

THE SYSTEM OF ADMINISTRATIVE LAW OF GERMANY

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Introduction. The dogmatics of German administrative law is based on the self-sufficiency of the theoretical postulates of "police law" and "public order law," primarily examined within the context of Special Administrative Law.

Purpose of the study. This article aims to explore the theoretical dogmas related to General Administrative Law, specifically focusing on the concept of *Verwaltungsrecht* as a branch of law and its distinctions from "administrative science" (*Verwaltungswissenschaft*) in the context of German and Austrian administrative law.

Methodology. The article employs formal-legal and comparative-legal methods: the former is used to elucidate the concept and structure of Special Administrative Law through the analysis and interpretation of legal categories and constructs. The comparative-legal analysis is utilized to compare the German and Austrian models of administrative law, identifying similarities and differences in the functioning of key institutions.

Results. Police law and public order law (*Polizei und Ordnungsrecht*) within German Special Administrative Law occupy a central position. They are perceived as the law of danger prevention (*Gefahrenabwehrrecht*). A comparison with Austria reveals a similarity in the fundamental 'police' logic; however, the Austrian model places a stronger emphasis on data protection (*Datenschutzrecht*) and European international cooperation among security agencies. In contrast, the German doctrine elaborates more on the separation of police and intelligence competencies (*Trennungsgebot*) and describes their interaction through a strictly limited exchange of information.

1. Introduction

The concept of "administrative law system" has a distinct public law foundation, and in Germany, as well as in Russia, it signifies the subordination of its elements. This primarily indicates their hierarchical dependence, according to which the status of a subordinate element within the system is determined by the interdependence of intra-structural relationships with the superior systemic element.

In relation to General Administrative Law – Allgemeines Verwaltungsrecht – this implies the existence of doctrinal unity in the postulates of the "theory of administration" – Verwaltungslehre, which primarily defines the commonality of theoretical constructs within a unified administrative law system – Verwaltungsrecht, including Special Administrative Law – Besonderes Verwaltungsrecht [1, 2, 3, 4].

The dogmatics of German administrative law primarily stems from the self-sufficiency of theoretical constructs related to police law and public order law – Polizei – und Ordnungsrecht, Verwaltungslehre, Allgemeines Verwaltungsrecht, as well as their constructive interdependence and mutual reliance; the foundational postulates, along with their inherent principles of creative autarky, are equally significant from the perspective of their scientific interpretation, and these concepts should not be regarded as identical during analytical investigations.

One of the sections traditionally examined within the framework of Besonderes Verwaltungsrecht is the law of security police, Sicherheitspolizeirecht. In this context, the Special part of administrative law in Germany primarily derives from the delineation of competencies based on the territorial principle, distinguishing between European, federal, regional, and local levels of legal regulation.

2. Theoretical postulates of German administrative law

German administrative law is characterized by a commonality of theoretical institutions and a unity in the architecture of Allgemeines und Besonderes Verwaltungsrecht, primarily driven by the objectives of educational activities or scientific

research. Naturally, certain peculiarities are inherent to the specifics of teaching and research in various German-speaking countries [2, 6].

In relation to Besonderes Verwaltungsrecht, the main differences can be traced in the justification of theoretical postulates.

In Germany, Polizei- und Ordnungsrecht are examined within the framework of the theoretical justification of fundamental concepts in the Special Part of administrative law. Friedrich Schoch analyzes the theoretical postulates of police law and public safety law within the context of the Special Part of administrative law, with the corresponding sections preceding the main part of the fundamental study, specifically its sectoral structural elements dedicated to the applied characteristics of regulatory activities.

Friedrich Schoch identifies a commonality in the foundational concepts of Polizei – und Ordnungsrecht (Gefahrenabwehrrecht), which are examined within the context of general human rights activities. In any case, he equates police law and public safety law with Gefahrenabwehrrecht.

Significant attention is given to substantive law in Besonderes Verwaltungsrecht, particularly regarding the characteristics of police administrative activities [7, 8].

Within the framework of formal police law and public safety law, the study focuses on the structural organization of police agencies, specifically the Sicherheitspolizei (Schutzpolizei in Hamburg), public safety police, and Kriminalpolizei.

