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Interfaces of Police and Military Security

Internal assistance provided by the German Armed Forces due to the increasing number of disasters and security threats



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The security policy situation has changed – it has become more complex and no longer so easy to divide into national and international or civilian and military sections. This also makes the decision harder as to what kind of security guarantees may be used and when. However, as the necessity to fight against natural disasters with military means as well has been realised, in the meantime, there may also be a need to use military resources to combat man-made threats or disasters that have already occurred. Unfortunately, disasters and security threats do not adapt themselves to our legal situation – in militant democracy, it must be the other way around. The following article demonstrates the legal framework for the domestic deployment of the German Armed Forces currently valid in Germany and above all represented through the German Constitution. Consequently, a fictitious request for help from the police to the military will be presented. In this case, it concerns a killing spree which requires military equipment to combat. Undoubtedly, this situation could also be defined as an act of terrorism with just a few changes - which is intended to show the increasing complexity of the current challenges faced by all guarantors of democratic security. Finally, I will make some necessary remarks on the development of the security services – within the current security situations and in international comparison with neighbouring European countries, which are our allies both in the rather civilian scope of the EU and also in the military sector of NATO.

1. LEGAL FRAMEWORK FOR THE DOMESTIC DEPLOYMENT OF THE GERMAN ARMED FORCES

The core mission of the German Armed Forces and domestic deployments

The current possibilities and limits in force on the deployment of the German Armed Forces to provide assistance within Germany – thus including assisting police forces – are determined by the German Constitution. The fundamental mission of the German Armed Forces is enshrined in

Article 87a Paragraph 1 of the Constitution as deployment in the context of national defence. This includes the guarding of military objects as well as the training of soldiers in Germany. In the context of – outwardly directed and hitherto traditionally taking place there as well – defence of the country, it concerns the core mission, which however, in conjunction with Article 24 Paragraph 2 of the Constitution, also includes obligations adopted due to membership (UN, NATO, EU).

The core mission of the military thus defined can however be extended under

certain circumstances for special purposes and limited in time – this can also include deployment in Germany. This extension is, however, pursuant to Article 87a Paragraph 2 of the Constitution expressly reserved to the cases approved in the Constitution itself (German Bundestag 1994, 8) and is thus exclusively regulated in Germany. This reservation of statutory powers serves to prevent the abusive deployment of the military against its own people or democracy. In addition to the core mission of the German Armed Forces – actual national defence – possibilities also exist according to the Constitution for actual deployment in Germany in the case of emergencies or for disaster relief. There are, in each case in legal connection with Article 87a Paragraph 2 of the Constitution, the following four conceivable variants:

- ▶ “Regional disaster relief” pursuant to Article 35 Paragraph 2 of the Constitution. In this case, a competent state authority requires the armed forces because civilian organisations are not sufficient. This concerns natural disasters or particularly serious accidents within a federal state. As far as action by the German Armed Forces is necessary, then this also has the necessary sovereign authorities.
- ▶ “Nationwide disaster relief” pursuant to Article 35 Paragraph 3 of the Constitution. If several federal states are affected by natural disasters or particularly serious accidents, the federal government grants the state governments the authority to deploy the armed forces in order to support the police. The assistance then takes place in close coordination with the police and with the necessary sovereign authorities required for such assistance of the armed forces in addition to those of the police.
- ▶ “International state of emergency” pursuant to Article 87a Paragraph 3 of the

Constitution. In this scenario, aptly described as a state of tension, armed conflict seems possible and thus heightened military readiness is necessary. After the declaration of such a state of tension by the German Bundestag, the protection of civilian objects as well as traffic control duties in support of police operations may also be transferred to the armed forces.

- ▶ “National state of emergency” pursuant to Article 87a Paragraph 4 of the Constitution. This case occurs when a danger to the existence or the free democratic basic order of the federation or of a federal state and the police forces are not in the position or are not willing to combat this danger adequately. The federal government can thus deploy the German Armed Forces to protect civilian objects and to fight against organised or militarily armed insurgents.

