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THE PUBLIC-PRIVATE LAW DIVIDE

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1. BASIC PRINCIPLES OF THE PUBLIC-PRIVATE LAW DIVIDE IN GERMANY

Coming from the civil law tradition, the German legal system is well acquainted with the public-private law divide. On a preliminary note, it is useful to state that in the German legal order the administration can be subject to private law rights and obligations ("Privatrechtsfähigkeit der Verwaltung"), while still being bound by competence rules and fundamental rights.[1] The actual division between public and private law in Germany – or better: the determination of the scope of application of either public or private law[2] – has been shaped mainly by legal evolution since the 19th century, evolution itself shaped by competence quarrels between the federation, competent for regulating private law, and the federal states (Länder), competent for legislation in public law matters. Furthermore, the question of the submission of public authorities' activities to public or private law has been intensely linked to the question of which regime is more effective in controling the administration and guaranteeing judicial protection to private parties.

[1] See Ulrich Stelkens, Verwaltungsprivatrecht, 2005, pp. 33 ff.

[2] The question of whether a specific legal provision is part of public law or private law is clear in most cases, see Martin Burgi, Rechtsregime, in: Wolfgang Hoffmann-Riem/Eberhard-Schmidt-Aßmann/Andreas Voßkuhle (eds.), Grundlagen des Verwaltungsrechts I, § 18 n° 18 ff.; Hartmut Maurer, Allgemeines Verwaltungsrecht, 18th ed. 2011, § 14 n° 17.

1.1 The origins of the public-private law divide from the turn of the 20th century[3]

Before the entry into force of the German Civil Code (Bürgerliches Gesetzbuch – BGB) on 1 January 1900 there was not "one" German civil law order, but several local civil law orders that persisted from the time before the foundation of the Reich in 1871. Nevertheless, in all German federal states, public authorities were treated like simple citizens when they performed actions that could also be performed by private parties. They were thus subjugated to private law and to the jurisdiction of the ordinary courts. This principle was considered a necessary condition to guarantee the rule of law and equality before the law, because it meant that public authorities had no special rights in the sense of privileges and that their actions could be submitted to judicial review.[4] Illustrations of this principle of the administration being bound by private law ("Privatrechtsbindung der Verwaltung") can be found in §§ 76 and 77 of the Common Law of Prussia of 1794 (Preußisches Allgemeines Landrecht), which stipulated that the State as a property owner shall not enjoy any more rights than a private property owner except if provided for by special statutes. Another example can be found in § 4 of the Introductory Act to the Code of Civil Procedure from 1877 (Gesetz betreffend die Einführung der Zivilprozeßordnung – EGZPO), which stipulates that the federal states cannot exempt private law disputes to which a public authority is a party from the jurisdiction of the ordinary courts. However,

[3] For a survey of this evolution see U. Stelkens (note 1), pp. 53 ff.; Jens-Peter Schneider, The Public-Private Law Divide in Germany, in Matthias Ruffert (ed.), The Public-Private Law Divide: Potential for Transformation, 2009, pp. 85 ff.

[4] « Fiscus iure privato utitur », cf. Julius Hatschek, Die rechtliche Stellung des Fiskus im Bürgerlichen Gesetzbuche, VerwArch 7 (1899), 424 ff.; Otto Mayer, Deutsches Verwaltungsrecht – Vol. I, 1st ed. 1895, pp. 53 ff. and 138; Otto Mayer, Zur Lehre des öffentlich-rechtlichen Vertrages, AöR III (1888), 1, 35.

despite this principle the local civil law orders allowed for many "fiscal privileges", i.e. provisions according particularly favourable conditions to public authorities in their civil law relationships, from a material as well as from a procedural point of view. An example is the principle according to which the State held the estates of the guarantors of its debtors as security in case of non-payment.[5]

When the BGB was drawn up, the federation, which – as mentioned – is competent for lawmaking in the domain of private law, wanted to abolish most fiscal privileges in order to guarantee the unity of the law and the citizens' legal certainty vis-à-vis the administration. Yet the legal relationships between the administration and citizens that were not comparable to relationships between private parties could not be regulated by the federation because they fell under administrative law, for which the federal states had legislative competence. Furthermore, the general "subjugation" of the administration to private law did not mean that private law had to apply in every case in which a relationship between the administration and a private party could theoretically be regulated by private law, e.g. concerning the use of public facilities. Hence, the codification of civil law by the Reich did not exclude the development of specific (administrative/public) legal provisions, even regarding public services.

