

Allgemeines Verwaltungsrecht

1. Teil: Begriff, Geschichte und Rechtsquellen

1. Kapitel: Begriffliches

I. Zum Begriff „Verwaltung“

Allgemeines Verwaltungsrecht = Beschäftigung mit den rechtlichen Grundlagen und Fragen, die für die Verwaltung als Ganzes oder größere Teilbereiche von Bedeutung sind. Zur Beantwortung von Fragen des Allgemeinen Verwaltungsrechts gibt es eine Vielzahl von Vorschriften, wobei man Regelungen des materiellen, des formellen und des organisatorischen Verwaltungsrechts unterscheiden muss:

- **Materielles/Besonderes Verwaltungsrecht oder Funktionenrecht** = Bundes- und Landesgesetze, die einzelne Materien des Verwaltungsrechts regeln (GewO, BauO, ForstG etc.)
- **Formelles Verwaltungsrecht** = Gesetze, die das Verfahren vor den Vw-Behörden regeln (AVG, VStG, VwG)
- **Organisatorisches Verwaltungsrecht** = Regelung der Einrichtung von Organen, Feststellung ihrer Aufgaben und Zuständigkeiten (findet sich zT in der Bundesverfassung, meist aber in den einzelnen Materiengesetzen)

Verwaltung im rechtswissenschaftlichen Sinn bedeutet staatliche Verwaltung. Es fallen die Tätigkeit der Bundes- und Landesverwaltung und auch die Selbstverwaltung und die Tätigkeit ausgegliederter und beliehener Rechtsträger darunter.

Der Verwaltungsbegriff muss erst mithilfe einer rechtswissenschaftlichen Begriffsbildung bestimmt werden: Es handelt sich um eine **Staatsfunktion**.

=> Im B-VG findet sich die Einteilung der Staatsfunktionen in Gesetzgebung und Vollziehung. Die Vollziehung wird noch in Justiz und Verwaltung unterteilt (Art 94 Abs 1 B-VG).

- Es besteht die Möglichkeit, Staatsfunktionen (also auch die Verwaltung) als Tätigkeiten (aufgabenbezogen) oder in organisatorischer Hinsicht zu verstehen.
- Man versucht schon seit dem 19. Jahrhundert den Begriff der Verwaltung zu definieren/bestimmen. Es wurde immer schon danach getrachtet, den Begriff inhaltlich zu bestimmen und daher die **Tätigkeit der Verwaltungsorgane** in den Mittelpunkt zu stellen. Man kann aber den Verwaltungsbegriff als Tätigkeit nicht definieren. Man kann in allenfalls beschreiben/skizzieren.
- Neuere österreichische Verwaltungslehre (Adamovich sen/Merkl) – Orientierung an organisatorischen Kriterien: Unterschiedliche Ergebnisse
 - **Negative Definition:** Verwaltung = Tätigkeit von Staatsorganen, die weder Organe der Gesetzgebung noch Organe der Gerichtsbarkeit sind => Die Verwaltung umfasst alle außerhalb der Gesetzgebung und Gerichtsbarkeit gelegenen Staatsstätigkeiten
 - **Gesetzgebung** im organisatorischen Sinn = Tätigkeit der gesetzgebenden Organe (NR, BR, LT) => Erlassung von Bundes- und Landesgesetzen, Mitwirkungsbefugnisse an der Verwaltung (politische, finanzielle und rechtliche Kontrollbefugnisse; personelle Vorschlagsrechte)
 - **Gerichtsbarkeit** im organisatorischen Sinn = Tätigkeit richterlicher Organe, die unabhängig, weisungsfrei, unabsetzbar und unversetzbar sind (Berufsrichter, Laienrichter). Auch die Verwaltungsgerichtsbarkeit zählt dazu: Die Mitglieder der VwG und des VwGH sind Richter
 - **Verwaltung** = Alle Vollzugsakte außerhalb von Gesetzgebung und Gerichtsbarkeit (durch **Subtraktionsmethode** gewonnener Verwaltungsbegriff)

Allgemeines Verwaltungsrecht

Claudia Heibeyn



Allgemeines Verwaltungsrecht:

Bildungsrecht Ernst-Wilhelm Luthe, 2011-05-03 The author presents a coherent overall depiction of the education law of the Federal Republic of Germany European education law administrative legal principles examination law school law job creation law professional rehabilitation child and youth welfare law social welfare law training support law and the law regarding adult education are dealt with

