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Provision of public services

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Leibniz Association

Alexander Milstein

Provision of public services

Contents

The term ‘provision of public services’ refers to services for the common good in the broader sense: those required by individuals in order to have an acceptable lifestyle and which are subject to regular state influence because of their essentially market-centred provision.

1 Basic principles and development

Safeguarding the provision of public services is defined as one of the key responsibilities of ▷ *Spatial planning (Raumordnung)* by the Federal Spatial Planning Act *(Raumordnungsgesetz, ROG)* (cf. section 2(2) nos. 1 and 3 of the Federal Spatial Planning Act). Although the term 'provision of public services' is widely used in case law and literature, even basic aspects of the concept remain unclear. On the one hand this is due to the fact that the term is closely associated with its creator, Ernst Forsthoff, and emancipation from his definition has proven difficult to date (cf. Kersten 2005: 567). On the other hand, the primary aim in case law and literature was to construct the provision of public services as a concept of a system of general administrative law, which is why vagueness around the concept was tolerated. Any interpretation of the term in ▷ *Spatial planning law (Raumordnungsrecht)*, however, must be more specific about its meaning while taking into account the specific regulatory context of the standard.

1.1 Origin in fascism and history in the constitutional state

The term 'provision of public services' was introduced into the academic debate in 1938 by the German legal scholar Ernst Forsthoff in his *Die Verwaltung als Leistungsträger* (The Administration as Provider of Services) (Forsthoff 1938). It was created as an alternative plan to the liberal classicists of the Weimar Republic, who emphasised the freedom of individuals in the civic sphere and constructed the state primarily as a means of administrative intervention (Meinel 2011: 142 et seq.). This doctrine had become irrelevant due to the National Socialists' seizure of power. Forsthoff's starting point was thus that 'fundamental rights belong in the past' (Forsthoff 1938: 1, 43). 'The total state' (Forsthoff 1933) reversed the liberal government's existential separation of state and society and thus assigned jurisprudence the task of dogmatic reconfiguration of public law. Forsthoff tried to overcome this challenge with an institution with 'responsibility for the provision of public services' under the National Socialist state, which was to provide the populace with vital services and was equated with a right to the sharing of these services by the *Volksgenossen* or members of the Nazi state (cf. Meinel 2011: 154). He derived this doctrine from real sociological findings influenced by Max Weber. Forsthoff observed a social need among the populace in the early 20th century, who for lack of their own resources 'do not acquire the goods that are necessary or [that they] aspire to beyond what is necessary on their own, but by way of appropriation'; he called this the disintegration of 'effective and controlled space' (Forsthoff 1938: 4 et seq.). The fact that a city dweller is dependent on a highly differentiated division of labour to earn their living led Forsthoff to an initial definition of the term: 'I refer to those activities undertaken to satisfy the need for appropriation as the provision of public services' (Forsthoff 1938: 6).

The institution responsible for the provision of public services became redundant when the Federal Republic of Germany was formed as a constitutional state (Meinel 2011: 217). The term 'provision of public services' nevertheless became established in jurisprudence. This cannot be considered a matter of course given Forsthoff's initial proximity to National Socialism – attention should be drawn to his affirmative work *Der totale Staat* (The Total State) (Forsthoff 1933). Nonetheless, he was vindicated in 1952 and like many other legal practitioners of his generation he was able to translate his work from fascism to the constitutional state (cf. Kersten 2005: 555 et seq.; Stolleis 2012). In the case of provision of public services, however, this was only

possible by abandoning the basic doctrinal construction (Krajewski 2011: 20; Leisner 2011: 66). For example, in the first edition of his seminal textbook on administrative law, Forsthoff did not mention the institution responsible for the provision of public services, but rather addressed them independently of the political philosophy which gave rise to the idea (cf. Forsthoff 1950, 1959). However, he did not manage to derive any additional legal benefit from the concept. His attempt to elevate the provision of public services to a concept associated with the ordering function of the constitutional state by expanding the original definition to 'all services provided by the administration to all comrades' (Forsthoff 1973: 370) or everything that 'belongs to the normal infrastructure of modern existence' (Forsthoff 1971: 77) failed to stand up to the prevailing doctrine (cf. Meinel 2011). The provision of public services was not accepted as a legal concept; it was reduced to its sociological, heuristic core by the prevailing doctrine (cf. Badura 1966; Ossenbühl 1971; Börner 1971).