In this context, the idea emerged that public authorities have the choice to submit such relationships either to public or to private law ("liberty of choice between public and private law"). However, this possibility was not introduced regarding procurement and the management of public estates, as it was deemed impossible to exempt the administration from its *private law obligations* in these fields.[6]

[5] See the decision of the Reichsgericht, 28.6.1881 – III 44/81 – RGZ 5, 136 ff.

[6] U. Stelkens (note 1), pp. 86 ff.; Johannes Masing, La poursuite d'intérêts publics à travers la participation directe des collectivités publiques aux activités économiques – Point de vue allemand, RUDH 2003, 107, 108 ff.

1.2 Inversion of perspectives since the entry into force of the Basic Law (Grundgesetz – GG)

The original reason for the subjugation of public authorities to private law in cases where they act in the same way as a private party could act – i.e. the desire to protect the rights of citizens by treating them on an equal footing as the administration – gradually sank into oblivion as the possibility to act through private law began to appear as a way for the administration to escape its specific *public law obligations*. Indeed, in the modern constitutional order that has been built up since World War II, the public law regime for administrative activities no longer only implies that the administration enjoys specific rights, in the sense of privileges, but also that it is subject to special *public law obligations*, primarily deriving from the fundamental rights granted by the Basic Law, e.g. the obligation to ensure equal treatment and non-discrimination to all citizens. Hence, the administrations' possibility to act through private law became discredited, seen as a way for the administration to "escape into private law" ("Flucht ins Privatrecht"), i.e. to escape from its public law obligations.[7]

Consequently, doctrine and jurisprudence tried to find ways to ensure the administration respected public law obligations during all administrative activities, even those performed through private law. The ordinary courts thus developed a kind of specific private law for the administration, called "Verwaltungsprivatrecht" ("administrative private law")[8], which allows for interpreting general civil law notions, e.g. "good faith" (§ 242

[7] "Flucht ins Privatrecht" ("Escape into private law"), famous expression coined by Fritz Fleiner, Institutionen des Deutschen Verwaltungsrechts, 8th ed. 1928, p. 326.; see also Walter Jellinek, Verwaltungsrecht, 3rd ed. 1931 (supplementary print 1948), pp. 25 ff.; Masing (note 6), 109 ff.

[8] This neologism, invented by Hans Julius Wolff (Verwaltungsrecht I, 1st ed. 1956, p. 73), is nowadays commonly used.

BGB), "public policy" (§ 138 BGB) or "statutory prohibition" (§ 134 BGB), in such a way that the specific public law obligations of the administration can be taken into account. This means, for example, that a private law contract to which the administration is a party can be declared void because its object is contrary to the public law obligations of the administration, such as the principle of equality before the law or the principle of accountability in public budget management.[9] Interestingly, despite in principle being intended to protect private parties, this situation does not always turn out to be advantageous for the private party involved in a concrete case. The principle of the administration being bound by its public law obligations has gradually been recognized for all administrative activities, even for those that had previously been considered as "secondary", i.e. serving only indirectly the "primary" administrative tasks by providing means for the proper functioning of administrative services (procurement or management of public assets). Today, the public-private law divide in Germany is strongly influenced by this "administrative private law", in such a way that the border between public and private law has become blurred.

2. Specific Problems raised by the Public-Private Law Divide in Germany

The problems raised by the public-private law divide in the German legal order can be illustrated by some concrete examples concerning legally founded claims against and entitelements of the administration (2.1), state liability (2.2), contractually founded claims against and entitlements of the administration (2.3), and public sector labour law (2.4).

[9] See for example BGH (Bundesgerichtshof – Federal Court of Justice), 25.1.2006 – VIII ZR 398/03 – nos 26 ff. (www.bundesgerichtshof.de).

2.1 Statutory claims against and entitlements of the administration

The administration can be the object of claims based on private law obligations, just as it can be entitled to sue private parties with claims based on private law obligations.

