Comparative Administrative Law (CAL)

Prof. Dr. Felix Uhlmann

Chair of Constitutional Law, Administrative Law and Legislation
Centre for Legislative Studies

University of Zurich

Spring 2023

Seminar

In a Nutshell

Seminar: June 1/2, 2023, exact times and rooms communicated in mid-May.

Topic: Case, with some connection to topics in class (e.g. administrative law contracts v. private contracts)

Presentation: 15-20 min., discussion 10 min. (exact times according to detailed program)

Co-Work: Possible but marks given individually

Deadline: April 28, 2023. Case (if not in English, French or German with a "google"-translation or summary) + One page summary (what is the case about and why this case)

Questions: lucile.pasche@rwi.uzh.ch

Administrative Action

Administrative Action

Administrative Action

General Questions

1. **Why does the form of administrative action matter?** (legal protection, due process, administrative prerogatives etc.)?
2. **Possible challenges of administrative acts** (informal governmental actions etc.)
3. **What are the particularities if an agency stipulates rules and regulations?** (legal basis, legal effects, procedure etc.)?

Administrative Action: Yöyler v. Turkey

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION
[*In its composition before 1 November 2001*]

CASE OF YÖYLER v. TURKEY

(Application no. 26973/95)

Administrative Action: Yöyler v. Turkey

Questions to the Decision

1. **What impact has the form of administrative action when the court applies Article 13 of the European Convention of Human Rights?**
2. **What are the reasons for this court practice?**
3. **Which problems in administrative law may arise because of this court practice?**

Administrative Action: Yöyler v. Turkey

effective investigation into the applicant's allegations by taking statements from his fellow villagers and committing a suspect for trial on charges of setting the applicant's house on fire.

87. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see *Dulaş*, cited above, § 65).

88. Where an individual has an arguable claim that his or her home and possessions have been purposely destroyed by agents of the State, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigation procedure (see *Menteş and Others*, cited above, pp. 2715-16, § 89).

Administrative Action:
General Administrative Law Act (NL)

The Constitution of the Kingdom of the Netherlands 2008

Article 107

1. Civil law, criminal law and civil and criminal procedure shall be regulated by Act of Parliament in general legal codes without prejudice to the power to regulate certain matters in separate Acts of Parliament.
2. The general rules of administrative law shall be laid down by Act of Parliament.

Grondwet voor het Koninkrijk der Nederlanden van 24 augustus 1815

Artikel 107

1. De wet regelt het burgerlijk recht, het strafrecht en het burgerlijk en strafprocesrecht in algemene wetboeken, behoudens de bevoegdheid tot regeling van bepaalde onderwerpen in afzonderlijke wetten.

2. De wet stelt algemene regels van bestuursrecht vast. 108 [Vervallen per 25-03-1999]

Administrative Action:
General Administrative Law Act (NL)

Questions to the Decision

1. **What procedural rights are guaranteed in case of an "order" (in Switzerland an administrative decision)?**
2. **Is something missing?**
3. **What advantages or disadvantages do you see in codifying them in an act?**

Administrative Action: Mortgage Bankers Association et al.

(Slip Opinion) OCTOBER TERM, 2014 1

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

PEREZ, SECRETARY OF LABOR, ET AL. *v.* MORTGAGE BANKERS ASSOCIATION ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13–1041. Argued December 1, 2014—Decided March 9, 2015*

The Administrative Procedure Act (APA) establishes the procedures federal administrative agencies use for "rule making," defined as the process of "formulating, amending, or repealing a rule." 5 U. S. C. §551(5). The APA distinguishes between two types of rules: So-called "legislative rules" are issued through notice-and-comment rulemaking, see §§553(b), (c), and have the "force and effect of law," *Chrysler Corp.* v. *Brown*, 441 U. S. 281, 302–303. "Interpretive rules," by contrast, are "issued . . . to advise the public of the agency's construction of the statutes and rules which it administers," *Shalala* v. *Guernsey Memorial Hospital*, 514 U. S. 87, 99, do not require notice-and-comment rulemaking, and "do not have the force and effect of law," *ibid.*

Administrative Discretion

Administrative Discretion

Administrative Discretion

General Questions

1. **What is the role of courts in the administrative system?** (What is "applying" the law?)
2. **What is the idea of administrative discretion?**
3. **What is the role of the legislator in framing judicial review and administrative discretion?**

Administrative Discretion: Wednesbury Corporation

IN THE SUPREME COURT OF JUDICATURE
KING'S BENCH

Royal Courts of Justice
10 November 1947

Before:

MASTER OF THE ROLLS
(Lord Greene)

LORD JUSTICE SOMERVELL
and
JUSTICE SINGLETON

ASSOCIATED PROVINCIAL PICTURE HOUSES LTD — **Plaintiffs (Appellant)**

WEDNESBURY CORPORATION — **Defendants (Respondents)**

MR GALLOP K.C. and MR S. LAMB (instructed by Messrs. Norman, Hart & Mitchell) appeared on behalf of the Plaintiffs (Appellants).
MR FITZGERALD K.C. and MR V. GATTIE (instructed by Messrs. Pritchard & Co.) appeared on behalf of the Defendants (Respondents).

Administrative Discretion: Chevron

CHEVRON U.S.A. INC.
v.
NATURAL RESOURCES DEFENSE COUNCIL, INC.

SUPREME COURT OF THE UNITED STATES

467 U.S. 837

February 29, 1984, Argued
June 25, 1984, Decided *

* Together with No. 82-1247, American Iron & Steel Institute et al. v. Natural Resources Defense Council, Inc., et al.; and No. 82-1591, Ruckelshaus, Administrator, Environmental Protection Agency v. Natural Resources Defense Council, Inc., et al., also on certiorari to the same court.

SUBSEQUENT HISTORY: As Amended.

PRIOR HISTORY: CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

DISPOSITION: 222 U. S. App. D. C. 268, 685 F.2d 718, reversed.

[*839] JUSTICE STEVENS delivered the opinion of the Court.

In the Clean Air Act Amendments of 1977, Pub. L. 95-95, 91 Stat. 685, Congress enacted certain requirements applicable **[*840]** to States that had not achieved the national air quality standards established by the Environmental Protection Agency (EPA) pursuant to earlier legislation. The amended Clean Air Act required these "nonattainment" States to establish a permit program regulating "new or modified major stationary sources" of air pollution. Generally, a permit may not be issued for a new or modified major stationary source unless several stringent conditions are met. [1] The EPA regulation promulgated to implement this permit requirement allows a State to adopt a plantwide definition of the term "stationary source." [2] Under this definition, an existing plant that contains several pollution-emitting devices may install or modify one piece of equipment without meeting the permit conditions if the alteration will not increase the total emissions from the plant. The question presented by these cases is whether EPA's decision to allow States to treat all of the pollution-emitting devices within the same industrial grouping as though they were encased within a single "bubble" is based on a reasonable construction of the statutory term "stationary source."

1 Section 172(b)(6), 42 U. S. C. § 7502(b)(6), provides: