ADMINISTRATIVE JUSTICE IN EUROPE

– Report for Germany–

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INTRODUCTION (History, purpose of the review and classification of administrative acts, definition of an administrative authority)

1. Main dates in the evolution of the review of administrative acts

The administrative jurisdiction by specific Administrative Courts has been established in the German states (Länder) since 1863. Instead of the internal administrative control by superior authorities since the early 19th century, a separate administrative jurisdiction by separate Administrative Courts was established besides the ordinary courts (civil and criminal jurisdiction). But Administrative Courts, staffed by independent judges, had to decide only specific types of lawsuits in the field of public law enumerated by the legislator.

The administrative legal protection was vastly suppressed during the 3rd Reich and in the communist German Democratic Republic. In response to the National-Socialist regime of injustice the German Constitution (Basic Law – Grundgesetz – GG) stipulates the fundamental right of recourse to the courts should any persons's rights be violated by public authority. (Art. 19 paragraph (4) GG). Consequently, section 40, subsection 1 of the Code of Administrative Court Procedure (Verwaltungsgerichtsordnung – VwGO) provides that recourse to the Administrative Courts shall be available in all public-law disputes of a non-constitutional nature regardless of the legal form of an administrative act. By the transition from the enumerative competence of Administrative Courts in the late 19th century to the general access to Administrative Courts there is a comprehensive legal protection against all the acts of state.

2. Purpose of the review of administrative acts

The administration is bound by law and justice. The role of the Administrative Courts is not an extension of the administration with the aim of a comprehensive objective control, but the protection of the individual rights against public authorities. The Constitution grants to any person a subjective right against the violation of his/her rights by administrative acts (Article 19 paragraph (4) of the Basic Law. Therefore, the defence and the enforcement of an individual right is the basis, legitimacy and limit of the administrative judicial review in Germany; the subjective right is the cardinal point to understand the concept of judicial administrative review in Germany. Nevertheless, the judgments and decisions of the Administrative Courts have repercussions on the administrative practice. Thus, the administrative jurisdiction contributes to the respect of objective law by the administration.

3. Definition of an administrative authority

With regard to the competence of the Administrative Courts, an “administrative authority" comprises any entity which performs tasks of public administration by means of public law. This concept is formal because it does not include companies under private law, which are owned by public authorities (federal, state’s or local authority). The term “administration” does not extend to the constitutional bodies (e.g. the parliament) applying constitutional law, but these bodies are included, if they apply administrative law (e.g. cases of the right to information by citizens or non-government-institutions).

4. Classification of administrative acts

Administrative bodies may act in various legal forms: The classical administrative act (Verwaltungsakt) in a narrower sense is any order, decision or other sovereign measure taken by an authority to regulate an individual case in the sphere of public law and intended to have a direct, external legal effect. Public authorities may also adopt regulations or articles if they are authorized to do so by law (rulemaking). Furthermore the German Administrative Procedure Act enables an authority to conclude public contracts. Besides, there are non-normative administrative activities as real acts (e.g. public product warnings).

It has to be underlined that access to Administrative Courts does not depend on the legal form of an administrative act. The fundamental right of access to court for any person claiming that his/her person’s individual rights were violated by a public authority (Article 19 paragraph 4 of the Basic Law) provides general access to Administrative Courts, irrespective of the form of the administrative measure. Consequently, section 40, subsection 1 of the Federal Code of Administrative Court Procedure provides that recourse to the Administrative Courts shall be available in all public-law disputes of a non-constitutional nature regardless of the legal form of the administrative act.

I –ORGANIZATION AND ROLE OF THE BODIES, COMPETENT TO REVIEW ADMINISTRATIVE ACTS

A. COMPETENT BODIES

5. Non-judicial bodies competent to review administrative acts

Prior to lodging an action, the lawfulness and expedience of an administrative act shall be reviewed in preliminary proceedings by the higher authority. In recent years some federal states have adopted legislation which abandons this internal review and grants direct access to the Administrative Courts. Besides the internal preliminary control by the administration the German legal system does not provide a non-judicial review of administrative acts. Section 1 of the Code of Administrative Court Procedure stipulates that administrative jurisdiction shall be exercised by independent courts separated from the administrative authorities. Therefore the review of administrative acts is only exercised by autonomous Administrative Courts, which are separated with regard to their organization and staff.

6. Organization of the court system and courts competent to hear disputes concerning acts of administration

The German court system follows two principles: The idea of specialization (horizontal structure) and the principle of federalism (vertical structure). Germany has five different branches of jurisdiction with different competences:

- The ordinary (or judiciary) jurisdiction (Local Courts, Regional Courts, Higher Regional Courts and the Federal Court of Justice at Karlsruhe and Leipzig) decides civil and criminal cases.