2.1.1 Statutory claims against the administration[10]

Concerning the administrations' liability to be sued, the border between the application of public and private law is very difficult to draw. When revendications for unjustified enrichment are concerned, the border between public and private law has been quite clearly determined by case law. The applicable law depends on the nature of the presumed obligation of the claimant.[11] On the other hand, the case law concerning prohibitory actions and the related claims for compensation is completely incoherent.[12] The courts often use the same argumentation patterns and yet come to different solutions. The situtation is even worse concerning the border between public state liability law and private indemnity law (see infra 2.2). Furthermore, the scope of private law regulation is disputed regarding the recovery of expenditure related to management without mandate.[13]

[10] See on this point U. Stelkens (note 1), pp. 452 ff.

[11] See Fritz Ossenbühl, Staatshaftungsrecht, 5th ed. 1998, pp. 415 ff.

[12] See the analysis of the case law by U. Stelkens (note 1), pp. 465 ff. and Christoph Althammer/Christian Zieglmeier, Der Rechtsweg bei Beeinträchtigungen Privater durch die kommunale Daseinsvorsorge bzw. erwerbswirtschaftliches Handeln der öffentlichen Hand, DVBl. 2006, 810 ff.

[13] See e.g. the analysis of the case law by Friedrich Schoch, Geschäftsführung ohne Auftrag im öffentlichen Recht, Die Verwaltung 38 (2005), 91 ff.

2.1.2 Statutory entitlements of the administration[14]

Concerning the administrations' capacity to sue, the situation is the following: as the administration has the capacitiy to act under private law, it is entitled to sue private parties for private law statutory obligations if the conditions for the application of these rules are met and if there are no conflicting public law rules.[15] Yet, as the situations in which the administration is entitled to sue private parties for private law obligations are very heterogeneous, there is no general principle or solution. Fields in which the question arises about whether the administration is entitled to sue for private law obligations include unjustified enrichment; prohibitory actions for preventing violations of absolute rights, property rights, and competition rules; compensation; and recovery of expenditure.

2.2 State liability[16]

In the field of state liability, the German public-private law divide is especially complicated. Indeed, German state liability law consists of a mix of rules of different natures, including constitutional as well as statutory dispositions at the level of both the federation and the federal states, and comprising both public and private legal provisions

[14] See on this point U. Stelkens (note 1), pp. 573 ff.

[15] See the general remarks of BVerfG, 22.02.2011 – 1 BvR 699/06 – nos 79 ff. (www.bverfg.de)

[16] For an overhead study see Ulrich Stelkens, Le développement de la responsabilité administrative en droit allemand, 2009, contribution to the workshop series "Comparative, European and Global Public Law" of the Governance and Public Law Center (Chaire "Mutations de l'Action Publique et du Droit Public"), Sciences Po Paris, available at http://chairemadp.sciences-po.fr/pdf/seminaires/2009/Contribution_Ulrich_Stelkens_nov_09.pdf.

and lots of case law. Furthermore, European law, deriving from both the "Frankovich" case law of the European Court of Justice and the dispositions of the European Convention on Human Rights, are superimposed on all this. Fritz Ossenbühl, the leading scholar of state liability law in Germany, has stated that German state liability law is not based on a complete and materially coherent system, but is the result of a century-long chaotic evolution which has led to contemporary contradictions and incongruities.[17] The majority of the discipline shares this view and has called for reforms, but these are very difficult to carry out and politically contentious.

Yet theoretically, concerning damages caused by the administration, the border between the application of public state liability law and private indemnity law is normally drawn in such a way that state liability law applies when the administration causes damages while violating its public law obligations and private indemnity law applies when the administration causes damages while violating its private law obligations. Indeed, the principle is that when the administration acts in the same way that a private party could act, damages should be granted according to private law principles, whereas when the administration acts by means of public law in a way that private parties cannot act (e.g. by issuing an administrative act), damages should be granted according to specific public law principles.

Nevertheless, this apparently clear distinction can raise problems in practice, which can be illustrated by the example of liability for traffic accidents. Article 77 of the Introductory Act to the German Civil Code from 1896 (Einführungsgesetz zum Bürgerlichen Gesetzbuche – EGBGB) and Article 131 of the Weimar Constitution from 1919 – dispositions that were important for the development of state liability law in Germany – use the notion of "public force" to define the domain in which state liability applies. The case law deduced from these dispositions that the army and police forces, even when just using the roads, always exert public force vis-à-vis third parties, probably

[17] Ossenbühl (note 11), p. 438.

because in the early 20th century the idea of army forces just using the roads like simple citizens was difficult to conceive. Subsequently, the case law has developed quite peculiar criteria to determine in which cases the administration exerts public force when in road traffic.[18] Yet to grant equality to all participants in road traffic, the courts also apply special legislation directly addressing the matter of traffic accidents, which leads to a barely comprehensible mix of private and public law.[19] This example shows that part of the imbroglio of state liability law in Germany is due to the fact that no convincing criteria have been established to distinguish between cases in which the administration is responsible according to common private indemnity law and cases in which state liability law applies.

