

EUROPEAN ADMINISTRATIVE LAW

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1. EUROPEAN ADMINISTRATIVE LAW IN GERMANY

Research on the influence of European administrative law on national administrative law has a great tradition in Germany. Following some pioneers in the 1960s and 1970s, it is *Jürgen Schwarze's* seminal work on the subject that creates attention not only at the domestic level. The establishment of the subject is followed by a phase of conflict in the early 1990s around several judgements of the ECJ such as *Francovich*, *Zuckerfabrik Süderdithmarschen* and *TA Luft* which are seen by many as an illegitimate intrusion into the scope of national administrative law. Fortunately, this phase has ended a few years later as many scholars concentrate on what is commonly called "Europeanisation" (*Europäisierung*) of administrative law. It is today generally accepted that European law containing principles and rules that are relevant for public government are part of German administrative law. In some areas, this is particularly visible, as e.g. in environmental law or the law of public procurement.

2. CONCEPTUAL ISSUES: INTEGRATED EUROPEAN ADMINISTRATION (*EUROPÄISCHER VERWALTUNGSVERBUND*)

If administrative law in Germany is generally "Europeanised", new conceptual approaches have to be found to achieve a more precise picture of the process and its results. In German public legal scholarship, the links and ties between the central administration at the Commission and agencies' levels on the one hand and national institutions on the other hand are particularly underlined, as is the interrelationship between supranational and national legal principles and rules. The dominant term for describing these conjunctions is *Europäischer Verwaltungsverbund*, which, regrettably, is scarcely translatable (not only into English). Some scholars strive for translation choosing the term "European composite administration", while it is preferred here to underline the integrated character of the *Verwaltungsverbund*, so that "European integrated administration" would be the right concept. Other terminological approaches are submitted to be less precise such as the "European administrative space" (*Europäischer Verwaltungsraum*).

At any rate, the concept of European integrated administration differentiates and combines the different levels of administrative law interacting within it: (1) administrative law to be implemented by the EU-institutions, (2) administrative law originating from EU sources (regulations and directives) implemented at national level and (3) national administrative law under European influence.

3. CORE DEVELOPMENTS IN 2011

1.1 Jurisprudence

The most important jurisprudential development is related to category (3) listed above. In Case C-115/09 (*Bund für Umwelt und Naturschutz Deutschland v. Bezirksregierung Arnsberg, Trianel Kohlekraftwerk intervening*), the *Trianel* case of 12 May 2011, the ECJ declared that German legislation precluding access to administrative courts of non-governmental organisations in the environmental sector was incompatible with the relevant legislation at EU level. The background to the case is the restrictive approach of German administrative procedural law concerning access to justice. As German administrative courts have a broad scope of review with only limited margins of decision left to the government bodies controlled, standing is limited to plaintiffs bearing an individual right (*subjektiv-öffentliches Recht*). In environmental matters, such individual rights are normally linked to individual health or property and not bestowed upon institutions acting in an altruistic way. There have certainly been some modifications in recent years and standing for environmentalist NGOs has been somehow extended. There was also some extension to individual standing following the jurisprudence of the ECJ (Case C-237/07, *Dieter Janecek v. Freistaat Bayern*, ECR 2008, I-6221). In *Trianel*, however, an obvious lacuna in German environmental law was brought before the Court:

The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, known as ‘the Århus Convention’ of 1998, aims at the reinforcement of the activity of environment groups in administrative matters. It was transposed into EU law by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect

of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (OJ 2003 L 156, p. 17). German implementing legislation continued making standing for environmental organisations conditional upon the impairment of individual rights. The ECJ – not astonishingly – did not accept this: “If, ..., those organisations must be able to rely on the same rights as individuals, it would be contrary to the objective of giving the public concerned wide access to justice and at odds with the principle of effectiveness if such organisations were not also allowed to rely on the impairment of rules of EU environment law solely on the ground that those rules protect the public interest. ... that very largely deprives those organisations of the possibility of verifying compliance with the rules of that branch of law, which, for the most part, address the public interest and not merely the protection of the interests of individuals as such.” The decision was met with incomprehensive criticism in some parts of scholarship, but it is completely within the logics of ECJ jurisprudence, and it shows the need for modification in domestic administrative law.

1.2. Scholarship

It is impossible to list all publications in the field that have been published in Germany in 2011, but two of them shall be particularly underlined (details to be found in the bibliography). First, there is a new seminal work covering all areas of European Administrative Law edited by *Terhechte*. Second, the annual meeting of the University assistants in public law was devoted to the *Verwaltungsrechtsraum Europa*.

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