Y. Todyky, O. Frytskyi, M. Tsvik, V. Shapovalva, P. Shlyakhtuna, O. Yarmysha, etc.

**The purpose** of the article is to analyze the formation, development and features of German parliamentarism.

The research **methods** are historical, abstract, institutional, systemic. The historical method was used to study the emergence and development of German state representative institutions. The method of abstraction made it possible to distinguish formal (legal) and informal features of parliamentarism in Germany. The institutional method involves the identification and analysis of formalized

phenomena and processes of the political life of society to one degree or another, and is used to distinguish parliamentary institutions at various stages of the formation of German parliamentarism. The application of the system method is determined by the system of higher state bodies in Germany. The systematic method is used to study the formation and functioning of German public authorities.

**Discussion.** The first rudiments of representative bodies in Germany appeared in the Middle Ages. These were land estates that united representatives of different strata of the population: the nobility, the clergy, and the townspeople. They took part in solving important issues related to land management. However, these bodies were not permanent and their powers were limited.

At the end of the 18th century, political movements arose in Europe that advocated national unification on a liberal basis. In Germany, this development started relatively late. After the victory over Napoleon, the Congress of Vienna from September 1814 to June 1815 conducted negotiations on the reorganization of European states. The negotiations were largely shaped by efforts to restore the pre-revolutionary order. While the goal was to restore the balance of power between European states in foreign policy, the principle of the monarchical state was to be

re-applied within the country, if possible without any concessions to liberal and democratic ideas. Instead of the nation state that many had hoped for, the German princes created the German Union. It included 37 principalities and four free cities. The only federal body was the Federal Assembly in Frankfurt am Main, which met under the presidency of Austria and was later called the «German Bundestag». Although the creative possibilities of the German Union were limited by the cumbersome nature of its institutional mechanisms, it proved to be an effective tool for suppressing the efforts of the opposition for a long time [3].

The implementation of the constitutions promised in some states has not met expectations. While a number of states in central and northern Germany adopted constitutions only later, Prussia and Austria refused to adopt constitutions for their territories until 1848. Only the southern states of Germany adopted state representative constitutions that granted liberal civil rights to a limited extent. People's representatives created in this context gave the opposition movement new opportunities for development and initiated the development of the parliament in Germany. State parliaments usually consisted of two chambers: the first one was composed of representatives of the ruling family, the high nobility, and the church, appointed by the king. The seats in the second chamber were allocated to certain social groups according to fixed quotas, whose representatives were elected by indirect elections.

Economic crises, poverty, and general political discontent destabilized the social and political order in many European countries from the early 1840s and ultimately led to the revolutionary wave that swept Europe in 1848. In Germany, rallies and demonstrations also called for the provision of basic rights and freedoms and national unity.

At the end of March 1848, a pre-parliament consisting of members of the state parliament and leading representatives of the liberal and democratic opposition decided to elect members of the German National Assembly on the basis of universal male suffrage. The legislative number of members of the Paulskirchen Parliament was 649 deputies. However, due to the boycott of the elections, there were only 587 full-time parliamentarians [3].

On May 18, 1848, members of the first all-German parliament gathered at the Paulskirche in Frankfurt to discuss a liberal constitution and the formation of a German nation-state. The first president of the National Assembly was the well-known liberal politician Heinrich von Gagern. Parliament adopted regulations and created a Constitutional Committee to draft a constitution [3].

On March 27, 1849, a constitution was adopted that formed a federal unitary German state, to which all the lands of the German Confederation belonged,

with the exception of the Austrian Empire. The head of state was the hereditary emperor. He was given the right to appoint the government. In April 1849, King Friedrich Wilhelm IV of Prussia, who was elected by the National Assembly as «Emperor of Germany», renounced this position. The parliament began to lose legitimacy among the population and was dissolved in May 1849 [3].

In 1871, the Prussian-German Empire was created. A draft constitution was developed by Bismarck, according to which the executive power was given wide powers. The Federal Council was empowered in the executive, legislative and judicial branches of government. The Reichstag was granted the exclusive right to pass laws, including the law on the state budget. In 1894, the composition of the Reichstag consisted of 382 parliamentarians, who were elected first for three years and then for five years.