In spite of this weakness, the notion of public service provision developed into one of the formative concepts of administrative law. On the one hand this was partly due to its comprehensive adoption by the highest judicial authority including the Federal Constitutional Court *(Bundesverfassungsgericht, BVerfG)*, which had accepted the concept at an early stage and counted the 'right to the provision of public services [...] as one of the foundations of our social order' (Federal Constitutional Court, order of 22 January 1959, 1 BvR 154/55, *BVerfGE* [Federal Constitutional Court Decisions] 9, 124/133; cf. also Federal Administrative Court *[Bundesverwaltungsgericht]*, order of 25 April 1957, II C 50.55, *BVerwGE* [Official Reports of the Federal Administrative Court] 5, 39/40; Federal Court of Justice *[Bundesgerichtshof]*, judgment of 10 October 1958, 5 StR 404/58, *BGHSt* [Federal Court of Justice Decisions in Criminal Cases] 12, 89/90), without, however, helping to define the term more specifically. In addition, the neologism 'provision of public services', which is borrowed from Hegel's 'services for the general interest' and von Stein's theory of administration (Huber 1974), is very closely associated with the fundamental consensus of the Federal Republic of Germany that there had to be types of services that were different to the usual service relationships of capitalism and thus had to be subject to the influence of the state (cf. Hesse 1962: 78) (Welti 2005: 533; Kotzur 2013: 201).

1.2 Municipal provision of public services

This statist notion was reflected in the traditional legal framework of the provision of public services in the Bonn Republic, which was marked by the state's strong influence over the economy, ranging from the direct provision of services by way of state monopolies to indirect control of the competition by subsidies and the granting of special rights. The most incisive example of this economic model is what is known as municipal provision of public services (cf. Hellermann 2000: 17 et seq.). Municipal provision of public services is characteristic of the constitutional guarantee of self-government of the local authorities from Article 28(2) sentence 1 of the Basic Law *(Grundgesetz, GG)*. This gives the latter the right and the 'responsibility to regulate all matters of the local community within the framework of the laws'. This general competence of the local authority includes 'those needs and interests rooted in or specifically relating to the local community, in other words common to the municipal population as such, because they affect the coexistence and cohabitation of the people in the municipality' (Federal Constitutional Court, order of 23 November 1988, 2 BvR 1619/83, *BVerfGE* 79, 127/151). Thus ensued the prevailing opinion of an exception-to-the-rule relationship in favour of the municipality (cf. *BVerfGE* 107,

1/13; Pieroth 2016: para. 12). According to this, typical services such as water and power supply including energy production, waste management, the financial services of the savings banks as well as the running of other municipal facilities such as outdoor pools and theatres are included in municipal provision of public services. However, it is irrelevant whether the actual services are provided in the legal form of private or public law (Mehde 2015: para. 92 et seq.).

The guarantee of self-government ends where local jurisdiction stops. Supra-local planning decisions, such as ▷ *Planning approval* under railway law, are no longer included in the matters handled by the local community (Federal Administrative Court, order of 17 April 2000, 11 B 19/00, *NVwZ [Neue Verwaltungszeitschrift]* 2001, 88/89). Municipal provision of public services is further limited by the fact that local self-government can be restricted by acts of parliament. Only a very narrow core area is absolutely protected and thus sacrosanct. Apart from this, municipal provision of public services can also be transferred to the state, taking the principle of proportionality into account. For example, it is possible – as ruled by the Federal Constitutional Court in the landmark Rastede order – to transfer waste removal from the local authorities to the districts if this is necessary, for example for economic reasons (Federal Constitutional Court, order of 23 November 1988, 2 BvR 1619/83, *BVerfGE* 79, 127).

1.3 Europeanisation, liberalisation and renaissance

However, the breaches of the competition law of the European Union (EU; ▷ *European Union*) arising from this state-centric economic model were only tolerated by the European Commission until the mid 1980s (cf. European Commission 1985; Szyszczak 2007: 2 et seq.). As a general rule, companies offering provision of public services – including publicly owned ones – are not allowed to exploit their market power to the detriment of consumers and the state must not grant subsidies that distort the competition (Article 101 et seq., Article 106(1), Article 107 of the Treaty on the Functioning of the European Union (TFEU)). The legal enforcement of these provisions resulted in an extensive liberalisation of the markets, often involved the ▷ *Privatisation* of providers and radically transformed the scope of provision of public services in Germany (cf. Sauter 2008).