The use of the German Armed Forces beneath a threshold

Every use of the armed forces is to be understood as the deployment of the German Armed Forces in the constitutional sense. However, beyond this, the definition of deployment also complies with every unarmed deployment, provided that it is not neutral in the domestic political sense or includes sovereign activities. For example, humanitarian assistance is located beneath this threshold – however, so do the activities of the armed forces based on requests for assistance. An action following a request for assistance by the an authority of the federation or a federal state is made possible with reference to Article 35 Paragraph 1, provided that no extension of competence is associated with it. In this case not deployment – as an independent action –, but the mere use without own sovereign activity is permitted. An example of this is the provision of rescue means, which will be

examined in the following section from a military perspective. According to currently prevailing opinion, technical/logistical support of other authorities in the course of assistance is provided for by the Constitution (German Bundestag 1994, 9). It should surely be taken into consideration as to whether in the case of the current developments in the security threats, soldiers might not also “be made available” (thus for example subordinated to the police authorities) – without exerting sovereign powers themselves. The following example concerns in what form and within what limits the German Armed Forces could currently respond to a fictitious request for assistance by the police.

2. A FICTITIOUS REQUEST FOR ASSISTANCE BY THE POLICE IN MILITARY TEST METHODS

Initial situation and example assistance requests by the police

At least one, but possibly several perpetrators had barricaded themselves into a school building at a primary school in Völklingen (near Saarlouis), and are aiming shots at teachers and pupils. This follows the indiscriminate shooting on two teachers’ cars. Three people (one teacher and two pupils) were taken out of the building and are now lying motionless in an open area (school playground). It is not known whether they are still alive. The police have cordoned off the area, however, due to the lack of armoured tracked vehicles, are unable to reach the victims. The grass of the school playground was softened so much due to the medieval tournament last weekend that it cannot be driven over by the armoured wheeled vehicles of the police. The local police chief turns to the German Armed Forces in Saarlouis and requests armoured tracked vehicles, if possible, of Type BV

206 “Hägglund” (unarmed), to recover the victims under armoured protection. Furthermore, the perpetrators should be communicated with from the armoured tracked vehicles via loudspeakers. After the arrival of the police special forces (SEK), they should, if necessary, be brought under armoured protection to the object, should storming the building become unavoidable.

The legal framework of urgent emergency relief

According to the Constitution, the deployment of the German Armed Forces within Germany is only possible in very specific circumstances. In addition to the cases of Article 87a of the Constitution, the assistance of the German Armed Forces is determined according to the stipulations of Article 35 of the Constitution. Averting danger in the context of assistance without sovereign powers (technical-logistical assistance) is dealt with in Paragraph 1 of this Article. The help of military units or official positions of the German Armed Forces in the context of urgent emergency relief at the request of authorities or private third parties constitutes a special case for assistance without sovereign powers. Urgent emergency relief is basically defined as the assistance of a few members of the German Armed Forces, possibly with vehicles, for example to save human lives (Federal Republic of Germany 2010, No. 216). In these cases, it concerns the use of the German Armed Forces beneath a threshold – it is however controversial whether in addition to the provision of materials, the allocation of troops is also possible (who drives the vehicles?). Thus far, there have been few events and little experience.

Based on the legal requirements and the conditions for a disaster operation of the German Armed Forces in cases of

urgent emergency relief, two checks are required beforehand: Is no equivalent assistance possible on the part of civilian organisations and are there no sovereign tasks associated with the assistance? The German Armed Forces may only provide help in Germany on a subsidiary basis when civilian resources are not available in sufficient amounts or with the required skills (Federal Republic of Germany 2010, No. 105). Furthermore, in cases of urgent emergency relief as a special case of mutual assistance, no sovereign functions may be exercised. “In the event of other emergencies which do not fall under Article 35 Paragraphs 2 and 3 of the Constitution, only actual and technical-logistical assistance by the German Armed Forces is possible within the scope of urgent emergency assistance at the request of authorities or third parties. The German Armed Forces are not entitled to sovereign powers in this respect and they cannot be transferred” (ibid.). In order to carry out rapid checks of both requirements for the urgent emergency relief on principle, the German Armed Forces provides its commanders and heads of departments with a relatively simple test schematic (Federal Republic of Germany, 2010, Annex 12):

1. Is there a natural disaster or a particularly serious accident? > No.
2. Is the exercise of sovereign powers requested? > No.
3. Does it concern the saving of human lives or the prevention of serious injuries, considerable environmental damage or a loss of valuable material for the general public? > Yes.
4. Are suitable civilian support staff/materials from the competent authority or civilian auxiliary equipment available? > No.

