

Articles

How (not) to elect a Federal Constitutional Court Justice

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Abstract

This paper examines the process of the election of the Federal Constitutional Court Justices and the failed election of the candidate Prof. Dr. Frauke Brosius-Gersdorf in the summer of 2025. It highlights the vulnerabilities in the selection process and the dependency on informal consensus between the central parties. Additionally, it explores the role of the Federal Constitutional Court within in the German state to understand the intensity of the discussions around its Justices.

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In the summer of 2025, 3 of 16 seats on the German Federal Constitutional Court, the *Bundesverfassungsgericht*, were up for election. Normally, this is a rather straightforward affair, with nominations being agreed upon between parties in an expert committee. The candidates are usually not controversial figures, so that they get the required votes easily. Last summer, however, things turned out differently. The debate around the nominations was held with unprecedented severity and media attention. The candidate Frauke Brosius-Gersdorf withdrew her application after a weeks-long controversy. With this in mind: What is the procedure for appointing Justices? How did the process derail last year? What exactly is the role of the *Bundesverfassungsgericht*?

A. The procedure for appointing Justices to the *Bundesverfassungsgericht*

The election of a Federal Constitutional Court Justice is, very simply put, a two-step process: First, a committee selects a candidate and secondly, either the *Bundestag*, the German parliament, or the *Bundesrat*, the Federal Council with representatives from the states, vote to confirm the selection. However, it gets much trickier in the details: The selection is a tower of carefully balanced processes of informal consensus, which is – unfortunately – build on the quicksand of changing political influence and trust.¹ The post-1945 constitution (*Grundgesetz* or GG) has shaped the court and its central role in the German state.² However, the specific mode of operation of the court was not regulated in the constitution until 2024 and the details of the election of justices remain in the *Bundesverfassungsgerichtsgesetz* (BVerfGG). Additionally, informal agreements among the major parties continue to play a central role in the election of the justices.³ For long, the party actors have avoided the politicization that has marked constitutional courts elsewhere and the constitutional court appointments have been handled as a serious but ultimately manageable questions of statecraft.

I. The Justice Election Committee (*Richterwahlausschuss*)

The committee for selecting the candidates in the first part of the process is fittingly called the *Wahlausschuss für die Richter des Bundesverfassungsgerichts* or, in English, the Justice Election Committee. The committee consists of twelve members (section 6 paragraph 2 of the Federal Constitutional Court Act BVerfGG). After the election of the *Bundestag*, which occurs every four years, the 12 members of the committee are selected via vote in the

¹ Carmen Vidal Pérez, 'Von Konsens zum Konflikt: Die Wahl der Bundesverfassungsrichterinnen im Wandel' (2025) 61 *Recht und Politik* 356, 356.

² Regarding the role of the BVerfG as a characteristic of the post-world war order, see BVerfGE 114. 121 para 160.

³ Vidal Pérez (n 1) 358.

Bundestag. Expertise in legal matters is required to be selected.⁴ The number of members per party mirrors the composition of the *Bundestag*.⁵

The *Bundesverfassungsgericht* consist of two Senats (section 2 paragraph 1 BVerfGG) with eight Justices each (Article 93 paragraph 2 sentence 1 GG, section 2 paragraph 2 BVerfGG). The Justices are elected for a non-extendable 12-year term (Article 93 paragraph 3 sentence 1 GG, section 4 paragraph 1 BVerfGG).⁶ The election committee gets to work when a Justice is reaching the end of his or her term. The different parties present candidates to the committee for debate among its members. It has become common practice that the Christian Democratic Union (CDU) of chancellor Friedrich Merz and the Social Democratic Party (SPD) each propose candidates for three of the eight Justices in each Chamber of the court. The Green Party and the Free Democratic Party (FDP) each get to nominate one candidate.⁷ If a Justice that had been proposed by, for example, the CDU is retiring, the CDU then gets to present a candidate for this position.

The more fringe The Left Party (Die Linke), and the Alternative for Germany Party (AfD) have – up to today – not been able to successfully present candidates. However, since the last election they have enough votes between them to block the election of a candidate, causing the proposing parties to rely on support from The Left Party to elect Justices.⁸

How exactly the parties select the candidates they present to the committee is not made public. The *Bundesjustizministerium* keeps records of potential candidates in accordance with section 8 BVerfGG, but the parties are not limited to this record.⁹ Instead, they rely on a few party politicians to identify potential candidates and informally find out whether they might be acceptable for the members of the other parties.¹⁰

The merits of the potential Justices are debated among the committee. The section 6 paragraph 4 BVerfGG obligates the members of the committee not to disclose the content of their discussions, the result of the votes and information on the candidates to the public

⁴ Oliver Lepsius, 'Nicht der Modus ist das Problem, sondern die Abgeordneten.' (*beck-aktuell*, 2 September 2025) <<https://www.beck-aktuell.de/node/21421>> accessed 10 May 2026.

⁵ Currently, it consists of five CDU/CSU-members, three AfD-members, two SPD-members and one each from *Die Linke* and *Bündnis 90/Die Grünen*. Vidal Pérez (n 2) 357.

⁶ Alternatively, a Justices term ends when he or she reaches the age of 68 (section 4 paragraphs 1 and 3 BVerfGG). This practice reflects the understanding of democracy as time-limited power (Dieter Hömig, '§ 4 BVerfGG' in Bruno Schmidt-Bleibtreu and others, *Schmidt-Bleibtreu/Klein/Bethge Bundesverfassungsgerichtsgesetz* (65th supplement, C.H. Beck August 2025) para 5).

⁷ As the FDP is currently not part of the *Bundestag* this agreement might need to be renegotiated once the FDP nominated justice of the Court is retiring.

⁸ Christian Walter, 'Art. 93 GG' in Günter Dürig, Roman Herzog and Rupert Scholz (eds), *Grundgesetz Kommentar* (109th supplement, C.H. Beck January 2026) para 231.

⁹ Vidal Pérez (n 1) 358.

¹⁰ *ibid* 359.

to avoid damage to the future Justices in the public opinion.¹¹ Sometimes the candidates also attend discussions with the *Bundestag*-members of a party. Finally, the candidates must pass the vote in the committee with a majority. This resolution recommends them for the final vote in either the *Bundesrat* or the *Bundestag*.¹²

II. The vote of the Bundesrat or the Bundestag

Up until 2015, the vote in the committee would have been the end of the procedure.¹³ However, growing concerns for the acceptance of the *Bundesverfassungsgericht* and the undemocratic nature of a closed-door committee decision inspired a change of policy.¹⁴

As per the recent changes, the *Bundestag* and the *Bundesrat* take turns confirming the proposal of the committee (Article 93 paragraph 2 sentence 2 GG, section 5 paragraph 1 sentence 1 and section 6 paragraph 1 BVerfGG).¹⁵ However, the Justices are not voted for individually but rather in a package: If there are three seats to fill, one vote is cast to confirm all three candidates together. In the *Bundestag*, there is no debate prior to the vote, and the vote is cast with a secret ballot (section 6 paragraph sentence 1 BVerfGG). A vote without prior debate is not unusual; it is also used for election of other roles such as the Chancellor (Article 63 section 1 GG). For the Justices, a majority of two thirds is required to confirm their selection (section 6 paragraph 1 sentence 2 BVerfGG). In the *Bundesrat*, the vote is public and a two third majority is required as well (section 7 BVerfGG).¹⁶

While this part of the procedure exists to make the election more democratic, it is also not meant for the discussion of the candidates, not least because this would undermine the purpose of section 6 paragraph 2 BVerfGG.¹⁷ Its purpose is merely the confirmation of the judgment of the committee, not an independent selection process by the members of the

¹¹ BT-Drs 18/2737, 4-5; Gerd Morgenthaler and Laura Münkler, 'Art. 93 GG' in Volker Epping and Christian Hillgruber (eds), *Beck'scher Online-Kommentar Grundgesetz* (65th edn, C.H. Beck March 2026) para 19. Vidal Pérez (n 1) 357-58.