EU law does, however, also recognise that supplying populace nationwide cannot be guaranteed by the market alone, and therefore provides for exceptions to competition law for 'services of general economic interest' (Article 106(2) TFEU). This clause allows the state to maintain its influence on certain services for the common good. Although there is a strict doctrinal difference between the legal institution of services of general economic interest and concepts such as the German provision of public services or the French 'service public', ultimately there are nonetheless major similarities between European and national notions (cf. Welti 2005: 568). How much state intervention is appropriate by legal and political standards is the subject of intense debate, which, in Germany, has led to a revisiting of the meaning of public provision and has recalled the concept of provision of public services to the awareness of the expert public (cf. Krajewski 2011: 29 et seq.; Weiß 2013: 669). In addition to the renewed and rising significance of municipal provision of public services (remunicipalisation), this renaissance was marked by the discovery of the concept by the legislature and the associated elevation of the provision of public services to a legal concept (in particular section 3(2) nos. 1 and 3 of the Federal Spatial Planning Act; as well as section 1 of the Regionalisation Act *[Regionalisierungsgesetz, RegG]*; section 50 of the Water Management Act *[Wasserhaushaltsgesetz, WHG]*; cf. Ronellenfitsch 2009: 29 et seq.).

2 Scope

It has become apparent that the definition of provision of public services cannot simply be tied in with Forsthoff's theory, because he radically altered his own concept several times and the factual and legal framework he used as the basis for his ideas has also changed considerably (cf. Krajewski 2011: 24 et seq.).

2.1 Essential provision for all population groups

With regard to the concept for the purposes of administrative law, it is debatable whether the scope of provision of public services is limited to services that are 'vital' or 'essential' (Schmidt 2003: 225; Franz 2005: 13) or whether they cover all services for the common good. The legislature opted for the second variant for spatial planning law. This is because section 2(2) no. 3 sentence 1 subsentence 1 of the Federal Spatial Planning Act makes a distinction between general 'provision of services and infrastructures for the provision of public services' and 'provision of basic services for all population groups', limited to essential services. These basic services are essentially stipulated by constitutional law, because the Basic Law constructs the Federal Republic of Germany as a social state, rather than an absolutist welfare state, and thus allows the 'conditions of freedom of the individual in the modern world' (Huber 1974: 160 et seq.). Not only does this 'freedom through the state' (Isensee 2006: para. 14) encompass the absence of material need, it also guarantees the individual effective participation in society (Kingreen 2002: 99). Spatial planning law aptly describes this approach as 'equal opportunities' and thus concurs with the case law of the Federal Constitutional Court, according to which not only must the 'physical existence of people, i.e. food, clothing, furniture, accommodation, heating, hygiene and health' be guaranteed by the constitution, but also 'safeguarding the possibility of maintaining interpersonal relations and a minimum level of participation in social, cultural and political life' (Federal Constitutional Court, judgment of 9 February 2010, 1 BvL 1/09 et al., *BVerfGE* 125, 175/223; by contrast Federal Constitutional Court, order of 19 December 1951, 1 BvR 220/51, *BVerfGE* 1, 97/104). This is not just a mere national objective, but rather a subjective right in the form of the fundamental right to the guarantee of a humane subsistence level, based on human dignity in conjunction with the social state principle and which grants the individual a direct constitutional entitlement to benefits (Herdegen 2009: para. 121).

Case law has gradually substantiated this right and thus also determined the scope of the basic provision of the provision of public services in spatial planning. For example, the Federal Constitutional Court highlighted the close link between subsistence level and the provision of public services in a key decision on energy law: 'Energy supply is included in the scope of provision of public services; it is an indispensable service to citizens to ensure a humane existence' (Federal Constitutional Court, order of 20 March 1984, 1 BvL 28/82, *BVerfGE* 66, 248/258; most recently confirmed by the Federal Constitutional Court, judgment of 17 December 2013, 1 BvR 3139/08 et al., *BVerfGE* 134, 242). According to the federal courts, state benefits (Federal Administrative Court, judgment of 1 December 1998, 5 C 29/97, *BVerwGE* 108, 56), medical insurance (Federal Social Court *[Bundessozialgericht]*, judgment of 15 November 1973, 3 RK 50/72, *BSGE* [Federal Social Court Decisions] 36, 238) and local public transport (*ÖPNV*; ▷ *Public transport*) are considered 'essential needs' to be met by way of provision of public services (Federal Court of Justice, judgment of 23 September 1969, VI ZR 19/68, *BGHZ* [Decisions of the Federal Court