[18] In a case concerning an accident caused by a carriage of the mail services of the Reich, for example (Reichsgericht, 20.11.1924 – IV 314/24 – RGZ 109, 209 ff.), the Reichsgericht examined the question of whether a postillion who drives such a carriage exerts public force by doing so. They came to the conclusion that even if the mail services serve public ends, this does not imply that all civil servants carrying out these services exert public force. Hence, the clearing of post boxes or the sorting of mail would definitely not imply the exertion of public force, and neither would the transport of mail. Thus the notion of the exertion of public force was found to be inapplicable in the case of the aforementioned postillion. On this case and more cases on the matter Stelkens (note 1), pp. 534 ff.

[19] See the cases analysed by Stelkens (note 1), pp. 545 ff.

2.3 Public Contracts[20]

Public contracts – in the sense of contracts concluded by public entities, regardless of whether they are submitted to a public or private law regime[21] – are another field where the public-private law divide is not very clear in German law, which can be illustrated by the example of procurement contracts.[22] On a preliminary note, it must be stated that in German law there is no overarching special regime granting specific powers to the contracting public entities, such as exists in French administrative law.[23] On the contrary, for contracts concluded by the German administration, submission to private law is the rule whereas submission to public law constitutes the exception.[24] Thus, the German "public law contract" ("öffentlich-rechtlicher Vertrag"), codified in Article 54 ff. of the Administrative Procedure Act (Verwaltungsverfahrensgesetz – VwVfG), is not conceived of as being a means for procurement or similar contracts but as an alternative to the issuing

[20] For an overview see Ulrich Stelkens/Hanna Schröder, Allemagne/Germany, in Rozen Noguellou/Ulrich Stelkens (eds.), Droit comparé des Contrats Publics – Comparative Law on Public Contracts, 2010, pp. 307 ff., esp. pp. 313 ff.; Hanna Schröder, Le marché public – contrat de droit privé en Allemagne, Droit et Ville n° 70/2010, 221 ff.

[21] See on this definition Rozen Noguellou/Ulrich Stelkens, Propos introductifs/Introduction, in Noguellou/Stelkens (note 20), pp. 5 f.

[22] On the general question of the public or private law nature of public contracts in the German legal order see Stelkens/Schröder (note 20), pp. 320 ff.

[23] See on this point Johannes Masing, Les prérogatives de contrôle exercées par l'administration relativement à l'exécution des marchés publics en Allemagne, in Gérard Marcou et. al. (eds.), Le contrôle des marchés publics, 2009, pp. 311 ff.

[24] See further Michel Fromont, Droit administratif des États européens, 2006, pp. 313 ff.

of administrative decisions, especially in cases in which preexisting public law relationships are to be modified. The classic example of such a public law contract is a contract concluded between the administration and a construction firm by which the latter is exempted of their statutory obligation to construct parking places if in exchange they participate in the financing of public parking areas.[25]

Meanwhile, procurement contracts are ordinary private law contracts that do not imply any specific powers for the contracting public entity unless provided for by the contractual clauses.[26] Traditionally, this meant that the whole procurement process was submitted to private law, also concerning the rights of competitors related to the award procedure. Indeed, the rules to be respected by the contracting public entities concerned only public budget management and did not confer any rights to competing actors. However, due to the impact of European Union procurement law, this conception had to be totally modified,[27] as EU directives require the Member States to grant enforceable rights of equal treatment and transparency to competing actors in the procurement process. Initially, in Germany it was not clear whether the federation could intervene in the domain of contracts concluded by the administrative entities of the Länder given that administrative procedure law falls under the competences of the latter.[28] Nonetheless, the federation, supported in this matter by the Federal Constitutional Court (Bundesverfassungsgericht –

[25] See for example Maurer (note 2), § 14 n° 12 ff.

[26] See further Schröder (note 20); Masing (note 23).

[27] See on this evolution Peter M. Huber, The Europeanization of Public Procurement in Germany, EPL 7 (2001), 33 ff.

