

Local Autonomy and Trans-border Cooperation (of Local Collectives)

Introduction

In the Federal Republic of Germany, the term of local self-government is used to describe a municipality or town. "Local", however, especially in the European context, is a relative concept. Thus, the much larger administrative unit of a German federal state may be considered as local, as both legal entities have their own competencies which enable them to enter into international cooperation projects.

Therefore, I will first examine the autonomy of a German federal state (see number I), and then the autonomy of a German municipality (see number II). Finally, I will describe the possibilities of interstate cooperation between such entities (numbers III, IV).

I Autonomy of a federal state

The Federal Republic of Germany is a federal union of states. The political level of the Federation ("Bund") must be distinguished from the level of the component states or federal states ("Länder", for instance Bavaria). The individual federal states have the right to regulate many things autonomously and without interference from the Federation, cf. Gruner/Junker, Bürger, Staat und Politik (Citizen, State and Politics), 1972. The local autonomy of a federal state relates to both legislation and administration.

I.1 Legislation

In the Federal Republic of Germany, the individual federal states have the right to legislation, to the extent that the Constitutional Law (GG) does not confer such legislative power to the federal level, cf. Art. 70 para. 1 GG.

The exclusive legislative power of the federal states includes a few areas only – which contradicts the basic structure of the Federation. These areas include, in particular, culture, police, their own internal administration and the municipal constitution.

The individual regulations for legislation result from the provisions on competency of Art. 72 seq. GG.

However, the state legislator (which here and in the following will be illustrated by the example of the federal state of Bavaria) is not completely free to exercise its competencies. On the one hand, it is bound by the provisions of the Bavarian Constitution and the Articles of German Constitutional Law to adhere to the principles of a republican, democratic and social state under the rule of law, cf. Art. 28, para. 1 and 2 GG.

Conflict between federal law and the laws of the federal states

In general, federal law prevails over the laws of the federal states, cf. Art. 31 GG. This principle is restricted by Art. 28 para. 1 GG so that the federal states, when designing their laws, are only bound to the principles of a republican, democratic and social state under the rule of law, cf. Maurer, Allgemeines Verwaltungsrecht (General

Administrative Law), Verlag C.H.Beck (editor), 18th edition, Munich 2011, § 4, marginal number 52.

I.2 Administrative competency

In accordance with the federal structure, the administrative competency is either attributed to the federal or to the state government. In principle, administration is the federal states' competency, to the extent that Constitutional Law does not provide otherwise, cf. Art. 30 GG.

The individual regulations on administration result from Art. 83 seq. GG. However, this essay will not deal with the execution of federal laws and the federal administration.

In the following, the administrative competency of the federal states will be described. The states are competent unless the matter is under federal rule. Thus, the federal states have exclusive competency in enforcing state laws, cf. Federal Constitutional Court E 21, 312, 325.

I.3 Administrative organisation

It is the task and the right of the individual federal states to regulate their internal administrative organisation themselves. As a rule, a triple-level administrative structure prevails:

at the upper level: the state government with prime minister and ministers,
at the middle level: the government of the individual provinces – in Bavaria seven provincial governments – and
at the lower level: the district governments.

The municipalities are organised below the level of district government. Although not integrated in the state structure, they are assigned to the federal state which delegates various tasks to them.

I.4 Hierarchical structure

The state administration has a hierarchical structure. The superordinated administrative agency has supervision and instruction authority over the subordinated agency which must comply with the instructions of the superordinated agency.

The district government exercises subject-matter supervision over the municipalities if the latter have assumed specific tasks from the state.

I.5 Influence of the Federation on the federal states

As a principle, the administrations of the Federation and those of the federal states are separated from each other. A so-called mixed administration is not permitted.

However, various kinds of cooperation have emerged. For instance, as a result of constitutional requirements, joint government agencies have been set up in the medium level of fiscal administration (cf. Art. 108 para. 4 GG). On the state level, too, the states cooperate in various fields, for instance by operating a joint agency for the assessment of films, cf. Maurer, loc. cit., § 22, marginal number 48.

I.6 Summary

In practice, the individual federal state has relatively few exclusive legislation competencies. However, administration is the federal states' very own competency. In this field, the federal government has little influence.

The principles of a republican, democratic and social state under the rule of law (Art. 28 para. 1 phrase 1 GG) constitute the basis on which different policy designs may be implemented in the federal states, in particular in the fields in which they have exclusive legislation, namely culture, police and municipal constitution. Therefore, it is justified to speak of local autonomy.

