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Administration, public



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Based on a description of the diversity of public administrative activities, this article explains the administrative competences in the federal state and outlines the administrative structure and administrative organisation. A brief survey of the scope of the civil service in Germany is followed by a description of the attempts at administrative reforms and the various sector-specific perspectives on the subject of public administration. The article concludes with an outline of the planning administration.

1 Terminology

Public administrations are a diverse phenomenon. They include citizens' offices and regional governments, prisons and universities, ministries and museums, regulatory authorities and utilities, the Federal Employment Agency (*BA*) and the statutory health insurance funds. Hence, there are significant differences between the remits, external relationships and the personnel working in these administrations. In addition, public administrations can take different legal forms, such as institutions, corporations and foundations under public law and their commercial enterprises in different private legal forms (GmbH, AG).

This diversity is also reflected in the academic preoccupation with public administrations. The functions and services of public administrations, their procedural rules and actual procedures, their formal and informal structures, their internal and external relationships or their personnel structures and recruiting, as well as the career patterns, abilities, attitudes, motivations and frustrations of the people who work within them are worthy subjects of study. Hence, it is not surprising that there is no uniform definition of public administration. As Ernst Forsthoff famously remarked (1973: 1), public administration cannot be defined, only described. However, two key points can be identified: first, there is an essential difference between public administrations compared to other organisations, in that they are subject to a system of democratically legitimised political steering and control. Second, a general distinction can be made between direct administration, i.e. the territorial authorities of the federal, federal state and municipal administrations, and indirect administration, i.e. the institutions under public law, such as the Federal Employment Agency, the German Federal Bank, social welfare funds, public-law broadcasting companies and some other smaller organisations.

2 Administrative competences

In the German system of administrative federalism, the federal states play the key role in the execution and implementation of federal and state laws. According to the German Basic Law (*Grundgesetz, GG*), (Articles 30, 83), public administration in Germany is primarily the responsibility of the federal states and local authorities. The following administrative competences can be distinguished:

- The federation's own administration

The federation maintains its own administration with an independent supporting structure only in a few instances, which are expressly stipulated in the Basic Law. This is referred to as the federal execution of federal laws. It includes the foreign service, the federal financial administration (where the federation and the federal states cooperate), the administration of federal waterways and shipping, the federal police and the federal defence administration.

- Administration on behalf of the federation

The execution of federal laws by the federal states acting on behalf of the federation is a rare occurrence as well. It includes the administration of the federal motorways and federal highways, the federal air transport administration, the approval of nuclear power stations and

plants to store and recycle radioactive substances and the administration of certain taxes. With administration on behalf of the federation, the latter exercises the legal and technical oversight, has a comprehensive right of instruction but also bears the costs. The federation also stipulates the provisions on training and is involved in the appointment of the head of the intermediate authorities (*Mittelbehörden*).

- Execution of federal legislation by the federal states in their own right

The standard form of administrative execution in Germany is the execution of federal legislation by the federal states in their own right. In this regard, the federal states are free to establish the requisite authorities and determine the administrative procedures. This means in practical terms that the administrations of the federal states can exploit the latitude provided by the laws in regard to hospital planning, youth welfare services, environmental protection, urban regeneration and ▷ *Building law*, road traffic law and matters relating to foreign nationals. The federation only exercises legal oversight, not technical oversight. The administrative costs are borne by the federal state; up to 50% of benefit payments to citizens can be borne by the federation.

- Execution of state laws by the federal states

In the case of the execution of state laws by the federal states, the federal state administrations, which also includes the local authorities, execute the laws independently and without the involvement of the federation. This includes in particular the conservation of historic monuments (▷ *Conservation of historic buildings and monuments/heritage management*), theatres, museums, sports, police, regional structural policy, economic development and federal state spatial planning (▷ *Federal state spatial planning, federal state development*).

In summary, after the privatisation of the railway services, postal services and air traffic control, only the foreign service, federal waterways administration, federal police, financial administration, labour administration (as an intermediary administration) as well as the federal defence administration are the remaining public activities with their own federal administrative support structure. The entire field of education, hospital administration, the police, environmental protection measures, roadworks (including federal motorways and federal highways), the tax offices, energy measures, numerous social services such as social welfare assistance, housing benefits, or welfare benefits for war victims and other matters are administered by the federal states and local authorities.