- The Administrative Courts (Administrative Courts, Higher Administrative Courts and the Federal Administrative Court at Leipzig) are competent to hear cases concerning public law which do not fall under the competence of social and fiscal courts.

- The fiscal courts (Finance Courts and the Federal Finance Court at Munich), which deal with the legal review of cases concerning customs and taxes.

- The labour courts (Labour Courts, Higher Labour Courts and the Federal Labour Court at Erfurt) hear cases related to labour law.

- The social courts (Social Courts, Higher Social Courts and the Federal Social Court at Kassel) are exclusively competent for matters of public social insurance (retirement, health, unemployment) and cases of social welfare.

As a consequence of federalism, the lower courts are established and financed by the federal states; only the courts of last resort are federal courts.

The general administrative jurisdiction forms the largest system of specialised courts in Germany. It consists of 52 Administrative Courts, 15 Higher Administrative Courts and the Federal Administrative Court at Leipzig; at present the administrative jurisdiction comprises approximately 2.000 judges. Administrative Courts decide cases of all kinds of non-constitutional public law matters, unless the respective matter is explicitly assigned by statute to the fiscal or social courts. Typical examples of actions brought before the general Administrative Courts are disputes arising from laws relating to public order and security, assemblies, foreign nationals and asylum, building, traffic, trade and industry, municipal revenue and municipal administrative organisation, subsidies, access to public institutions and public welfare, education, protection of the environment, nuisance caused by public facilities, project planning and civil service matters.

Constitutional Courts are installed outside the five jurisdictions in the federal states and on the federal level (Bundesverfassungsgericht at Karlsruhe). They litigate disputes on constitutional issues between constitutional bodies as well as - after the exhaustion of legal remedies - constitutional complaints of citizens concerning the violation of fundamental rights.

B. RULES GOVERNING THE COMPETENT BODIES

7. Origin of rules delimiting the competence of ordinary courts in the review of administrative acts

The German Constitution provides two regulations dealing with the competence of ordinary courts in public matters: Article 14 paragraph 4 of the Basic Law stipulates that in cases, which deal with the compensation for expropriation - not the legitimacy of the expropriation itself - recourse may be had to the ordinary courts. Article 34 of the Basic Law stipulates that in cases concerning public liability the jurisdiction of the ordinary courts shall not be excluded for the claims for compensation or indemnity. According to the latter provision, in cases of public liability the civil courts can review an administrative act on its legality; when previously an administrative trial was pending, the ordinary courts are bound by a final judgment of an Administrative Court. Because of the legal relationship with the claims previously mentioned, Section 40, subsection 2 of the Code of Administrative Court Procedure stipulates that recourse shall be available to the ordinary courts for property claims from sacrifice for the public good and from public-law deposit, as well as for compensation claims from the violation of public-law obligations which are not based on a public-law contract. This fragmentation of the recourse to the courts is a historical relic.

8. Existence and origins of specific rules related to the competence and duties of the administrative courts or tribunals

Article 95 of the Basic Law provides that the Federation shall establish the Federal Court of Justice, the Federal Administrative Court, the Federal Finance Court, the Federal Labour Court and the Federal Social Court as supreme courts of ordinary, administrative, financial, labour and social jurisdiction. In regard of this provision dealing only with the federal level it is concluded that the five jurisdictions must be separated also on the trial and the intermediate court level (court of appeal). The function, organization and competencies of the three administrative jurisdictions are ruled by specific procedural laws (Code of Administrative Court Procedure, Code of Social Court Procedure, and Code of Finance Court Procedure), which match in large parts and share most of the procedural principles. Nevertheless attempts to develop a common Code of Court Procedure for the three related administrative jurisdictions have not been successful yet.

C. INTERNAL ORGANIZATION AND COMPOSITION OF THE COMPETENT BODIES

9. Internal organization of the ordinary courts competent to review administrative acts

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10. Internal organization of the administrative courts

a) Vertical Structure:
The general administrative jurisdiction is divided into three levels:

The Administrative Courts on the trial level
With regard to the federal structure of Germany, the 52 Administrative Courts are established and financed by the federal states. Generally, a lawsuit starts at this level and the judicial scope of review extends to points of fact and law (federal and state law). An Administrative Court is organized in chambers, which are led by the President or a Presiding Judge and are complemented by the necessary number of further judges. The chambers of an Administrative Court hear and decide cases by judgments in a composition of a presiding judge, two judges and two honorary judges, if the chamber didn't assign the case to one of its professional members as a single judge, because the case does not show any particular factual or legal difficulties and it has no fundamental legal significance. In the composition of five judges for a session, the two honorary judges have equal rights and votes during the oral hearing and the deliberation. The honorary judges are elected by a committee for five years. Thus, they are not overloaded in this additional honorary office besides their principal job; honorary judges are sequentially summoned from a list for the sessions of a chamber. Thus, a lay-judge may have to attend about five or six oral hearings per year.

