# Proportional Representation and Electoral Equality in German Constitutional Thinking and Case Law

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# *Proportional Representation and Electoral Equality in German Constitutional Thinking and Case Law*

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## I. INTRODUCTION

In this chapter we take a look at how electoral laws have been addressed in the case law of the German Federal Constitutional Court, with occasional focus on the constitutional courts in the Länder. Due to the fact that no specific voting system was entrenched in the Basic Law of 1949, the main constitutional yardstick that surfaces in the case law is the principle of voting equality. Article 38(1) Grundgesetz (GG): 'Members of the German Bundestag shall be elected in general, direct, free, equal and secret elections.' However, the reading of the principle of voting equality by the Bundesverfassungsgericht is influenced by a deeply rooted legislative tradition that has favoured proportional representation. Since the very beginning of its activity, the Bundesverfassungsgericht has rendered a number of judgments concerning federal and municipal electoral laws, as well as the law on the election of the members of the European Parliament allocated to Germany. In many of these decisions, the interplay between voting equality and proportional representation was central. Limitations on strict equality and deviations from it, for instance the well-known five-per cent threshold, have been assessed in the light of long-standing assumptions on how the prevalence of proportional representation defines the meaning of equal suffrage in the German constitutional order. This principle has played a key role, also due to the fact that the Court has generally looked at it as a right, protected by means of individual complaints raised under Article 93(1)(4a) GG.[1]

* Although this chapter is the result of joint reflections, Giacomo Delledonne wrote II.A, III.A, and IV.A; Bastian Michel wrote II.B, III, B, and IV.B. I and V were elaborated on jointly.

[1] See H Meyer, 'Wahlgrundsätze, Wahlverfahren, Wahlprüfung' in J Isensee and P Kirchhof (eds), *Handbuch des Staatsrechts der Bundesrepublik Deutschland*, vol 3, 3rd edn (Heidelberg, CF Müller, 2005) 543, 561.

The German approach to analysing equality in the light of proportionality sits in a rich comparative context. Electoral equality is a fundamental principle of the representative democratic system and, in this sense, has something universalist about it. During the transitions to constitutional democracy in central and eastern Europe over the last three decades, comparison with long-established constitutional democracies in western Europe played a crucial role.[2] With most European countries now being Member States of the European Union, the European Parliament provides a nucleus case in which the separate electoral regimes come together and show a similarity of problems and a range of possible roles for supreme and constitutional courts, often with interesting differences in approach and outcome.[3] A broader politico-constitutional context is that of a perceived crisis of representative democracy and the growing 'judicialisation of politics'.[4]

The aim of this chapter is to shed some light, through the prism of electoral equality and proportional representation, on the German thinking about representative democracy and to point to some comparative contrasts.

Equality and proportionality have a complicated history of intertwinement from the Weimar Republic into the post-war period, which forms a peculiar historical backdrop of conceptual thinking in Germany today (II). Two areas of application of equality and proportionality bring out the contrast with other jurisdictions more concretely: the case law on thresholds and the judgments on the problems caused by the mixed-member electoral system (III). The European context, and specifically the German case law on European elections, ultimately reveals a certain view of the democratic polity and its organisation within the organs of the state (IV).

## II. EQUALITY AND PROPORTIONALITY

Before looking into the case law in greater detail, some clarifications are needed with regard to the status of proportional representation in the German constitutional order. Unlike a majority of constitutions in the Member States of the EU – including, among others, Austria and Spain – no voting system is entrenched in the Basic Law of 1949. When the Parliamentary Council was called on to draft both a Basic Law for the still to be established Federal Republic of Germany and an electoral law for its federal legislature, it discussed electoral matters extensively. Therefore, although the Basic Law is silent on voting systems, this should

[2] See W Sadurski, *Rights Before Courts: A Study of Constitutional Courts in Postcommunist States of Central and Eastern Europe*, 2nd edn (Dordrecht, Springer, 2014) ch 6.

[3] See G Delledonne, '"A Goal That Applies to the European Parliament No Differently From How It Applies to National Parliaments": The Italian Constitutional Court Vindicates the 4% Threshold for European Elections' (2019) 15 *European Constitutional Law Review* 376.

[4] See R Hirschl, 'The Judicialization of Mega-Politics and the Rise of Political Courts' (2008) 11 *Annual Review of Political Science* 93.

not be mistaken for indifference.[5] The members of the Parliamentary Council sought to establish a well-functioning parliamentary form of government; therefore, they critically engaged with the legacy of the Weimar years. According to influential analyses, one of the shared assumptions of the drafters of the Basic Law was that the Constitution of 1919 carried responsibility for the collapse of the Weimar Republic.[6] When discussing the reasons for the rise to power of National Socialism, they made reference, among other factors, to the nefarious effects of the proportional voting system, which, incidentally, had enjoyed constitutional status in the Weimar Republic.[7] Apparently, the drafters of the Basic Law were guided by the dominant feeling that 'Bonn is not Weimar'.

However, a more nuanced appreciation is also possible. Within the Parliamentary Council, no majority emerged for a majoritarian system based on single-member constituencies. In an early version, the Federal Electoral Law did not even provide for a threshold to access the federal legislature. Overall, an unspoken but clear preference for proportional preference seems to pervade the German constitutional order, so much so that an influential scholar used the label 'eloquent silence' to describe the attitude of the Basic Law in this domain.[8] As an Italian Germanist put it, 'Bonn is also Weimar'.[9] In the light of the ambiguous relations between the Basic Law and its antecedent enacted in 1919, a closer look at the legacy of Weimar is needed (II.A), before turning to the current doctrine as it emerges from the Bundesverfassungsgericht's case law (II.B).

## A. Systematics and the Legacy of Weimar

The aim of this paragraph is not to retrace the debates about the entrenchment of proportional representation at the Weimar Constituent Assembly;[10] rather, it aims to highlight some points that contributed to shaping the 'credo' of the Federal Constitutional Court in the post-war decades.

First, an idea that seemed to inspire the supporters of the entrenchment of the 'principles of proportional representation' (*Grundsätze der Verhältniswahl*) in Article 22 of the Weimar Constitution was that this move was the culminating

[5] See, in general terms, M Foley, *The Silence of Constitutions* (Abingdon, Routledge, 1989).