The subject of research in General Administrative Law should consider the unity and differences in the organization of police forces, primarily influenced by regional regulations and the national-historical traditions of police activities in various federal states.

The ownership, use, and management of information utilized in preventive police activities, as well as for the purpose of preventing offenses, is examined within the framework of Besonderes Verwaltungsrecht in relation to the general administrative functions of the police. Within the scope of police information activities, significant emphasis is placed on the specifics of the accumulation, analytical processing, and dissemination of personal data

(Personenbezogener Daten), particularly regarding the characteristics of protecting databases from unauthorized access.

This approach is characteristic of the features of the architecture of General Administrative Law, which is particularly evident in the context of conducting practical sessions for the course *Besonderes Verwaltungsrecht* at universities in Germany, as well as in specialized police institutions [9, 10].

The educational courses and fundamental research on General Administrative Law – *Allgemeines Verwaltungsrecht* predominantly adhere to unified analytical approaches in both teaching and research activities [9, 11, 13]. Initially, the primary theoretical postulates of *Verwaltungsrecht* are examined, along with their distinctions from the "science of management" and the "science of administrative law," as well as the establishment and evolution of key terms and definitions [14].

Particular attention is given to the study of legal sources, as well as the organizational and legal forms of administrative activities, taking into account the differences in the concepts of "administrative bodies," institutions, and agencies (*Behörde*).

3. The commonalities and characteristics of the administrative law systems in Germany and Austria

In relation to the academic courses on General Administrative Law of federal states – Germany and Austria, the peculiarities of the structure of federal and regional executive bodies are examined [15].

Unlike Austrian sources, German administrative scholars consider "public administration" – *Öffentliche Verwaltung* within the broader context of *Allgemeines Verwaltungsrecht*, focusing on its characteristics in relation to the federal foundations of administration and executive activities in the federal states [16].

In the Austrian model, *Besonderes Verwaltungsrecht* places significant emphasis on the legal protection of information, known as *Datenschutzrecht*. Various stages of information circulation are considered as objects of public legal protection, highlighting a specific public legal regime for data processing, referred to as *Verarbeitung von*

Daten, and a special regime based on particular objectives, where information is examined to obtain a statistical data set or to analyze the stage of economic development [17].

Regarding the different stages of information protection during its collection, analytical processing, and dissemination, particular attention is given to the public and private legal aspects of information circulation. Austrian administrative law has established specific procedures for the public nature of information processing (*Publizität der Datenverarbeitungen*), and the functions of ensuring public legal protection of data are assigned to a designated official, the Data Protection Officer (*Datenschutzbeauftragter*).

The subject of public legal protection in this case is the interested party (*Betroffene Person*) – an entity of private or public law whose information is processed for private or governmental purposes. Personal data (*personenbezogene Daten*), which are subject to protection, should be considered as those whose circulation is conducted in accordance with the procedures established by the federal law of Austria (*Datenschutzgesetz*). The status of personal data remains unchanged, and the legal protection measures defined by the *Datenschutzgesetz* are consistent at the stages of correction, amendment of personal data (*Richtigstellung*), or their deletion (*Löschung*).

Significant attention is given in the Austrian concept of *Sicherheitspolizeirecht* to European integration at the political and legal levels, as well as to international legal cooperation. In the context of European collaboration, a special emphasis is placed on interactions with the European Police Office (*Europol*). All EU member states, guided by § 88 of the Treaty on the Methods of EU Cooperation, establish national contact offices with *Europol*, which facilitate the exchange of information while ensuring the proper protection of data related to personal information (*personenbezogenen Daten*).

The primary responsibility of public safety police in Austria is to ensure public safety (*öffentliche Sicherheit*) and public order (*öffentliche Ordnung*). The architecture of *Besonderes Verwaltungsrecht* is influenced by the subjective perception of research and its goal-setting. There is a noticeable similarity between the German administrative law system and the dominant role of policing. Professor Friedrich

Schoch from the University of Freiburg examines Polizei – und Ordnungsrecht within the context of the special (particular) section of the curriculum, distinguishing its theoretical principles from the pragmatic issues of substantive law [18, 19]. As a fundamental objective of legal order, the professor identifies the elimination of any external factors that hinder proper public and private legal activities, specifically ensuring adequate protection against any unlawful encroachments (Gefahrenabwehr).

