



German Administrative Judiciary




Historical Development

- ***Justizstaatlichkeit*** – pronouncing administrative disputes for civil ones, so that they could be judged
- Otto Bahr – Rudolf von Gneist debate
- Baden – first administrative court in 1863
- Württemberg – first introduced general clause for administrative disputes





Historical Development

- ***Vollständige gerichtliche Kontrolle*** (full, integral judicial control)
 - ***Totaler Rechtsstaat*** (complete Rule of Law)
 - Experience of WWII
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Critique of Full Judicial Control

- Imbalance between private and public interest, in favor of the prior
- Disregard of administrative authorities' expertise
- Lacks of democratic legitimacy of courts
- Administration is also bound by the principle of legality
- Hinders government's policies and administrative action
- Engages vast resources in administrative judiciary



Organization and Jurisdiction of Administrative Judiciary

- **Bundesverwaltungsgericht** (1953) – *Federal level, federal law*
- **Oberverwaltungsgericht** – *Land level, federal and land law (up to one per land, one court for more lander)*
- **Verwaltungsgericht** - *Land level, federal and land law (at least one per land)*

- Not all disputes are dealt with in three-instances
- Damages claim, public procurement, fiscal and social security disputes, expropriation compensation disputes

Types of Lawsuits / Acts / Claims

- **Anfechtungsklage**
- annulment of an individual administrative act (*Verwaltungsakt*) setting down obligations for the party
- Taking new facts into account is allowed
- Annulment of the act since the moment he became illegal (as of its issuance or later)
- 'Channelling'
- Exceptions of unconstitutionality and of illegality (*inter partes* effect with respect to the general administrative legal act)
- Amendment of the *Verwaltungsakt* prescribing pecuniary obligations – *plein contentieux*

Types of Lawsuits / Acts / Claims

- ***Verpflichtungsklage***
- Concerns only *Verwaltungsakt*
- Against rejection - *Versagunggegenklage*
- Against administrative silence – *Untätigkeitsklage*
- ‘Channelling’ (difference between bound and discretionary acts)
- Exceptions of unconstitutionality and of illegality (*inter partes* effect with respect to the general administrative legal act)

Types of Lawsuits / Acts / Claims

- ***Leistungsklage***
- other types of acts of administration, especially factual actions – *Realakt, schlichtes Verwaltungshandeln*
- Challenging illegally undertaken *Realakt* – *Untelassungsklage*
- Requesting undertaking of illegally omitted *Realakt* or payment of a sum due – *allgemeine Leistungsklage*
- Could be combined with *Anfechtungsklage* (e.g. illegally fired civil servant – reemployment and payment of skipped salaries)
- Created by case-law

Types of Lawsuits / Acts / Claims

➤ *Feststellungsklage*


- declaring existence or nonexistence of certain legal relationship
- declaration of nullity of an administrative act – *Nichtigkeitsfeststellungsklage*
- Conditions:
 - a) available only when other types of lawsuits cannot be used
 - b) plaintiff has to have an interest for this kind of legal protection (e.g. to have an administrative act declared illegal so that it would not be repeated or for reasons of legal certainty [e.g. preclusive deadline elapsed])
- Exceptions of unconstitutionality and of illegality (*inter partes* effect with respect to the general administrative legal act)

Types of Lawsuits / Acts / Claims

- **Normenkontrollverfahren (abstrakte Normenkontrollklage)**
- Against general administrative legal acts (by-laws)
- *Erga omnes* effect
- Only against urban planning document issued by the local government (Art. 47 VwVG) or other acts indicated in *Lander* legislation
- Interest has to be proven for *locus standi*
- Does not remove final judgments based on unconstitutional and illegal by-law



Challengeable Acts / Claims

- ▶ Individual administrative acts
 - ▶ General administrative acts
 - ▶ Factual acts of administration
 - ▶ Administrative silence
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Judicial Control of Discretionary Acts

- ▶ Control of formal and material legality (competence, procedure, form of act, application of the law)
- ▶ Full control of determined facts (exception – nuclear power plant building permit – case *Why1* – was the factual basis sufficient for deciding)
- ▶ Ermessen – excess of powers and legal aim

Judicial Control of Discretionary Acts

- Ermessen control through constitutional principles of equality before the law (Art. 3 GG) (legitimate expectations) and proportionality
- Administration is bound by its internal acts and previous case-law even in case of discretionary acts – 'filling the gaps in the legal norm' or 'dying out of discretion'
- Ermessenreduzierung auf Null – application of the principle of equality and specific circumstances of the case
- Beurteilungsspielraum – (not the same as unbestimmte Rechtsbegriffe) – judicially uncontrolled legal standards – decision is personal (exam) or unrepeatable (collegial authority)