In such cases, the German Armed Forces will review whether appropriate military means are available for a relief operation

and they are not at the same time integrated into the original tasks of national defence.

Classification of specific police request for assistance

In this specific case, it is known that there had been an exchange of fire between the police (territorial sovereignty) and one or more perpetrators; the exact number of perpetrators is unknown. Three people (including two children) were injured or killed in this exchange of fire; their exact state of health is unknown. The perpetrator or perpetrators are still firing targeted shots from the building in which they had barricaded themselves. The victims in question are lying unprotected on a piece of grass, which, however, cannot be driven over by the wheeled armoured vehicles of the police (muddy, rough terrain). It is possible that there are further victims (wounded, dead, hostages) in the building together with the perpetrators. Only the local police are at the scene, special forces are still expected. The local head of operations had executed a request for assistance; an armoured vehicle with chain drive, if possible of type BV 206 “Hägglund” (a two-part, small, unarmed, armoured, tracked vehicle), is required. The vehicle is to be used for the recovery of the injured under armoured protection and for communication with the perpetrators. After the arrival of the special forces, it is to be decided whether these police officers are to be taken under armoured protection to the school building and whether they must storm it in an emergency. It was not stated in local police’s request for assistance from the airborne brigade in Saarlouis whether the armoured tracked vehicle could also possibly be driven by SEK officers to storm the building or whether after their arrival, soldiers would also be needed. On this basis, it shall now be decided whether a case of urgent emergency relief exist, therefore

no equivalent civilian assistance can be provided and no sovereign functions are expected from the German Armed Forces. The local police's request for assistance assumes no armoured tracked vehicles are available to these regionally employed officers. The danger or damage situation, which occurred suddenly and is still present, reinforces this assumption, as well as the advancement of the special forces. It must also be assumed by the German Armed Forces that no equivalent civilian assistance can be found – at least not in a timely manner. This is followed by an examination of whether in the case of mutual assistance in the form of urgent emergency assistance pursuant to Article 35 Paragraph 1 of the Constitution, sovereign powers should be transferred to the German Armed Forces. This would be incompatible with legislation and would lead – at least partially – to the rejection of the request for assistance. The examination of whether the recovery of the injured involves sovereign powers proves to be unproblematic, as it can be swiftly negated in this respect. First aid to save lives in this case must involve recovery from the danger area, and medical care is not a sovereign task, rather an obligation for everyone within the framework of all available resources. Communication from the armoured vehicle of the German Armed Forces may also lead to the avoidance of further injuries or fatalities. An effort to communicate in the sense of willingness to negotiate already contradicts the meaning of sovereign action. Sovereign action includes regular, non-negotiable instructions, which would not be constructive in the present case. Here, it would thus be possible to comply with a request for assistance by the police. It is to be assumed at this point that appropriate civilian loudspeakers are not available or cannot be brought close enough to the occupied building. Additionally, the

police director of operations had asked for possible assistance in the event of police special forces storming the building. These SEK officers should be taken to the occupied building under the protection of the armoured tracked vehicles of the German Armed Forces. It is possible that this concerns a sovereign action, which would not be covered by urgent emergency assistance. It would be easy to answer this question if it were certain that only the perpetrators are still in the building. In this case, it concerns arrest – in other words, a clearly sovereign power. In addition, an emergency situation would no longer exist, since after recovering the wounded, there is no longer any direct threat from the (surrounded) perpetrators. This part of the request for assistance would have to be rejected. A legal grey zone is then in evidence if it can be assumed that there are still hostages in the building along with the perpetrators. In this case, covering the approaching SEK officers, on the one hand, would certainly facilitate the arrest of the perpetrator as a sovereign task; on the other hand, it also serves the recovery of injured or uninjured hostages, which, as already examined, does not constitute sovereign action. The commander of the Saarlouis airborne brigade stationed nearby has to make a decision based on such sketchy knowledge of the situation at the scene. It seems self-evident to commit all resources available at the scene for the lawful rescue of possible hostages, even if it means that in addition, the sovereign act of arresting the perpetrators would to a certain extent thereby be illegally favoured. Nevertheless, it must be assumed at least currently on the part of the German Armed Forces, that covering the advance of the SEK police to the school building must be refused. The argument for such a refusal is that the deployment of these policemen enables or initiates the real sovereign po-

lice action. The decision of the military leaders in each alternative case is worthy of discussion. At this point, it can be seen that the procedures for civilian-military cooperation must continue to be improved and existing legal restrictions require critical interpretation.