of Justice on Civil Matters] 52, 325/328); the guarantee of railway and postal services and telecommunications is also provided for in special constitutional regulations (cf. Article 87e(4), Article 87f(1) Basic Law). As the substance of the fundamental right to the guarantee of a humane subsistence level depends 'on the social conceptions of what is required for a humane existence' (Federal Constitutional Court, judgment of 9 February 2010, 1 BvL 1/09 et al., *BVerfGE* 125, 175) or on the efficiency of the social state (Herdegen 2009: para. 121), it is not possible to compile an exhaustive list of basic services provided for under the constitution (Papier 2003: 686). It should be broadly the same as the services referred to by the judiciary as provision of public services. These include, for example, broadcasting (Federal Administrative Court, judgment of 10 December 1971, VII V 45.69, *BVerwGE* 39, 159), social housing (Federal Court of Justice, judgment of 29 January 1992, 5 StR 338/91, *BGHSt* 38, 199/201), waste removal (Federal Administrative Court, judgment of 11 November 1999, 3 C 34/98, *BVerwGE* 110, 61) as well as the opening of a current account (Federal Court of Justice, judgment of 11 March 2003, XI ZR 403/01, *BGHZ* 154, 146). The ruling of the Federal Administrative Court that the municipal establishment of a Christmas market constitutes one of the statutory duties of the local authorities (Federal Administrative Court, judgment of 27 May 2009, 8 C 10/08, *NVwZ* 2009, 1305), on the other hand, seems somewhat dubious.

It must be noted that although the stipulations of constitutional law are binding, the parliamentary legislature does have some leeway in determining the scope of the provision of public services. The basic provision of public services amounts to more than just 'enforcement of the constitution' (cf. Storr 2001: 112; Steiner 2001: 2922), but rather the fundamental right to the guarantee of a humane subsistence level is, like every participation right, 'subject to what is possible with regard to what the individual can reasonably demand from society' (Federal Constitutional Court, judgment of 18 July 1972, 1 BvL 32/70 et al., *BVerfGE* 33, 303/333). The Basic Law assigns this judgment to the legislature alone. With regard to spatial planning law, the legislature ruled that basic provision should only be guaranteed 'within reason' (section 2(2) no. 3 sentence 1 subsentence 1 of the Federal Spatial Planning Act). Not only does this allow for a distinction to be made according to sub-regions (▷ *Equivalence of living conditions*), but it also means that the level of service must be based on economic reasonability criteria (Runkel 2010a: para. 133).

A look at case history can help to identify key characteristics of the provision of public services. One the one hand it becomes clear that the concept is based on a broad definition of services that is not just limited to ▷ *Services* in the narrower sense, but also includes physical goods (cf. section 611 of the German Civil Code *[Bürgerliches Gesetzbuch, BGB]*; Article 56 TFEU). This notion is expressed in the Federal Spatial Planning Act by the two terms *services and infrastructures*. Less clear is whether sovereign activities in the narrower sense such as justice or the police, which do not require a bilateral service relationship between the provider and the recipient, but which are instead characterised by unilateralism and subordination, are to be considered provision of public services. Whereas Forsthoff expressly excluded these domains from his interpretation (cf. Forsthoff 1959: 37), more recent definitions consider these state activities to be provision of public services (cf. Runkel 2010a: para. 134). Although the latter view may be subsumed under a broad interpretation of the concept, both the history of the concept and the differing doctrinal derivation suggest otherwise: the duty of the state to protect life and health, also referred to as the 'fundamental right to safety' (Isensee 1983) is based on the fundamental right to physical integrity (Article 2(2) of the Basic Law) and is thus closely related to the state monopoly on the legitimate use of force.

2.2 The common good characteristic

Provision of public services going beyond the basic provision is characterised by the ▷ *Common good* (Knauff 2004: 48; Einig 2008: 17). This characteristic is also reflected in case law, which considers the provision of public services to be 'highly important common interests' (Federal Administrative Court of 11 November 1999, 3 C 34/98, *BVerwGE* 110, 61/62) or adjudges it a 'particular public interest' (Federal Administrative Court, judgment of 29 June 1999, 1 D 104/97, *BVerwGE* 113, 361/363). Thus, the provision of public services not only needs to serve a particular interest, it must also 'embody the cause of the public good' (Isensee 2006: para. 5). These matters are not already established in Basic Law, but rather must be determined by parliamentary scrutiny (Federal Constitutional Court, judgment of 23 January 1990, 1 BvL 44/86 et al., *BVerfGE* 81, 156/189) and laid down in law. The principle of section 2(2) no. 3 of the Federal Spatial Planning Act has been more specific to that effect by the preservation of central public amenities, the protection of critical infrastructures and their accessibility by sub-regions. Furthermore, it is the responsibility of the planning agency to fill out the concept when exercising its discretionary power. The concept of the 'fictitious average citizen' (Knauff 2004: 49; cf. Franzen/Thüsing/Waldhoff 2012: 33 et seq.) of the relevant sub-region can be used as a point of reference.

