

# ADMINISTRATIVE POLICE ISSUES AT EUROPEAN LEVEL

Dana VULPAȘU\*

## Abstract

*Administrative police, fundamental form of public administration, which aims to ensure public order and the protection of human rights, through prevention, knows no uniform conceptualization in the European states. However, it appears in various forms in national systems and is sustained and strengthened by EU policies whose objectives aim at the establishment of an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States and to ensure a high level of security through measures of preventing crime, racism and xenophobia. This article aims to show how the concept of administrative police is reflected in the European Union, the complementary and coordinating role of the latter, and the need for a uniform legal framework in European national systems which can allow the shaping of a European model.*

**Keywords:** *Public order, human rights, prevention, administrative police, European Union*

## 1. Introduction

This article highlights a comparative analysis at the European states level of the administrative police as fundamental form of public administration activity and the incidence of the European law on it.

The overall goal of administrative police is to maintain public order, having a preventive character and being governed by the rules of administrative law. Although it does not appear in each analysed state under the name of administrative police, its manifestations can be found in the practice of public authorities.

I believe that the importance of this study is related to the need of uniform conceptualization of this notion at European level and to promote public disorder prevention practices because the modernism of public administration activity lies in overcoming the actions of the individuals that may affect public liberties, which would reduce human and psychological damage caused by these acts, that are often irreparable.

Depending on the proposed indicators, such as the content of the administrative police concept, preventive nature versus repressive character, general and special administrative police, which were the basis for comparative analysis, we could identify some common elements, the present state of research in this field and the premises which could be the foundation of a European model.

Finally, the European Union has a coordinating role in internal security, it aims, through its strategy of Homeland Security, the prevention and anticipation of crime, as well as natural and manmade disasters and to mitigate their potential impact.

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\* PhD Candidate, Doctoral School in "Administrative Sciences", National School of Political and Administrative Studies, Bucharest (e-mail: danavulpasu@yahoo.com).

## 2. Content

Etymologically, the word police comes from the Latin word "politia" and from the Greek "politeia", which refers to the administration of the city (polis). Therefore, the origin of "police" means, in a general way, the action of government.

Currently, its historical meaning is lost, and its present one can be approached from two perspectives:

- a) In a material sense, denoting an activity, one that is to maintain public order through legal and material measures;
- b) In an organic sense, referring to the group of persons or authorities entrusted with the power to enact constraining rules which must be respected by the administered ones to maintain public order.

John Alderson in *Policing freedom*<sup>1</sup> has identified the following "police styles":

- Informal police (social control);
- Passive police (non-active police, except in cases of very serious disorders);
- Punitive police (applying severe punishment for discouragement and example);
- Preventive Police ("higher" form of the police, which is manifested by "continuous and systematic islanding").

Based on this typology, we propose in this article to address preventive police, which will play in the position of administrative police.

To have a clearer understanding of the concept of administrative police we will begin by listing a series of definitions found in the literature<sup>2</sup>. In this regard, we mention a first definition proposed by Charles-Édouard Minet<sup>3</sup>, in a simplistic manner, according to which it is the activity consisting in fixing various rules that must be complied by individuals so that the exercising of their freedom does not interfere with the harmony of community life or with the freedoms of others.

In another opinion<sup>4</sup>, by administrative police we understand "all public administration interventions that require to the action of individuals the discipline demanded by life in society", being completed by Jean Castagné<sup>5</sup>, who states that "administrative police power is the prerogative recognized to the administrative authority to enact, in order to ensure public order, enforceable legal acts and to perform material acts required of their enforcement."

So, from these definitions, we conclude that the administrative police activity seems to have a simple nature, in connection with the facts. We can ask what is the link with EU law, given on the one hand that the police legal activities are not economic activities and, on the other hand, the EU has no direct competence in the field of administrative police. A first and possible answer lies in the fact that the treaty provisions on free movement of persons, goods and services, competition and so on, are required by national police authorities in taking police measures which fall within the scope of EU law.

In our approach, we will start from the provision of Article 67, Title V „Area of freedom, security and justice” from the Treaty on the functioning of the European Union, which stipulates that:

- The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States;

<sup>1</sup> John Alderson, *Policing freedom* (Plymouth: McDonald & Evans, 1979), 35.

<sup>2</sup> Dana Vulpașu, „Administrative police – fundamental form of public administration activity,” *Research and Science Today* 1(5) (2013): 245, accessed March 2, 2014. [http://mpr.aub.uni-muenchen.de/45887/1/MPRA\\_paper\\_45887.pdf](http://mpr.aub.uni-muenchen.de/45887/1/MPRA_paper_45887.pdf)

<sup>3</sup> Charles-Édouard Minet, *Droit de la police administrative* (Paris : Vuibert, 2007), 5.