Verwaltungs - und Verwaltungsprozessrecht Andreas Wittern, Maximilian Baßlsperger, 2007 Das Werk vermittelt die erforderlichen Grundkenntnisse des allgemeinen Verwaltungs und des Verwaltungsprozessrechts und stellt sie anhand der Einbeziehung vieler Beispielsfälle aus der täglichen Verwaltungspraxis in einem engen Bezug zur täglichen Rechtsanwendung dar Es wird somit dem Leser in jedem Teilbereich eine Einstiegsmöglichkeit zur vertieften Auseinandersetzung mit den jeweiligen Problemen gegeben Bewusst wird auf umfangreiche theoretische Darlegungen zugunsten von Hinweisen auf leicht auffindbare Quellen verzichtet Das Werk bietet somit nicht nur eine Arbeitsgrundlage für den Praktiker sondern gibt gezielt eine umfassende Hilfestellung für Aus und Fortbildung

The Transformation of Administrative Law in Europe Matthias Ruffert, 2007 This volume is a collection of the papers presented at the first kick off meeting in Dornburg near Jena Germany 26-28 May 2005 Foreword

The Administrative State Armin von Bogdandy, Sabino Cassese, Peter M. Huber, 2017 This is the first volume of The Max Planck Handbooks of European Public Law Volume I The Administrative State frames the administrative regimes of Europe in a comparative perspective analysing the evolution of state and administration of major European jurisdictions and examining issues that cut across national boundaries

German Administrative Law Mahendra P. Singh, 2013-04-17 It is with the greatest pleasure that I add a few introductory remarks to the book of Dr Mahendra Pal Singh on German administrative law Between 1981 and 1982 Dr Singh spent nearly two years in Heidelberg doing research partly at the South Asia Institute of the Ruprecht Karl University and partly at the Max Planck Institute for Comparative Public Law and International Law During his stay in the Federal Republic of Germany Dr Singh studied the general principles of German administrative law in a careful and admirable manner and he has now completed the present book which is based on his studies in Heidelberg For several reasons Dr Singh is especially qualified to write this book His familiarity with the administrative law of his home country has enabled him to look upon the German law with considerable objectivity his knowledge of the German language gave him access to the vast amount of German literature and court decisions and Dr Singh was able to penetrate this material with a searching and scholarly spirit The final product seems to be the first comprehensive treatise in English on German administrative law

Rechtswissenschaft für Gesellschaftswissenschaften Bernhard Losch, Andreas Schwartze, 2006 Für sämtliche Gesellschaftswissenschaften ist ein grundlegender Einblick in die Rechtsordnung unentbehrlich denn die Rahmenbedingungen für das Zusammenleben der Gesellschaft werden in erster Linie durch das Recht bestimmt Rechtliche Regeln steuern die Wirtschaftsordnung das politische System und die soziale Organisation Ebenso wichtig wie die

institutionelle Struktur sind die Verfahrensweisen nach denen sich die rechtsverbindliche Kommunikation richtet Vor allem Ökonomen Politologen und Sozialwissenschaftler benötigen daher ein Verständnis für die rechtlichen Grundlagen von Staat und Zivilgesellschaft Das Buch führt in die wichtigsten Rechtsgebiete ein und öffnet den Zugang zu einem kontextbezogenen juristischen Grundwissen