[6] See, among others, FK Fromme, *Von der Weimarer Verfassung zum Bonner Grundgesetz. Die verfassungspolitischen Folgerungen des Parlamentarischen Rates aus Weimarer Republik und nationalsozialistischer Diktatur* (Tübingen, Mohr Siebeck, 1960); W Weber, *Spannungen und Kräfte im westdeutschen Verfassungssystem*, 3rd edn (Berlin, Duncker & Humblot, 1970).

[7] Among Ferdinand Hermens' highly influential works, see FA Hermens, *The Representative Republic* (Notre Dame IN, University of Notre Dame Press, 1958).

[8] H Meyer, 'Demokratische Wahl und Wahlsystem' in J Isensee and P Kirchhof (eds), *Handbuch des Staatsrechts der Bundesrepublik Deutschland*, vol 3, 3rd edn (Heidelberg, CF Müller, 2005) 521, 537.

[9] A Bolaffi, 'Lo spettro di Weimar e la coscienza politica d'Europa', preface in A Wirsching, *Weimar, cent'anni dopo. La storia e l'eredità: bilancio di un'esperienza controversa* (Roma, Donzelli, 2019) 10.

[10] On this, see C Gusy, *Die Weimarer Reichsverfassung* (Tübingen, Mohr Siebeck, 1997) 116 ff.

point of a decade-long struggle for political equality. Proportional representation seemed to go hand in hand with universal, equal and secret suffrage. Sceptics of proportional representation like Friedrich Naumann argued that the latter were political rights, while the adoption of proportional representation was one of the possible solutions to the question of how to determine the political leadership. Hugo Preuß championed the opposite view and assumed that the recognition of (male and female) universal and equal suffrage, with the ensuing demise of elitist mechanisms like Prussia's three-class franchise, had to be complemented by the adoption of proportional representation. Not only were voters equal when they cast their votes, but the effects of this equality had to be extended to the composition of the legislature. In this vein, the constitutional recognition of political rights was tightly connected to the decisions on the voting system, and embracing the 'principles of proportional representation' was seen as a direct consequence of the affirmation of equal suffrage.[11] By contrast, the Weimar constituents were not particularly interested in the interplay between proportional representation and the relations between the legislature and the executive under the new Constitution.

The subsequent interpretation and implementation of the principles enshrined in the Weimar Constitution, most notably proportional representation *and* equal suffrage, deserve careful consideration. First, the Constitution mentioned the principles of proportional representation but did not define the contents and technical features of the federal voting system in greater detail. The electoral law, the Reichswahlgesetz of 1920, opted for the strictest possible reading of proportional representation. Within multi-seat constituencies, each party list would receive a seat for every 60,000 votes, and unused votes would be allocated to national party lists. Accordingly, the overall size of the Reichstag was not predetermined in advance.

Second, the inspiration of the Reichswahlgesetz was paralleled by a 'maximalist' approach in the case law of the State Court (Staatsgerichtshof) for the German Reich.[12] In three judgments rendered on 17 December 1927, the Staatsgerichtshof struck down the state electoral laws of Hamburg, Hesse, and Mecklenburg-Strelitz.[13] On 22 March 1929, it annulled the election that had been held in the Free State of Saxony three years before.[14] In its reasoning,

[11] In fact, this component of the Weimar legacy has rapidly gone out of fashion; nowadays, there is no consensus on the fact that proportional representation should be preferred over other voting systems in the same way that universal and equal suffrage finally prevailed over, respectively, limited franchise and plural voting (H Meyer, *Wahlsystem und Verfassungsordnung: Bedeutung und Grenzen wahlsystematischer Gestaltung nach dem Grundgesetz* (Frankfurt am Main, Metzner, 1973) 20 f).

[12] Under Art 19 of the Constitution of 1919, the Staatsgerichtshof decided constitutional controversies arising within a state 'for the decision of which there is no competent court', and public-law controversies arising between different states or between the Reich and a single state, 'if no other court of the Reich is competent'.

[13] StGH 6/27.

[14] StGH 13/28.

the Staatsgerichtshof moved from a strong reading of the principle of equal suffrage, which could not simply be seen as a mere prohibition to revert to plurality voting; rather, equal suffrage entailed that the votes cast should be treated equally when seats were allocated and should have equal influence (*Erfolgswert*) on the outcome. Therefore, a proportional voting system had to be compatible with equal suffrage requirements at all stages, from the casting of votes to the allocation of seats. This strand of case law was met with mixed reviews; more particularly, Hermann Heller analysed the proportional electoral laws that were in force in many European states at that time and argued that 'discriminations with regard to the equal *Erfolgswert* of the votes cast […] are not incompatible with the postulate of equal suffrage in a proportional electoral system if they are not exclusively directed against individual political parties but against all small parties'.[15]

Although the entrenchment of proportional representation in the Constitution of 1919 was later described as an ominous decision – also because of an apparently cumbersome amending procedure – it is correct that ordinary legislation and the case law of the Staatsgerichtshof went further than the Constitution in imposing strict electoral equality. The legacy of the Weimar years can be traced back not only to a certain preference for proportional representation but also to the emergence of a tight link between proportional representation and a strict understanding of electoral equality, including both the one person, one vote principle and equal *Erfolgswert* of the votes cast.

## B. Current Situation and Case Law of the Bundesverfassungsgericht

As already mentioned, the new Grundgesetz for West-Germany of 1949 did not fix the electoral system for the Bundestag and left that decision to the ordinary legislature. The choice in fact made, on the level of ordinary legislation, was for proportional representation based on party lists, combined with plurality voting in single-member constituencies to fill part of the seats won through proportionality. The Parliamentary Council's own draft for an electoral law for the first Bundestag elections already contained that system of 'personalised proportional representation' and this system has continued in place, unchanged in its fundamentals, ever since. After a failed attempt to introduce first-past-the-post voting at the time of the first Grand Coalition in the late 1960s, the decision for proportional representation has generally not been challenged any longer, if not in the aftermath of the federal election of 2005 and the ensuing stalemate.[16]

[15] H Heller, 'Die Gleichheit in der Verhältniswahl nach der Weimarer Verfassung. Ein Rechtsgutachten' in *Gesammelte Schriften*, vol 2 (Leiden, AW Sijthoff, 1971) 319, 344 (this author's translation).

[16] See L Helms, 'The Grand Coalition: Precedent and Prospects' (2006) 24 *German Politics and Society* 47, 59.

