

Comparative Administrative Law (CAL)

Prof. Dr. Felix Uhlmann

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



University of Zurich

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Exam information

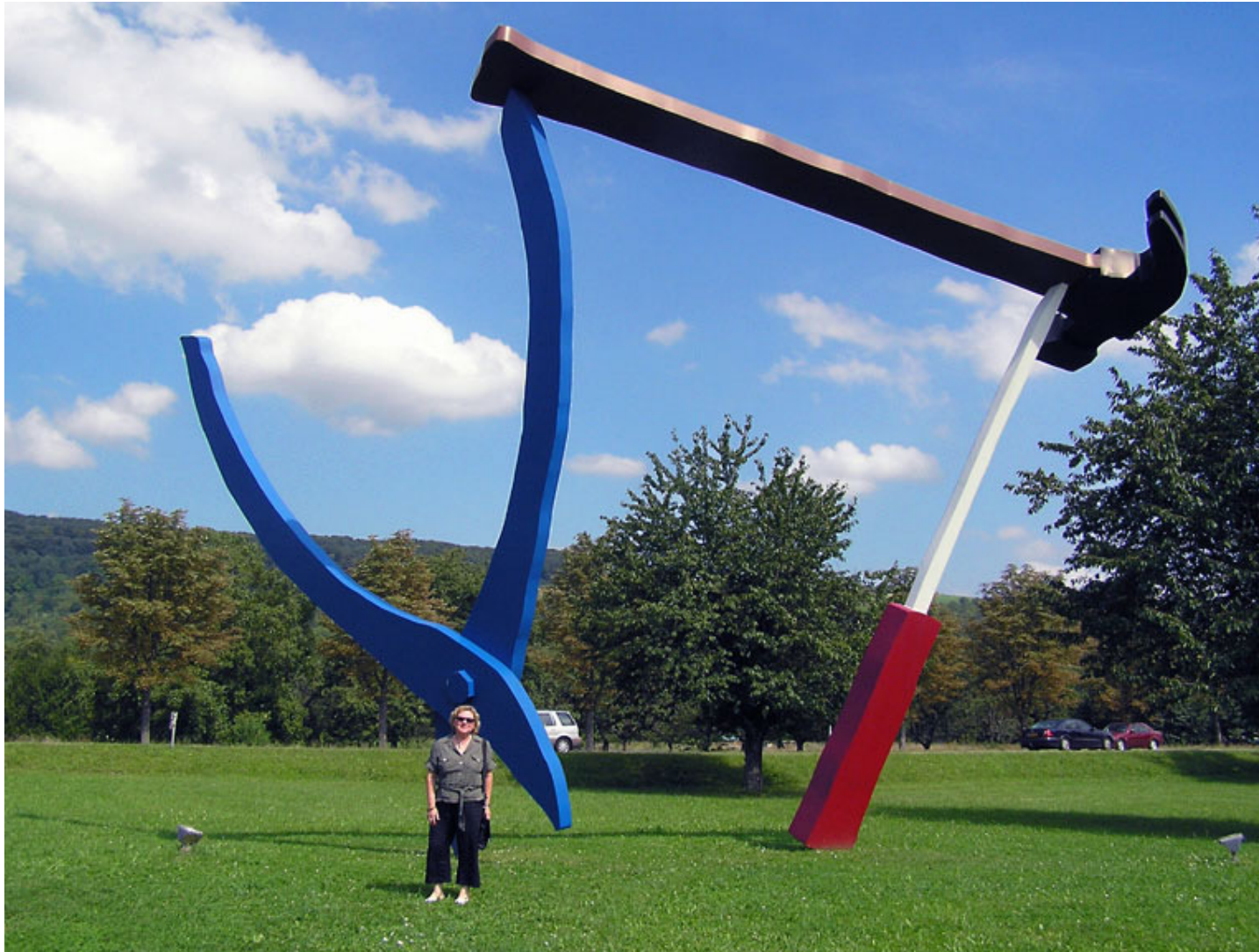
- Consisting of a presentation
 - Case of your choice
 - Relating to a topic covered in class
 - Taking place in May (attendance mandatory)
 - 21 May 2026: 8 am - 6 pm — SOD-1-101
 - 22 May 2026: 8 am - 6 pm — KO2-F-174
 - Max. 15 minutes of presentation followed by 10 minutes of discussion
 - Active participation counts for the final grade
- Submit via [OLAT](#)
 - Case and topic proposal – Deadline: **21 April 2026**
 - Presentation summary (along with a Declaration of Authenticity)
 - Deadline: **10 May 2026**
 - Will be shared with the other students before the seminar
 - Slides (if applicable) – Deadline: **17 May 2026**
- Questions? Ist.uhlmann@ius.uzh.ch



