Administrative Public Power: Comparative Analysis in European Legal Systems

Public Function, Öffentliche Verwaltung, Puissance Publique, Potestà Amministrativa, Potestad Administrativa, Władza Publiczna

EDUARDO GAMERO-CASADO (DIRECTOR)

INCLUYE LIBRO
ELECTRÓNICO
THOMSON REUTERS
PROVIEW™



Proyectos confinanciados con FEDER (Fondo Europeo de Desarrollo Regional)

Una manera de hacer Europa



EDUARDO GAMERO-CASADO (Director)

ADMINISTRATIVE PUBLIC POWER: COMPARATIVE ANALYSIS IN EUROPEAN LEGAL SYSTEMS

(Public Function, Öffentliche Verwaltung, Puissance Publique, Potestà Amministrativa, Potestad Administrativa, Władza Publiczna)

Authors

Eduardo Gamero-Casado Jens-Peter Schneider
Diana-Urania Galetta Marek Wierzbowski
Jean-Bernard Auby Gordon Anthony
Giacinto della Cananea Herwig C.H. Hofmann
Jasmin Hiry

C. Solit

THOMSON REUTERS

ARANZADI

Index

			Pages
I		RD O GAMERO-CASADO	15
INTRO	DU	JCTION	
	DU	RING THE INCOMPARABLE? SOME UCTORY REMARKS ON A COMPARATIVE STUDY MINISTRATIVE PUBLIC POWER"	17
DIAN.	A-U	RANIA GALETTA	
CHAP'	TER	₹1	
POTES			
ADMI	NIS	STRATIVE PUBLIC POWER IN SPANISH LAW	25
I.	Int	roduction: purpose and scope of this chapter	27
II.		nceptual delimitation of the potestad administrativa: stinctive features	30
	1.	Potestad is a unilateral legal power granted to satisfy the interest of third parties	31
	2.	Public powers (potestades públicas): concept and demarcation from private individuals. General interest and potestad administrativa	37
		2.1. Public "potestades" as powers conferred to satisfy the general interest	37
		2.2. How the general interest linked to the conferral and exercise of a "potestad administrativa" is determined	40

		Pages
	2.3. General interest and misuse of power in the exercise of "potestades administrativas"	41
	2.4. Public <i>potestad</i> as power-duty; the unrenounceable nature of <i>potestades administrativas</i>	42
3.	Organisational interweaving of public powers (potestades públicas) and specific analysis of some of them	43
	3.1. The original public powers	43
	3.2. Full judicial review of "potestades administrativas"	45
	3.3. Other public powers other than "potestades administrativas"	46
4.	Exclusion of the concept: (material) provision of public services; and ancillary or support activities for the exercise of potestades administrativas	47
5.	Delimitation and definition of potestad administrativa. Consequence: subjection to administrative law in its exercise	49
At	tributes or conceptual notes of the potestad	
	ministrativa: identifying features	50
1.	Constitutional indeterminacy. Multiformity	50
2.	The potestad administrativa is a unilateral (one-sided) power, the exercise of which produces effects by itself (promptness); it is not necessarily a power of authority or imperium, which can be imposed on private individuals (enforceability). Enforceability as a specific potestad administrativa	51
3.	The attribution of potestades administrativas is based on the principle of legality. The exercise of potestades administrativas without competence to do so is an invalidity defect	55
4.	Exercise of potestades administrativas and administrative procedure	56
	4.1. The exercise of "potestades administrativas" is subjected to procedural guarantees, which vary in intensity depending on the potestad administrativa being exercised	56
	4.2. Substantive participation in the processing of an administrative procedure involves the exercise of "potestades administrativas"	58

INDEX

dif	feren	public and private persons. It is necessary t tiate between holding and exercising potestade trativas
1.	Cases by pr	s involving the exercise of potestades administrativa
	1.1.	So-called "private individuals exercising publifunctions"
	1.2.	
	1.3.	Decisions issued by public concessionaires in the exercise of "potestades administrativas"
	1.4.	Some relations between private bodies providing and private users or recipients of services of general interest
	1.5.	Decisions issued by certification and accreditation private bodies
	1.6.	Spanish sports federations
	1.7.	The "extension" of administrative law
	1.8.	Summary: law governing the exercise of <i>potestade</i> administrativas by private persons under privat law: supervision and control; necessary distinction between holding and exercising of <i>potestade</i> administrativas
2.		cise of potestades administrativas by public sectories with private law legal personality
	2.1.	The new legal framework of Acts 39/2015 and 40 2015
	2.2.	The "escape" and "return" to administrative law Limits
3.		cise of potestades administrativas by Parliamen ciary and constitutional bodies
Cla	assific	ations of the potestades administrativas
1.	The adm	need for a catalogue or inventory of potestade inistrativas. Families of procedures
		· ·