All German Länder use proportional representation for elections to their Land Parliament, most of them through a similar system of personalised proportionality,[17] as well as for municipal elections.[18] European elections in Germany have always been based on proportionality even before that became a requirement under the Direct Elections Act.[19] The overall impression one gets, looking back at 70 years of constitutional life in the Federal Republic, is that proportional representation is very much entrenched in Germany, certainly as a matter of politico-constitutional culture. It remains true, though, that proportional representation is not entrenched in the text of the Grundgesetz.

It is in this context, and against the background of Weimar, that the Bundesverfassungsgericht's case law can best be understood. With a constitutional text silent on the choice of electoral system, but equality being there as a core element of elections, there are two potential views on the situation that are simple and straightforward: one view would hold that equality implies proportional representation, in other words that a majoritarian system (say the British simple plurality vote in single-member constituencies) is so unequal that it would be unconstitutional in Germany; the other view would be that equality can go no further than it would in the least equal but still permissible electoral system, providing a uniform minimum standard that any electoral system would have to respect but no more than that.

The Bundesverfassungsgericht has always rejected both views. Continuing its predecessor's case law of the 1920s, it has held, from as early as 1956 onwards, that the meaning of equality depends on the system chosen. Under the Grundgesetz, the legislature is free to opt for a majoritarian system, in which electoral equality means each vote had to be counted equal (*Zählwertgleichheit*); or it can opt for proportional representation, in which case not only have votes to be counted equal but must have equal influence on the outcome, more precisely the same potential for success in contributing to one more seat for the party chosen (*Zählwertgleichheit* plus *Erfolgswertgleichheit*).[20]

The Bundesverfassungsgericht arrived at this position by using the doctrinal construction variously know as 'correctness of consequence' (*Folgerichtigkeit*) or 'self-binding of the legislature' (*Selbstbindung des Gesetzgebers*). This doctrine says, as these terms suggest, that the legislature, once having made a principal choice of overall legislative approach to an area of life to be regulated,

[17] The majority of the Länder have proportional representation entrenched in their constitution, those constitutions that do not mention the system often implicitly assume proportionality where they set a threshold; see 'Zur Regelungsdichte des Wahlrechts in den Verfassungen der deutschen Bundesländer und der Mitgliedstaaten der EU' (Bundestag, Wissenschaftliche Dienste, WD 3–3000–136/14, 2016) 8–12; also W Zicht, 'Übersicht über die Wahlsysteme bei Landtagswahlen' (2009, last update 25 March 2020), www.wahlrecht.de/landtage/index.htm.

[18] Mostly with an open list system; see W Zicht 'Übersicht über die Wahlsysteme bei Kommunalwahlen' (1999, last update 21 May 2018), www.wahlrecht.de/kommunal/index.htm.

[19] § 2 Europawahlgesetz (as originally enacted 16 June 1978) BGBl I 709.

[20] BVerfGE 1, 208, 244 ff with reference to the case law of the Staatsgerichtshof and to Heller (n 15).

is bound by its own principal decision and has to fill in the detailed rules in a way consistent with it. Or, as the Bundesverfassungsgericht put it with regard to the electoral system in 1952:

> The advantage associated specifically with proportional representation is that it provides for fractions of all parliamentary seats that correspond, as best as possible, to the fractions of votes gained by the several political streams in the country. It is therefore regarded as a requirement of equity, here, that each vote have the same success value in principle. A legislature that chooses this system, even if merely in addition to election by majority, thereby accepts this requirement of equity and subjects its law to that standard.[21]

In later decades, specifically in its judgment of 2012, the Bundesverfassungsgericht seemed slightly to edge away from this language of a self-binding legislature and instead focussed on electoral equality and the substance of what elections are. Electoral equality meant votes had to be treated strictly equally, having the same counting value and the 'same chance of success legally' (*gleiche rechtliche Erfolgschance*). This was, in the words of the Court, a uniform standard, it just meant different things under different electoral laws. In a majority or plurality single-seat constituency system it would mean constituencies had to be of roughly equal size and votes had to be counted equally. In a list-based proportional system it meant that, after counting votes equally, they also had to have the same degree of influence in each step of the necessary calculations that would ensue.[22] So this reasoning leads, in the end, to the very same test of equal counting value plus equal success value.

In the next part of this chapter, we look at two areas of application of this approach by the Bundesverfassungsgericht to see how very powerful and far-reaching it can be. Before doing so, it is worth briefly to put the approach into its broader electoral-law context as represented in the German case law, including the standard of review the Court says it uses, and to flag up a few strands of critique on it.

According to the Bundesverfassungsgericht's stable case law, seen that the Grundgesetz itself leaves open the question of which electoral system is to be used, the legislature is free to choose one system or another and to modify it. In doing so, it must have regard to the functions that elections have in the representative democratic system and the constitutional requirements connected with these: elections create a relationship between voter and elected, and are an expression of the sovereign people's will in legitimising the organs of the state.[23] The elected assembly must be able to fulfil its functions, especially legislating

[21] BVerfGE 1, 208, 248.

[22] BVerfGE 131, 316, 337 f.

[23] On the 'chain of legitimation' (*Legitimationskette*) from voters to Parliament to the government and the administration, see, critically and with further references, U Schliesky, *Souveränität und Legitimität von Herrschaftsgewalt* (Tübingen, Mohr Siebeck, 2004) 276 ff.

and installing an executive. Elections must be designed in such a way that the integration of different political forces can take place and so that significant desires, concerns and interests do not remain unrepresented. Some of these aims are in tension with each other and meeting them at the same time can only be successful if the legislature enjoys wide discretion.[24] The bottom line that the Bundesverfassungsgericht draws, and which the legislature may not transgress, is each citizen's right to free and equal participation in the process of democratic self-determination. In addition, the strictly formal character of electoral equality means that there is very little room of manoeuvre to differentiate between votes. It is for the legislature to identify the constitutional aims that might require some degree of differentiation in voting equality and to lay down a balanced solution. It is not for the Court to say whether such solutions are adequate or desirable as a matter of constitutional policy; scrutiny by the Court is restricted to asking, by way of proportionality test, whether the aims behind a differentiation are legitimate, whether the means to reach them are suitable, and whether they go no further than required. Lastly, the legitimacy of a differentiation in voting equality can depend on real-world circumstances that may change. The legislature is therefore under an obligation to monitor developments and intervene if needed.[25]

Despite the Bundesverfassungsgericht's rhetoric of restricted scrutiny, a proportionality test in particular is, of course, a strong means. The critique on the Court's overall approach, moreover, highlights the potentially too broad view on permissible electoral systems and the too deep-reaching test once a system is chosen.