Measures by the German Armed Forces for specific assistance

In the case of assistance by the German Armed Forces, the definition of a damaging event is differentiated between and is evaluated with respect to the application: damages with a time-discernible lead-up, the surprise occurrence of damage, emergency aid (extensive damage) as well as urgent emergency relief (limited loss events). “Urgent emergency and spontaneous assistance concerns cases in which immediate assistance is offered in acute emergencies and a previous request for the armed forces by the respective country or a civil authority/department is not possible in a timely fashion” (Federal Republic of Germany 2010, Annex 30). In case of urgent emergency relief, each military unit and each military department of the German Armed Forces, at the request of an authority and following examination of the requirements, orders the necessary assistance and announces the deployment of the military hierarchical authority as a special event. Urgent emergency relief must always be proactively provided within the context of the availability of forces and means, in accordance with the decision of the respective local leader (Federal Republic of Germany 2010, No. 347). All cases of urgent emergency assistance must be reported to the responsible state command of the German Armed Forces for each respective federal state. As a result of the notification of the (partial) execution/rejection of a request for assistance, the state command – in this case, Saarland – reports

full details of the assistance provided to the competent civil disaster protection authority and coordinates all assistance from several departments according to the territorial overview of the situation. After the provision of assistance had been completed, the Federal Defence Administration makes a general report on the services rendered (statement of costs) and a claim to the civil authority which had requested the assistance. Finally, the military state command, of which there is one in every state, will make status reports on the assistance.

Example-based key statements on civilian-military cooperation

The recovery of the injured with the armoured tracked vehicle “Hägglund” is possible by the German Armed Forces without issues as urgent relief in the context of assistance. The military department heads and unit commanders to whom the request for assistance in the form of urgent emergency relief had been made will decide on this at their own initiative. Urgent emergency relief during a damaging event may be requested in any form; a formal application process is required upstream for other forms of official and disaster relief. Whereas the use of the vehicle for communication between the police and the perpetrators is also covered by Article 35 Paragraph 1 of the Constitution, the deployment of the vehicle for transporting SEK officers cannot be permitted. Here, it must be assumed by the German Armed Forces that it concerns police enforcement (sovereign) tasks. The task of the state command of the German Armed Forces (informed first in the current emergency process) is the coordination of any relief operations running in parallel as well as the comprehensive information of the civil disaster protection centre in the state capital of Saarbrücken. After assistance had been provided completely in the form of urgent

emergency aid, the federal defence administration creates a request to the state police agency in the basis of a cost catalogue.

3. CONCEPTS OF FUTURE CO-OPERATION BETWEEN THE POLICE AND MILITARY SECURITY UNITS OF SELECTED STATES

International comparisons for police and military cooperation

There have been various forms of cooperation and combination of police and military forces in almost all democratic countries – and it should only concern those here – for many years now. In many countries, these collaborations go beyond that of organisational and substantive assistance measures in the case of disasters or humanitarian aid. Outside of Europe, the USA plays a leading role here, where the National Guard and the reserve of all forces have been deployed both in the fight against terrorism and drugs. The Canadian Forces have also been employed domestically – namely to guard federal prisons and also to combat terrorism. British Armed Forces can also be deployed domestically in the case of a national emergency; one example here is replacement service in the event of the fire brigade calling a strike. Similarly to the UK, armed forces have already been deployed domestically in Belgium – in order to secure airports and nuclear centres, however also to combat student unrest and to dispose of garbage after strikes. These cases can be extended to nearly all EU member states, through the deployment of Danish soldiers to inspect fisheries, German soldiers to protect the 2006 FIFA World Cup to the searching of homes of Mafia members in Sicily by Italian military personnel (German Bundestag 1994, 10). In the current discussion on the deployment of the German Armed Forces, it is amazing how varied the deployment of