3 Organisation and structure of public administration

In principle, the administrative organisation can be differentiated by two conceivable basic theoretical models of state organisation: a horizontal, territorial model and a vertical, functional model (cf. Benz 2002; Bogumil/Jann 2009):

- Horizontal organisation means that there is in general no consistent bureaucratic structure from the federal to the local level, and that every administrative level has its own specifically demarcated, bundled remit. All tasks in a given territory are carried out by an administrative unit, which is why this model is also known as a territory-based organisational model. This leads to a bundling of administrative tasks and a uniform administration.

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- The functional or vertical model places particular emphasis on the optimal execution of public subfunctions. It is characterised by a consistent bureaucratic structure. A separate organisation is created for each defined sectoral task (e.g. special public authorities). The sectoral, departmental approach and a task-specific organisational model prevails in this regard. In Germany, the foreign service, railways, postal services and the defence force, for example, have always been functionally organised, but examples at the level of the federal states also include public matters such as forestry, the supervision of industry and commerce, police or education.

In general, while the territory-based organisational model tends to facilitate the harmonisation and balancing of tasks that may mutually obstruct each other as well as local democratic control, it also leads to a suboptimal performance of tasks from a technical perspective. The function-based organisational model leads to specialisation and professionalisation but also to centralisation and greater difficulties in relation to control. The conflict associated with this situation can be illustrated quite well in the field of environmental policy in Germany: Due to their preference for the greatest possible degree of direct democratic control, supporters of the Green party actually prefer the territory-based organisational model (a strong local, people-oriented and democratically controlled administration); yet in the field of environmental protection they are often proponents of strong specialist public authorities (state environmental agency, public \triangleright *Nature conservation*), because they fear that environmental concerns could take a backseat to other decision-making criteria in decision-making processes at the local level. Germany has a mixed system of territorial-based and function-based organisational models: this mix initially gave priority to territory-based organisation in the sense that the majority of tasks are bundled at the local level or the level of the regional governments, while certain tasks are managed by a specific organisation.

In the 16 federal states, a distinction can be made between two-tier non-city states, three-tier non-city states and the three city states. A two-tier administrative structure tends to strengthen the sectoral administration, while a three-tier administration is to the benefit of the general administration.

The non-city states (especially the larger federal states, except for Lower Saxony) mostly have a three-tier administration. This system is characterised by the attempt to concentrate the tasks allocated to the state as far as possible at the intermediary level of the regional governments (public bundling). In recent years, tasks of the lower and higher state authorities were frequently shifted to this tier, which led to an increase in responsibilities at the intermediary level (e.g. in Baden-Württemberg). The forms of intermediary state authorities vary greatly. Neither their tasks nor their integration in the administrative structure are the same across Germany. Three models can be distinguished: a three-tier structure with federal state administrative agencies in Saxony-Anhalt and Thuringia, a three-tier structure with functional remits in Rhineland-Palatinate and a three-tier structure with regional intermediary authorities in Hesse, Baden-Württemberg, Bavaria, Saxony and North Rhine-Westphalia.

A two-tier administration without a general authority at an intermediary level is mostly found in federal states with a smaller population (less than three million inhabitants, with the exception of Saxony-Anhalt and Thuringia), except for Lower Saxony. This model is characterised by the attempt to reduce the greater number of special public authorities resulting from the lack of a intermediary authority through merging (concentration) or conversion into enterprises of

the federal state. In addition, a reduction of the scope of lower federal state administration is envisaged. This is achieved by integrating this level into the higher administrative level of the federal state or by reallocating tasks to the local authorities and districts. The extent of the transfer of tasks to the level of the local authorities depends on the municipal territory structure.

