

MECHANISMS OF CONTROL OF PUBLIC ADMINISTRATION
OUTSIDE LEGAL PROTECTION IN GERMANY

Contribution to the course *Oversight of State Administration* from a comparative perspective

Mid-term exam observations

Dear participants of the course Oversight of State Administration,

I have corrected your answers to my question in the mid-term examination. There were many very good or excellent answers, but also quite some that failed because their authors had obviously not attended my lectures and/or not thoroughly studied my course materials.

There was also another phenomenon, probably caused by uncritical use of AI or consulted websites:

Sub-question a asked about two important classical control mechanisms outside legal protection that are applied by the superior authority. Here you should discuss FUNCTIONAL and LEGAL SUPERVISION, which are the classical types of hierarchical administrative supervision. Some of you presented instead disciplinary supervision [Dienstaufsicht], although this control mechanism is only about the personal behaviour of the acting officer but not about the quality of his work and therefore largely unimportant. Moreover, some of you confused functional with disciplinary supervision or used a wrong English translation that I had - for good reasons - avoided in my lectures and course materials.

Maybe you consulted an unreliable website or a website with an incorrect English translation of the foreign legal terms? Or did you adopt uncritically what an AI chatbot presented you? Please always keep a critical approach when using such means! According to my personal experience, 30 to 40 % of the answers of AI chatbots in the field of law are wrong or distorted because they "hallucinate" or mispresent their findings. Be aware that they only rely on algorithms and do not understand what they are reporting! Moreover, always use two or three AI chatbots and compare critically their findings!

I filled out a detailed INDIVIDUAL CORRECTION SHEET for each exam paper. Every student is welcome to contact me to discuss in detail the strong and weak points of his or her paper. In this case, please pick up your paper from mbak Tyas, together with the individual correction sheet, and see me in office B.VI.11.

Best wishes for your further studies,

Thomas Schmitz

The course material for this course can be downloaded at www.thomas-schmitz-yogyakarta.id. For any questions, suggestions and criticism please contact me via WhatsApp (+62 812 9824 3441) or e-mail (tschmit1@thomas-schmitz-eu.de) or in my office (Building A, room A.VI.11).

Name:

Result: _____ / 15 points

Special comments:

Prof. Dr. Thomas Schmitz

Semester 1, 2025/2026

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Contribution to the course *Oversight of State Administration* from a comparative perspective

Question for the final examination

(15/100 points for this mid-term examination)

In Germany, oversight of public administration focuses on the legal protection of the citizen, but there are also a variety of control mechanisms outside legal protection.

- a) Which two important classical mechanisms of administrative self-control outside legal protection are applied *by the superior authority*? How do they differ? What is reviewed? Are there legal remedies for the supervised authority? (9 points)
- b) Which non-judicial external control mechanism serves to scrutinise the *financial conduct* of public administration? Please describe briefly the example at the federal level (institution, status, types of control, decisions) (6 points)

Note: This is an academic examination. Please write in legible handwriting and present your text in an appealing form. Read the question very carefully and think carefully before you formulate your answers. Make sure that your text answers precisely and exhaustively but only the question asked, is concise, well-structured and demonstrates your understanding of the subject matter. After the exam, all students are welcome to contact me to discuss in detail the strong and weak points of their paper (office: B.VI.11; e-mail: tschmit1@thomas-schmitz-eu.de; phone/WhatsApp: +62 812 9824 3441).

The topics were discussed in the lectures and presented in the course material (§ 2 I.1-2, § 3 II.1), which can be downloaded at my lecturer's website (www.thomas-schmitz-yogyakarta.id).

a) Administrative self-control by the superior authority: administrative supervision

/ 9 points

aa) Functional supervision

/ 4 p.

- standard case in any hierarchically structured public administration
- review of *legality* and *expedience* of administrative action
 - expedience includes suitability, practicability, fairness, political or financial aspects, principles of good governance
 - protection of citizen's rights only secondary function/side effect
- supervised authority must follow *instructions*
- *measures are internal affairs* and cannot be challenged before the court

bb) Legal supervision

/ 5 p.

- in case of *self-government activities of authorities enjoying autonomy* (communes, counties, universities)
- review of the *legality* (not expedience!) of administrative action
 - but protection of citizen's rights only secondary function/side effect
- limited to instruments provided in the legal basis (formal complaint, binding order etc.)
 - measures interfere with right to self-government and therefore *can be challenged before the administrative courts*

b) Financial control by the courts of auditors

/ 6 points

- institution: *Federal Court of Auditors* [Bundesrechnungshof] (art. 114(2) BL, Federal Court of Auditors Act)
- status: *independent body of government auditing*; members enjoy *judicial independence*
- types of control: *financial audit* (regularity and compliance), *performance audit* (economy, efficiency, effectiveness)
- decisions (panel decisions): *recommendations* in management letters, annual and special reports