Handbuch des Verwaltungsrechts Ivo Appel, Hartmut Bauer, Martin Burgi, Andrea Edenharter, Michael Fehling, Dagmar Felix, Sina Fontana, Elke Gurlit, Ekkehard Hofmann, Albert Ingold, Constanze Janda, Wolfgang Kahl, Jan Henrik Klement, Martin Kment, Stefan Korte, Sabine Leppeck, Eva Julia Lohse, Markus Ludwigs, Andreas Musil, Christoph Ohler, Katharina Pabel, Hermann Pünder, Barbara Remmert, Johannes Saurer, Wolf-Rüdiger Schenke, Sabine Schlacke, Utz Schliesky, Kyrill-Alexander Schwarz, Angela Schwerdtfeger, Margrit Seckelmann, Benjamin Straßburger, Kahl Ludwigs (HVwR Bd. IV), 2022-06-02 Das neue Handbuch ist eine auf 12 Bände angelegte Edition des Verwaltungsrechts Als wissenschaftliches Gemeinschaftswerk von zwei Herausgebern und rund 250 Autorinnen basiert es auf einer Gesamtkonzeption die das deutsche europäische und internationale Verwaltungsrecht als Einheit und in ihrer Interdependenz und Interaktion in den Blick nimmt Die Bände wenden sich gleichermaßen an die verwaltungsrechtliche Praxis und die Verwaltungsrechtswissenschaft Der Rechtsstoff wird enzyklopädisch aufbereitet die Zusammenhänge und das Allgemeine in der Folge der Referenzgebiete des Besonderen werden erschlossen und auseinanderstrebende Detailforschungen zusammengefasst Das Handbuch stellt die positivrechtlichen Begriffe Prinzipien und Institute des Verwaltungsrechts in ihren Geltungsbedingungen dar geht ihren wesentlichen geschichtlichen und sonstigen Grundlagen nach analysiert sie dogmatisch und untersucht eingehend ihre europäische und internationale Verzahnung Das Handbuch hat das Ziel den aktuellen Stand des Verwaltungsrechts des Bundes und der Länder sowie der Europäischen Union umfassend systematisch und verständlich darzustellen Charakteristisch für die Darstellung ist die enge Verzahnung mit internationalem und europäischem Recht die Verknüpfung von Allgemeinem und Besonderem Verwaltungsrecht die Vernetzung von materiellem und formellem Recht die Interdisziplinarität der Methodik sowie die Einbeziehung neuer Entwicklungen wie z.B. der Digitalisierung der Verwaltung Band IV behandelt den Status des Einzelnen sowie das Verfahren Die Grundlagen des subjektiven öffentlichen Rechts und des Rechtsverhältnisses die prozessuale Durchsetzung ausgewählte zentrale Referenzgebiete des Besonderen Verwaltungsrechts im Hinblick auf den Status des Einzelnen Funktionen Beteiligte und Kontext von Verwaltungsverfahren sowie die wichtigsten Verfahrensarten

The Länder and German federalism Arthur Gunlicks, 2013-07-19 This electronic version has been made available under a Creative Commons BY-NC-ND open access license An illuminating introduction to how the Länder the sixteen states of Germany function not only within the country itself but also within the wider context of European political affairs Looks at the Länder in the constitutional order of the country and the political and administrative system Their organization and administration is fully covered as is their financial administration The role of parties and elections in the Länder is looked at and the importance of their parliaments The first

work in the English language that considers the Lander in this depth *The Max Planck Handbooks in European Public Law: Volume I: The Administrative State* Sabino Cassese, Armin von Bogdandy, Peter Huber, 2017-07-24 The Max Planck Handbooks in European Public Law series describes and analyses the public law of the European legal space an area that encompasses not only the law of the European Union but also the European Convention on Human Rights and importantly the domestic public laws of European states Recognizing that the ongoing vertical and horizontal processes of European integration make legal comparison the task of our time for both scholars and practitioners it aims to foster the development of a specifically European legal pluralism and to contribute to the legitimacy and efficiency of European public law The first volume of the series begins this enterprise with an appraisal of the evolution of the state and its administration with cross cutting contributions and also specific country reports While the former include among others treatises on historical antecedents of the concept of European public law the development of the administrative state as such the relationship between constitutional and administrative law and legal conceptions of statehood the latter focus on states and legal orders as diverse as e g Spain and Hungary or Great Britain and Greece With this the book provides access to the systematic foundations pivotal historic moments and legal thought of states bound together not only by a common history but also by deep and entrenched normative ties for the quality of the *ius publicum europaeum* can be no better than the common understanding European scholars and practitioners have of the law of other states An understanding thus improved will enable them to operate with the shared skills knowledge and values that can bring to fruition the different processes of European integration Public Administration and Expertise in Democratic Governments Susan Rose-Ackerman, 2024-05-23 This collection deals with challenges confronting public law and public administration in twenty first century democracies across the world It draws together contributions from leading scholars examining cutting edge topics and projecting the scholarship forward It emphasizes the importance both of justifying executive policymaking to citizens and of drawing on bureaucratic expertise and professional competence Contributors examine the role of courts and argue for new forms of public participation that can incorporate democratic values into executive branch policymaking Finally the work confronts problems in the administration of the criminal law that are generating increased public concern Building on Rose Ackerman s scholarship writers compare the American experience with contemporary developments in other leading democracies in particular Germany France the EU Canada and Latin America The work will be an invaluable resource for academics researchers and policymakers working in the areas of Administrative Law Public Law and Political Science German Legal System and Laws Nigel G. Foster, Satish Sule, 2010 German Legal System and Laws provides a comprehensive introduction to the German legal system and the core areas of substantive law Constitutional law is the foundation of German law and this area has been given fuller consideration in this fourth edition The constitutional organs of state basic rights and administrative law are all thoroughly explained The text has been fully amended and updated with regard to a wealth of