Interim measures

- ▶ Anfechtungsklage, as a rule, had suspensory effect
- ▶ Preliminary measures by first-instance and appellate courts
- ▶ Condition: if the danger exists that the enforcement of a right of the plaintiff could be prevented or considerably impeded by means of an alteration of the existing state

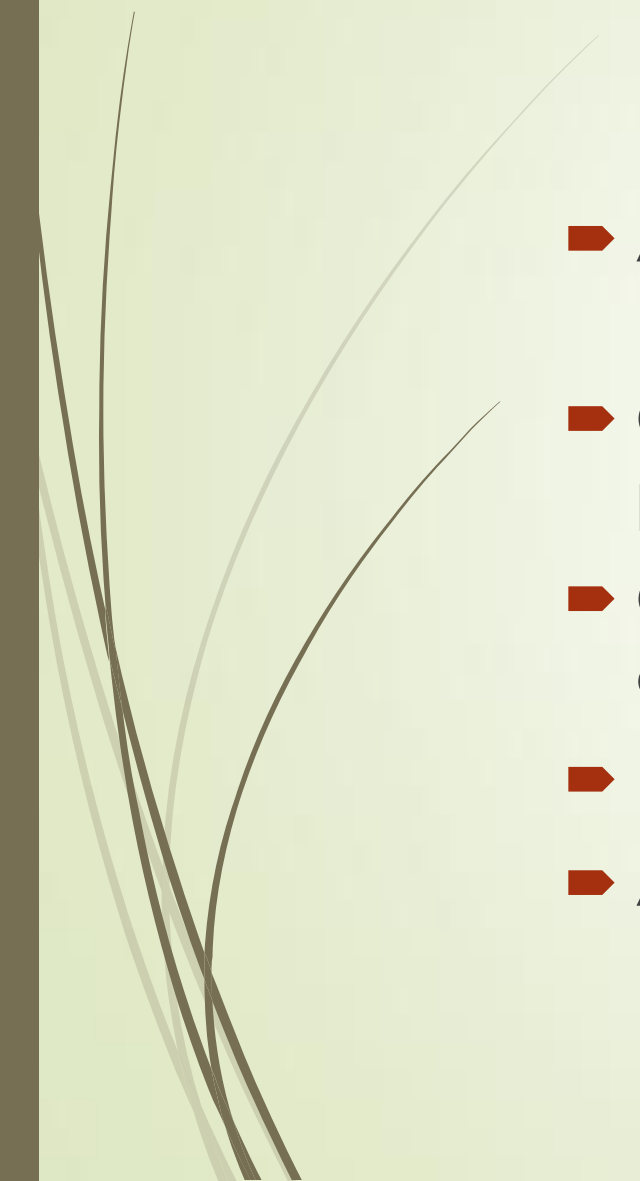


Oral Hearings

- First-instance administrative courts decide on the basis of a public oral hearing.
- Exceptions:
 - a) if all the parties agree
 - b) when a court issues a decision that is not a judgment
 - c) when it renders a summary decision in cases that do not show any particular factual or legal difficulties and where the facts have been clarified
 - d) when a higher court is deciding on the conflict of territorial jurisdictions of lower courts.



Decisions

- Annulment of challenged individual administrative act (including 'channeling')
 - Ordering issuance of an act (administrative silence) or payment of sum due by the administration
 - Ordering ceasing or undertaking of a factual act of administration
 - Declarations
 - Annulment of general administrative acts
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Legal Recourse - *Berufung* -

- against judgments of administrative courts
- submitted to higher administrative courts
- points of law and facts
- The appeal shall be admitted if one the following conditions is met:
- a) if serious doubts exist as to the correctness of the judgment
- b) if the case has special factual or legal difficulties
- c) if the case is of fundamental significance
- d) if the judgment derogates from a ruling of a higher administrative court, of the Federal Administrative Court, of the Joint Panel of the supreme courts of the Federation or of the Federal Constitutional Court, and is based on this derogation
- e) if a judgment is based on a procedural shortcoming.



Legal Recourse

- *Revision* -

- against decisions of higher administrative courts
- submitted to the Federal Administrative Court
- only on points of law
- The appeal before the Federal Administrative Court shall be admissible in one of the following instances:
 - a) if the legal case is of fundamental significance
 - b) if the judgment deviates from a ruling of the Federal Administrative Court, of the Joint Panel of the supreme courts of the Federation or of the Federal Constitutional Court and is based on this deviation
 - c) if a judgment is based on a procedural shortcoming.



Relations to Administrative Procedure

- ***Widerspruch***
- Obligatory in case of Anfechtungsklage and Verpflichtungsklage

Thank you for your attention!