As pointed out by Hans Meyer in his 1973 book, one cannot conclude from the Grundgesetz's silence on which electoral system is to be used that all known systems are permissible or that any specific system will be. Whether introduction of a British-style simple plurality system would be permissible in Germany depends on whether such a system meets the requirements that the Grundgesetz *does* contain.[26] Fifty years later, that critique still stands. With the broad use of proportionality in Germany, now deeply entrenched as a matter of politico-constitutional culture, it is less likely that this question will be tested in the near future, but perhaps more likely that a majoritarian system would have to be seen as unconstitutional in Germany if it ever came to such a test. Meyer also criticises the Court's view that there are essentially two archetypes of electoral system, majoritarian and proportional, with modifications. Despite his strong appeal to take a more realistic view about a range of systems, possibly to be ordered along a scale from restrictive to more open, this classic view is still prevalent in the Bundesverfassungsgericht's case law.

[24] BVerfGE 131, 316, 335f with references to preceding case law.

[25] BVerfGE 131, 316, 336–39.

[26] Meyer (n 11) 193. On this, see also G Delledonne, *Costituzione e Legge Elettorale* (Napoli, Editoriale Scientifica, 2019) 53.

Critique on the Court's deep scrutiny goes in a similar direction. A doctrine of a self-binding legislature is problematic in that the Court takes it upon itself to determine which choices by the legislature are the principal ones and what the legislature's aim was in enacting them. Countervailing choices can then be presented as questions of detail, which may be held to be impermissible. The forms of law in Germany do not, in themselves, have any structure of hierarchy within the class of ordinary legislation that would justify this technique. Departing from the presumption that there are essentially two electoral systems to choose from, albeit with modifications, further enhances the Court's grip on the legislative design. In particular, in a situation that a detailed rule encroaches upon an individual right like electoral equality and fits ill with the principal choice of system, it is then no defence for the legislature to say that under a different principal choice, also open to the legislature, the encroachment of right would be even worse but permissible.[27] In other words, the Court seems to compartmentalise constitutional review into pillars, then to require that rules within each pillar are in harmony whilst disallowing any sideway comparison between pillars. This becomes more clear in the concrete application of the Court's approach to the questions of thresholds and the problems around the mixed system, to which we turn now.

## III. TWO AREAS OF APPLICATION

When addressing the Federal Election Law (Bundeswahlgesetz) or other electoral laws (for instance, the Europawahlgesetz), a recurring point in the case law of the Bundesverfassungsgericht is resort to thresholds (III.A). These judgments are of great relevance also in comparative terms. Thresholds are a typical, although not a necessary, component of proportional voting systems, which allows to explain the great influence of the Bundesverfassungsgericht in this area. Other issues that have been addressed in the case law, most notably the much-discussed 'excess seats', are more directly related to the technicalities of the German mixed-member system (III.B).

### A. Limiting Equality by Thresholds

A five-per cent threshold is generally described a distinctive feature of the German system of personalised proportional representation. However, a closer look at the discussion within the Parliamentary Council shows that the introduction

[27] See M Payandeh, 'Das Gebot der Folgerichtigkeit: Rationalitätsgewinn oder Irrweg der Grundrechtsdogmatik?' (2011) 136 *Archiv des öffentlichen Rechts* 578 with a critique on the doctrine, at 600ff specifically in the context of electoral law.

of a five-per cent threshold at Land level was the result of last-minute pressure from the occupying powers. Initially, the threshold for federal elections applied for each Land separately. Since 1953, with the sole exception of the first federal election after the reunification in 1990, the threshold has applied nationally.

The first significant judgment was issued by the Bundesverfassungsgericht in 1952.[28] The Court held that proportional representation may favour smaller parties 'that would not stand the slightest chance of success under a single-seat constituency system', possibly resulting in 'perturbations of constitutional life'.[29] A representative assembly fragmented into several small groups might not be able to perform its functions, first and foremost 'to create a politically active government'.[30] To prevent political instability, political parties could be treated differently when seats are allocated; because of the proportional inspiration that pervades the system, such exceptions to the general rule of equality can only be admitted on compelling grounds. The issue of which differential rules are admissible cannot be settled once and for all; however, and in spite of the silence of the Basic Law, a comparative analysis of the constitutions then in force in several West German Länder suggested that a five-per cent threshold, barring exceptional circumstances, was not an unjustified measure.

The reasoning of the Court may be saluted for its cautious, realistic approach or, conversely, criticised as unsatisfactory. To assess the constitutionality of thresholds, constitutional provisions have to be read with an eye to empirical evidence:

> An electoral law provision may be justified in one state at a given point in time and not in another state or at another point in time; when it is issued, the circumstances of the country to which it is supposed to apply must be taken into account.[31]

In 1990, this led the Court to invite the federal legislature to adapt the Bundeswahlgesetz to the exceptional circumstances arising from the reunification of Germany.

What the need for a functioning representative body requires is not completely clear in the case law of the Bundesverfassungsgericht. In 1952, the judges in Karlsruhe hinted at the formation of a politically active government. In subsequent judgments, the Court has resorted to a slightly different wording: smaller groups may make it difficult or impossible 'to form a stable majority' and undermine 'the Parliament's ability to act and to make decisions'.[32] Therefore, one may argue, a functioning Parliament is needed per se, independently from its relations with the executive (which, of course, are no less important); this, in turn, may represent a compelling reason to justify the introduction of thresholds.

[28] See also above II.B (text at n 20).
[29] BVerfGE 1, 208, 248.
[30] ibid.
[31] BVerfGE 82, 322, 338.
[32] ibid.

As mentioned above, these arguments are not inherently related to the distinctive features of the German model of personalised proportional representation; rather, they reflect memories of the Weimar legacy and a systematic reading of the electoral law and the constitutional provisions. The Federal Republic of Germany having a parliamentary form of government, the relations between the Bundestag and the Federal Government cannot be ignored when addressing the constitutionality of electoral thresholds. From an entirely different viewpoint, the arguments used by the Bundesverfassungsgericht have been criticised as 'weak and contradictory'.[33] On the one hand, the silence of the Grundgesetz may have been overinterpreted by courts and scholars; on the other hand, an unbiased consideration of the very stable German party system in the 1970s may have suggested that thresholds were no longer necessary. Fifty years on, it might be argued that the ever-greater fragmentation of the party system – and the composition of the Bundestag – in the last two decades shows that the five-per cent threshold is no longer fit for purpose.