<sup>4</sup> Jean Rivero and Jean Waline, *Droit administratif* (Paris: Dalloz, 2004), 347.

<sup>5</sup> Jean Castagné, *Le controle juridictionnel de la légalité des actes de police administrative* (Paris: LGDJ, 1964), 22.

- The Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws;
- The Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters.

European Union institutions and its Member States promote and provide freedom and security. Europe guarantees respect for human rights, rule of law and solidarity.

Through the Internal Security Strategy of the European Union, it demonstrates a firm commitment to continuing to make progress in the area of justice, freedom and security through a European security model which faces the following challenges: protecting rights and freedoms; improving cooperation and solidarity between Member States; addressing the causes of insecurity and not just the effects; prioritizing prevention and anticipation; involving all sectors with a role to play in public protection (political, economic, social, etc.); communicating security policies to the citizens; and, finally, recognising the interdependence between internal and external security in establishing a "global security" approach with third countries<sup>6</sup>.

In the following we observe that, at EU level, the purpose of the national administrative police to prevent public disorders and to enforce of human rights respect is identified in the above mentioned expressions such as "ensuring a high level of security" "prevention", "human rights" and "prevention of crime, racism and xenophobia".

According to European constant jurisprudence, states "remain solely responsible for maintaining public order and safeguarding internal security," European law recognizing thus the administration discretion to choose the preventive or repressive means to implement, since EU institutions are not substitute of Member States to prescribe what measures should be taken<sup>7</sup>.

Member States must continually make efforts to develop tools so that national borders, different laws, different languages and ways of working do not impede progress in preventing cross-border crime.

In this article I will analyse the following countries according to certain indicators: France, Germany and the United Kingdom of Great Britain and Northern Ireland.

They will allow the identification of a part of the common elements found in each analysed state and the verification of the European model of administrative police hypothesis.

#### **a) The content of the administrative police notion**

##### **➤ France**

The theory of "administrative police" is amply analysed and can be considered to have been born in France, European State in which it finds its applicability explicitly.

In this sense, an attempt to define this concept can be found in the General Code of Local Authorities, art. L. 2212-2, which reproduces the old formula of the Law of 1884, and states that "the municipal police is to ensure good order, safety, security and public sanitation", followed by an enumeration, without being exhaustive, of 8 points<sup>8</sup>.

Regarding the phrase "good order" we must make some remarks. This is less accurate and it results that the definition of the legitimate administrative could and may know some

<sup>6</sup><http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&gc=true&sc=false&f=ST%207120%202010%20INIT> accessed February 27, 2014.

<sup>7</sup> Judgment of the Court of 9 December 1997, Commission of the European Communities v French Republic, case C- 265/95.

<sup>8</sup>[http://www.legifrance.gouv.fr/affichCode.do;jsessionid=EDE1997A47EFD02BFC95FAF04C8688EF.tpdjo15v\\_1?idSectionTA=LEGISCTA000006164555&cidTexte=LEGITEXT000006070633&dateTexte=20131004](http://www.legifrance.gouv.fr/affichCode.do;jsessionid=EDE1997A47EFD02BFC95FAF04C8688EF.tpdjo15v_1?idSectionTA=LEGISCTA000006164555&cidTexte=LEGITEXT000006070633&dateTexte=20131004) accessed February 28, 2014.

variations: it may correspond, for example, to morality, aesthetics, and the protection of individuals from themselves<sup>9</sup>.

The issue on preventing immorality as legitimate goal of the administrative police at first was resolved in a negative way: administrative police ban of activities deemed likely to affect morality is not permitted unless the moral disorder itself is likely to generate a material disorder (C. E. 7 Nov. 1924, Club sportif chalonais on banning boxing fights by the mayor because they have a brutal character, and sometimes wild, contrary to "moral hygiene"<sup>10</sup>).

Currently, the jurisprudence recognizes that concerns for morality can be a legitimate police purpose, at least in field of mayor ban, through municipal police, of the immoral films projection already covered by state censorship.

Equally, it is an extension that marks the possibility available to the general administrative police, to take into account concerns about aesthetics (P. Duez, *Police et esthétique de la rue*, D. H. 1927, 17). Apart from the aesthetic special police organized by specific texts (eg those relating to advertising contained in the Environmental Code<sup>11</sup>), the jurisprudence recognizes that general administrative police measures, particularly those that the mayor disposes, are not vitiated by abuse of power for the simple fact that they were inspired on aesthetic considerations.