In addition to the two-tier or three-tier structure, the federal state can be distinguished according to the size of the municipal territorial structure. All non-city states have an administrative level above the municipal tier (11,093 municipalities as of the end of 2013), i.e. the administration of the 295 districts and 107 urban districts. The three city states (Berlin, Hamburg, Bremen) are both urban districts and city states (hence, with the same standing as federal states). In the non-city states, the average number of inhabitants per municipality ranges between 1,730 (in Rhineland-Palatinate) and 44,330 in North Rhine-Westphalia, while the average number of inhabitants per district ranges between 95,510 in Thuringia and 338,741 in North Rhine-Westphalia. This phenomenon is due to the fact that the municipal and district reforms undertaken in the 1970s differed considerably in their extent (Bogumil 2015).

4 Scope of the civil service

The territorial authorities (federation, federal states, municipalities) and their economic enterprises are the most important aspect of public administration in Germany. This is also illustrated by the number of employees. At the end of 2012, the German civil service had a total of 4.6 million employees. Most of these work for the territorial authorities: in the administration of the federation (11%), in the administration of the federal states (51%) and in the municipal administrations (30%). The remaining 8% are employed in indirect administration.

Up to the early 1990s, there was a steady increase in the number of employees in the civil service; this trend peaked with the takeover of the East German civil servants with close to 6.7 million employees as part of German Reunification in 1991. Not inconsiderable personnel cuts have taken place since then in the wake of budget consolidations and privatisations (postal services, railways services). According to Vesper (2012: 43) and taking into account the outsourcing from the core budgets (hospitals, municipal commercial enterprises, universities), this results in a total reduction in personnel of 18%. Given that part-time work has considerably increased as well – from 16% to 33% in the period from 1991 to 2012 – Germany would now appear to have an extensively reduced public service by international comparison.

5 Administrative reforms

Administrative reforms may be defined as planned modifications to the organisational, legal, HR and fiscal structures of the administration. They are primarily part of the remit of the federal states and the local authorities, as these are responsible for most administrative activities.

An overview of the development of public administration in Germany reveals a rather inconsistent picture. There are clear tendencies towards a remarkable continuity of the German administrative system, yet, at the same time, obvious changes have taken place. Public administration today, as much as 50 years ago, is still characterised by the hallmarks of a classic,

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Weberian bureaucracy, documented in files, hierarchical offices, generally regulated powers, official business conducted in line with and based on rules and regulations, etc. The defining structural features of public administration, whether in regard to personnel (career civil service), macro- and micro-organisation (three tiers, linear organisation), procedures (compliant with laws and regulations, justiciability) and finances (fiscal accounting), have not changed despite continuous attempts at reform.

Yet the public administration of 2015 is not comparable to that of 1949, let alone to the administration of the German Empire. Modern administration fundamentally differs from its predecessors in regard to its tasks, scope, diversification and professionalisation, in regard to the recruitment and qualifications of its employees, its techniques, means of communication and procedures and, last but not least, due to its diverse interactions and connections with its social and economic environment and political control. Five major phases of administrative reform can be distinguished in Germany:

- 'active policymaking' and municipal territorial reform at the end of the 1960s and early 1970s,
- efforts to cut 'red tape' (deregulation) and the simplification of public administration since the end of the 1970s,
- discussions regarding a more citizen-friendly approach, citizens' offices and civic society since the end of the 1970s,
- the business administration-inspired internal modernisation of administration inspired by the 'Public Management' movement and the discussions on privatisation and liberalisation since the early 1990s, as well as
- the more recent administrative structural reforms in the federal states since the beginning of the 21st century.

An exhaustive review of these reforms is not possible at this point (cf. Bogumil/Jann 2009: 219 et seq.), yet a brief outline of the opportunities and limits of administrative reforms should not be omitted. In regard to the willingness of public administrations to accept change, it should be noted first that they pursue more complex organisational objectives (legality, economic feasibility, democratic legitimacy and efficiency) than private enterprises. Public administrations, moreover, have a particular organisational structure. The civil service enjoys special institutional protection (permanence of employment, security of tenure, very limited market competitiveness, equal access to statutory benefits) and a specific form of political control (competing political parties). Both the institutional protective factors and the difficulties of politically steering change processes in administrations mean that changes in public administrations are only rarely triggered from within.