The case law of the Court developed as a result of challenges brought against the Bundeswahlgesetz and the electoral laws of the Länder; indeed, the judgment released in 1952, which represents a leading case in this respect, focused on a threshold clause in the electoral law of Schleswig-Holstein that was deemed to penalise the Danish-speaking minority party.

The case law of the Court looks less consistent if the electoral laws for the European Parliament and municipal councils are also taken into account. In 1957, the Bundesverfassungsgericht held that the municipal councils, for all their differences from the Federal and Land parliaments, were dominated by political parties and, consequently, their functioning could be 'perturbed by the existence of small parties, just like the normal operation of a parliament'.[34] The decline of mass political parties at the local level and, even more importantly, the introduction of the direct election of mayors in several Länder led both the Bundesverfassungsgericht and constitutional courts in the Länder to change their approach. The significant differences between municipal councils and parliaments and the option for a new form of government at the local level, with the mayor not depending on the support of a majority within the council, weakened the compelling grounds for providing for thresholds in the electoral laws for the municipal assemblies.

In the run-up to the first election of the European Parliament by direct universal suffrage, the Europawahlgesetz of 1978 provided for a national five-per cent threshold. Soon after the European elections of 1979, the Bundesverfassungsgericht adjudicated constitutional complaints based on the alleged violation of the principle of equal suffrage. To reject these claims, the Court built on the similarities between the European Parliament and the Bundestag: due to its tasks and its role as defined by the Treaties,

[33] Meyer (n 1) 564.
[34] BVerfGE 6, 104, 118.

> [t]he European Parliament can only effectively deal with the tasks assigned to it if it provides all its members with the necessary expertise and is able to form a convincing majority. Both [preconditions] can be jeopardized if the division of Parliament into many groups, which is unavoidable in any case due to the large number of member states, takes on such proportions that its ability to function is seriously called into question.[35]

This line of reasoning was further strengthened by comparison with the other Member States of the European Communities, whose electoral laws for the European Parliament contained, more often than not, explicit or implicit thresholds. Three decades later, in a significant overruling of its previous judgment, the Federal Constitutional Court declared the five-per cent threshold unconstitutional. In spite of the constitutional evolution of the Communities and later the EU, the Court firmly rejected any analogy between the European Parliament and the Bundestag. With regard to the latter, the Court said, the five-per cent threshold is justified because a stable majority is needed to form a functioning government and to support it over time. In the supranational scenario, in turn,

> [t]he European Parliament does not elect a Union government depending on its continued support. Nor is the Union's legislation dependent on a stable majority in the European Parliament […] [T]here are no compelling reasons to affect equal suffrage and equal opportunities through threshold clauses.[36]

Echoes of the much-discussed case law of the Bundesverfassungsgericht on the relations between the domestic and the European legal and constitutional orders resonate in this judgment, which was confirmed after the federal legislature tried to reintroduce a three-per cent threshold ahead of the 2014 European election.[37] In spite of major transformations in the institutional architecture of the EU, the Bundesverfassungsgericht could no longer seen any 'compelling reasons' to justify resort to a threshold for the European elections in Germany.

### B. Deviating from Equality through Mixity of the System

Germany is well known for its mixed-member electoral system of 'personalised proportional representation'. It also has not gone unnoticed that the problems around 'excess seats' (*Überhangmandate*) and 'negative voting effect' (*negatives Stimmgewicht*) have made the system, as it was until 2011, untenable. A brief discussion is warranted here, as the complexity of the federal electoral system

[35] BVerfGE 51, 222, 246 f.

[36] BVerfGE 129, 300, 336.

[37] BVerfGE 135, 259. See also B Michel, 'Thresholds for the European Parliament Elections in Germany Declared Unconstitutional Twice' (2016) 12 *European Constitutional Law Review* 133; G Taylor, 'The Constitutionality of Election Thresholds in Germany' (2017) 15 *International Journal of Constitutional Law* 734.

puts constitutional review by the Bundesverfassungsgericht into a problematic position between the norms of the constitution and their established interpretation, the general understanding of the system amongst the broad public, the interests of party politics, and the hard limits of simple mathematics.

It is globally correct to say that the two main elements in the German federal electoral system – plurality vote in the single-member constituencies and proportionality based on a list vote overall – cannot always be brought together in harmony and that this clash causes the problems: too many constituency seats won can 'exceed' a party's seat allotment under proportionality. But the problems partly come from, and are partly exacerbated by, a third ingredient: party lists are drawn up for each Land separately and an intra-party contest between each party's several Land subsections takes place. This third element, although having little traction with voters and not prominently present in public debate, is essential for political career paths. Overloading the electoral system with not one, or even two, but three first principles, puts it against the limits of what is mathematically possible. In the old Bonn republic, with its two large parties plus a small third kingmaker, this did not lead to significant problems. But with four or more parties going beyond the five-per cent threshold and the larger parties losing in the proportional vote but remaining dominant in the constituencies, the numbers simply do not pan out any longer. In this situation, the Court has steadily become stricter towards the legislature over the past decades.

The line of case law goes from acceptance of excess seats as a small and legitimate deviation from overall proportionality, lastly confirmed in a 1997 judgment, through to the 2008 judgment finding negative voting effects a reason for unconstitutionality of the system, up to 2012 when the Court mooted a concrete upper limit to the number of excess seats.

The judgment of 3 July 1997 continued the long-standing case law of the Bundesverfassungsgericht.[38] The general nature of the electoral system was proportionality. But the absolute rule that constituency seats won by plurality were to be maintained, even where exceeding proportion, was legitimate in view of the aim to create a narrow bond between each constituency and its elected member.[39] The Court did recognise, however, that there would be a quantitative limit beyond which the intrusion into proportionality could no longer be tolerated, which the legislature had to keep an eye on and act if necessary. Such a limit might, the Court added tentatively, lie around five per cent of the standard seat number, as that was a limit on proportionality that the legislature itself had recognised in setting the five-per cent threshold.[40] The Court's judgment was adopted on a knife's edge, with four judges in favour of the reasoning just summarised and four against. The dissenting reasoning of the other four judges

[38] BVerfGE 95, 335, *Überhangmandate II*.
[39] ibid 357 ff, with references to standing case law that goes back to 1957.
[40] ibid 366.

