

§ 1 Introduction

I. Why studying administrative law with a comparative approach?

- for a *better understanding* of the own administrative law, its particularities (and the alternatives), its strong and weak points and the perspectives of its development
- as a *source of inspiration*: public administration in different countries often faces similar problems and legal solutions developed in one country may be useful in others too
 - you do not need to reinvent the wheel...
- comparison of laws in the field of admin. law is especially interesting because this law is less influenced by the national cultural background but more by the principles of rule of law, good governance and efficiency
- a long history of *legal reception*: in the field of admin. law, many countries have successfully *adapted and adopted* legal concepts, instruments and institutions from others
 - example: the establishment of administrative courts in Latvia (2004) and Kazakhstan (2021)
- *not only the success stories* but also the failures of foreign admin. law are interesting
 - you must not repeat the mistakes of others...

II. Why do we need legal protection against public administration?

- to protect the rights of the citizen
- to ensure the rule of law in public administration - in particular to prevent corruption
- to allow economic, political, social and cultural life to develop freely in a reliable environment

III. Administrative acts (= admin. decisions) and other forms of administrative action

- German administrative law distinguishes between *different forms of administrative action* with different rules for legal protection
- most frequent: the "*administrative act*" (= admin. decision) [Verwaltungsakt]
 - the most important legal institution in the field of administrative law
 - developed in France and adopted in Germany in the 19th century
 - follows the French terminology ("act" instead of "decision")
 - dominates in practice the system of legal protection before the administrative courts
- legal definition in sect. 35 Administrative Procedure Act (APA):
an administrative act is...
 - a measure taken by a public authority
 - in the sphere of public law
 - for the *unilateral regulation of an individual case*
 - with external legal effect (typically addressed to the citizen)

IV. Backgrounds of legal protection against public administration in Germany

1) Historical backgrounds

- strong rule of law tradition since 18th century (concept of → *Rechtsstaat* [negara hukum])
- independent administrative courts introduced in the 19th century
- total decline of rule of law and human rights under the totalitarian regimes of the National Socialists (1933 - 1945) and Communists (East Germany, 1945 - 1989)
- very effective implementation of the rule of law and protection of human rights under the Basic Law for the Federal Republic of Germany of 1949 [= BL]

2) Constitutional backgrounds

- fundamental constitutional *principle of the rule of law* (art. 20(3) BL)
 - requires effective mechanisms to enforce the law in public administration
- *comprehensive and effective guarantee of fundamental rights*
 - fundamental rights are directly binding law (art. 1(3) BL)
 - a comprehensive f.r. catalogue with an all-encompassing *general freedom of action* (art. 2(1) BL)
- legal remedy of individual *constitutional complaint* against fundamental rights violations before the Federal Constitutional Court (art. 94(1) no. 4a BL)
- *fundamental right* of the citizen *to have recourse to the courts* against any violation of his rights by public authority (art. 19(4) BL)
 - *courts must provide effective legal protection*, including interim relief

3) European backgrounds

- the supranational integration within the EU is based on law (→ integration through law)
 - therefore, EU cannot tolerate any deviation from its law in the member states
- the compliance of all public institutions in the member states with EU law is thoroughly monitored by the European Commission, to which every citizen can complain
- the European Court of Justice has developed a rich jurisprudence on the duties of the member states to effectively implement and enforce EU law

4) Social and cultural backgrounds

- more trust in the courts than in administrative self-control in Germany
- a high degree of *professionalism, integrity and actual independence of the judges*
 - judges highly qualified, even at the lower courts
 - almost no risk of corruption
 - judges not only *de iure* (cf. art. 97 BL) but also *de facto* independent
 - do not allow influence of personal relations, political parties or religious groups
 - will not hesitate to enforce the law against any resistance of the government
 - administrative judges particularly known for their intellectual independence and often critical approach
- a *high readiness of the citizens to bring legal disputes before the court*
 - citizens determined to fight for the defense of their subjective rights
 - citizens often more willing to accept dispute settlements in legal proceedings and based on law
 - sometimes both, citizens and authorities may prefer to bring difficult legal questions before the court in order to achieve a sustainable, legally consistent solution
 - legal expenses insurances foster litigiousness by covering the financial risk of the legal proceedings