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ADMINISTRATIVE FINE PROCEEDINGS – ADMINISTRATIVE PROCEDURE OR "MINOR CRIMINAL TRIAL"?

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Summary

German administrative offence proceedings occupy an ambiguous position between administrative and criminal law. While administrative offences are commonly understood as violations of regulatory norms, the German legislator has deliberately structured both substantive and procedural law in close alignment with criminal law. Proceedings are conducted by administrative authorities in a repressive capacity and are subject to review by ordinary courts rather than administrative courts.

This article traces the historical development of this model and examines its normative rationale and practical consequences. It highlights both its strengths, particularly procedural safeguards and doctrinal consistency, and its weaknesses, including deficits in specialised expertise and risks of procedural fragmentation. Special attention is given to the principle of expediency (Section 47 OWiG), which allows discretionary discontinuation of proceedings and raises concerns regarding its practical application. The paper concludes that the classification of administrative fine proceedings as either administrative procedure or a "minor criminal trial" remains a fundamentally open question requiring further doctrinal and empirical analysis.

Introduction

Administrative offences are often referred to as "administrative wrongdoing". This term implies that, unlike criminal offences, they generally do not protect higher-ranking subjective rights such as health, property, or the inviolability of the home. Instead, they sanction violations of administrative regulations, such as breaches of traffic rules or reporting obligations. Accordingly, administrative

offences are closely linked to the numerous administrative regulations that typically come with their own specific penalty provisions. Without detailed knowledge of the relevant administrative framework, it is often simply impossible to handle administrative offences properly.

This substantive proximity may suggest that the entire administrative fine procedure should be conducted like a standard administrative procedure – based on administrative procedure laws and with administrative courts as the legal venue.

However, the German legislator has taken a different path. The entire administrative fine procedure in Germany is closely modelled on criminal law and criminal procedure. The assessment framework for administrative offences mirrors that of criminal offences one-to-one. The procedure itself is also based on criminal procedure. The investigative powers of the administrative fine authorities are primarily derived from references to the Code of Criminal Procedure. Furthermore, the administrative fine notice is not structured like a typical administrative act but rather like an indictment. Notably, judicial review is not the responsibility of the administrative courts but of the ordinary courts – specifically, the local courts (*Amtsgerichte*) and the regional supreme courts (*Oberlandesgerichte*).

1. Historical development of administrative offence law in Germany

The reasons for the German legal situation described above are essentially historical. The decisive point is that German administrative offence law evolved from criminal law over a long process spanning the late 19th century to the 1970s.[1]

The starting point in the 19th century was the "unitary solution". This meant that there was no distinction between criminal offences and administrative offences.[2]

The Imperial Penal Code of 1871 adhered to this principle, providing for crimes (*Verbrechen*), misdemeanours (*Vergehen*), and petty offences (*Uebertretungen*) as forms of criminal acts, but no provisions for administrative offences (*Ordnungswidrigkeiten*).[3] So whatever would be an administrative offence today would have been a crime according to these definitions. However, a first substantive differentiation was already implicit: in the case of petty offences, there was a kind of preliminary administrative decision through police "penalty orders". This did not exist for crimes and misdemeanours.[4]

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[1] Nowrousian B. Ordnungswidrigkeitenrecht [Administrative Offence Law]. 2nd ed. Munich: C. H. Beck, 2025, p. 2.

[2] Mitsch W. Karlsruher Kommentar zum Gesetz ueber Ordnungswidrigkeiten. OWiG [Karlsruhe Commentary on the Administrative Offences Act (OWiG)]. 6th ed. Munich: Beck, 2025, Einleitung Randnummer [introduction para.] 4 et seq.

[3] Mitsch W. 2025, Einleitung Randnummer [introduction para.] 6.

[4] Mitsch W. 2025, Einleitung Randnummer [introduction para.] 8.

A purely administrative penal law developed alongside this in the field of economic criminal law. In some areas, not only were sanctions imposed by authorities, but judicial review was sometimes excluded altogether.[5]

Further calls for a complete separation between criminal law and administrative offence law initially went unheard.[6]

The National Socialists advanced the development by creating a so-called "administrative penal law" (*Ordnungsstrafrecht*) in the economic sphere. For example, in the field of price control, supervisory authorities were granted extensive powers to impose sanctions.[7] However, the motives behind this were highly problematic: the aim was primarily to restrict judicial review, which was perceived as obstructive and inconvenient.[8]

After the formation of the Federal Republic of Germany in 1949 a major milestone was the Administrative Offences Act of 1952 (*Gesetz ueber Ordnungswidrigkeiten*). For the first time, the legislator consolidated the principles of administrative sanctions in a framework law. The administrative fine was explicitly defined as something different from a criminal penalty, and its imposition was fundamentally the responsibility of administrative authorities. The provisions of the general part were largely adopted verbatim from the Penal Code.[9]