¹² In the case that the committee doesn't recommend a candidate to the voting body within two months after the end of the term of a Justice, the committee is obligated to call upon the court to present candidates it considers suitable (section 7a paragraph 1 BVerfGG). The Justices of both chambers vote in the *Plenum* on whom to present to the committee (section 7a paragraph 2 BVerfGG, sections 56 and 57 GO-BVerfGG). The suggestions are not binding but the Bundestag must confirm election of new Justices no later than three months after a recommendation from the court. The measure was implemented in 2024 to strengthen the resilience of the BVerfG. This happened at the beginning of 2025 when the BVerfG suggested Günther Spinner as the successor of Josef Christ, see Maximilian Amos, 'Nun macht es das BVerfG eben selbst' (*beck-aktuell*, 22 May 2026) <<https://www.beck-aktuell.de/node/26186>> accessed 15 May 2026.

¹³ The *BVerfG* deemed this process constitutional in a 2011 ruling: BVerfG, NVwZ 2012, 967 paras 9 ff.

¹⁴ Lepsius (n 4).

¹⁵ In the case that one of the two bodies is unable to collect the votes for a group of candidates within a certain timeframe, the other body may instead vote on the candidates and thereby ensure that the BVerfG remains functional (Article 93 section 2 sentence 3 GG). See BT-Drs 20/12977, 5, 7-8.; Morgenthaler and Münkler (n 11) para 20.

¹⁶ See also Article 51 paragraph 2 GG; Hans Lechner and Rüdiger Zuck, *Bundesverfassungsgerichtsgesetz Kommentar* (8th edn, C.H. Beck 2019) section 7.

¹⁷ Morgenthaler and Münkler (n 11) para 19.

Bundestag.¹⁸ As membership in the committee is already based on the composition of the *Bundestag*, the second vote only serves to make the election more visible to the public. In keeping with this, the vote is usually cast among party lines as per the agreements found in the committee and less in keeping with the personal opinion of the individual members of the *Bundestag* or the representatives of the federal states in the *Bundesrat*.¹⁹ It is not meant to be a matter of conscience and personal beliefs.²⁰ The *Bundesverfassungsgericht*'s independence of political sway is rather meant to be reflected in a clean, straightforward process based on consensus across party lines.²¹ Additionally, the alternating vote in the *Bundesrat* integrates a structural element of the federal government into the process in keeping with the basic division of power in the *Grundgesetz*.²²

III. Conclusion: Swearing in

After their confirmation through either the *Bundestag* or the *Bundesrat* the *Bundespräsident*, i.e. the formal head of the German state, discharges the incumbent Justices and appoints the incoming Justices (section 10 BVerfGG). According to section 11 BVerfGG the Justices swear the following oath: "I swear that I shall, as an impartial judge, at all times faithfully observe the Basic Law of the Federal Republic of Germany and that I shall faithfully perform my judicial duties towards everyone. So help me God." The reference to God may be replaced with a different religious declaration or left out entirely (section 11 paragraphs 2 and 3 BVerfGG).

This concludes the process of the election of the Federal Constitutional Court Judges. With the process in mind, it is possible to understand at which critical point the election derailed in 2025 and what caused calls to reform the process.²³

B. The case of Frauke Brosius-Gersdorf

At the center of the dispute was Frauke Brosius-Gersdorf, a professor of constitutional law from Potsdam University nominated by the SPD to succeed Justice Doris König. She was meant to be elected together with Günter Spinner and Ann-Katrin Kaufhold. Günter

¹⁸ Walter (n 8) para 231; Steffen Detterbeck, 'Art. 94 GG' in Christian von Coelln and Thomas Mann (eds), *Sachs Grundgesetz* (10th edn, C.H. Beck 2024) para 2; Lepsius (n 5).

¹⁹ Lepsius (n 4).