Hence, administrative reforms generally fail due to a strong resistance to change from within the organisations. The creation of an institutional as well as individual benefit and the active shaping of reform processes are always necessary prerequisites. This is the only way the micro-political processes, which are part of everyday life within an organisation but only infrequently discussed, can be steered so that they can be used to achieve the reforms. Whenever a reform process produces clear winners and losers, the micro-political conflicts within the organisations are exacerbated. When core convictions and established procedures on the part of the parties

involved are called into question, this results in considerable problems; it is not easy to create incentives for changing the rules and procedures of public administration.

In the face of this resistance to change there is an intensive debate in the research on administrative reform about the potential factors that enable change processes to succeed. As a rule, path dependence, institutional arrangements, stakeholders, ideas and opportunities are significant as general explanatory characteristics for reforms. If these essential characteristics are examined in the context of reform processes within public administration, the prospects for comprehensive administrative reforms are generally limited given the prevailing general institutional framework and stakeholder constellations. This is the largely consistent explanation of various approaches based on organisational and control theory. Administrative reforms in most cases are not planned, problem-solving processes but rather gradual, step-by-step adjustments to changed conditions, often following historical patterns of solutions.

To overcome the internal resistance to change and create new methods and procedures, external pressure is generally necessary to (occasionally) impact change processes and to steer the reforms (also) from the outside. The opportunities to exert pressure on public administrations are budgetary crises, competition in regard to locations and image, as well as pressure exercised by citizens (e.g. through the direct election of mayors at the municipal level) or through public involvement. In these cases, it is either possible to persuade the administrations concerned to undertake the reforms themselves for reasons of justification or legitimisation, or the political actors feel compelled to act by imposing budgetary cuts, by setting clear requirements for reform (rarely) or by legislating such reforms, thus compelling the administrations to implement them. One key problem remains, however: administrative policy as a political decision-making process to steer the administration (not to be confused with the political activities of the administration) is largely driven by the administration itself. Administrative reforms must be implemented by the administrations themselves, and this offers much scope to undermine the reform objectives if the political decision-makers do not pay sufficient attention and fail to steer the forms intelligently. In addition, not always, in fact even rarely, is there a clear and unambiguous understanding of the correlations between administrative reforms and the desired results, which means that intended measures are frequently controversial. Overall, the opportunities for comprehensive reform of administrative organisations are limited.

However, in regard to current structural administrative reforms of the federal states in recent years, the political decision-makers were in part able – in the face of opposition from elements of the state administrations – to push through comprehensive reform plans or to ensure the achievement of certain reform objectives through strictly structured and monitored implementation processes, through external pressure transmitted by means of budget cuts and the exploitation of existing power constellations, e.g. the elimination of regional governments in Lower Saxony and of numerous specialist authorities in Baden-Württemberg (cf. Bogumil/Ebinger 2008).

6 Administrative sciences

Administrative sciences examine the various specialist aspects of public administration in the context of the general academic disciplines, e.g. jurisprudence, macroeconomics, business administration, political science, sociology, psychology, history, legal philosophy or the general theory of state. In jurisprudence, the main focus is on the legality of administrative actions or, e.g. the law relating to the civil service, in macroeconomics it is on the origins and effects of public revenues and expenditure, business economics focuses on public enterprises and the efficiency of administrative activities, sociology focuses on the interactions between the administration and society, psychology studies the interactions of the administration with its environment and people, political sciences approaches administration as a tool to pursue political goals and political control of the administration. As administrative science plays a role in numerous disciplines, the term is often used in its plural form, e.g. the German University of Administrative Sciences (*Deutsche Universität für Verwaltungswissenschaften*) in Speyer.

The notion that *administration* as a field of study requires an interdisciplinary approach also becomes clear if the different requirements that govern public action are taken into account (cf. Offe 1974: 344; Bogumil 2001: 26). Administrative actions are always underpinned by different rationalities:

- a test of legal correctness (legal rationality), i.e. the question of legality, consistency with the law, equal treatment and legal remedies,
- a test of economic feasibility (economic rationality), i.e. the question of the efficiency of state actions,
- a test of political consensus (political rationality in the sense of ‘politics’), i.e. the question of democratic responsibility and control, in other words, the legitimacy of the administration, and
- a functional test of effectiveness (political rationality in the sense of ‘policy’), i.e. the question of the effectiveness of political and administrative measures.

