

§ 2 Legal protection by public administration itself: the objection proceedings [Widerspruchsverfahren]

- sect. 68 et seq. Code of Administrative Court Procedure [= CACP]

I. Administrative review of administrative acts

- a once general legal remedy, now limited in some Länder to certain areas of admin. law
- review of administrative acts by public administration itself after a formal objection of the affected citizen
 - the objection is lodged with the authority that issued the admin. act (sect. 70 CACP)
 - if this authority does not remedy the objection
 - in matters of self-government (autonomy) it decides about the objection
 - in other matters generally the next higher authority decides (sect. 73(1) CACP)
- functions of the objection proceedings:
 - protection of the citizen's rights (a legal remedy but more simple and cheaper than judicial review)
 - administrative self-control (public administration shall have the chance to correct wrongful acting itself)
 - relief for administrative courts (but many citizens turn to the courts if their objection is not successful)

II. A prerequisite for a later legal action before the administrative court

- where objection proceedings are possible, they generally are a *legal precondition for a later judicial review* (sect. 68(1) CACP)

III. Review of the legality and the expedience of administrative acts

1) Review of the legality of the administrative act

a) Review of the legality in form

- aa) competence
- bb) procedure
- cc) form

b) Review of the legality in substance

- aa) legal basis
- bb) choice of the right addressee
- cc) general requirements
 - definiteness, feasibility of implementation, proportionality, no violation of other norms etc.
- dd) no incorrect exercise of discretion

- see for the details the *detailed examination scheme* (from a course in Astana 2023)

2) Review of the expedience of the administrative act

- something that cannot be achieved by the way of judicial review since the judge is functionally limited to the control of legality
- the admin. act may be repealed for any legitimate reasons of expedience:
 - suitability and practicability
 - fairness and morality
 - political reasons
 - financial reasons
 - (non-legal) principles of good governance

IV. The (automatic) suspensive effect of the objection (sect. 80 CACP)

- in principle, the controversial administrative act cannot be executed until the authority has decided about the objection; where the law provides for exceptions, the citizen may ask the administrative court to order/restitute the suspensive effect
- this is a powerful mechanism to protect the objector's rights - with the risk of detrimental side-effects on the efficiency of public administration or the interests of third parties
 - therefore it has now been restricted, cf. sect. 80, 80a, 80b CACP