2.3 The new role of the state

According to Forsthoff's notion, the concept of provision of public services was synonymous with state provision: it 'served to [demonstrate] a public law element in the service functions of the modern state [...]' (Forsthoff 1959: 9). It did not matter, however, whether the services were provided under public or private law. Limiting the provision of public services to the state in this way has been broadly accepted in case law and the literature to the present day (cf. Burgi 2002: 258; Franz 2005: 12; Rüfner 2006: para. 3). This understanding means that the concept would lose a significant part of its application given that since the extensive privatisations of the 1990s, many services which were traditionally included in the provision of public services are no longer provided by the public authorities (Püttner 2002: 38). Adhering to this 'state paradigm' would also contradict applicable law. This becomes particularly clear in section 2(1) no. 2 of the Environmental Information Act *[Umweltinformationsgesetz, UIG]*, which expressly includes 'real' private companies which provide environmental public services (cf. Reidt/Schiller 2010: para. 19 et seq.). Likewise, spatial planning law (section 2(2) nos. 1 and 3 of the Federal Spatial Planning Act) circumvents the limitation of the provision of public services to state services. Its primary concern is solely to provide the populace in the area in question with these services. Furthermore, the departure from Forsthoff is not least reflected in the case law of the Federal Constitutional Court. In its ruling on Garzweiler II, the court acknowledged that private companies can also provide public services, and thus legally enacted the actual shift (Federal Constitutional Court, judgment of 17 December 2013, 1 BvR 3139/08 et al., *BVerfGE* 134, 242). It can, therefore, be noted that the provision of public services as per section 2 of the Federal Spatial Planning Act – just like the concept of services of general economic interest in European Union law – is neutral with regard to the entity of the provider. The state is therefore not limited to the role of service provider, but can also leave it to the market to provide the populace with these services. Because of commitments in constitutional and ordinary law, however, it is obliged to prevent imminent service deficits by way of state intervention, for example with planning instruments (the so-called 'guarantor state'; cf. Einig 2008; Krajewski 2011: 552 et seq.).

3 Provision of public services through spatial planning

Spatial planning law has fulfilled the abstract mandate to safeguard the provision of public services (cf. section 1(2) of the Federal Spatial Planning Act) in particular with the instrument of the central-place theory (▷ *Central place*) (Kluth 2012: 163). This is set down in section 2(2) no. 3 sentence 2 of the Federal Spatial Planning Act as a basic mechanism for ensuring the consistent provision of public services to the populace at a reasonable distance and at acceptable prices (cf. Advisory Board for Spatial Development *[Beirat für Raumentwicklung]* 2011). This principle ties in with section 2(2) no. 2 sentence 4 of the Federal Spatial Planning Act, in which the development of settlements is also geared towards central places. The special significance of the concept is highlighted by section 8(5) sentence 1 no. 1 lit. b) of the Federal Spatial Planning Act, which provides for central places to be stipulated within the rules for spatial development plans. Stipulating the number and facilities of the central places as an objective of spatial planning (▷ *Objectives, principles and other requirements of spatial planning [Raumordnung]*) in spatial development plans initiates the specific steering effect (Ruttloff 2012: 59).