The problem is that administrative action is always subject to all of these tests simultaneously and that there is no superordinate criterion for these rationalities. This means that interdisciplinary discussion is necessary to fully encompass such questions. Yet the notion of a new *administrative sciences* discipline as an independent discipline did not prevail in Germany; on the contrary, unlike in the US where a sectoral approach to *public administration* as a field of study prevails (Bogumil/Jann 2009).

7 Planning administration

In a federation with a constitutional guarantee of \triangleright *Local self-government*, the various levels must cooperate in spatial policy. This separation of responsibility is institutionalised in Germany especially through the \triangleright *Mutual feedback principle* in the Federal Building Code (*Baugesetzbuch*) and the Federal Spatial Planning Act (*Raumordnungsgesetz*). This provides that the regulation of the subspaces fit with the structure of the overall space, and the regulation of the overall

space must take the circumstances of the individual spaces into account – hence, it imposes a coordination duty. A distinction can be made between different levels of spatial planning, from the guiding principles and spatial development plans of the federation through the federal state spatial planning and regional planning of the federal states down to municipal urban land-use planning (preparatory and binding land-use planning).

As part of the Federalism Reform of 2006, legislative powers in connection with ▷ *Spatial planning (Raumordnung)* were allocated to the federation as part of the concurrent legislative powers; these powers are exercised primarily by the Federal Office for Building and Regional Planning (*Bundesamt für Bauwesen und Raumordnung, BBR*) as the supreme federal authority in the remit of the Federal Ministry for the Environment, Nature Conservation, Construction and Nuclear Safety (*Bundesministerium für Umwelt, Naturschutz, Bau und Reaktorsicherheit, BMUB*).

The federal states differ in the administrative units to which they have assigned the responsibility for federal state spatial planning, e.g. the Ministry of Economic Affairs in Baden-Württemberg, the Ministry of Agriculture in Lower Saxony or even to an independent Ministry for Infrastructure and Federal State Spatial Planning in Brandenburg. Their primary responsibility is to concretise the principles of spatial planning established by the federation for the state territory.

▷ *Regional planning* is the connecting link between federal state spatial planning and municipal urban land-use planning. As a public task, regional planning is responsible for the concretisation and refining of federal state spatial planning at the regional level. Even though the organisation of regional planning partly takes place at the local level or as a joint responsibility of the state and local authorities, it should be considered a state task due to the need for approval (cf. Hesse 2006: 7). The preparation and updating of a regional plan is a key instrument of regional planning. It is the central design and coordination instrument of spatial planning, which should reflect all ecological, economic, social, cultural and other infrastructural requirements. A further task of regional planning is to coordinate and align all spatially relevant planning activities (e.g. settlements and expansions of large-scale retail trade, wind turbines, etc.). In so doing, the regional spatial planning programme must make allowance for the development potentials of all municipalities but keep competition between the municipalities under control to ensure that no municipality can develop at the expense of neighbouring ones. In addition, the demands of federal state spatial planning must be taken into account.

The most important instrument of spatial development planning at the municipal level is ▷ *Urban land-use planning*. Urban land-use planning, in turn, forms part of the spatial planning objectives (▷ *Objectives, principles and other requirements of spatial planning [Raumordnung]*), in particular in the requirements of federal state spatial planning and regional planning. Urban land-use planning is a mandatory task of self-government. The ultimate binding decision on land use is thus in the hands of the elected local councillors. Urban land-use planning consists in the first instance of the ▷ *Preparatory land-use plan* and the ▷ *Binding land-use plan*. The preparatory land-use plan reflects the structural objective by setting out the type of land use in broad lines for the entire municipal territory. The preparatory land-use plan is legally binding on the local authorities and other authorities.

As urban land-use planning affects diverse interests, the planning process must fairly weigh the various public and private concerns against and among each other (▷ *Weighing of interests*). This must be done using the instruments of formal civic participation and the hearing of public

agencies. The so-called ‘early civic participation’ and the hearing of public agencies should serve to discuss alternative planning options and to outline the general problem. After the draft plan has been adopted by the elected local councillors, the draft is publicly displayed. Mandatory civic participation takes place in this phase, as a rule in the form of a town hall meeting.

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