The Higher Administrative Courts
In every federal state there is one higher Administrative Court; only Berlin and Brandenburg share a common court. These courts at the state level serve as courts of appeal and first instance courts in enumerated matters (e.g. specific infrastructure projects as airports, validity of communal zoning-plans). They re-examine judgments of the Administrative Courts of as to the facts and to the law (federal and state law). A higher Administrative Court is organized in panels, which are named "Senat", led by the President or a Presiding Judge and which are complemented by the necessary number of further judges. The Senates of these courts rule in a panel composed of a presiding judge and two associate judges; Land legislation may provide that the senates rule composed of five judges, two of whom may also be honorary judges.

The Federal Administrative Court
The Supreme Court of the general administrative jurisdiction is the Federal Administrative Court at Leipzig. In contrast to the lower courts it reviews cases submitted to it only on points of federal law. It is bound by the facts established in the judgment to be reviewed. These proceedings are called "Revision". But more and more the Federal Administrative Court is charged with first instance cases which the legislator defines. Born out of the need to accelerate decisions on major infrastructure projects after the German reunification this transitory phenomenon has now established itself as a permanent solution. The Federal Administrative Court is composed by panels ("Senat") sitting with a bench of five professional judges (one presiding judge and four associate judges). The number of senates is not fixed by law but depends on the workload of the Court. Presently, the Court consists of ten senates of revision and two senates specialised in disciplinary matters of the armed forces. The disciplinary senates comprise three professional judges and two lay judges (members of the army).

b) Horizontal Structure:
The horizontal organization of all the courts at the three levels follows the idea of specialization of the judges. With regard to the constitutional principle of the legally designated judge (Article 101 paragraph (1) of the Basic Law) all cases are distributed to a specific chamber/senate according to a general rule predetermined in a roster of judge's responsibility (Geschäftsverteilungsplan). It is drawn up for one year by the Court Presidium in judicial self-government. Usually, it is provided for that cases are allocated according to their subject-matter.

D. JUDGES

11. Status of judges who review administrative acts

Article 97 of the Basic Law stipulates that judges shall be independent and subject only to the law. Judges appointed permanently to full-time positions may be involuntarily dismissed, permanently or temporarily suspended, transferred or retired before the expiration of their term of office only by virtue of judicial decision and only for the reasons and in the manner specified by the law. With regard to this constitutional guarantee of judicial independence a judge appointed for lifetime in an Administrative Court cannot be subject to mutation to another jurisdictional court against his/her will. Section 15 of the Code of Administrative Court Procedure provides that the judges in Administrative Courts of all levels shall be appointed for lifetime. As an exception a judge on probation can be appointed at the trial court level; after five years he/she has a right to an appointment for lifetime, if he/she is not inappropriate to hold a judge's office.

12. Recruitment of judges in charge of review of administrative acts

The educational background, the conditions of appointment as a judge and the legal status of a judge are identical in all jurisdictions. Only persons having completed law studies with the first State Examination in a university and who completed the practical legal training phase of two years followed by the second State Examination may carry out the duties of a judge. Judges are selected by the relevant ministry and appointed by the Minister depending on their aptitude, qualifications and professional achievements (Art. 33 paragraph (2) of the Basic Law); in practice the performance in the State Examinations is of major importance. In certain federal states, judges are appointed by the state minister of justice after an election by a committee for the selection of judges consisting of judges and members of Parliament.

A committee consisting of the responsible state ministers and an identical number of members of the federal parliament (Bundestag) elect the federal judges. The elected candidates are appointed by the Federal Minister of Justice. Qualification, competence and professional performance are legally required criteria to be appointed as a judge. Up to a certain age limit, each German national having the required competence for the duties of a judge (jurist with two State Examinations) may be appointed. Typically, the federal judges are recruited out of the judges of the Higher Administrative Courts.

13. Professional training of judges

Training for judges does not differ from that of other jurists and takes place in two stages. Full term university law studies are completed on passing the first State Examination. A two-year-preparatory course aimed at practical training in courts, administrations, and law offices (Referendariat) is followed by the second State Examination.