Regarding the possibility of administrative police to protect individuals from themselves by imposing, according to the Decree of 28 June 1973, to wear a headset the drivers and passengers of two-wheeled vehicles, or the seat belt drivers and other occupants of private cars. Repressive judicial courts are divided. The Court of Cassation ruled legality of the decree (Crim. 20 March 1980<sup>12</sup>). From his perspective, the State Council held in the same sense, considering that the requirement was intended "to reduce the consequences of road accidents" (CE 22 Jan 1982, Ass. Auto défense<sup>13</sup>).

Regarding the components of the concept of public order, we consider the Decree of October 7, 1995<sup>14</sup>, by which the State Council considers that human dignity should be seen as an integral part of public order. The Mayor of Morsang sur Orge banned performances "Lancer de nains - throwing dwarfs" that should take place in the discos of that city because it believed that they affect human dignity.

In exercising municipal police, mayors are obliged to take measures to maintain public order, which is consisted of security, tranquillity and public sanitation. However, the jurisprudence has already accepted that public order can be understood beyond the traditional trilogy, taking into account, in some circumstances, issues of public morality.

By its decision of 27 October 1995, the State Council, for the first time explicitly recognized that respect for human dignity is one of the components of public order. Protecting human dignity against all forms of slavery or degradation has already been elevated to constitutional status by the Constitutional Council (Décision n° 94-343/344 DC, 27 juillet 1994<sup>15</sup>). It has also been provided in article 3 of the Convention for the Protection of Human

<sup>9</sup> Andre de Laubadère, Jean-Claude Venezia and Yves Gaudement, *Traite de droit administrative* (Paris: L. G. D. J., 1999), 788 – 806.

<sup>10</sup> [http://archiv.jura.uni-saarland.de/france/saja/ja/1924\\_11\\_07\\_ce.htm](http://archiv.jura.uni-saarland.de/france/saja/ja/1924_11_07_ce.htm) accessed February 28, 2014.

<sup>11</sup> <http://www.legifrance.gouv.fr/affichCode.do?idArticle=LEGIARTI000006834682&idSectionTA=LEGISCTA000006176663&cidTexte=LEGITEXT000006074220&dateTexte=20130401> accessed February 28, 2014.

<sup>12</sup> <http://www.easydroit.fr/jurisprudence/Cour-de-Cassation-Chambre-criminelle-du-20-mars-1980-79-93-104-Publie-au-bulletin/C73090/> accessed February 28, 2014.

<sup>13</sup> <http://www.easydroit.fr/jurisprudence/Conseil-d-Etat-3-5-SSR-du-22-janvier-1982-20758-20966-21002-21030-21185-21194-21221-inedit-au/J143316/> accessed February 28, 2014.

<sup>14</sup> <http://www.conseil-etat.fr/fr/presentation-des-grands-arrets/27-octobre-1995-commune-de-morsang-sur-orge.html> accessed February 28, 2014.

<sup>15</sup> <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/depuis-1958/decisions-par-date/1994/94-343/344-dc/decision-n-94-343-344-dc-du-27-juillet-1994.10566.html> accessed March 1, 2014.

Rights and Fundamental Freedoms<sup>16</sup> according to which “No one shall be subjected to torture or to inhuman or degrading punishment or treatment”.

State Council decided, therefore, that respect for the human being is a part of the public order and the authority vested with the municipal police power may, even in the absence of specific local circumstances, prohibit an activity which affects it.

Judging from the present case, the Contentious Assembly considered that the attraction "Lancer de nains", consisting of a dwarf throwing by spectators led to use as projectile a physically handicapped person and presented as such. This attraction has been found as violating, by its own object, human dignity. Therefore, this prohibition was legal, even in the absence of particular local circumstances.

For a municipal authority to be accorded powers to ban performances likely to disrupt consciousness because they can undermine human dignity, the State Council has shown that public order can only be defined as "material and exterior," but it should cover the concept of "human" that public power should make it respected.

#### ➤ **Germany**

In Germany, the Lander prevents the danger and the federation holds the prosecution. Police and public security laws aim to provide police jurisdiction the competency rules that regulates the issue of preventive measures<sup>17</sup>.

Order maintaining or combating public danger authorities take over police materials functions. They become active to protect the community or the individual of the danger threatening public order and safety.