legislation and case law which has radically altered the course of German law with considerable attention being given to the development of private law Also included are expanded and updated extracts from the Grundgesetz and fully revised glossaries of German legal terms Die wasserrechtliche Beurteilung von Erdwärmesondenanlagen in Mineralwasserbildungsgebieten in Rheinland-Pfalz Ariane Engelhaupt, 2005 **Die Entwicklung des Europäischen Verwaltungsrechts aus der Perspektive der Handlungsformenlehre** Andreas Glaser, 2013 In den Rechtsordnungen der EU Mitgliedstaaten sind den Formen des Verwaltungshandelns bestimmte Rechtsfolgen in Bezug auf das Verwaltungsverfahren die Wirksamkeit von Verwaltungshandlungen die Auswirkungen von Rechtsverstößen und den Rechtsschutz zugeordnet Ausgehend hiervon untersucht Andreas Glaser die Einwirkungen der als Unionsverwaltungsrecht bezeichneten Vorgaben des EU Rechts auf die jeweilige Handlungsformenlehre des nationalen Rechts Weitere Schwerpunkte der Analyse bilden die Handlungsformen der EU Eigenverwaltung auf der Grundlage des Vertrages von Lissabon sowie das Zusammentreffen nationaler und unionaler Handlungsformen im Rahmen des Europäischen Verwaltungsverbundes Anhand dieser Betrachtungen benennt der Autor übergreifend Übereinstimmungen und Unterschiede zwischen den Rechtsordnungen Abschliessend zeigt er das rechtspolitische Entwicklungspotenzial auf **Good Administration and the Council of Europe** Ulrich Stelkens, Agnė Andrijauskaitė, 2020 This book seeks to find an answer to the question of how to rule a state well by drawing on a range of organizational procedural and substantive standards of administrative conduct developed within the framework of the Council of Europe CoE as an organization of a broader scope than the European Union Die privatisierte Erfüllung staatlicher Aufgaben Dominik Elser, 2020-06-02 Der Staat ist zu gross zu langsam zu teuer und zu weit von seinen Bürgerinnen und Bürgern entfernt Diesen Eindruck vermitteln die zahlreichen Privatisierungsvorhaben die den Staat reformieren möchten können Privatisierungen die Erwartung von weniger Staat einlösen oder sind umgekehrt die Befürchtungen berechtigt wonach damit die rechtsstaatlichen und demokratischen Vorgaben zurückgedrängt werden Was den Staat ausmacht sind die Aufgaben die er erfüllen muss Wer nur die Art und Weise der Aufgabenerfüllung verändert wird den Staat nicht verkleinern verursacht aber oft zusätzlichen Kontrollaufwand Zudem können aufgabenfremde Motive in die staatliche Aufgabenerfüllung einfließen und die Grenzen des Staates schwieriger zu ziehen sein Auf der anderen Seite stehen grössere Flexibilität Erfüllungsweisen die für den Einzelfall passen und die erhöhte Akzeptanz seitens der Adressatinnen und Adressaten von staatlichem Handeln Dieses Buch arbeitet mit Blick auf das schweizerische Verfassungsrecht heraus wo Probleme und Spielräume auftreten wenn die staatlichen Aufgaben privatisiert erfüllt werden **Willens- und Erklärungstheorie bei Steuerverwaltungsakten** Claudia Heibeyn, 2013-03-08 Claudia Heibeyn untersucht die im Steuerrecht entwickelten Besonderheiten verfahrensrechtlicher Art im Hinblick auf die Erklärungstheorie und stellt die Auswirkungen auf die Entstehung und das Wirksamwerden von Steuerverwaltungsakten dar **Die Rücknahme rechtswidriger nicht begünstigender Verwaltungsakte nach § 44 SGB X** Sebastian Krauß, 2022 Bei 44