			Pages
	2.	Potestades administrativas favourable and potestades unfavourable or involving the exercise of public authority or imperium	74
		2.1. What are prerogatives, authoritative or unfavourable <i>potestades administrativas</i> according to scholars?	<i>7</i> 5
		2.2. List of functions involving unfavourable acts or the exercise of exorbitant prerogatives	77
VI.	Co	nclusion	78
VII.	Bi	bliography	80
СНА	PTEI	R 2	
		THE CONCEPT OF PUBLIC AUTHORITY IN FRENCH	95
JEAI	N-BEI	RNARD AUBY	
I.		e concept of public authority did play an important role the historical building of French administrative law	96
II.	It j	plays only a limited practical role in modern times	98
III.		t it remains essential for understanding the conceptual ses of French administrative law	100
CHA:	PTEI	R3	
BY PI	UBL	STRATIVE FUNCTIONS AND POWERS "GOVERNED IC LAW": A VIEW FROM ITALY	103
I.	Int	roduction	103
II.	A	first cut at the argument	104
	1.	The growth of government	104
	2.	Defining administration: the subjective criterion	106
	3.	Defining administration: the objective criterion	108
III.	Na	ture and scope of administrative functions	111
	1.	Reinterpreting separation of powers	111
	2.	Functions reserved to public authorities	115

INDEX

		Pages
	3. Administrative functions and powers: the case of public employment	117
	4. The 'negative' state and the 'positive' state	121
	5. The exclusion of auxiliary and 'technical' activities	122
IV.	Functions "governed by public law"	124
	1. Identifying administrative functions: interests and powers	124
	2. Standards and procedures for administrative functions	127
1	3. Public law requirements for private bodies	130
	4. Implications for judicial protection	131
V.	Conclusion	133
THE VERV	CONCEPT OF PUBLIC FUNCTION (ÖFFENTLICHE VALTUNG) IN GERMANY	135
I.	Introduction: the ambiguous concept of "öffentliche	405
**	Verwaltung" in Germany	135
II.	The constitutional concept of "state authority" (Staatsgewalt)	138
	1. "State authority" and the scope of (binding) application of basic rights	139
	2. "State authority" and democratic legitimation	143
	3. Effective legal remedies against violation of rights by "public authority"	146
III.	The scope of application of the VwVfG and the concept of "administrative activities under public law"	148
IV.	The concept of "public-law conflicts"	151
V.	State liability for violation of an "official duty"	153
VI.	The concept of "public contracting authorities"	154
VII.	The principle of the exercise of sovereign authority by	
	members of public service	155

		Pages
VIII.	Common features and functional differences of public law concepts reflecting the evolution of public administration	156
IX.	Bibliography	158
CHAI	PTER 5	
	CONCEPT OF PUBLIC FUNCTION IN THE POLISH	163
MAR	REK WIERZBOWSKI	
I.	Public Function or Public Power in Polish Administrative Law	165
II.	Substantial Differences	168
III.	Other aspects of the Polish concept of Public function	169
CHAI	PTER 6	
	LIC FUNCTIONS" IN UK ADMINISTRATIVE LAW DON ANTHONY	173
I.	Introduction	173
II.	From "source of power" to "public functions"	176
III.	The problem of contract	181
IV.	Public functions and the Human Rights Act 1998	184
V.	Conclusion	188
CHAI	PTER 7	
HER	NCEPT OF THE PUBLIC FUNCTION IN EU LAW?	191
I.	Defining the Concept of the EU Public Function	192
	1. European public power and the principle of conferral	194

INDEX

	\underline{P}	nges
2.	European public interest 1	196
	2.1. Principle of Subsidiarity 1	198
	2.2. Principle of Proportionality	199
	2.3. Principles of Democracy and Openness	201
T	he Public Function in EU Administrative Law 2	203
1.	Organisation: Public Functions within an Integrated Multi- Level Administration	204
2.	Limits to the administrative function: Delegation of Public Functions	208
S	ome tentative conclusions2	210
В	bliography2	211

Thomson Reuters ProView. Usage guide