Similar approaches that characterize police law and order as an element of the Special Part of administrative law are quite prevalent in specialized monographic and educational publications in Germany [20, 21]. However, this perception is not universally accepted among German researchers as a whole. In Austrian scientific and educational literature, a pragmatic approach is widely adopted, equating police law with the powers of public safety police – Sicherheitspolizeirecht. The corresponding powers at the federal level are assigned to the jurisdiction of the Federal Ministry of the Interior and its divisions responsible for public safety (öffentliche Sicherheit). Certain public functions in Austria are assigned to the Federal Office for the Protection of the Constitution and Counterterrorism and the Federal Criminal Police Office (Bundeskriminalamt). All the aforementioned authorities exercise their entrusted powers in coordination and direct collaboration with the bodies responsible for public safety in the federal states of Austria, operating in accordance with regional legislation (Landessicherheitsgesetze).

German researchers in the field of administrative law's Special Part contrast the Austrian concept of Sicherheitspolizeirecht with a holistic understanding of Polizei – und Ordnungsrecht, which also encompasses the Austrian perspective on public safety law enforcement [22]. A prominent German police scholar, Professor Friedrich Schoch from the University of Freiburg, supplements and expands upon the Austrian concept within the framework of fundamental teachings, which thoroughly examine, alongside basic postulates, the organizational and legal forms of activity of federal and regional authorities, as well as various aspects of European and international integration.

4. The law of danger prevention in German Special Administrative Law

In this pluralistic perspective, Friedrich Schoch equates the authority of the Federal Intelligence Service (Bundesnachrichtendienst – BND) with the powers of the Foreign Intelligence Service (Auslandsnachrichtendienst). Friedrich Schoch examines three agencies responsible for ensuring internal security (Innere Sicherheit), alongside the Ministry of the Interior (BMI) and the Public Prosecutor's Office (Staatsanwaltschaft). These powers are assigned to the Federal Office for the Protection of the Constitution (Bundesamt für Verfassungsschutz, BfV) along with its federal and regional bodies, while within the federation, the corresponding authorities are also attributed to the BND and the Military Counterintelligence Service (Militärischer Abschirmdienst – MAD), which is part of the structure of the Ministry of Defense (Bundesverteidigungsministerium). The primary objective of the MAD is to accumulate and analytically process information that threatens the rule of law and the security of the state, alongside information that summarizes data on illegal activities within the country, including those conducted covertly, which undermine the fundamental principles of the state [23, 24].

Particular emphasis in his understanding of the concept of the Special Part of Administrative Law is placed by Friedrich Schoch on the law-enforcement function: in this regard, police law and public order are primarily viewed as interconnected elements of the law aimed at preventing threats to the protection of both private and public law subjects, as well as the state as a whole, from unlawful encroachments – Gefahrenabwehrrecht. By attributing significant importance to the interconnection and interdependence of public and private law foundations, Schoch highlights the relationship between police law and public order in addressing the legal task of ensuring national security – das Recht der staatlichen Gefahrenabwehr.

Within the framework of the German concept of Polizeirecht, the position advocating for the pluralism of police activities is upheld. Friedrich Schoch notes, in this context, the fragmentation of such activities and the lack of unified approaches in their justification, highlighting the varying significance of the

term "police." Essentially, the term "police" refers to the exclusive activities of state organs, primarily carried out through coercive means (Zwangsgewalt) aimed at preventing or addressing the interests protected by law of individual citizens, public corporations, and the state as a whole.

5. The Concept of Police Law

In an institutional context, the term "police" encompasses the authorities, institutions, and organizations through which law enforcement (police) activities are carried out as a whole.

In its direct (formal) expression, the term "police" refers to the official authoritative activities of the bodies that ensure its powers, and in this regard, it is connected to the institutional perception of the police.

The protection of legitimate private and public interests is a fundamental task for any legal and social state. In this regard, the concept of a "preventive state" – Präventionsstaat – is introduced into German administrative law, which is primarily aimed at preventive police activities that ensure protection against immediate dangers (konkreter Gefahren), or through the execution of law enforcement functions that prevent any unlawful excesses and potential harm (Abwehr abstrakter Gefahren). When considering the concept of Präventionsstaat in this context, one can discuss the human rights protection functions of the state as a whole, regardless of their private or public needs, which predetermines the interconnection and mutual conditioning of the categories Präventionsstaat and Gefahrenabwehrrecht. Moreover, the prevention of harm to legally protected interests or its minimization is regarded as an attribute of internal security law – Recht der Inneren Sicherheit – along with the natural legal restrictions imposed by police activities and the maintenance of public order.

