Major Duties of German Police (I)

Police Law / Public Safety Laws:

• Maintenance of public safety
• Maintenance of public order
  *(Today a very limited approach. E.g. begging, drinking in the public, or loitering do not interfere with public order in general but are constitutionally protected)*
• Protection of private rights against intrusions by private persons, only in case a judge cannot come to a timely decision and delay may endanger said private right
• (Compulsory) Enforcement of other agencies’ orders
• Few other miscellaneous duties as provided for by the law
Major Duties of German Police (II)

Prevention of crime:
*By definition no danger to public safety nor suspicion of criminal act exists*

Criminal Procedure Law:
- *Making provisions for the detection of crime*
- *Detection of crime / Investigating crime*
- *Apprehension of criminals*

*[Not covered in this lecture !!!]*
Article 20(3) German Constitution (so called Basic Law - Grundgesetz)

Basic Principles of State

The Legislation is subject to the constitutional order; the executive and the judiciary are bound by law and justice.
The Executive is Bound by Law and Justice: Art. 20(3) Const.

- The police too have to adhere to the law – PERIOD!
- “Law” only refers to statutory law (not rule or regulations of police)
- A duty of police doesn’t provide for any powers
- No “action” without explicit statutory provision!!!
  (Very restricted use of so called blanket clause in police law)
- Law might be different from Justice (e.g. Nazi laws)
- The police cannot refer to Justice if they think the Law is “wrong”
Police Officers Are Bound by the Law

• Is the problem beforehand within the competence/responsibility of the police?

• If police action results in an intrusion upon fundamental right:
  • Is there any statutory law that gives the police the right/power to act?
  • Is judicial control required before taking action?
  • Are the means police uses in accordance with the constitutional principle of appropriateness-of-means (proportionality)?
The Appropriateness-of-Means-Standard

In police law (as well as in criminal procedure law) any means has to be in accordance with each of the three following constitutional principles, following from the rule of law

• **Suitable** Can a given purpose be achieved by this specific means?

• **Necessary** Is there any less intrusive means?

• **Adequate** Is a suitable and necessary means also adequate in a given case?

Thus, rule of law is **substantial**, not only formal or procedural standard
Typical Powers under Police Law (I)

In case of danger for public safety, e.g.:

- Interrogation/Questioning
- Investigation/Inquiry
- Ascertaining of personal data (identification)
- Collection, and use of personal data including rules on data protection
- Subpoena
- Sending a person off a certain place, or his or her home
- Search (persons/houses/personal goods)
- Seizure/confiscation (personal goods/property)
- Arrest

- Blanket Clause (*Applicable only when no specific power is provided for in the other rules, but not, if legislature fails to provide for such means.*)
Typical Powers under Police Law (II)

Prevention of crime, e.g.:

- **Video-surveillance** of public places
- **Video-surveillance** of any police-citizen interaction
- **ID-Checks and ID-Checkpoints** without danger or suspicion
- **Search** of person and luggage at such checkpoints
- **Automatic Number Plate Recognition** in certain areas (in some States only under very strict limitations)

Each of these means may legally be used against everybody even though this person does not cause any danger, and no suspicion that she/he may have committed a crime!

To keep in balance with **appropriateness-of-means** as a constitutional principle, however, some of these means require **prior approval** by a high ranking police officer or court!
Typical Powers under Police Law (III)

Summary:

- German Police Law is governed by high constitutional standards and limited powers of the police when it comes to dangers to public safety.

- So-called “Prevention of Crime” in the last 10 – 15 years resulted in a continued downhill trend against protection of fundamental rights.

- Despite of high constitutional standards German police law provides for all necessary means to constitute a “police state” without “formal” change being necessary. This is especially true when it comes to the powers under Prevention-of-Crime-Standards.

- In recent years often the courts “reconstructed” protection of fundamental rights when it comes to (new) police law under the prevention-of-crime “flagship”.

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Decision-Making-Process under Police Law

1. Is the problem before hand within competence/responsibility of police? (This is only the case, if no other agency in charge of public safety, is able to take timely action; standard varies according to law of the Laender.)

2. Is action an intrusion upon fundamental right (which almost always is the case in a police-citizen-interaction):

3. Is there any statutory law that gives me the right/power to undertake planned action?

4. What exactly are the legal requirement/standards?

5. Discretionary power: Is there any legal obligation for the police to act under police law?

6. Is action in the given case in accordance with the principles of appropriateness of means?

7. Is judicial control required before taking action?
Use of Force

• In general, non-compliance with a police order this neither is a crime, nor a (minor) offence.

Different only for active physical resistance, and refusal of (legitimate) identification procedures.

• If a person does not comply with such order, the police might carry out this order by use of force
• Appropriateness-of-means-standard apply

• Means of coercion are:
  
  • Substitutional Act by the Police
    *(The police is carrying out the demanded action, e.g. moving a car out of a parking ban, while the responsible person is being charged for.)*
  • Physical Force
  • Coercive Fine
    *(This is not a sanction/penalty but only intended to bring disobedience of the responsible person to an end!)*
Slides and Link

http://www.hwr-berlin.de/prof/clemens-arzt/lehre/

Go towards end of page: „Lectures at Symbiosis Law School“
See also slides on „Basic Principles of Police Law“

German Constitution in English:
www.gesetze-im-internet.de/englisch_gg/index.html