

Prof. Dr. Thomas Schmitz

Semester 2, 2024/2025

LEGAL PROTECTION AGAINST ADMINISTRATIVE DECISIONS/ACTION IN GERMANY

Contribution to the course *Administrative Law* from a comparative perspective

Question for the final examination

(16/100 points for this final examination)

This question is about legal protection against administrative acts (admin. decisions) and other forms of administrative action before the administrative courts in Germany.

- a) In Germany, citizens are *more inclined to turn to the administrative courts* in disputes with public administration than in many other countries. Why is this? [4 points]
- b) Legal protection before the administrative courts is largely governed by the *form of action (type of lawsuit)*.
- aa) What determines the form of action before the administrative court? [4 points]
- bb) What depends on the form of action before the administrative court? [2 points]
- cc) What forms of legal action are available for which kinds of court decisions sought? Please give three examples [6 points]

Note: This is an *open book exam*, but the course participants are *not allowed to "copy and paste" excerpts from my course materials*. Every information must be formulated in your own words, showing the understanding of the subject.

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 the question asked but is limited to what is asked for, is concise, has a clear and consistent structure with well-formulated precise headlines and shows well your deeper 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 **Slide 1** (p. 3), **Slide 3** (p. 1, 2) and **Diagram 1** (parts A.II.-III., B), which are available for download at the [special website for my course contribution](#).

- a) **Why are citizens in Germany more inclined to turn to the administrative courts?** (/ 4 points)
in case of many details: (/ 2 extra p.)
- because they trust more in the courts than in the executive and admin. self-control
 - because of the high degree of professionalism, integrity and actual independence of the judges
 - because of a particular high readiness of the citizens to bring legal disputes before the court
 - fostered by several factors, e.g. legal expenses insurances
 - other reasons:
- b) **Legal protection largely governed by the form of action (type of lawsuit)** (/ 12 points)
- aa) What determines the form of action: the *kind of court decision sought* (annulment, injunction, declaration etc.) and thus the *form of the administrative action in question* (admin. act, non-regulatory action, sub-legislative legal provisions etc.) (/ 4 p.)
in case of details: (/ 2 extra p.)
- bb) What depends on the form of action: the requirements for *admissibility* and *well-foundedness* of the action (/ 2 p.)
in case of details: (/ 2 extra p.)
- for example, citizen must first go through objection proceedings before filing an action for annulment against an admin act
- cc) 3 available *forms of action* and the kinds of court decisions sought: (/ 6 p.)
in case of details: (/ 4 extra p.)
- action for annulment (of an administrative act [= admin. decision])
 - action for the issue of an admin. act
 - action for the establishment of the unlawfulness of a settled admin. act
 - action for performance (for ordering a non-regulatory admin. action)
 - action for prohibitory injunction (for prohibiting a non-regulatory admin. action)
 - declaratory action (on the existence/non-existence of a legal relationship or the nullity of an admin. act)
 - application for judicial review of sub-legislative legal provisions

Final exam observations

Dear participants of the course Administrative Law,

I have corrected your answers to my question in the final examination. The results are mixed: Many students failed but there were also many very good or excellent answers.

Many of you have prepared the exam diligently and could have achieved a better result if they had not made some tactical or methodological mistakes:

1. Many *focused strongly on sub-question a)*, although only 4 of 16 points could be achieved for this part. They wrote an excellent answer here but then lacked the time for a proper answer to sub-question b), for which you could get up to 12 points. This was not a good exam tactic. Maybe you should improve your time management in exams.

2. Although the exam question asked expressly for a clear and consistent structure of your answer and even provided the structure for the answer to sub-question b) itself by dividing it into the three parts aa), bb) and cc), many presented an *answer to sub-question b) with a deviating chaotic structure*. Sometimes it was not even clear, which part of your text referred to which part of the sub-question. Often the *various forms of legal action before the administrative courts in Germany were presented twice*, at the beginning and at the end of your answer. This resulted in a lengthy text with little information but confusing repetitions. Moreover you lost precious time with unnecessary writing. Be aware that in legal writing a clear, logically and dogmatically consistent structure of the text is one of the most important criteria for its evaluation!

3. Some students did not carefully analyse parts aa) and bb) of sub-question b) and therefore misunderstood them. If you had studied the course materials thoroughly, it was clear what was meant. Moreover, you could achieve 4 points for part aa), as much as for the whole answer to sub-question a). So it was worth to think thoroughly about it, as those with the better results have done.

I have filled out an *individual assessment sheet* for every single exam paper. Everyone is welcome to see it at the IUP management (please ask mbak Tyas) and to consult me in my office (A.VI.11) to discuss in detail the strong and weak points of his/her paper.

Best wishes for your further studies,

Thomas Schmitz