This stipulation, however, does not in itself bring about the realisation of the objectives, as spatial planning as per section 1(1) of the Federal Spatial Planning Act is limited to the coordination of beneficiary interests (Jarass/Schnittker/Milstein 2011: 215) and the implementation of spatial planning stipulations is thus dependent on third parties. However, the latter can only be compelled to implement the facilities of the central places to a minimal extent through spatial planning law. Spatial planning is relativised by the fact that private companies are only bound to the objectives of spatial planning in exceptional cases (cf. section 4(2) and (3) of the Federal Spatial Planning Act; Kment 2003). In addition, the objectives of federal state spatial planning (▷ *Federal state spatial planning, federal state development*), with the exception of ▷ *Urban land-use planning* (cf. section 1(4) of the Federal Building Code *[Baugesetzbuch, BauGB]*), does not compel its addressees to implement the stipulations, but rather both the sectoral planning agencies (▷ *Spatially-relevant sectoral planning*) – for example, planning for federal highways, schools or hospitals – and private stakeholders take decisions about their activities independently (cf. section 4(1) of the Federal Spatial Planning Act; Goppel/Runkel 2010: para. 22 et seq.; Kümper 2014: 825 et seq.). The limitation of section 5 of the Federal Spatial Planning Act also applies to federal planning. Even if this means that spatial planning is intended to significantly help to safeguard the provision of public services for ▷ *Rural areas* in particular, the steering options of spatial planning are first and foremost limited to 'location planning' (cf. Rojahn 2011: 211). In certain aspects such as ▷ *Retail trade*, spatial planning can thus generate a crucial steering impetus for safeguarding the provision of public services for all areas (cf. Koch 2012: 241 et seq.), whereas ambitious central-place concepts are difficult to implement (▷ *Shrinking cities*) (Edenharter 2014: 289 et seq.). Developing structurally weak areas is much more dependent on funding (Gatawis 2002: 268 et seq.). In this respect, even though public funds are included in the binding effects of the requirements of spatial planning as per section 3(1) no. 6 in conjunction with section 4 of the Federal Spatial Planning Act, the promotion of regional economic development as per Article 91 a(1) of the Basic Law is in fact subject to compliance with spatial planning by way of a special spatial planning clause (cf. section 2(1) sentence 1 of the Law on the Joint Task 'Improving the Regional Economic Structure'*[Gesetz über die Gemeinschaftsaufgabe „Verbesserung der regionalen Wirtschaftsstruktur", GRWG]*). The European Union's cohesion policy (▷ *European*

regional policy) (cf. Article 174 et seq. TFEU), which is of huge significance in practice, on the other hand, is not covered by the steering effect (Hendler 2010: para. 106; Runkel 2010b: para. 272), because EU law as the higher-ranking law does not allow any scope for influence by member states when it comes to allocating funds (cf. Nettesheim 2014: 33). Instead, spatial planning has to implement the European impetus on its side (cf. section 2(2) no. 8 of the Federal Spatial Planning Act).

The steering impetus of spatial planning is furthermore essentially limited to the act of construction, whereas maintaining the infrastructures (▷ *Infrastructure*), on the other hand, is a question of specialised law, for example the duty to construct and maintain roads (cf. section 5 of the Federal Highways Act *[Bundesfernstraßengesetz, FStrG]*), (Wissmann 2014: 405 et seq.). In these points the difference from regulatory law is clear, whereby the state can obligate providers to provide so-called universal services (cf. e.g. section 78(4) of the Telecommunications Act *[Telekommunikationsgesetz, TKG]*; notwithstanding Einig 2011: 185). This concerns a minimum range of services for the public, for which a certain quality has been stipulated and to which all end users must have access at an affordable price regardless of their place of residence or business and the provision of which has become indispensable to the public as an essential service (cf. section 78(1) of the Telecommunications Act; Krajewski 2011: 111 et seq.).

4 Conclusions and outlook

With the guarantee of a nationwide provision of public services, regional planning has been set an essential task for the future. In principle it also has an appropriate instrument in the form of the central-place concept. However, the fact cannot be ignored that the instruments of spatial planning law according to current law are primarily aimed at addressing land use conflicts and cannot achieve active ▷ *Spatial development*. Anything else would overextend their interdisciplinary character as constitutionally stipulated (cf. Federal Constitutional Court, Expert Report of 16 June 1954, 1 PBvV 2/52, *BVerfGE* 3, 407/425) (▷ *Constitutional framework of spatial planning [Raumplanung]*). Furthermore, France's experience in particular, with its much more active role in spatial development policy – *aménagement du territoire* (▷ *Urban and spatial development in France*) – has shown that the influence of state planning on the development of space is limited (cf. Geppert 2014). In order to manage this responsibility, spatial planning therefore relies on the support of informal instruments (▷ *Informal planning*) for the ▷ *Participation* of private companies. The incipient academic debate on this justifiably demands new approaches and instruments (cf. Advisory Board for Spatial Development 2011; Danielzyk 2014) and encourages a return to elements of 'persuasive federal state spatial planning' (Schmidt-Aßmann 1993: 84).

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