In November 1918, the constitutional monarchy fell in Germany and a parliamentary republic was established. The central constitutional body of legislative power in the Weimar Republic was the Reichstag, which was elected for four years. It passed laws, including budget approval, and oversaw the imperial government. It organized its work through a system of permanent commissions. The Reich Chancellor was appointed by the Reich President, not elected by the Parliament. He depended on the confidence of the Reichstag in his administration. The Reich President, who was elected directly by the people, was endowed with broad powers under the Weimar Constitution. He had the right to dissolve the Reichstag, declare a state of emergency, issue emergency decrees that have the force of law. Elections to the Reichstag took place under the proportional electoral system (previously under the majoritarian electoral system) [4, p. 125].

On March 31, 1933, the government passed a law on the equalization of the states without the participation of the parliament. Ten months later, the «Reich Reconstruction Act» abolished the state parliaments. This was followed by the dissolution of the Reichsrat, the state representation at the level of the Reich, on February 14, 1934. After Hindenburg's death on August 2, 1934, Hitler was appointed «Führer and Reich Chancellor» thanks to a law passed – also without the consent of the parliament – combining the offices of Reich President and Reich Chancellor. He also became the supreme commander of the Wehrmacht, who swore to him personally and not to the Weimar constitution [4, p. 127].

In December 1947, the first People's Congress was still a pan-German and non-party representative of the German people after 1945. In March 1948, the second German People's Congress elected a German People's Council, a consultative body with a presidium and committee structure. The Provisional

People's Chamber was formed on October 7, 1949 from the members of the third Congress of German People's Representatives. In addition to its own presidium, the People's Chamber elected the chairman and members of the Council of Ministers of the GDR, the chairman of the National Defense Council, the president and judges of the Supreme Court and the prosecutor general. The principles of activity of these state bodies were determined by the People's Assembly. These, as well as people's representatives of volosts, poviats and districts, were accountable to the People's Assembly. Until 1963, the People's Chamber consisted of 466 representatives, then 500, who were elected for four to five years.

On May 8, 1949, the Parliamentary Council adopted the Basic Law of the Federal Republic of Germany, which established the parliamentary republic. The constitution states that the parliament of the Federal Republic of Germany is bicameral. The upper house is called the Bundesrat (Federal Council). The lower house is called the Bundestag. The members of the Bundestag are elected by direct, general, free and secret elections for a term of four years. As stated in Article 38 of the Basic Law of the Federal Republic of Germany, elected deputies "are representatives of the whole people, who are not bound by orders and instructions and obey only their conscience" [2]. Elections to the Bundestag take place under a mixed electoral system.

The Bundesrat is the upper house of the German parliament. Through the Bundesrat, the states participate in the exercise of the legislative and administrative power of the Federation. The Bundesrat consists of members of the state governments who appoint and recall them. They can be replaced by other members of these governments. Each land has at its disposal no less than three votes; lands with a population of more than two million have four votes, lands with a population of more than six million have five votes. Each land can delegate as many members as it has votes. Votes of the land can be submitted only simultaneously and by the members of the Bundesrat or their representatives (Articles 50-51 of the Basic Law of the German Federal Republic of 1949) [2].

German parliamentarism provides for the real supremacy of parliament in the legislative sphere. The formal features of parliamentarism in Germany are the separation of powers, the parliament's function of controlling the government, and the special status of parliamentarians.

The division of state power in Germany is flexible. The executive power belongs to the Federal Government, which consists of the Federal Chancellor and the Federal Ministers, the legislative power is the Bundesrat (Federal Council) and the Bundestag, the judicial power is exercised by the Federal Constitutional Court, the Supreme Federal Court,

federal courts and state courts. The Federal President of Germany is the head of state. It performs ceremonial functions.

The Bundestag is assigned the function of controlling the activities of the government. In order to effectively perform this function, deputies have the right to receive comprehensive information about all aspects of state policy. For this purpose, special tools of parliamentary control are provided, such as «Small and Large Inquiries» and «Hour of Questions to the Government» («Topical Hour»), which allow deputies to receive answers to their questions and express comments on the work of the government. «Small and Large Requests» are submitted in writing. The main difference between these two forms of parliamentary scrutiny is that «Major Inquiries» can lead to parliamentary hearings, while «Small Inquiries» are usually limited to a written response. «Hour of Questions to the Government» or «Topical Hour» is a tool of parliamentary control, which allows deputies of different factions to discuss urgent issues of state policy, and is usually convened at the initiative of opposition factions [3].