§ 44 SGB X handelt es sich um eine Sondervorschrift des Sozialverwaltungsverfahrensrechts die die Rücknahme rechtswidriger nicht begünstigender Verwaltungsakte regelt Eine Besonderheit dieser Vorschrift liegt darin dass sie eine wesentliche Einschränkung der formellen Bestandskraft von Verwaltungsakten bestimmt Die Dissertation nimmt eine Analyse des Regelungsgehalts des § 44 SGB X vor und beschäftigt sich mit der Frage ob es sich bei dieser Norm um einen überzeugenden Sonderweg des Sozialverwaltungsverfahrensrechts handelt oder ob es einer grundlegenden Neukonzeption bedarf

Grundfragen der Beweiserhebung von Amts wegen im Zivilprozess Antonios Diakonidis, 2014-10-08 English summary Antonios Diakonidis addresses the problem of establishing evidence for public agencies and attempts to illuminate a new dimension in the rules of evidence and to study their effect on the interpretation of § 142 ff und § 448 of the German Code of Civil Procedure In this investigation the author deals with fundamental questions of the civil processes such as the goal of civil processes the problems of judicial discretion and the content and function of trial precepts The author conceives of this present work as a proposal for judges to abandon their passivity in the establishment of evidence without at the same time to falsify the character of existing civil processes German description Antonios Diakonidis widmet sein Werk der Beweiserhebung von Amts wegen Er versucht eine neue Dimension des Rechts auf den Beweis zu beleuchten und seine Ausstrahlung auf die Auslegung der § 142 ff und § 448 ZPO zu untersuchen Bei diesem Versuch behandelt er Grundfragen des Zivilprozesses wie der Zweck des Zivilprozesses die Problematik des richterlichen Ermessens und der Inhalt sowie die Funktion der Verhandlungsmaxime Dabei versteht der Autor die vorliegende Arbeit als eine Anregung für den Richter bei der Beweiserhebung seine Passivität zu verlassen ohne gleichzeitig den Charakter des geltenden Zivilprozesses zu verfälschen

Die Verjährung im Öffentlichen Recht Annette Guckelberger, 2004 Im Unterschied zum Privatrecht fehlen im Verwaltungsrecht bis heute detaillierte Regelungen zur Verjährung öffentlich rechtlicher Rechtspositionen Annette Guckelberger erstellt erstmals eine grundlegende Studie zu diesem Thema Ausgehend von der historischen Entwicklung und vereinzelt öffentlich rechtlichen Verjährungsnormen untersucht sie ob die bislang vorgenommene Übertragung der zivilrechtlichen Verjährungsvorschriften auf verwaltungsrechtliche Sachverhalte zutreffend ist oder ob nicht die Besonderheiten des öffentlichen Rechts eine eigenständige Ausgestaltung dieses Rechtsinstituts bedingen berdies wird die Verjährung im öffentlichen Recht aus europarechtlicher und rechtsvergleichender Perspektive betrachtet *Manual de Direito Administrativo* António Francisco de Sousa, Com recurso a uma linguagem clara objetiva e precisa este manual constitui uma reflexão e abordagem crítica próprias de cunho pessoal e nesta medida um contributo científico jurístico Trata-se de uma versão revista e aprofundada do *Direito Administrativo* publicado em 2009 pela Editora Prefácio A intensa inovação e renovação legislativa que tem ocorrido nos últimos anos em Portugal especialmente com a entrada em vigor do novo CPA os importantes desenvolvimentos da jurisprudência administrativa portuguesa a crescente influência do direito da UE na nossa ordem jurídica e os desenvolvimentos da doutrina jurídica administrativa obrigam a que este tipo de obras sejam

regularmente revistas e atualizadas O autor aperfeiçoou a abordagem crítica e o tratamento didático da obra aproveitando o efeito feedback que a edição anterior suscitou Em geral toda a obra reflete uma concepção de fundo sobre o Direito Administrativo enquanto instrumento de efetivação do Estado de direito democrático Para facilitar a consulta recorreu-se frequentemente a remissões para outras partes do texto onde são feitas referências complementares ou mais aprofundadas da matéria que está a ser tratada

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Trata-se de um texto escrito a pensar nos estudantes e profissionais do Direito Administrativo A obra abarca as matérias que no atual plano universitário correspondem às unidades curriculares de Direito Administrativo I e Direito Administrativo II

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