

# **Comparative Administrative Law (CAL)**

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# Fasnacht Basel



# Administrative Action

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# 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.)?



### General Administrative Law Act (NL)

- 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 ECtHR, 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

## ECtHR, 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

## ECtHR, Yöyler v. Turkey

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YÖYLER v. TURKEY JUDGMENT

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.

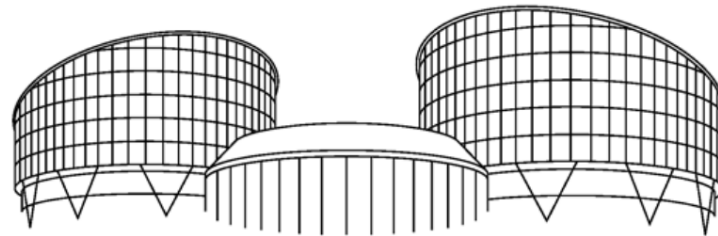
87. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require 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

ECTHR, Verein Klimaseniorinnen Schweiz v Switzerland



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

**GRAND CHAMBER**

**CASE OF VEREIN KLIMASENIORINNEN SCHWEIZ  
AND OTHERS v. SWITZERLAND**

*(Application no. 53600/20)*



### Questions to the Decision

- 1. What impact has the form of administrative action when the court applies Articles 6 and 13 of the European Convention of Human Rights?**
- 2. What are the reasons for this court practice?**
- 3. Does the form of administrative action matter?**
- 4. Do you agree with the court's relatively broad interpretation of the notion of victim status in the Klimaseniorinnen case? What consequences may the possibility of an action popularis have on the efficiency of administrative activity?**
- 5. Considering your answers to the question above, do you think there is a conflict between the need for administrative efficiency and the protection of rights in transnational contexts?**

# Administrative Action

## US, Perez et al v Mortgage Bankers Association

(Slip Opinion)

OCTOBER TERM, 2014

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### 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

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# Administrative Discretion

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# 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

## UK, Associated Provincial Picture Houses Ltd v 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**

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

**WEDNESBURY CORPORATION** **Defendants  
(Respondents)**

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**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

## US, Chevron USA Inc. V Natural Resources Defense Council, Inc.

CHEVRON U. S. A. v. NATURAL RES. DEF. COUNCIL 837

Syllabus

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

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

No. 82-1005. Argued February 29, 1984—Decided June 25, 1984\*

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 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.<sup>1</sup> The EPA regulation promulgated to implement this permit requirement allows a State to adopt a plantwide definition of the term “stationary source.”<sup>2</sup> 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.”



# Administrative Discretion

## US, Loper Bright Enterprises v Raimondo

(Slip Opinion)

OCTOBER TERM, 2023

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### Syllabus

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## **SUPREME COURT OF THE UNITED STATES**

### Syllabus

**LOPER BRIGHT ENTERPRISES ET AL. *v.* RAIMONDO,  
SECRETARY OF COMMERCE, ET AL.**

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

No. 22–451. Argued January 17, 2024—Decided June 28, 2024\*