14. Promotion of judges

Aptitude, qualifications and professional achievements are essential for a promotion. At regular intervals, the court president assesses the judges. The responsible minister, typically

the minister of justice, decides on the promotion of a judge with assistance of a judge appointing committee elected by the judges of the jurisdiction.

15. Professional mobility of judges

The transfer of judges to other jurisdictions and temporary delegations to the administration are possible. Judges who are appointed for lifetime – generally after three-years-employment as a judge – must give their assent regarding a transfer to another court or a delegation to an administrative authority. In practice, a temporary delegation to an authority (usually for 2 or 3 years) forms part of the professional biography of many judges. Transfers of administrative judges to other jurisdictions are rare. They may be considered upon a sudden shift of workload between jurisdictions.

E. ROLE OF THE COMPETENT BODIES

16. Available kinds of recourse against administrative acts

Access to Administrative Courts does not depend on the legal form of an administrative act. The fundamental right of access to court for any person claiming that his/her rights were violated by a public authority (article 19 paragraph (4) of the Basic Law) assigns the transition from the enumerative competence of Administrative Courts in the late 19th century to the general access to Administrative Courts. Consequently, section 40, subsection 1 of the Code of Administrative Court Procedure provides that recourse to the Administrative Courts shall be available in all public-law disputes of a non-constitutional nature regardless of the legal form of the administrative act.

Therefore, the distinction and differentiation between various types of lawsuits or actions has no longer the particular importance as it had in the 19th century, because it does not regulate the access to court but only the selection of the proper type of action. The selection of the type of action depends on the one hand on the petitioner's objective (challenge of an adverse administrative act or issuance of a beneficial administrative act) and on the other hand on the legal form of the challenged or desired administrative act (single case decision, real act, administrative norm). In regard to administrative acts as single case decisions Administrative Courts may (partially or entirely) quash an administrative act (Anfechtungsklage - recissory action) or as well sentence the authority to issue a rejected or omitted administrative act (Verpflichtungsklage - enforcement action). Besides that there are also actions for injunction (Leistungsklage) and actions for a declaratory judgment (Feststellungsklage). Finally, the Code regulates an action for annulment of a non-parliamentary law (e.g. communal zoning-plan).

Furthermore, Administrative Courts have to decide disputes resulting from public law contracts, including claims for damages and compensation for prejudicial consequences of an illegal administrative act as well as compensations resulting from violation of property rights, excepting expropriation. Their jurisdiction extends to all disputes related to Civil Service Law, including claims for damages due to civil service pecuniary detriment. In contrast, civil courts have to decide cases for compensation concerning official liability (Article 34 of the Basic Law; see above No. 7). This fragmentation of the recourse to the courts is a historical relic.

17. Existence of mechanisms for the delivery of a preliminary ruling apart from the procedure under the Article 234 of the EC Treaty

Administrative Courts, just like the courts of other jurisdictions, are authorized to examine prejudicial questions and to decide them. If the prejudicial question is taken up in a court of another jurisdiction, the Administrative Court may suspend its proceedings. But having decided a prejudicial issue, the legal force and effect of the judgment does not cover this part of the decision. Final judgments of other courts bind Administrative Courts by their legal effect, which is limited to the merits and the parties of that trial and their legal successors.

The power of all courts to decide preliminary questions is limited in regard to the constitutional validity of a law. Article 100 of the Basic Law stipulates, that if a court concludes that a law on whose validity its decision depends is unconstitutional, the proceedings shall be stayed and a decision shall be obtained from the state court with jurisdiction over constitutional disputes where the constitution of a Land is held to be violated, or from the Federal Constitutional Court where this Basic Law is held to be violated. This provision states a monopoly to the rejection of formal laws in the constitutional courts.

18. Advisory functions of the competent bodies

The Administrative Courts are an integral part of the German judiciary. They have no advisory functions and are strictly independent from any executive branch of the government. Therefore, courts are not entitled to carry out duties related to the legislative branch or the executive branch (constitutional principle of the separation of the three powers of government). Section 39 of the Code of Administrative Court Procedure provides that the court may not be assigned any administrative business outside court administration. The office of a judge is incompatible with any executive or parliamentary function. Section 54, subsection 2 of the Code of Administrative Court Procedure stipulates that anyone shall be excluded from exercising the office of judge or honorary judge in a case, in which he/she was involved in the previous administrative proceedings. This provision prevents a conflict of interests.