Public safety and police are the legislative competence of the Landers, not mentioned in Article 73 of the Constitution<sup>18</sup>. This power is expressly clarified by Article 70 of the Constitution. All Landers have issued, therefore, its own regulations on public security and police. German Federation has, however, a number of legislative powers of a special nature in police matter<sup>19</sup>.

#### ➤ **United Kingdom of Great Britain and Northern Ireland**

United Kingdom is the state in which we find the fewest elements administrative police.

Metropolitan Police institution defines police more generally, as the set of measures taken in all civilized countries to ensure that the inhabitants keep the peace and obey the law. Also, it is the force of peace (or police) officers used for this purpose<sup>20</sup>.

In terms of the public order, the Act of 1986 is based on the abolishment of the common law offences of riot, rout, unlawful assembly and affray and certain statutory offences relating to public order; to create new offences relating to public order; to control public processions and assemblies; to control the stirring up of racial hatred; to provide for the exclusion of certain offenders from sporting events; to create a new offence relating to the contamination of or interference with goods; to confer power to direct certain trespassers to leave land<sup>21</sup>.

### **b) The preventive nature versus repressive nature**

#### ➤ **France**

<sup>16</sup> [http://www.echr.coe.int/Documents/Convention\\_ROM.pdf](http://www.echr.coe.int/Documents/Convention_ROM.pdf) accessed March 1, 2014.

<sup>17</sup> Monica Vlad and Gilbert Gorning, *Drept polițienesc român și german* (București: C. H. Beck, 2012), 24.

<sup>18</sup> <https://www.btg-bestellservice.de/pdf/80201000.pdf> accessed March 1, 2014.

<sup>19</sup> Monica Vlad and Gilbert Gorning, *Drept polițienesc român și german* (București: C. H. Beck, 2012), p. 28.

<sup>20</sup> <http://content.met.police.uk/Site/history> accessed March 2, 2014.

<sup>21</sup> <http://www.legislation.gov.uk/ukpga/1986/64> accessed March 2, 2014.

The definition of administrative police is completed by a very important distinction, that between administrative police and judicial police.

More generally, administrative police is distinguished by the judicial police in that the first is preventive and the second is repressive. Administrative police aims to avoid disorders taking in advance necessary measures; judicial police <sup>22</sup> seeks to investigate and bring to justice the perpetrators of crimes already committed.

The importance of the distinction is presented in the following aspects:

In the litigious competence field, administrative police contentious is settled by administrative jurisdictions, while judicial police contentious work belongs judicial justice.

Regarding liability, damages caused by acts of administrative police are likely to engage the administration responsibility with at least a greater certainty than those resulting from acts of judicial police.

For example, we meet authorities and officials cumulating the two skills and sometimes they act as administrative police authorities (prefects, mayors, state police inspectors). Therefore, it is essential to determine a criterion for distinguishing the judicial police from the administrative police.

However, if this criterion is always true in most cases, it does not always allow us to distinguish between the two types of polices. In general, we talk about judicial police when we are in the presence of research or arrest operations of the perpetrators of a defined crime, while administrative police covers general control and surveillance missions.

Applying this principle, however, is sensitive to the extent that the crimes are often committed when an operation of administrative police is taking place or when the latter was unable to prevent it, or even to discover it.

#### ➤ **Germany**

To decide if public safety laws or police law are applicable, or if it has to be chosen the path of administrative or judicial itself, it is relevant if the police got involved to fight the danger or to pursue criminal acts.

According to Article 14 of Prussian police administration law by public safety we understand:

- Protection of public law order;
- Establishment and functioning of the state and its institutions;
- Inviolability of life, health, liberty, property and honour of citizens.
  - o Police preventive actions

On the action to combat hazards, police have the power to fight against the dangers that threaten public order and security. In this framework, the police must:

- Prevent the commission of offenses;;
- Ensure the prosecution of criminal offenses;
- Make necessary preparations to grant support and action in situations of danger.

Among the standard measures of safety and police legislation, are:

- Collecting information:
  - Establishing the identity;
  - Checking special permits;
  - Recognition measures;
  - Summons and interrogation;
  - Hearing;
  - Observation;
  - Data collection and processing;

<sup>22</sup>[http://www.legifrance.gouv.fr/affichCode.do;jsessionid=F1858763D97C5EA4F832799413472DBF.tpdjo06v\\_2?idSectionT A=LEGISCTA000006167411&cidTexte=LEGITEXT000006071154&dateTexte=20130329](http://www.legifrance.gouv.fr/affichCode.do;jsessionid=F1858763D97C5EA4F832799413472DBF.tpdjo06v_2?idSectionT A=LEGISCTA000006167411&cidTexte=LEGITEXT000006071154&dateTexte=20130329) accessed March 2, 2014.