To exercise effective parliamentary control over the government, special committees are supposed to be established. At least a quarter of the Bundestag members can initiate their creation.

The legal status of deputies of the Federal Republic of Germany is determined by the Basic Law of the Federal Republic of Germany of 1949 [2] and relevant laws. The main constitutional principles of the status of German deputies are the principle of a free or mandatory mandate, parliamentary indemnity, parliamentary immunity, and the incompatibility of a parliamentarian's mandate with other activities.

The principle of a free mandate is stated in the first part of Article 38 of the Basic Law of the Federal Republic of Germany from 1949: «Deputies of the German Bundestag are elected by universal, free, equal and secret elections. They are representatives of the entire nation, not bound by orders and instructions and obeying only their conscience» [2].

The principle of imperative mandate is used in socialist countries. However, the Ukrainian scientist P. Shlyakhtun points out that in democratic states the imperative mandate is usually given to appointed members of parliament. For example, members of the Bundesrat of the Federal Republic of Germany, who are appointed by the state governments, can be recalled by them at any time [1, p. 341].

The principle of parliamentary indemnity (from the Latin *indemnitas* – compensation for damages, break-even) is derived from the principle of a free mandate and consists in the legal irresponsibility of a parliamentarian for his actions as a member of parliament [1, p. 342]. In other words, a parliamentarian is not legally responsible for

speeches, statements, votes, inquiries, submission of bills and amendments to them, participation in the work of parliamentary committees or commissions and other actions directly related to parliamentary activities, both during the period of exercising parliamentary powers and after their expiration. It is assumed that a parliamentarian speaks at plenary sessions, in the bodies of the parliament and outside its walls, votes based on his inner convictions, and for this he should not bear criminal or any other formalized responsibility. In some countries, parliamentary indemnity has an absolute character (the parliamentarian is not legally responsible for voting or any statements), and in other countries it is relative (the parliamentarian is legally responsible for defamation or insults committed by him during a session of the parliament).

In Germany, the parliamentary indemnity has a relative character. Thus, a member of the Bundestag cannot at any time be subject to judicial or administrative prosecution or otherwise held accountable outside the Bundestag for his vote or speech in the Bundestag or one of its committees. This does not apply to defamatory insults (Part 1 of Article 46 of the Basic Law of the Federal Republic of Germany of 1949) [2].

The principle of parliamentary immunity (from the Latin *immunitas* – release, freedom) consists in the legal inviolability of a parliamentarian and means that he cannot be held criminally liable, detained or arrested without the consent of the parliament [1, p. 343]. Parliamentary immunity is not absolute. It can be extended to the entire time of election of the parliamentarian of the Bundestag. However, a parliamentarian of the Bundestag is deprived of immunity if he is detained at the scene of a crime. The Basic Law of the Federal Republic of Germany from 1949 states that a deputy can be prosecuted or arrested for a criminal act only with the consent of the Bundestag, except for cases of detention during the commission of such an act or during the following day (Part 2 of Article 46) [2].

The principle of incompatibility of a parliamentarian's mandate with other types of activity means that a member of the Bundestag cannot hold positions defined by law.

In addition to legal ones, there are informal signs of parliamentarism that are not enshrined in legislation. They concern the German parliament itself and are manifested in its structure, the level of professionalism and discipline of parliamentarians, their activities in national (and not personal and narrow-group) interests. Such signs largely depend on what the party and electoral systems are like, the real mechanisms of the parliament's functioning.

**Results.** Thus, German parliamentarism is characterized by the supremacy of the parliament in the legislative sphere, its leading role in the exercise of state power. The features of German parliamentarism are the separation of powers, the parliament's function of controlling the government, and the special status of parliamentarians. Informal features of parliamentarism are manifested in the structure of the parliament, the level of professionalism and discipline of parliamentarians.