²⁰ *ibid.*

²¹ Joachim Behnke, 'Der Krug geht so lange zum Brunnen, bis er bricht: Die gescheiterte Richterwahl von Brosius-Gersdorf und die politische Kultur' (2025) 61 *Recht und Politik* 345, 348.

²² Detterbeck (n 18) para 2; Morgenthaler and Münkler (n 11) para 17.

²³ Redaktion beck-aktuell, 'Justizministerin für Konsequenzen aus Fall Brosius-Gersdorf' (*beck-aktuell*, 8 May 2025) (<<https://www.beck-aktuell.de/node/22576>> accessed 10 May 2026).

Spinner, who had been nominated by the *Bundesverfassungsgericht* pursuant to section 7a BVerfGG (also a novelty to ensure the functioning of the court), was to replace a CDU nominated Justice. Ann-Kathrin Kaufhold had been nominated by the SPD just like Brosius-Gersdorf. All three potential Justices passed the vote in the Justice Election Committee. As it was the turn of the *Bundestag* to confirm the selection, a vote on the matter was scheduled for early July 2025.

In the days leading up to the vote, opposition emerged within the CDU/CSU bloc in the *Bundestag*. Some members of the party had concerns regarding Brosius-Gersdorf's position on reproductive rights.²⁴ The strict framework within which abortions are compatible with the guarantee of human dignity in Article 1 paragraph 1 GG has been developed by the *Bundesverfassungsgericht* in multiple rulings.²⁵ In 2024, Brosius-Gersdorf was part of a Commission for Reproductive Self-Determination and Reproductive Medicine which discussed, amongst other things, a future regulation of abortion without criminalization.²⁶ Conservative and new right wing media outlets picked up on the issue.

What followed was a political and media campaign against the nominee. Brosius-Gersdorf's academic positions, particularly on reproductive rights and constitutional interpretation, were framed as evidence of ideological bias. More than 300 legal scholars came to her defense and opposed the way Brosius-Gersdorf and her academic opinions had been treated,²⁷ illustrating that she and her academic positions were not isolated or considered extremist in the field. However, positions that were and are part of the scholarly debate of the *Grundgesetz* were recast as disqualifying activism by some outlets and public figures.²⁸ Brosius-Gersdorf herself pointed out her positions also mostly aligned with the goals of the coalition agreement of the current CDU/CSU-SPD government.²⁹

²⁴ Redaktion beck-aktuell, 'Brosius-Gersdorf: In der Union umstrittene Juristin' (*beck aktuell*, 7 July 2025) <<https://beck-online.beck.de/Bcid/Y-300-Z-becklink-N-2034816>> accessed 2 June 2026.

²⁵ BVerfGE 39, 1 (judgement from 1975); BVerfGE 88, 203 (judgement from 1993); BVerfGE 98, 265 (judgement from 1998).

²⁶ Currently section 218 StGB. For the report of the commission see Kommission zur reproduktiven Selbstbestimmung und Fortpflanzungsmedizin (April 2024) <<https://www.bmbfsfj.bund.de/resource/blob/238402/c47cae58b5cd2f68ffbd6e4e988f920d/bericht-kommission-zur-reproduktiven-selbstbestimmung-und-fortpflanzungsmedizin-data.pdf>> accessed 2 June 2026.

²⁷ Verfassungsblog, 'Stellungnahme zur Causa „Frauke Brosius-Gersdorf“' (*Verfassungsblog*, 14 July 2025) <<https://verfassungsblog.de/stellungnahme-zur-causa-frauke-brosius-gersdorf/>> accessed 2 June 2026.

²⁸ Felix Perrefort, 'Richterkandidatin Frauke Brosius-Gersdorf: Warum ihre Abtreibungsposition noch radikaler ist als gedacht' (*NIUS*, 17 July 2025) <<https://nius.de/politik/frauke-brosius-gersdorf-abtreibungsposition-noch>> accessed 2 June 2026; Christian Rudolf and Lukas Steinwandter, 'Wird diese Abtreibungs-Befürworterin Vizepräsidentin des Bundesverfassungsgerichts?' (*Corrigenda*, 2 July 2025) <<https://www.corrigenda.online/leben/frauke-brosius-gersdorf-wird-diese-abtreibungs-befuerworterin-vizepraesidentin-des>> accessed 2 June 2026.