[28] See Hans-Ullrich Gallwas, Verfassungsrechtliche Kompetenzregelungen – ungelöste Probleme des Vergaberechts, VergabeR 2001, 2 ff.; Huber (note 27), 37.

BverfG)[29], justified its competence pursuant to economic law and transposed the directives in the Anti-Trust Code (Act Against Restraints of Competition, Gesetz gegen Wettbewerbsbeschränkungen – GWB)[30]. Since 1998, §§ 97 ff. GWB regulate the award of procurement contracts and establish a special review procedure for aggrieved bidders.[31] Nevertheless, the transposition of the directives has been carried out in a minimalistic fashion, in such a way that outside the scope of the directives the procurement process still falls under private contract law and claims have to be brought to the ordinary courts, who in principle do not grant primary judicial protection to aggrieved bidders pursuant to the right of equal treatment and transparency, but may only grant damages according to the principle of *culpa in contrahendo*. This leads to a complete disjuncture in procurement law according to whether a contract falls under the scope of the EU directives or not. This situation is highly criticised in legal doctrine and administrative courts, which hold that the procedural rules for the award of procurement contracts are administrative procedure rules that should be enforced by administrative courts even if the subsequent contract is a private law contract. Yet the federal courts do not support this critique and approve of the current dichotomy in public procurement law. Firstly, the BVerfG decided that no constitutional provision requires the establishment of effective remedy in procurement matters outside the scope of the EU directives, even if the contracting public entity is bound by fundamental

[29] Bundesverfassungsgericht, 11.7.2006 – 1 BvL 4/00 – nos 56 ff. (www.bverfg.de) = BVerfGE 116, 202, 215 ff.

[30] Gesetz gegen Wettbewerbsbeschränkungen (Act Against Restraints of Competition) in its consolidated version of 15 July 2005 (BGBl. I P. 2114; 2009 I P. 3850), as last amended on 26 July 2011 (BGBl. I P. 1554) (http://www.gesetze-im-internet.de/gwb/, for the English version see http://www.gesetze-im-internet.de/englisch_gwb/index.html).

[31] See on this regulation and the following developments Hanna Schröder/Ulrich Stelkens, Le contentieux des contrats publics en Europe – Allemagne, RFDA 2011, 16 ff.

rights.[32] Secondly, the Federal Administrative Court (Bundesverwaltungsgericht – BVerwG) decided that because of the private law nature of procurement contracts procurement litigation falls under the jurisdiction of the ordinary courts.[33]

This situation exemplifies the problem with the articulation of concurrent public and private rules in German administrative law. Indeed, the rules on equal treatment and transparency during the award procedure of procurement contracts definitely are of a public law nature, in the sense that they establish special rules that are binding for public entities but do not exist for private contracting parties. These regulations cannot remain without implications for subsequent contracts, if only insofar as concerns the consequences in case of illegalities (does an infringement of these rules by the contracting public entity have any consequences for the subsequent contract?).[34] The integration of these rules into a private law regime thus appears problematic and leads to a mixture that is unsatisfactory from a practical as well as from a theoretical point of view.

2.4 Public sector labour law[35]

In Germany, public sector agents are either civil servants, which places them under a public law regime, or employed by way of private law contracts, which theoretically

[32] BVerfG, 13.6.2006 – 1 BvR 1160/03 – nos 50 ff. (www.bverfg.de) = BVerfGE 116, 135, 149 ff.

[33] BVerwG, 2.5.2007 – 6 B 10/07 – nos 6 ff. (www.bverwg.de) = BVerwGE 129, 9, 13 ff.

[34] See on this question ECJ, 10 April 2003, joint cases C-20/01 and C-28/01 (Bockhorn and Braunschweig I), no 36; ECJ, 18 July 2007, case C-503/04 (Bockhorn and Braunschweig II), nos 29 ff.; see further http://ec.europa.eu/internal_market/publicprocurement/infringements/cases/index_en.htm.

[35] See for an overview U. Stelkens (note 1), pp. 835 ff.

should place them under a private law regime. Yet the situation of these contractual agents is characterised by so many public law elements that it would be much easier to recognize their employment contracts as public law contracts, because their contracts can hardly be compared to "real" private law employment contracts. Indeed, it is difficult to integrate contractual agents on a private law basis into the administrative organisational structure, which is completely regulated by public law. Thus, it is not clear which criteria should determine the legal nature of measures taken by an administrative authority vis-à-vis its contractual agents, and in practice this blurs the boundary between public and private law and leads to a mixture of the two in this field.