#### BIBLIOGRAPHY:

1. Шляхтун П. П. Сучасний зарубіжний конституціоналізм (основні поняття та інститути): підручник. Київ: Київський університет, 2021. 512 с.
2. Basic Law for the Federal Republic of Germany of 23 May 1949. URL: [https://www.gesetze-im-internet.de/englisch\\_gg/englisch\\_gg.html](https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html) (date of application: 28.08.2024).
3. German Bundestag. URL: <https://www.bundestag.de/en> (date of application: 28.08.2024).
4. Hubert Peter. Uniformierter Reichstag. Die Geschichte der Pseudo-Volksvertretung 1933 – 1945, Düsseldorf: Droste. 1992. Pp. 394.

#### REFERENCES:

1. Shliakhtun, P. P. (2021) Suchasnyi zarubizhnyi konstytutsionalizm (osnovni poniattia ta instytuty): pidruchnyk. Kyiv: Kyivskiy universytet. 512 s. [in Ukrainian].
2. Basic Law for the Federal Republic of Germany of 23 May 1949. URL: [https://www.gesetze-im-internet.de/englisch\\_gg/englisch\\_gg.html](https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html) (date of application: 28.08.2024). [in English].
3. German Bundestag. URL: <https://www.bundestag.de/en> (date of application: 28.08.2024). [in English].
4. Hubert Peter. Uniformierter Reichstag. Die Geschichte der Pseudo-Volksvertretung 1933 – 1945, Düsseldorf: Droste. 1992. Pp. 394. [auf Deutsch].

## Становлення та розвиток парламентаризму Німеччини

Войчук Аліна Юріївна

доктор філософії зі спеціальності політологія,  
асистентка кафедри політичних наук  
Київського національного університету  
імені Тараса Шевченка  
вул. Володимирська, 64/13,  
Київ, Україна  
ORCID: 0000-0002-1925-1307

*Парламентаризм Німеччини характеризується верховенством парламенту в законодавчій сфері та його провідним становищем в системі вищих органів державної влади. Процес становлення німецького парламенту має давню історію. Ключовими етапами становлення парламентаризму було, зокрема, утворення перших парламентів у Середньовіччі, вплив революційних подій, особливості Веймарської республіки та становлення Федеративної Республіки Німеччини. Парламент Федеративної Республіки Німеччини є двопалатним. Верхня палата має назву Бундесрат (Федеральна рада). Нижня палата називається Бундестагом. Німецький парламентаризм характеризується юридичними та неформалізованими ознаками. Формальними ознаками парламентаризму Німеччини є: поділ влади, наявність у парламенту функції контролю за діяльністю уряду та особливий статус парламентаріїв. Поділ державної влади у Німеччині є гнучким. Бундестаг наділяється функцією контролю за діяльністю уряду. Щоб ефективно виконувати цю функцію, депутати мають право отримувати вичерпну інформацію про всі аспекти державної політики. Для цього передбачені спеціальні інструменти парламентського контролю, такі як «Малі та Великі запити» та «Година запитань до уряду» («Актуальна година»), які дозволяють депутатам отримувати відповіді на свої запити та висловлювати зауваження щодо роботи уряду. Для здійснення ефективного парламентського контролю за діяльністю уряду передбачається також створення спеціальних комітетів. Правовий статус депутатів Федеративної республіки Німеччини визначається Основним законом Федеративної республіки Німеччини від 1949 року. Основними конституційними принципами статусу депутатів Німеччини є принцип вільного або імперативного мандату, парламентського індемнітету, парламентського імунітету, несумісності мандата парламентарія з іншими видами діяльності. Неформалізовані ознаки німецького парламентаризму не закріплюються в законодавстві безпосередньо. Вони стосуються самого парламенту і виявляються в його структурованості, рівні професіоналізму і дисципліни парламентаріїв, їхньої діяльності в загальнонаціональних (а не особистих і вузькогрупових) інтересах. Такі ознаки значною мірою залежать від того, якими є партійна і виборча системи, реальні механізми функціонування парламенту.*

**Ключові слова:** парламент, парламентаризм, Бундестаг, Бундесрат, Німеччина, поділ влади, правовий статус, депутати.