gave a preview of what was to come later. In their view, excess seats meant that some voters had more influence on the Bundestag's composition than others and, therefore, excess seats were a breach of electoral equality.[41]

The mixed system with its excess seats remained in place until the Bundesverfassungsgericht's judgment of 2008 finally declared it unconstitutional in some respects and ordered the legislature to reform it by mid-2011.[42] The case was, in a sense, easier than the preceding one: it focussed on the negative voting effect, which is an obvious violation of electoral equality. The effect was an indirect consequence of excess seats combined with each party's separate lists per Land: more votes for party X in Land A might not win the party overall any additional seat but could lead, in the intra-party competition, to X losing a seat in Land B in favour of its list in Land A; but if X already had excess seats in Land A, then no additional seat would accrue; still, X lost a seat in Land B. The upshot was that an elector's vote could actively damage the party of choice. The Court pointedly remarked that the effect made the electoral system illogical and contrary to the very nature of an election; moreover, it discriminated against voters for larger parties as only those were potentially affected. It was clear the effect did occur regularly and would continue to do so. Having a third element of proportionality between the Länder was, in principle, a legitimate choice, as the federal structure of Germany was something the legislature could take in consideration; but that aim was not of such an importance that it could outweigh the absurdity of a negative voting effect.[43] A solution could lie in severing the intra-party competition by making each Land a more closed electoral area, or in wholesale reform of the system, for instance by switching to a 50-50 hard split between constituency seats and proportionality list seats.[44]

The Bundestag was deadlocked on the question of how to reform the system. Exceeding the deadline of mid-2011 by several months, the legislature ultimately introduced a system that maintained excess seats without correction. In following on the hint by the Bundesverfassungsgericht that severing intra-party competition might be a solution, the legislature, through its conservative-liberal government majority, attempted to make the Länder more closed electoral subareas. But it took the wrong path for that, introducing a first allocation of seats over the Länder by valid votes cast, followed by distribution over parties within each Land separately. Consequently, negative voting effect could no longer occur in the exact form it had before, but was to occur in a different and even worse form: additional votes on the elector's party of choice could win over seats from another Land which might not merely be of no effect for the party chosen, they could actually fall to a competing party in the same Land that the elector had not voted on, potentially damaging their own party elsewhere and actively helping

[41] ibid 375 ff.
[42] BVerfGE 121, 266.
[43] ibid 299 ff.
[44] ibid 306 ff.

another party in their own area. The new law was declared unconstitutional in the Court's 2012 judgment.[45] But not only did the Court point to the negative voting effect in its new form, it also found excess seats in too large a number a self-standing violation of the constitution's principle of equal elections. In principle, it was for the legislature to decide which number of excess seats would be too large; but as error or inaction by the legislature on this point could put into doubt the future elections to the Bundestag and might lead to elections being declared invalid, the Court decided itself to point to a limit: excess seats going beyond half the size of a parliamentary *Fraktion*, hence 2.5 per cent of all seats, would be unconstitutional.[46]

In its reaction to the 2012 judgment, the Bundestag could not agree on deeper reforms of the electoral system. Instead, it decided to revert to the pre-2011 system in principle and repair the defect of excess seats by introducing top-up seats to restore proportionality. This solution comes at the cost of a significant increase in the overall size of the Bundestag. The standard size of the Bundestag is 598 seats. The 2013 election, with excess seats and newly introduced top-up seats, resulted in an overall size of 631; the election in 2017 resulted in 706 seats; in 2021 this increased further to 736. Under the current rules it is perfectly plausible, based on reasonable assumptions about future voting behaviour, to expect a size of more than 1,000 seats. There is broad political consensus that this is undesirable. Changes adopted in 2020 sought a partial solution in allowing for a limited number of excess seats to remain uncorrected and there was an intention to reduce the number of constituencies in the longer term.[47] The most recent reform goes further than this and makes a radical choice in favour of the proportionality element: excess seats are no longer allocated, leaving single-member constituencies unrepresented where simple-majority winners are not covered by their party's seat allotment under proportionality.[48]

The developments since 1998 suggest that the Bundesverfassungsgericht has steadily become stricter towards the legislature, partly due to changing realities and partly in developing its case law and arriving at higher standards. But there are more concrete observations to be made: one on the problematic nature of the Court's doctrinal approach, one on its institutional position.

The case law on the problems of the mixed-member system provide a stark example of the Bundesverfassungsgericht's doctrine that the principal choices by the legislature are binding on the legislature itself: where constituency seats cannot be counted against allotments under proportionality, one solution

[45] BVerfGE 131, 316.

[46] ibid 363 ff.

[47] Fünfundzwanzigstes Gesetz zur Änderung des Bundeswahlgesetzes (14 November 2020) BGBl I 2395; this law is currently object of an *abstrakte Normenkontrolle* brought by Bundestag members of the Greens, Linke and FDP, BVerfG pending case 2 BvF 1/21.

[48] Amending law BGBl I 2023, no 147, commenced 14 June 2023; parliamentary record under dip.bundestag.de/vorgang/gesetz-zur-%C3%A4nderung-des-bundeswahlgesetzes-und-des-f%C3%BCnfundzwanzigsten-gesetzes-zur/295762.

mooted by the Court is to change to a 50-50 hard split system in which no constituency seats are ever counted against proportionality; of course this is much worse, but if overall proportionality is not the starting position then it is unproblematic in the Court's view. Or to put it more bluntly: if *all* constituency seats are always in excess, but this is by design rather than by accident, then there is no problem. One can see, here, how the doctrine developed by the Bundesverfassungsgericht goes very deep into consequences of the legislature's principal choice and, deep in there, forbids looking sideways and compare to a different system. Logically neat on the one hand, but somehow detached from the broader picture and almost anti-holistic on the other, we suggest that this approach is intellectually and doctrinally problematic.