II Municipalities

The state does not only fulfil its administrative tasks itself, but has also the possibility to delegate them to legally independent administrative entities that are embedded in the state structure. These independent administrative entities include mainly corporations, institutions under public law and foundations, cf. Maurer, loc. cit., § 23, marginal number 1.

The most important of these corporations is the municipality – and also the district, which however will not be dealt with herein.

Pursuant to Art. 1 of the Bavarian Municipal Code (BayGO), the municipality is a corporation under public law. This means that it has its own legal personality. Thus, the municipality (and also the district – cf. Art. 1 of the Bavarian District Code BayLKrO) has an independent legal existence, is competent to contract, capable of participating in court proceedings as a party, and capable of acting in law, cf. Lissack, Bavarian Municipal Law (Bayerisches Kommunalrecht), Verlag C.H.Beck (editor), 3rd edition, Munich 2009, § 1, marginal number 26.

The constitutional basis of municipal self-government of the municipality is Art. 28 para. 2 phrase 1 of the German Constitution (GG). Pursuant to this constitutional provision, municipalities may regulate all affairs of their local community in their own responsibility, subject to compliance with the laws.

Pursuant to Art. 28 para. 3 GG, the Federation must ensure municipal self-government within the federal states. In this way, this constitutional provision clarifies that municipalities are assigned to the sphere of the federal states, cf. Federal Constitutional Court E 22, 180/203. Therefore, the governmental unit "municipality" is integrated into the organisation and administration of the state.

II.1 Content of the right to self-administration

The municipalities' task is to put local affairs in order and administrate them. Thus, the basic mission of municipalities is to deal with all affairs of the local community, cf. Lissack, loc. cit., § 1, marginal number 67.

Elements of the right to self-administration

The right to self-administration of municipalities includes several elements:

- **Autonomy:** the municipality can decide at its own discretion whether, when and how it wants to assume tasks.
- **Territorial jurisdiction:** the municipality has the authority to set rules for all persons and things located in its territory by issuing either statutes or individual orders, cf. Federal Constitutional Court E 52, 95/117 f., cf. also Bavarian Constitutional Court, BayVBI, 2002, 19/20.
- **Power of the purse:** power of the purse means the right of a municipality to procure its own revenue and to decide on how to spend it autonomously, cf. also Art. 83 of the Bavarian Constitution. This power includes the authority to issue fiscal statutes, to levy and to administrate fiscal charges.
- **Authority to employ personnel:** the authority to employ personnel, too, belongs to the core area of self-administration. The municipalities are entitled to hire their own personnel and to select its members, cf. Bavarian Constitutional Court, BayVBI, 2008, 201 seq.
- **Organisational authority:** municipalities have the possibility to regulate their tasks, i.e. to provide for specific procedures and responsibilities.
- **Planning authority:** the planning authority confers municipalities the possibility to set up plans, for instance for infrastructure or finance. The planning authority especially includes the right to set up municipal plans such as the general plan for the development of local real estate, which is the frame plan for the development of municipal territory.

II.2 Organisation of municipalities

The organisation of municipalities stands under the legislative power of the federal states. In Bavaria, municipalities are administrated by a municipal council, cf. Art. 29, BayGO, unless the power of decision is conferred upon the first mayor pursuant to Art. 37 BayGO.

The mayor is directly elected by the citizens of the municipality with the absolute majority of the votes for six years, cf. Art. 15 para. 2 BayGO. The municipal council, too, is directly elected by the citizens for six years.

Supervision by the state

The municipalities are autonomous within the framework of their self-government, while being bound to applicable laws.

However, the state's supervision is limited to check the legality of municipal acts. The state's supervision means are limited. The district government is the supervision authority entitled to request information on all affairs of the municipality, to query infringement of rights by the municipality, outvote it or compel it to remove such infringements.

II.3 Summary

The municipality as the entity entitled to local self-government is virtually autonomous in all local affairs. The municipality's acts within the tasks assigned to it may only be

challenged if they are illegal, as the supervisory authority is not entitled to check their appropriateness. The municipality is solely responsible for the substance of the measures taken in its own affairs.

II.4 Comparison between federal state and municipality

A comparison between the local autonomy of a federal state and a municipality shows:

Both the federal state and the municipality are bound to higher-ranking law, in particular to German Constitutional Law. To the extent that the state has its own competencies distinct from those of the Federation, it is autonomous. The same applies to municipalities, which, however, due to smaller-scale local competencies, can better adapt their measures to individual cases and hence attain higher regulation density in their area of autonomy. Therefore, while federal states, depending upon their room for manoeuvre vis-à-vis the Federation, may issue large-scale regulations autonomously, municipalities can stamp its territory with its very own policy.