²⁹ See Vidal Pérez (n 1) 363 for further references.

It is worth to remember that, at this point in the debate, Brosius-Gersdorf had already been confirmed by the committee with CDU, SPD and The Left votes. The initial concerns by members of the CDU came from members of the *Bundestag* who had not been part of the committee. The widespread – and scrutinizing – public attention came only before the confirmation of the vote in the *Bundestag*. Because the doubt from the CDU emerged so late in the process, the CDU party leaders, especially the parliamentary leader Jens Spahn, also received criticism for failing to moderate the process among the members.³⁰ The debate further escalated when Brosius-Gersdorf was accused of plagiarizing her dissertation. The accusations regarding her dissertation did not hold up, but her reputation had been damaged substantially in the debate.³¹

Once it became clear that the agreement on the appointments had broken down, the parliamentary parties (except for the AfD) agreed to cancel the vote rather than risking an open failure in the *Bundestag*.³² This itself was a novelty as the recommendations of the committee had up to this point always been executed.³³

What followed were intense discussions whether Brosius-Gersdorf should withdraw her candidacy amidst the criticism or if the parties should continue to support her to show that their decisions couldn't be swayed by media campaigns.³⁴ Eventually, the other SPD-backed candidate, Ann-Katrin Kaufhold also came under fire for supposed extremists positions.³⁵ Finally, it can be noted, that – amongst other factors – the gender of the candidates seemed to have an influence on the controversy as the female candidates' positions were scrutinized while the third candidate, Günter Spinner, received almost no news coverage.³⁶

In yet another novelty, Brosius Gersdorf attended a popular political talk show moderated by *Marcus Lanz* in July 2025 to talk about her understanding of the *Grundgesetz*.³⁷

³⁰ Tagesschau, 'Gescheiterte Richterwahl: Spahn räumt erstmals seine Mitverantwortung ein' (*Tagesschau*, 14 July 2025) <<https://www.tagesschau.de/inland/innenpolitik/spahn-richterwahl-100.html>> accessed 2 June 2026.

³¹ Maximilian Amos, 'Brosius-Gersdorf veröffentlicht Gutachten: Anwälte sehen Plagiatsvorwurf widerlegt' (*beck-aktuell*, 16 July 2025) <<https://beck-online.beck.de/Bcid/Y-300-Z-becklink-N-2034938>> accessed 2 June 2026.

³² Redaktion beck-aktuell, 'Bundestag verschiebt Wahlen von Verfassungsrichtern' (*beck-aktuell*, 11 July 2025) <<https://www.beck-aktuell.de/node/23911>> accessed 10 May 2026.

³³ Vidal Pérez (n 1) 365.

³⁴ Redaktion beck-aktuell, 'Umfrage: Mehrheit gegen Rückzug von Brosius-Gersdorf' (*beck-aktuell*, 21 July 2025) <<https://beck-online.beck.de/Bcid/Y-300-Z-becklink-N-2034978>> accessed 2 June 2026.

³⁵ Gerhard Strate, 'Ökologische Transformation des Grundgesetzes' (*Cicero*, 29 July 2025) <<https://www.cicero.de/innenpolitik/richter kandidatin-ann-katrin-kaufhold-okologische-transformation-des-grundgesetzes>> accessed 2 June 2026; Christian Rath, 'Rechtsaußen nehmen Ann-Katrin Kaufhold ins Visier' (*TAZ*, 20 July 2025) <<https://taz.de/Streit-um-Verfassungsgerichtsbesetzung!/6098652/>> accessed 2 June 2026.

³⁶ Redaktion beck-aktuell, '"Ein ganzes Stück Frauenfeindlichkeit"' (*beck-aktuell*, 30 April 2026) <<https://www.beck-aktuell.de/node/197341>> accessed 10 May 2026.