As a necessary prerequisite for police activity, Friedrich Schock emphasizes its preventive foundation; any authoritative action taken by the police, including that which is related to criminal prosecution (Strafverfolgung), must be legally formalized and conducted with utmost caution (Strafverfolgungsvorsorge).

The concepts of "police law" and "law and order" in Germany are based on the delineation of

the powers of the police as an institution responsible for public safety and the powers of intelligence services, grounded in fundamental political and legal principles that prevent abuses by the secret state police (Geheimstaatspolizei) as an organ of political investigation during the National Socialist regime in Germany. Consequently, in April 1949, the BND was stripped of its police functions.

6. The organizational structure of the criminal police, public order police, and other law enforcement agencies in Germany

The organizational distinction between intelligence services and police is manifested in the separation of the BMI and BND systems, which prevents overlapping functions of intelligence services and police, particularly in the areas of criminal prosecution and the criminal enforcement system (Vollzugspolizeibehörde). The functional delineation of powers is enshrined in legislation that defines the competencies of intelligence services and police, thereby preventing arbitrary use of public coercive powers. Friedrich Schock notes that the intelligence service does not possess the coercive powers of the police, and the competencies of these law enforcement institutions are distinct, precluding even their joint operations. This conclusion is further supported by the position of the Federal Constitutional Court of Germany (BVerfG), which upholds the inviolability of the principle of separation of powers between the police and the BND ("Trennungsgebot").

The jurisprudence of the BVerfG also confirms the distinct separation of powers between the BND and the police in the exchange of law enforcement information. Interaction between police authorities and intelligence agencies is only permissible in specific areas, primarily when the information exchange is necessitated by counter-terrorism efforts.

The use of official information by the BND and police authorities, particularly operational data, for the purpose of information exchange, as affirmed by the BVerfG's judicial practice, is, in any case, restricted to the execution of official powers (Aufgabenvergenz). Law enforcement activities that involve the limitation of rights of suspected individuals, especially when such actions are based on physical or psychological coercion, are an exclusive prerogative of the police. The powers of the BND in these areas of police activity are limited,

including in instances where external surveillance measures or other operational actions are employed to prevent potential threats to law enforcement interests (Gefahrenvorfeld).

The interaction between the BND and law enforcement agencies can also occur through the use of personal data, particularly during the process of making necessary amendments (Zweckänderung) and in other instances where analytical processing is involved. Information exchange is only permissible on an ad hoc basis in accordance with the stipulations of the Data Protection Act (Datenschutzgesetz) and other legislative regulations. The analytical processing of personal data and the adjustments made for law enforcement purposes are founded on the general principles of functional and organizational separation of powers between the BND and law enforcement agencies.

In the context of law enforcement and human rights activities, a significant role is assigned to the Federal Office for the Protection of the Constitution (Bundesamt für Verfassungsschutz, BfV) – a federal executive authority that operates under the jurisdiction of the BMI. The BfV collects and analyzes information regarding unlawful anti-constitutional actions, primarily focusing on extremist and terrorist activities. The BfV is entrusted with the authority of the highest instance, coordinating the activities of constitutional protection agencies across the German federal states, including the facilitation of information exchange between federal and regional authorities.

The BfV is endowed with significant authoritative powers in the realm of information gathering (Informationsbeschaffung), primarily possessing the right to request information (Auskunftsverlangen) from broadcasting organizations and telecommunications services through official inquiries (geschäftsmäßigen Erbringern) for the provision of relevant data, or obtaining necessary information through covert acquisition (heimliche Informationsbeschaffung) – commonly referred to as "control purchases."

For operational purposes, BfV employees are authorized to act, including within broadcasting organizations, as undercover agents (als verdeckte Mitarbeiter) or to employ private individuals as

trusted contacts for the discreet acquisition of pertinent information (als Vertrauensleute). These individuals are permitted to process (Verarbeitung) personal data, which includes accumulating, correcting, and utilizing it (Speicherung, Veränderung und Nutzung).