the military already is in democratic countries allied with Germany. In some NATO countries, there are specific armed forces which possess general police powers, although technically subordinate to the Ministry of the Interior (for example, the French gendarmerie). In many countries, practical materials on how to carry out the procedure had been created in accordance with already long-existing legal bases. The Handbook of the German Armed Forces for Assistance within Germany (Federal Republic of Germany 2010) cited above should be mentioned here as should the Troop Service Handbook of the Republic of Austria concerning the right to deploy the military within Austria (Republic of Austria 2013). The multiple homicides in the Lower Austrian Annaberg in September 2013 may be cited as an example here. In this case, armoured vehicles of the armed forces were required to enable the task forces to approach the scene.¹ Both handbooks are examples of a successful adaptation of the regulations to the increasing and partly also novel disaster and threat situations in Europe. In this regard, it will also be interesting to see what lessons can be drawn from the deployment of military forces during the attacks of January 2015 in France and Belgium. The security situation for Germany was reassessed in 2011 and included in the defence policy guidelines. This reevaluation necessitated the reorientation of security policy development, which led to a new concept of the German Armed Forces in 2013. Here, it is stated that completely new challenges are presenting themselves and the influence of non-state actors has increased (Federal Republic of Germany 2013, 4). It also became clear that today, symmetrical conflicts are often overlapped by asymmetrical ones and therefore, it is to be expected “[...] that the interaction between internal and external security will continue to increase”

(Federal Republic of Germany 2013, 30). Nowadays, combatting terrorism is less of a fight against crime – it has also become a fight against acts of war. “National and non-national actors operating asymmetrically are trying to avoid conventional fighting. They are using niches and democratic, civilising self restrictions in order to circumvent their conventional inferiority and to gain advantages. They rely on psychological effects to intimidate the population and to unsettle national policy by attacks or assaults on state security forces, supporting international aid organisations, targets with symbolic characters, political elites and the social and economic infrastructure” (German Federal Republic 2013, 29 f). It is important to react against such a development – quickly, efficiently and within the framework of a functioning national security network.

Thoughts on the security needs of democratic citizens

Of course, any use of executive power must be made under the protection of human rights, and in Germany, in compliance with the Constitution. However, doesn't this already say everything? In Germany – as in all democratic states with separation of powers – both the police and the military are under the control of the parliament. It is not a matter of producing a state of emergency with the features of martial law – that must be prevented. Rather, it concerns the bundling of the defence forces of democracy, under the control of the same parliament as well as civil law, financed by the same tax payers and again benefitting from these in their entirety. The discussion therefore is not about the question of deploying the German Armed Forces or the police against the population – that is not open to debate in a democracy –, it concerns the deployment of both forces for the population.

11 September 2001 changed the nature of wars. Wars are no longer conducted solely through military combat units on the borders of hostile countries, they are carried into the national territory of the enemy. Should a strategy changed in this way really result in soldiers trained and armed for defence staying in their barracks and idly watching their differently uniformed comrades of the police on the television? As mentioned at the beginning, the core mission of the German Armed Forces is the defence of the country pursuant to Article 87a Paragraph 1 Section 1 of the Constitution. This has traditionally been directed outwards. Meanwhile, however, recent terrorist attacks have proven that national defence, although still remaining outwardly directed, must also take place inside the country. “Conflicts, especially the asymmetrically led ones, cannot be solved by military means alone. They must be viewed holistically and can only be successfully combatted with a coordinated, interagency approach. However, particularly in the event of an unforeseen outbreak of violent conflict, military means can be used for a rapid response in order to stabilise the security situation as far as possible and to provide enough time to for other means to take effect” (Federal Republic of Germany 2013, 30). Something similar happened in France and Belgium following the recent terrorist attacks. It is also necessary in Germany to reconsider what common possibilities could be transferred between the federal police, the state police and the armed forces. Despite all the advantages of federalism and the sovereign separation of policing at a state level, security guarantors can no longer act separately when freedom itself is in danger. Moreover, a threatened citizen is completely indifferent as to whether he is being threatened from within the country or from the outside and what

colour uniform the state protection guarantor is wearing. Such a differentiation cannot be the purpose of a contemporary

democracy capable of defending itself to remain dedicated for future generations.

¹ *During this official action, three police officers and a paramedic were shot by a poacher.*

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