3. CONCLUSION

This brief overview shows that the actual public-private law divide in Germany is characterised above all by an extreme interweaving of public and private law in the regulation of administrative activity. This is largely due to the historical evolution that was outlined in the first part of this paper, i.e. the fact that it was first (19th and early 20th century) preferred to submit as much administrative activity as possible to private law so as to guarantee judicial protection to private parties, whereas later (since the middle of the 20th century), public law elements were integrated into existing private law regulations. This process has been intensified by the Europeanisation of the regulation of public sector activities, as was illustrated by the example of public contracts. Nowadays, this superimposition of private and public rules gives rise more to auxiliary constructions rather than to theoretically satisfactory and practical solutions, clearly showing that a general theory capable of regulating the public-private law divide for all public sector activities is lacking. Thus, an alternative scientific approach has been developed that stresses the different functions of private law on the one side and public law on the other side[36] and considers public law and private law as "mutually supportive reciprocal models"

[36] See Burgi (note 2), § 18 n° 6 ff.

("wechselseitige Auffangordnungen").[37] However, it seems that this concept is not intended – and therefore not able – to contribute to the solution of specific questions of law.

4. BIBLIOGRAPHY

Christoph Althammer/Christian Zieglmeier, Der Rechtsweg bei Beeinträchtigungen Privater durch die kommunale Daseinsvorsorge bzw. erwerbswirtschaftliches Handeln der öffentlichen Hand, DVBl. 2006, 810 - 817

Michel Fromont, Droit administratif des États européens, 2006

Martin Burgi, Rechtsregime, in: Wolfgang Hoffmann-Riem/Eberhard-Schmidt-Aßmann/Andreas Voßkuhle (ed.), Grundlagen des Verwaltungsrechts I, pp. 1175-1236

Peter M. Huber, The Europeanization of Public Procurement in Germany, EPL 7 (2001), 33-49

Johannes Masing, La poursuite d'intérêts publics à travers la participation directe des collectivités publiques aux activités économiques – Point de vue allemand, RUDH 2003, 107-117

Jens-Peter Schneider, The Public-Private Law Divide in Germany, in Matthias Ruffert (ed.), The Public-Private Law Divide: Potential for Transformation, 2009, pp. 85-98

[37] See Wolfgang Hoffmann-Riem, Reform des allgemeinen Verwaltungsrechts – Vorüberlegungen, DVBl. 1994, 1381, 1386 f., Eberhard Schmidt-Aßmann, Das Allgemeine Verwaltungsrecht als Ordnungsidee, n° 6/28 ff. and the articles in Wolfgang Hoffmann-Riem/Eberhard Schmidt-Aßmann (eds.), Öffentliches Recht und Privatrecht als wechselseitige Auffangordnungen, 1996.

Friedrich Schoch, Geschäftsführung ohne Auftrag im öffentlichen Recht, Die Verwaltung 38 (2005), 91 - 100

Ulrich Stelkens, Verwaltungsprivatrecht, 2005

Ulrich Stelkens, Le développement de la responsabilité administrative en droit allemand, 2009, contribution to the workshop series "Comparative, European and Global Public Law" of the Governance and Public Law Center (Chaire "Mutations de l'Action Publique et du Droit Public"), Sciences Po Paris, available at http://chairemadp.sciences-po.fr/pdf/seminaires/2009/Contribution_Ulrich_Stelkens_nov_09.pdf

5. WEB SITES

http://www.gesetze-im-internet.de/ – Federal statutes

http://www.gesetze-im-internet.de/Teilliste_translations.html – Translations of federal statutes

http://www.bundesverfassungsgericht.de/ – Decisions of the Federal Constitutional Court (since 1998)

http://www.bundesverwaltungsgericht.de/ – Decisions of the Federal Administrative Court (since 2002)

http://www.bundesgerichtshof.de/ – Decisions of the Federal Court of Justice (since 2000)

http://www.saarheim.de/ – Case studies in German administrative law

http://www.bmwi.de/BMWi/Navigation/Wirtschaft/Wirtschaftspolitik/oeffentliche-auftraege.html – General survey of the German public procurement regulation on the website of the Federal Ministry of Economics and Technology