III. Trans-border cooperation of the federal state

The federal state is represented by its prime minister and the state ministers. However, there is no foreign minister on state level.

Bavaria's relations to foreign countries are managed by the State Minister of Federal and European Affairs with his main office in Munich and representative offices in Berlin and Brussels (relations to the European Union). His tasks include the defence of Bavarian interests at international level. On the other hand, many contacts to foreign countries are managed by the Bavarian Ministry of Economics.

At minister level, Bavaria has set up joint commissions with numerous partner regions, in which representatives of Bavarian ministries meet with representatives from partner regions. These commissions deal, in particular, with the core topics of allocation of EU subsidies, business promotion, internal security and environmental protection.

Within the framework of business promotion, trips of delegations with the Minister of Economics or representatives of Bavarian companies and exhibitions are being organised.

Within the framework of improving internal security, Bavarian police authorities cooperate with Bavaria's direct neighbours (Austria and Czech Republic). Protection of nature and environment, planning of roads and traffic routes, and other infrastructure projects are another priority within the framework of such cooperation.

Particularly intense cooperation has developed within the Special Partnership Alpine Countries (ARGE Alp), which is intended to promote mutual understanding of the peoples living in the Alpine region and to help solving their problems by implementing cross-border solutions. Another cross-border cooperation is the International Lake Constance Conference in which the countries bordering and having links to Lake Constance seek to maintain and promote the Lake Constance region as an attractive natural, cultural, living and business area and to agree on common urban and regional policies as well as planning objectives.

In addition, Bavaria promotes the setup of consulates in Munich, for instance the General Consulate of Romania.

Summary

Bavaria participates in various cultural and economic exchange and cooperation programmes with different regions, both with neighbours and remote countries. In accordance with the size and economic importance of Bavaria, these contacts are managed by the Bavarian government at minister level.

IV. Trans-border cooperation of municipalities

The locally acting municipality is globally active, too. This can be shown by the example of the City of Munich.

International cooperation is managed by different departments of the city administration, for instance by the Department for Health and Environment, the Department for Education and Sport, the Department for Culture and, generally, the Department for International Affairs in the office of the third mayor.

Communal development cooperation

The municipality of Munich acknowledges that development cannot be mastered by a top-down approach. Development must begin where politics and citizen are closest, i.e. in cities, towns and municipalities. There, the most urgent development problems become apparent: pollution, water shortage and poverty. Therefore, the municipality of Munich focuses on municipal development cooperation to help solving such problems.

To this end, Munich's communal know-how is required above all, which is contributed to various projects. Thus, for instance, a foundation was formed with the department of works of the city of Timisoara, the Aquademica foundation which is a training centre for specialists. Its aim is to transmit know-how and special knowledge in water supply and disposal.

Town-twinning

In addition, the municipality of Munich has special relations to partner cities, among others Bordeaux, Cincinnati, Harare and Sapporo. Culture is one of the main aspects of these relations (managed by the Department for Culture of the City of Munich). Exchange projects like the exchange of artists, European culture promotion projects and other international projects as well as promotion of cultural activities are offered in said cities.

Summary

Especially the municipality as the entity closest to the citizen can speed up international cooperation. As the citizen's first incoming point in matters of everyday life, the municipality has accumulated diversified know-how that can be transmitted to other municipalities. In cultural matters, every municipality is able to act autonomously and stimulate its own citizens by cultural exchanges with other culture.

Literature

- Gruner/Junker, Bürger, Staat und Politik (Citizen, State and Politics), 1972
- Detterbeck, Allgemeines Verwaltungsrecht (General Administrative Law), Verlag C.H.Beck (editor), 11th edition, Munich 2013
- Henneke/Pünder/Waldhoff, Recht der Kommunal Finanzen (Principles on Municipal Budget, Verlag C.H.Beck (editor), Munich 2006
- Maurer, Allgemeines Verwaltungsrecht (General Administrative Law), Verlag C.H.Beck (editor), 18th edition, Munich 2011
- Lissack, Bayerisches Kommunalrecht (Bavarian Municipal Law), Verlag C.H.Beck (editor), 3rd edition, Munich 2009
- Püttner, Verwaltungslehre (Administrative Law)

Final Judgments

- Bavarian Constitutional Court, BayVBl, 2002, 19/20
- Bavarian Constitutional Court, BayVBl, 2008, 201 seq.
- Federal Constitutional Court E 21, 312, 325
- Federal Constitutional Court E 22, 180/203
- Federal Constitutional Court E 52, 95/117 f.