At the same time, fewer and fewer petty offences were created, while more and more administrative offences were added. Increasingly, offences previously classified as petty crimes – and thus, as criminal acts – were transformed into administrative offences. Parallel to this, the maximum fines for administrative offences were continuously raised.[10]

This development culminated in the Administrative Offences Act of 1968 and the reform of the Penal Code in 1975. The latter abolished the practically obsolete category of petty offences, while the former completed the establishment of a distinct administrative offences system.[11]

The motives for the continuous strengthening of administrative offence law were quite different from those in the Third Reich. The goals were, on the one hand, **decriminalization**, particularly in the area of traffic violations, and on

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5 Mitsch W. 2025, Einleitung Randnummer [introduction para.] 16 et seq.

6 Gerhold L. BeckOK zum OWiG [Beck Online Commentary on the Administrative Offences Law], 01.10.2025, Einleitung Rn. 15 [introduction para.] 15; Mitsch W. 2025, Einleitung Randnummer [introduction para.] 11 et seq.

7 Mitsch W. 2025, Einleitung Randnummer [introduction para.] 24 et seq.

8 Mitsch W. 2025, Einleitung Randnummer [introduction para.] 24, 30.

9 Gerhold L. 01.10.2025, Einleitung Randnummer [introduction para.] 16 et seq.

10 Goehler M. R. Das neue Gesetz ueber Ordnungswidrigkeiten [The new Administrative Offences Act]. JuristenZeitung (JZ), 1968, p. 583.

11 Gerhold L. 01.10.2025, Einleitung Randnummer [Introduction para.] 18 et seq.

the other hand, **procedural efficiency**, to avoid tying up excessive resources in mass proceedings.[12]

Notably, both the 1952 and 1968 Administrative Offences Acts largely adopted the statutory provisions of criminal law and criminal procedure.[13] This applied to the general part of substantive criminal law – such as the distinction between intent and negligence, between completion and attempt, participation and complicity, as well as justification and grounds for exclusion of guilt. Furthermore, it applied to procedural law: after an objection to a fine notice, jurisdiction lay with the ordinary courts rather than the administrative courts.

Although administrative offence law is intended to stand alongside, and not beneath, criminal law, in practice it constitutes a "minor criminal procedure" – dealing with less serious offences and sanctions, yet following largely comparable procedural structures, just simplified and executed by administrative authorities.

2. Advantages of the link to criminal procedure

Aligning the administration offence procedure with criminal procedure has both advantages and disadvantages.

The advantages are, as follows:

Administrative offences, like criminal offences, are prohibitory norms that allow for sanctions. They differ in terms of the severity of sanctions but are structurally equivalent to criminal provisions. The gradual separation from criminal law did not alter this fact.

Accordingly, the administrative fine procedure, like criminal procedure, is **repressive** rather than **preventive**. It does not aim at eliminating existing unlawfulness for the future – as preventive administrative procedures for averting danger do – but rather at sanctioning past wrongdoing through a normative appeal to the citizen.

Against this background, the jurisdiction of the ordinary courts, rather than the administrative courts, also appears appropriate: the ordinary courts are responsible for criminal matters as well and thus have the necessary competence and experience to handle administrative fine proceedings as "minor criminal trials".

In particular, in the numerically significant area of traffic-related administrative offences, they also possess the expertise needed to distinguish them from criminal traffic offences.

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[12] Nowrousian B. Bussgeldtatbestand und Bussgeldverfahren – eine Kurzeinfuehrung ins Recht der Ordnungswidrigkeiten [Administrative Offences and Administrative Offence Proceedings – A Brief Introduction to the Law of Administrative Offences]. Juristische Arbeitsblaetter (JA), No. 4, 2020, p. 241.

[13] Nowrousian B. 2020, p. 241.

3. Disadvantages of the link to criminal procedure

The disadvantages are, as follows:

In many administrative offence proceedings, the violations concern rather "exotic" administrative norms. In such cases, the administrative courts have better subject-matter expertise than the ordinary courts.

In the not infrequent cases where an administrative fine proceeding runs parallel to a preventive administrative procedure, the German model creates another problem: if both the fine notice and the administrative decision are contested, the same factual situation must be examined in two independent proceedings before different branches of the judiciary. This is problematic for procedural efficiency and carries the risk of conflicting decisions.

Moreover, practitioners frequently criticize a general tendency among local courts to regard administrative fine proceedings as marginal and to discontinue them too readily based on considerations of expediency.

4. Excursus: Discontinuation at discretion in German administrative offence proceedings

In order to properly situate the aspect mentioned last, it is necessary to take a closer look at the provision that permits the discontinuation of administrative offence proceedings at the discretion of the competent authority. This competence is regulated in Section 47 of the German Administrative Offences Act (OWiG).[14] According to this provision, administrative offence proceedings may be discontinued without legal consequences at the discretion of the authority. Section 47 (1) OWiG authorises the administrative authority to do so as long as the proceedings are still pending before it. Section 47 (2) OWiG also allows the court to discontinue proceedings at its discretion, both during and outside the main hearing.