On the institutional level, it is striking how clearly the German Federal Constitutional Court differs from a classic Kelsenian, pure negative-legislator model. The Bundesverfassungsgericht suggests solutions to the problems found, in one case leading the Bundestag to adopt an incorrect strategy that it erroneously believed had received the Court's approval beforehand. And the Bundesverfassungsgericht points out concrete quantitative limits, intended to assist the legislature in designing an acceptable system. But these limits are not based on anything, in fact they are plucked out of thin air, and, in the latest case, are understood by the legislature not as a margin of tolerance for unforeseen deviations but as an invitation actively to wire these deviations into the system. This is not a typical relationship between a legislature and a constitutional court.[49]

The years since 2008 have shown German politics unwilling to confront wholesale reform of the electoral system; in designing reforms along the lines suggested by the Court, the legislature has aimed at a necessary minimum, but has more than once transgressed that line and ended up with equally unconstitutional solutions or worse ones. In the meantime, it is doubtful whether the basic idea of the German mixed-member system – proportionality as an expression of equality along party lines, plus a close local connection with a constituency candidate – can really be fulfilled; in reality, the two votes that electors cast do something quite different from what voters are told. But such profound critique of the system only comes from academic quarters[50] and has not, as far as can be seen, reached the broader public discourse or triggered a movement fundamentally to re-think within politics. The current reform proposals, although keeping a mixed system, do go a bit further than previous ones in giving clear priority to proportionality between parties over all other aims. The negative consequences for some constituency candidates are set to be a main consideration in a likely constitutional review case against these reforms. In that context, it is worth mentioning that voters'

[49] For contrast, consider CZ Constitutional Court 2 February 2021, Pl. ÚS 44/17, on which M Antoš and F Horák, 'Proportionality Means Proportionality: Czech Constitutional Court, 2 February 2021, Pl. ÚS 44/17' (2021) 17 *European Constitutional Law Review* 538.

[50] S Schönberger, 'Die personalisierte Verhältniswahl – eine Dekonstruktion' (2019) 67(1) *Jahrbuch des öffentlichen Rechts der Gegenwart* 1.

influence on the personal element, as an aspect of direct elections, has attracted much less constitutional scrutiny and closed lists seem to be much less a worry to constitutional thinking in Germany compared to other countries.[51]

## IV. EQUAL REPRESENTATION AND THE FUNCTIONS OF THE PARLIAMENT

Electoral equality is central to the notion of democracy as a political system of equal free citizens. But the precise purport and reach of the principle of electoral equality can be perceived differently in different jurisdictions. The preceding paragraphs have concentrated on some of the aspects of constitutional thinking and case law that are specific to Germany: the peculiar background of the Weimar Republic (II.A), the current approach by the Bundesverfassungsgericht to equality and its dependence on the electoral system chosen (II.B), and its decisions on two concrete problems, namely thresholds (III.A) and the mixed electoral system (III.B). Several points in which the German case law differs from that of the courts in neighbouring countries have already been highlighted. Here, we want to bring that contrast a bit more to the fore, by turning to the Bundesverfassungsgericht's view of the European electoral context. Our hypothesis is that German case law on Europe reflects, in a kind of mirror effect, some peculiarities of how the Bundesverfassungsgericht qualifies the German representative system and, to some degree, how it sees representative democracy in general. This can be demonstrated by looking at two functions of parliament: the creation of an executive (IV.A), and lawmaking (IV.B).

### A. Electing and Sustaining a Government

Governmental stability is a recurring concern in the case law of the Bundesverfassungsgericht. A functioning (*funktionsfähig*) legislature is one that is able to create and support a functioning government. This, in turn, can be seen as a compelling ground to justify derogations from a strict understanding of voting equality, for instance, by introducing thresholds. According to the Bundesverfassungsgericht, the access of 'a myriad of smaller groups' to federal representation may decisively hamper the formation of a stable government.[52] Conversely, those compelling grounds do not apply to municipal assemblies or the European Parliament due to the lack of comparable conditions (see above at III.A). These lines of argument, that have become even more evident in the last two decades, highlight the peculiar role of the Bundestag within the German constitutional order and are based on a peculiar reading of the constitutional provisions.

[51] Only few cases, eg BVerfGE 7, 63, 68 ff. Contrast this with the Italian case law, on which see the contribution by P Passaglia ch 7, IV.C in this volume.

[52] BVerfGE 1, 208 (248).

In other European systems, for instance Italy, representative democracy coexists with some elements of direct democracy, and the representative component of democracy 'circulates, in multiple forms and to different extents, throughout the whole state machinery, although this is most evident when it comes to the [national] Parliament'.[53] In Germany, in turn, there is a tight link between popular sovereignty, representative democracy,[54] and the constitutional role of the Bundestag. As the Bundesverfassungsgericht put it in the Lisbon judgment, the right to vote under Article 38 Grundgesetz is, first and foremost, a right to elect the members of the Bundestag by universal, direct, free, equal and secret suffrage; this allows all German citizens to express directly their political will. The representative legislature implements popular self-government, and 'the Chancellor – and, consequently, the Federal Government – is determined from it'.[55] In the Court's words, a 'will of majority' has to be articulated in the federal election.[56] Although the Bundesverfassungsgericht in its case law has addressed the electoral laws for the Bundestag, the European Parliament, and municipal assemblies, the federal legislature has clearly been at the forefront of the concerns of the Court. On the one hand, the Bundestag is the prime seat of political representation because of its link with the *Staatsvolk* in its capacity as electoral body. On the other hand, the Bundestag's power to elect the Federal Chancellor by a majority of its members (Article 63(2) Grundgesetz) lies at the heart of the line of argument used by the Court, and the need for a functioning Parliament, a stable working majority and a functioning executive are a recurring theme in its judgments. Still, the obsession for political stability seems to loom large in the case law of the Bundesverfassungsgericht as well as in German political culture, and may lead to underestimate the significance of other constitutional provisions which, for instance, consider the possibility of forming a minority government (Article 63(4) Grundgesetz).

### B. Legislating, the Legislature and the Representative Assembly

How the Bundesverfassungsgericht sees the German democratic system, and representative democracy more generally, is reflected in its analysis of the European system also in the context of legislating. This is first a question of majority formation, again, and the tensions it can create with equality; indeed,

[53] V Crisafulli, 'La sovranità popolare nella Costituzione italiana (note preliminari)' in *Stato popolo governo. Illusioni e delusioni costituzionali* (Milano, Giuffrè, 1985) 89, 92.

[54] See, among others, EW Böckenförde, 'Mittelbare/repräsentative Demokratie als eigentliche Form der Demokratie' in G Müller, RA Rhinow, G Schmid and L Wildhaber (eds), *Staatsorganisation und Staatsfunktionen im Wandel. Festschrift für Kurt Eichenberger zum 60. Geburtstag* (Basel, Verlag Helbing & Lichtenhahn, 1982) 301.

[55] BVerfGE 123, 267, 340 f.