³⁷ Broadcast from 15 July 2025, <https://www.zdf.de/video/talk/markus-lanz-114/markus-lanz-vom-15-juli-2025-100>.

However, the discussions did not subside and in August 2025, Brosius-Gersdorf withdrew her candidacy.³⁸ The SPD proposed Sigrid Emmenegger, previously a Judge at the Federal Administrative Court, as a new candidate. Finally, in September after eleven weeks of conflict, the *Bundestag* voted in favour of the future Justices Emmenegger, Kaufhold, and Spinner.³⁹ In October 2025, the three Justices were appointed by *Bundespräsident* Steinmeier.⁴⁰

Throughout the affair, what used to be – as shown in the first section of this article – a carefully balanced but straightforward appointment process turned into a partisan confrontation. The discussion shifted first to intense criticism of the candidates then to questions of ideology, legitimacy, and the role of constitutional judges in democratic processes. It can be said – perhaps cynically – that the vote in the *Bundestag* did have the desired effect of more public attention. However, it also showed that the act of electing Justices for a body as central to the state as the *Bundesverfassungsgericht* is extremely liable for instrumentalization.⁴¹ Furthermore, it became evident that some of the measures intended to protect the court from extremists turned out to cause damage to its public image.

C. The *Bundesverfassungsgericht*'s role

Given the intensity and emotionality of the debates around the election of Federal Constitutional Court Justices it is worth to look at what exactly the court does and what its role is within the German state.

The *Grundgesetz* has recently been amended to spell out the role of the *Bundesverfassungsgericht* more explicitly.⁴² Changes to the *Grundgesetz* require a two-thirds majority in the *Bundestag* (Article 79 paragraph 2 GG), thus making it harder to make changes to the nature of the court. Article 93 paragraph 1 GG now specifies that the *Bundesverfassungsgericht* is independent of all other constitutional bodies such as the *Bundestag*, mirroring section 1 BVerfGG.⁴³ In its core, the role of the court with its

³⁸ zdf heute, 'Brosius-Gersdorf verzichtet auf Kandidatur' (zdf heute, 7 August 2025) <<https://www.zdfheute.de/politik/deutschland/brosius-gersdorf-rueckzug-richterwahl-100.html>> accessed 2 June 2026; Redaktion beck-aktuell, 'Richterkandidatin Brosius-Gersdorf zieht sich zurück' (beck-aktuell, 7 August 2025) <<https://www.beck-aktuell.de/node/22641>> accessed 2 June 2026.

³⁹ Anne-Beatrice Clasmann and Michael Fischer, 'Bundestag bestätigt alle drei Kandidaten fürs BVerfG' (beck-aktuell, 25 September 2025) <<https://www.beck-aktuell.de/node/20131>> accessed 10 May 2026.

⁴⁰ Redaktion beck-aktuell, 'Steinmeier ernennt neue Verfassungsrichter' (beck-aktuell, 7 October 2025) <<https://www.beck-aktuell.de/node/19566>> accessed 2 June 2026.

⁴¹ Walter (n 8) para 232; Angelika Nußberger, 'Justiz – die „sensible Gewalt“' (2020) 73 NJW 3294 (para 9).

⁴² Proclamation in BGBl. 2024 I Nr. 439 v. 27.12.2024.

⁴³ Article 93 paragraphs 2 and 3 GG further regulate the division of the court into two Senates, as well as the mode of election and provisions in case the election is delayed for extended periods. Dieter Hömig, '§ 3 BVerfGG' in Schmidt-Bleibtreu and others (n 6) para 28; Steffen Detterbeck, 'Art. 93 GG' in von Coelln and Mann (n 18) para 6.

independence is to determine whether actions of the Government and all its institutions are compatible with the provisions of the *Grundgesetz*. It is not simply the court of final appeal but is limited in its responsibility to constitutional matters. In that sense it is a central element of the rule of law. It is the last resort to fend off governmental overreach as its decisions are binding for all other bodies of the state (section 31 paragraph 1 BVerfGG).⁴⁴ In accordance with these responsibilities it exercises the supreme authority of the state and has the ‘final say’ over the governance of the German Federal Republic.⁴⁵