In the domestic legal tradition, the aforementioned prerogatives encompass all the rights of the owner, namely possession, use, and disposal. All the specified operational activities are thoroughly regulated by § 8a, 8c, 8d, and § 10 of the Federal Law on the Protection of the Constitutional Order (BVerfSchG).

Significant powers in the realm of internal security are assigned to the Military Counterintelligence Service – Militärischer Abschirmdienst (MAD) – which is one of the divisions of the Federal Ministry of Defense of Germany. This agency is responsible for the collection, analytical processing, and utilization of information regarding actions that threaten the foundations of democratic order, the integrity of the state, and national security. This includes information about illegal activities conducted within the country, carried out at the behest of hostile state intelligence services (§ 1 section 1 of the Federal Law on MAD). Considering the additional powers of MAD, particularly in the fight against extremism and terrorism, it can be observed that there is a certain overlap in the competencies of MAD and the Federal Office for the Protection of the Constitution (BfV). It is important to note that MAD primarily focuses on the analytical processing of military-political information, which necessitates coordination between the federal agencies in question.

7. Private security services as subjects of Special Administrative Law

One of the pressing tasks of German police law is to establish the necessary organizational prerequisites for maintaining public order and safety. These powers are not only assigned to law enforcement agencies, primarily the police, but also to private security services that provide protection for the private property interests (private Rechtsgüter) of their clients (Auftraggeber) on a contractual basis.

Private security services (PSS) also participate in everyday law enforcement activities (Jedermannrechte), albeit within the framework of

legally formalized restrictions. A fundamental principle of German police law is the exclusive assignment of state authority powers (*hoheitliche Befugnisse*) to public law enforcement agencies, primarily the police, which means that private security services do not possess such powers.

Employees of the PSS, in situations where the right to the inviolability of the home has been violated (*Hausfriedensbruchs*) under extraordinary circumstances, are required to notify the police authorities (*Strafanzeige*).

Current legislation grants PSS employees the same rights concerning offenders during routine law enforcement activities as any individual may exercise in cases of self-defense (*Notwehr*), when extraordinary circumstances (*Notstands*) arise, or in situations of extreme necessity (*Selbsthilfe*), where self-defense is a necessary means to prevent unlawful actions. In these instances, a PSS employee, acting on behalf of the principal, carries out law enforcement actions dictated by the extraordinary circumstances.

Under these circumstances, the Private Security Service is entitled, and in certain instances required, to act in coordination with or with the direct involvement of police authorities, guided by the doctrine of "law enforcement partnership" (*"Sicherheitspartnerschaft"*). The collaboration between the law enforcement capabilities of the Private Security Service and the police is permissible during joint patrols (*Streifengänge*), during the conduct of large public events such as sports competitions and concerts, as well as in cases involving the exchange of law enforcement information. Notably, Professor Friedrich Schoch emphasizes that the "law enforcement partnership" should not be viewed as a legal category; rather, the cooperation of the Private Security Service and the police represent a legitimate form of effective (*tatsächlich*) collaboration aimed at safeguarding public safety and maintaining public order. Each party involved in the joint law enforcement operation carries out its assigned functions, while the state authority powers are exclusively reserved for police activities. An employee of the PSS is entitled to contact a police officer if there is a need to halt illegal

actions, but they are not permitted to take coercive measures independently.

8. Conclusion

The *Polizeirecht* doctrine, in cases of such partnerships, is based on the execution of administrative assistant functions (*Verwaltungshelfer*), with employees of the PSS acting solely in accordance with the supreme legal authority of police directives (*Weisungen der Polizei*) [25, 26].

A significant characteristic of the law enforcement activities of the PSS is the obligation imposed by the state to ensure their own safety (*Eigensicherungspflichten Privater*). According to Professor Schoch, this represents an unassailable attribute of general police law and order. This obligation is viewed in political-legal and economic contexts as specific legal attributes inherent to certain institutions of *Besonderes Verwaltungsrecht*, for which adherence to technological and economic-legal safety criteria is most pressing, particularly concerning nuclear energy law (*Kernenergierecht*), environmental protection law, laws for the protection of the natural environment (*Immissionsschutzrecht*), and air transport law (*Luftverkehrsrecht*).

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