- Correction and deletion of unlawfully data recorded.
- Prohibition to be in certain localities;
- Search, seizure, insurance, storage, recovery, restitution;
- Retention as an interim measure.

- Repressive police actions

On the other hand, the police have the prosecution duty and the jurisdiction to take measures pertaining to it, in accordance with the criminal law. These rules serve almost exclusively the purpose of prosecution, thereby having repressive character.

➤ **United Kingdom of Great Britain and Northern Ireland**

In this state it could not be identified a clear separation of the preventive measures against repressive ones, namely of administrative police against the judicial police, as it was found in the examples of France and Germany.

**c) General administrative police and special administrative police**

➤ **France**

General administrative police is entrusted to various administrative bodies and exercised in a general way in relation to any activity of individuals.

In parallel with this police, there are numerous special police. The particularity of these police in relation to the general police is that their subject is other than security, tranquillity, sanitation: special police in hunting, fishing, advertising, which are subject to a legal regime distinct from the general police. This specific character relate either to the competent police authority to exercise police power (railway police assigned to the prefect) or the procedures of implementing the power of the police: the police of classified installations for environmental protection.

➤ **Germany**

All legal norms may contain rules that serve to combat threats to public order or safety. Here we meet Lander rules and federal rules, regulating the functions of competent authorities in the field. Different Lander competence coincide in their general appearance, despite significant differences details. Only when not present rules establishing the powers at this level, there can be raised the rules of public safety or the police ones. In these laws are found numerous rules for awarding powers and one general clause, the latter becoming applicable only where there are no specific rules on regulating competences. If the person concerned does not comply with the authority requests, the facts may include a violation of public order<sup>23</sup>.

Regarding specific areas of the law on combating hazards in the field of public safety law at the federal level, we include:

- Road traffic;
- Soil protection;
- Protection against atomic energy and the harmful action of ionic radii;
- Exercise lucrative activities;
- Combat public hazards in pensions field;
- Exercising trades or professions;
- Combating public health hazard;
- Consumer protection;

<sup>23</sup> Monica Vlad and Gilbert Gorning, *Drept polițienesc român și german* (București: C. H. Beck, 2012), 56.

- Weapons and explosives;
- Status of foreigners.

Regarding specific areas of combating hazards in the field of public safety at the Lander level, we find:

- Constructions;
- Water management;
- Protection against fire and disasters.

### ➤ **United Kingdom of Great Britain and Northern Ireland<sup>24</sup>**

In this case there are general police forces in England and Wales, of which there are counties forces, merged forces (such as forces of Thames Valley and West Mercia covering two or more counties), metropolitan forces (covering areas of former councils of the metropolitan county) and London forces.

There are also various specialized police forces with limited jurisdiction, including the Port of London Police, Airport Police, British Transport Police, United Kingdom Atomic Energy Police, Royal Parks Police and Ministry of Defense Police. In addition, officers may be appointed by the justices of the peace (to act as harbor, dock or pier police) and the Rector or Vice-Rector of Oxford or Cambridge University (to act as university police in the subordination of the proctor).

### **3. Conclusions**

As a result of the study on EU states we may find that we cannot talk about a European model of administrative police. .

Moreover, there are very few common elements in the national systems that reinforce the unitary conceptualization of the European administrative police idea.

However, the three analyzed countries - France, Germany and the United Kingdom of Great Britain and Northern Ireland - carry some similarities, the most relevant being in the general police and special police organization. However, we found that the State which presented the fewest elements of administrative police is the United Kingdom of Great Britain and Northern Ireland, and the opposite is France.

Regarding the relationship between the analyzed Member States and EU, it may be considered to be one of complementarity, as the latter comes to complement the efforts of states to prevent public disorder, to ensure respect for human rights and a secure environment.

In this regard, we note that, at EU level, the administrative police purpose at national level of public disorder prevention and enforcement of human rights is identified in expressions such as "ensuring a high level of security" "action prevention "," human rights "and" prevent crime, racism and xenophobia ".

Because of the seriousness of the pursued objectives, we conclude that there are requirements which mark the administrative police measures:

- a) Administrative police action always takes the form of unilateral prescription.
- b) Police measure is never creative of rights and may therefore be subject to restriction.

In conclusion, I support the idea of a European model of administrative police as well as strengthening the cooperation between Member States to prevent public disorders and ensure human rights.

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<sup>24</sup> For more information, see William Wade and Christopher Forsyth, *Administrative Law* (Oxford University Press, 2000), 149-160



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