[56] ibid 342.

the Court mentions government creation and legislating in the same breath.[57] But there is a second aspect to the Court's case law on Europe which is interesting as well, one that leads from considerations on electoral equality to a strange difference between the representative assembly or 'Parliament' and the legislature. Briefly looking at this, we want to suggest that the difference is not just terminological but conceptual as well, and one that sets German constitutional thinking about representative democracy apart from that in comparable countries.

This aspect comes to the fore where, in its judgment on the Lisbon Treaty, the Court turns to the distortion of electoral equality as between voters throughout the EU. This distortion is caused by the fact that seat contingents in the European Parliament are assigned to the Member States in degressive proportionality. The inequality this introduces – much more influence on the composition of the European Parliament for each voter in smaller Member States than in the larger ones – was not a reason for the Court to declare accession to the Treaty unconstitutional: the EU was still an association of states and peoples, not of equal citizens forming one European people in a Union analogous to a state. The Treaties therefore needed not to provide for a 'political decision organ, created through equal elections by all Union citizens, that is capable of unitary representation of the will of the people'.[58] Such an organ would be required if the Union were a federal state and the Court turns to a short comparative exercise, holding unequal representation occurs at most for a 'second chamber next to the parliament'.[59]

There is something subtly wrong about this nomenclature. For instance the Australian Parliament, mentioned by the Bundesverfassungsgericht in this passage, consists of a first chamber, the House, and a second chamber, the Senate (plus the Crown). The Australian Parliament is the legislature. A similar terminology of both chambers together forming 'the Parliament' would hold for Italy, France, Belgium etc. Not so in Germany: the doctrinal position is that the Bundestag is the unicameral federal Parliament; the Bundesrat only co-operates in legislation. This doctrinal position has the consequence that the term 'legislature' remains undefined in Germany. Indeed, the informal expression 'der Gesetzgeber' points to an abstractum that can be concretised into the institutions mentioned in the Grundgesetz only through a complex exercise that is strongly dependent on subject matter.

More than mere terminology, there is something striking conceptually as well about the 'organ of unitary representation of the will of the people', supposedly positioned at the centre of every democratic system, like the Bundestag is for Germany. Very far-reaching requirements of equality hold for it, as equality

[57] See above III.A (quote at n 36).
[58] BVerfGE 123, 267, at 280.
[59] ibid 283 ff, especially 286.

within the people is a cornerstone of democracy. But co-legislative organs, based on territorial subdivisions of the people into unequal parts with resulting unequal influence, hardly enter the picture. In this perspective, condemning inequality in elections to the European Parliament can never be countered by saying that in Germany, too, voters' influence on legislation through the Bundesrat is highly unequal – for the Bundesrat is not at the centre of the legislative process. Even within Germany itself, the Bundesverfassungsgericht has taken this approach very far, limiting the functions of the inter-institutional Bundestag-Bundesrat conciliatory committee (Vermittlungsausschuss) in view of the pre-eminence of the Bundestag as the directly elected representative assembly.[60] It is on such points, ironically where the Bundesverfassungsgericht claims universality of its conception of representative democracy, that its concepts become very specifically German.

## V. CONCLUSION

In this chapter, we focused on specific aspects of electoral law that, by now, look quite stabilised in the case law of the Bundesverfassungsgericht. On 17 March 2023, the Bundestag passed an electoral reform bill that had been strongly supported by the ruling traffic light coalition. On 8 June, after some speculation, the electoral reform law was countersigned by the Federal President and subsequently promulgated in the Federal Law Gazette.[61] As the reform aims to eliminate the Basic Mandate Clause (Grundmandatsklausel), which allows for limited derogation from the national five-per cent threshold, it will likely lead to new constitutional litigation before the Bundesverfassungsgericht and provide the judges with an occasion to revisit the cornerstones of their approach to electoral laws and voting systems. Regardless of the final outcome, this will probably confirm one of the key observations in this chapter: the Bundesverfassungsgericht has never refrained from playing a strong, assertive role in this area of the constitutional order. Other constitutional courts, like the Italian one, were long seen as very cautious, also due to objective reasons that contributed to hindering the effective scrutiny of electoral laws and to the possible impact of a declaration of unconstitutionality.[62] By contrast, the German Federal Constitutional Court has always actively engaged – more often than not through the demanding lens of voting equality – with election-related issues. This testifies to the high level of

[60] See U Schliesky, '§ 5 Parlamentsfunktionen' in M Morlok, U Schliesky and D Wiefelspütz (eds), *Parlamentsrecht* (Baden-Baden, Nomos, 2016) marginal no 48, with reference to BVerfGE 120, 56 and BVerfGE 125, 104.

[61] See above n 48.

[62] See P Faraguna, '"Do You Ever Have One of Those Days When Everything Seems Unconstitutional?": The Italian Constitutional Court Strikes Down the Electoral Law Once Again' (2017) 13 *European Constitutional Law Review* 778, 781 f.

juridification of political life in post-war Germany. This attitude of the Court may have even intensified in the last few decades, as the increasing fragmentation of the party system has led to a closer scrutiny of legislative decisions. Moreover, the idea that a legislature may be acting 'in its own case' (*in eigener Sache*) when it modifies electoral laws has surfaced in several judgments of the Court in the last two decades.[63] In practice, the legislature has often struggled to amend the Bundeswahlgesetz or the Europawahlgesetz to the principles laid down in the judgments of the Bundesverfassungsgericht. On a different note, the case law of the Bundesverfassungsgericht proved to be very influential outside Germany, including in western Europe.[64] However, comparative references to judgments of the German Court have contributed to highlighting some idiosyncratic traits of the latter's approach to electoral matters. These peculiar features have particularly emerged in the judgments that addressed the constitutionality of thresholds in electoral laws for the European Parliament.[65]

[63] BVerfGE 120, 82, 105; BVerfGE 129, 300, 322; BVerfGE 135, 259, 289; BVerfGE 146, 327, 352.

[64] See inter alia judgment no 1/2014 of the Corte costituzionale (para 3.1) and the official commentary attached to decision no 2019-811 QPC of the Conseil constitutionnel.

[65] See A Antonuzzo and N Lupo, 'The thresholds for the EP elections: the EU Electoral Act, national legislation and the case-law of Constitutional Courts' in T Marguery, S Platon and H van Eijken (eds), *Les élections européennes 40 ans après. Bilan, enjeux et perspectives/The European Elections, 40 years after: Assessment, Issues and Prospects* (Bruxelles, Bruylant, 2020) 119.