Principles



Principles



Principles

General Questions

- 1. What do we understand by the principle of legality?**
- 2. What do we understand by the principle of proportionality?**
- 3. How do these principles affect our understanding of the role of courts and administration?**



Principles: Article 5 Federal Swiss Constitution

101

English is not an official language of the Swiss Confederation. This translation is provided for information purposes only and has no legal force.

Federal Constitution of the Swiss Confederation

of 18 April 1999 (Status as of 3 March 2024)

Art. 5 Rule of law

- ¹ All activities of the state are based on and limited by law.
- ² State activities must be conducted in the public interest and be proportionate to the ends sought.
- ³ State institutions and private persons shall act in good faith.
- ⁴ The Confederation and the Cantons shall respect international law.



Principles: Article 5 Federal Swiss Constitution

Questions to the article

- 1. What principles are stated in this article?**
- 2. Do you think that some principles are missing?**
- 3. At what level (parliamentary act, constitution) are these principles regulated in your country?**



Bank Mellat



**Trinity
Term [2013]
UKSC 39**

On appeal from: [2011] EWCA Civ 1

JUDGMENT

Bank Mellat (Appellant) v Her Majesty's Treasury (Respondent) (No. 2)



Bank Mellat

20. The requirements of rationality and proportionality, as applied to decisions engaging the human rights of applicants, inevitably overlap. The classic formulation of the test is to be found in the advice of the Privy Council, delivered by Lord Clyde, in *De Freitas v Permanent Secretary of Ministry of Agriculture, Fisheries, Lands and Housing* [1999] 1 AC 69 at 80. But this decision, although it was a milestone in the development of the law, is now more important for the way in which it has been adapted and applied in the subsequent case-law, notably *R (Daly) v Secretary of State for the Home Department* [2001] 2 AC 532 (in particular the speech of Lord Steyn), *R v Shayler* [2003] 1 AC 247 at paras 57-59 (Lord Hope of Craighead), *Huang v Secretary of State for the Home Department* [2007] 2 AC 167 at para 19 (Lord Bingham of Cornhill) and *R (Quila) v Secretary of State for the Home Department* [2012] 1 AC 621 at para 45. Their effect can be sufficiently summarised for present purposes by saying that the question depends on an exacting analysis of the factual case advanced in defence of the measure, in order to determine (i) whether its objective is sufficiently important to justify the limitation of a fundamental right; (ii) whether it is rationally connected to the objective; (iii) whether a less intrusive measure could have been used; and (iv) whether, having regard to these matters and to the severity of the consequences, a fair balance has been struck between the rights of the individual and the interests of the community. These four requirements are logically separate, but in practice they inevitably overlap because the same facts are likely to be relevant to more than one of them. Before us, the only issue about them concerned (iii), since it was suggested that a measure would be disproportionate if any more limited measure was capable of achieving the objective. For my part, I agree with the view expressed in this case by Maurice Kay LJ that this debate is sterile in the normal case where the effectiveness of the measure and the degree of interference are not absolute values but questions of degree, inversely related to each other. The question is whether a less intrusive measure could have been used without unacceptably compromising the objective. Lord Reed, whose judgment I have had the advantage of seeing in draft, takes a different view on the application of the test, but there is nothing in his formulation of the concept of proportionality (see his paras 68-76) which I would disagree with.