More specifically Article 94 GG and section 13 BVerfGG list the specific case types the court can be petitioned to decide.⁴⁶ The most prominent is the individual constitutional complaint with which anyone can accuse a government body of violating one’s constitutional rights (Article 94 paragraph 1 Nr. 4a GG, section 13 number 8a, sections 90 and following BVerfGG). Perhaps even more importantly it can be petitioned by the federal government, a state government or a quarter of the members of the *Bundestag* to decide whether a law is constitutional (Article 94 paragraph 1 Nr. 2 GG, section 13 Nr. 6, sections 76 and following BVerfGG). Should the court find a law to be unconstitutional it has the power to either pronounce the law void or order the government to remake the content of the law in keeping with the constitution (section 78 BVerfGG). It can also grant preliminary legal protection in urgent cases (§ 32 BVerfGG).⁴⁷ Additionally judges from other courts can petition the *Bundesverfassungsgericht* if they believe a law relevant to deciding on of their cases to be unconstitutional (Article 100 paragraph 1 GG, section 13 number 11, sections 80 and following BVerfGG). The court also decides in conflicts between the federal government and a state (Article 93 paragraph 1 number 3 GG, section 13 number 7, sections 68 and following BVerfGG). In perhaps one of the most delicate types of case the court can rule on the banning of parties if it deems them a threat to the constitutional order (Article 21 paragraph 2 GG, section 13 number 2, sections 43 and following BVerfGG).

As evident from this small excerpt from the defined list, the court holds tremendous power within the German state.⁴⁸ It operates on the fine line between constitutional interpretation and political influence. However, one of the differences between political actors and the court is, that political actors can be held responsible – by the *Bundesverfassungsgericht* – but the *Bundesverfassungsgericht* itself does not have a

⁴⁴ Nußberger (n 41) para 23.

⁴⁵ Detterbeck (n 43) para 7.

⁴⁶ Gerd Morgenthaler and Laura Münkler, ‘Art. 94 GG’ in Epping and Hillgruber (n 11) para 1.

⁴⁷ *ibid* para 4.

⁴⁸ For a more detailed list see Morgenthaler and Münkler (n 46) paras 4, 79, 82.

corrective mechanism.⁴⁹ It is in many ways the last resort of the rule of law. Its Justices carry the responsibility of having no one above them but the text of the *Grundgesetz*, according to which they must decide.

D. Conclusion

What the *Bundesverfassungsgericht* decides can have lasting impact – on individuals petitioning the court, on the fate of the political parties, the direction in which both Germany and the European Union are headed. The analysis has shown the carefully crafted balance of the election process of the Justices with its adaptations in recent years as well as the speed at which the process can derail and damage the reputation of candidates, parties, and the court itself despite these adjustments. It became evident that the process can no longer rely on the informal consensus between the central parties.⁵⁰ However, fostering a non-partisan public discussion of the candidates could still unlock the potential of the vote in the *Bundestag* and the *Bundesrat* and strengthen the courts' legitimacy in the public eye.

To connect the election process with the actual role and influence of the *Bundesverfassungsgericht* enables a clearer understanding of the deep emotions which have shaped the debate around the election process of the Justices in 2025. It serves as a reminder that while the election process might not be perfect now, it is worth to continue improving it and to continue the conversation on what the role of the *Bundesverfassungsgericht* and its Justices entails.

What becomes evident is, that the independence of courts is not guaranteed by constitutional text alone. It depends on the willingness of political actors to achieve non-partisan consensus and to preserve institutions whose authority ultimately constrains their own power. In that sense, the – usually – quiet procedures governing judicial appointments are among the most important safeguards of democratic constitutionalism.

⁴⁹ Nußberger (n 41) para 30

⁵⁰ Vidal Pérez (n 1) 365-66.