

Research project B15

Transformation of Administrative Action in the Disaggregated State

Mitarbeiter

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Project description

The public-law research project “Transformation of Administrative Action in the Disaggregated State” analyses the difficulties which occur when attempting to describe the activity of public administrations in modern states. In many regulatory areas we are confronted with such difficulties if we rely on types of arguments modelled on a democratic state founded on the rule of law and provided with structures conferring legitimacy which have been shaped for the nation state. In both sub-projects, we will outline frictions produced by the classic systematic idea of administrative law which constructs the safeguard of individual freedom and legal protection against the administration as a substantive ex ante control of its actions effectuated by the democratically legitimated lawmaker as well as judicial controls on the standards of this law. If this construction becomes arguable, the operability of the description as a state founded on the rule of law and its capacity to confine and restrain administrative action are called into question.

The sub-project “Knowledge Generation in Administrative Procedures“ (Burkard Wollenschläger, Judith Hettich) approaches the undermining of the classic concept of parliamentary steering of administrative action from within. It examines the negotiated actions and cooperative practices between administration and the private realm. According to the observation the project is based on, it is only in these administrative procedures where the relevant decision-making programmes can be generated. In the classical model, by contrast, the decision-making programme is conceived as being provided in advance by the lawmaker. By analysing selected areas of risk law, regulation law, and public economic law (öffentliches Wirtschaftsrecht), the sub-project aims to emphasise the universal character of these phenomena within administrative law. An important part of this sub-project will be a comparative analysis of knowledge generating procedures in different European countries.

The second sub-project “Dislocated International Decision-Making Processes“ (Yvonne Schreiber) observes supranational decision-making mechanisms which produce binding effects across the borders of nation-states without being able to be attributed to a central authoritative decision-making body, such as - in the classical case of attribution - a lawmaking parliament. A paradigm for this kind of decision mechanisms is formed by the regulations

governing the market access of products in the European Communities; this field will be addressed in a first step. These regulations are distinguished by the fact that private third parties are involved in the implementation of European product-safety law which is thus enforced almost without resorting to the administrative organizations of the Member States. In this context, however, classical mechanisms guaranteeing the accountability and legitimacy of administrative action, such as administrative orders, subordination, and control in a strictly hierarchical organization are no longer applicable. Based on this and further examples, we will examine which alternative concepts of legitimation and “steering” are available beyond the recourse to hierarchical structures, and how these can be made useful within the context of expanding interlocking regulatory competencies across various levels of authority.

The project will thus observe and describe processes represented vis-à-vis the classic conception of administrative action as a disaggregation towards the inside (determining the decision-making program and controlling its implementation in significant cooperation with the addressees of the law) and towards the outside (involvement in supranational regulatory strategies and acceptance of the emanations of a non-national ruling authority). Besides the analysis of these decision-making frameworks characterising the disaggregated state, the project will also attempt to describe reintegrative mechanisms from which a re-legitimation can progress.