This provision is based on a procedural principle that characterises German administrative offence proceedings, namely the principle of expediency (*Opportunitaetsprinzip*). This means that prosecutable administrative offences do not necessarily have to be prosecuted in every case. In particular, in cases of minor offences, the competent authority – or the court – may decide on an individual basis whether there is any need for prosecution at all. At least in principle, this constitutes a difference between administrative offence proceedings and criminal proceedings, as the latter are governed by the so-called principle of legality (*Legalitaetsprinzip*), which generally entails a duty to prosecute (even though this duty has meanwhile been significantly relaxed for minor criminal offences).

[14] Gesetz ueber Ordnungswidrigkeiten (OWiG) [Administrative Offences Act]. Available: https://www.gesetze-im-internet.de/owig_1968/ [last viewed 07.01.2026].

Section 47 OWiG grants the prosecuting authorities and courts a remarkably wide margin of discretion. Beyond the requirement that the discretionary decision must be free from errors of discretion, the statute does not lay down any substantive prerequisites. Rather, the legislator relies on the authorities and courts to make appropriate use of this provision and to apply it properly in the realm of mass proceedings, as administrative offence proceedings frequently are. In this context, both authorities and courts are, as a matter of principle, also permitted to take considerations of procedural economy into account when discontinuing proceedings under Section 47 OWiG. This, too, demonstrates that the provision is designed to enable a pragmatic and appropriate handling of mass proceedings. As a rule, a discontinuation under Section 47 OWiG is effectuated without stating reasons.

As already outlined, Section 47 OWiG confers these powers in subsection (1) upon the administrative authority, and in subsection (2) upon the court. However, the court's powers to discontinue proceedings are subject to certain limitations. Outside the main hearing, the court may discontinue proceedings without the consent of the public prosecution office only if no fine exceeding 100 euro has been imposed and the public prosecution office has declared that it will not participate in the hearing. In all other cases, a discontinuation pursuant to Section 47 (2) OWiG outside the main hearing requires the consent of the public prosecution office. Pursuant to Section 75 (2) OWiG, this does not apply in the same way within the main hearing. In the event of a discontinuation during the main hearing, the consent of the public prosecution office is required only if a representative of the prosecution office is present at the hearing. The public prosecution office is not obliged to attend, but merely entitled to do so, and it makes use of this right only in rare cases. As a result, the court may discontinue the proceedings pursuant to Section 47(2) OWiG at any time during the main hearing, even in cases involving substantially higher fines, without requiring any consent whatsoever. In addition, no consent of the administrative authority is required for a discontinuation by the court, neither within nor outside the judicial main hearing. The administrative authority can therefore never prevent a discontinuation under Section 47(2) OWiG.

Practical experience suggests that courts occasionally find it difficult to resist the temptation to dispose of complex and cumbersome proceedings – which would require not only a lengthy main hearing but also the drafting of an extensive judgment – by simply issuing the formulaic decision: "Order: The proceedings are discontinued pursuant to Section 47(2) OWiG". This should not be misunderstood. It should be expressly emphasised that, of course, not all judges apply the relevant provisions in this problematic manner. Practical experience also shows that, in the vast majority of cases, administrative offence proceedings are conducted conscientiously by the courts. As already noted, however, problematic applications of this provision are by no means entirely uncommon.

This issue is in urgent need of further academic scrutiny. Such research would, on the one hand, have to address the number of cases in which the principle of

expediency is applied in a problematic manner. On the other hand, it would require an analysis of the reasons that might give rise to such problematic applications.

Against this background, comparative law studies would also be of great interest. They might reveal patterns indicating which types of procedural structures and which kinds of judicial decision-making powers tend to promote or inhibit such problematic uses of discretion.

Conclusions

As the saying goes, all roads lead to Rome – but not all are equally good. The question of the fundamental structure of administrative fine proceedings is therefore both highly theoretical and of great practical relevance. Even though legal practice continues to function under whichever model the legislator has chosen, the fundamental issue should nevertheless remain open for discussion.

At the same time, it should be emphasised that the German model has, in principle, proven effective in practice. Its close alignment with criminal law ensures a coherent doctrinal framework and generally provides an appropriate procedural setting for the sanctioning of administrative wrongdoing. However, one element of the system requires more critical scrutiny: the broad discretion to discontinue proceedings under Section 47 OWiG. While the principle of expediency is indispensable for handling mass proceedings efficiently, its current formulation allows for a degree of flexibility that may encourage overly extensive use in practice. A more clearly structured and restrictive framework for discretionary discontinuation would therefore be desirable in order to prevent excessive application and to safeguard the consistent enforcement of administrative offence law.

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Normative acts

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