19. Organization of the judicial and advisory functions of the competent bodies

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F. ALLOCATION OF DUTIES AND RELATIONSHIP BETWEEN THE COMPETENT BODIES

20. Role of the supreme courts in ensuring the uniform application and interpretation of law

At federal level the Federal Administrative Court ensures the harmonization and standardization of the application and interpretation of the federal law. All cases of the lower courts may be subject to a revision at the Federal Administrative Court, if they are admitted. According to section 132, subsection 2 of the Code of Administrative Court Procedure cases shall only be admitted, if the legal case is of fundamental significance, if the judgment deviates from a ruling of the Federal Administrative Court, of the Joint Panel of the supreme

courts of the Federation or of the Federal Constitutional Court and is based on this deviation, or if a procedural shortcoming is asserted and applies on which the ruling can be based.

At state level, the Higher Administrative Courts fulfil the task of harmonization and standardization for state law.

As for the internal variances among panels of the Federal Administrative Court, a plenary chamber respectively composed of judges from each chamber decides on deviation matters submitted to it by a panel invoking such a deviation.

II – JUDICIAL REVIEW OF ADMINISTRATIVE ACTS

A. ACCESS TO JUSTICE

21. Preconditions of access to the courts

Prior to lodging a rescissory action, the lawfulness and expedience of an administrative act shall be reviewed in preliminary proceedings. Such a review shall not be required if a statute so determines, or if the administrative act has been handed down by a supreme federal authority or by a supreme authority of a federal state, unless a statute prescribes the review, or if the remedial notice or the ruling on an objection contains a grievance for the first time (section 68, subsection 1 of the Code of Administrative Court Procedure).

The result of this internal control is expressed by a decision on contestation.

Some federal states have adopted general legislation or legislation concerning several subject-matters omitting the preliminary proceedings and thus granting direct access to the Administrative Courts.

22. Right to bring a case before the court

Any private or public legal entity as well as communes and other communities having administrative autonomy may form recourse before the Administrative Court.

23. Admissibility conditions

According to section 42, subsection 2 of the Code of Administrative Courts Procedure a plaintiff has to claim that his/her rights have been violated by the administrative act or its refusal or omission. Thus, only subjective rights of the plaintiff may be invoked before the Administrative Courts.

24. Time limits to apply to the courts

The action to quash and the action aiming to issue an individual administrative act must be filed within one month from notification of the decision on contestation or, if a prior administrative recourse is not required, from notification of the individual administrative act. The parties must be informed in writing about recourse, the location where it must be filed and the deadline.

The deadline runs from the notification date and expires at the end of the last day. If a deadline expires on a Saturday, a Sunday or a Public Holiday, then the last day of the deadline is the first working day to follow. If someone was unable to adhere to a statutory deadline without fault, he/she shall be granted restitutio in integrum on request (section 60, subsection 1 of the Code of Administrative Court Procedure).

25. Administrative acts excluded from judicial review

As a general principle, all actions taken by a public authority are subject to review by the courts (Art. 19 paragraph (4) of the Basic Law, see also No. 1). Since this principle forms an essential part of the fundamental rights guaranteed by the Basic Law, no public act is excluded from this guarantee. A factual limit exists only in so far, as a person is restricted to file actions concerning his/her subjective rights. However, some legal instruments provide for a merely objective review (e. g. in environmental law).

26. Screening procedures

Appeal against Administrative Court judgments is open to parties, if declared receivable by the Administrative Court or by the Higher Administrative Court. The Administrative Court adjudicates the appeal admissibility in its judgment. The Higher Administrative Court is bound by the authorization. If the appeal is not receivable by judgment, it must be requested within one month from judgment notification. The motion must be addressed to the Administrative Court and shall be reasoned within two months after service of the complete judgment. The Higher Administrative Court adjudicates in the form of a judgment without oral debates about the motion's admissibility.

The admissibility reasons are settled by law. The appeal must be declared receivable (1) if serious doubts exist as to the correctness of the judgment, (2) if the case has special factual or legal difficulties, (3) if the case is of fundamental significance, (4) if the judgment derogates from a ruling of the Higher Administrative Court, of the Federal Administrative Court, of the Joint Panel of the supreme courts of the Federation or of the Federal Constitutional Court, and is based on this derogation, or (5) if a procedural shortcoming subject to the judgment of the court of appeal on points of fact and law is claimed and applies on which the ruling can be based (section 124, subsection 2 of the Code of Administrative Court Procedure). The appeal shall be reasoned within one month after service of the order on the admission of the appeal.

Against the judgment of an Administrative Court those concerned shall have recourse to an appeal on points of law to the Federal Administrative Court, circumventing the appeal on points of fact and law instance, if the plaintiff and the defendant agree in writing to the submission of the appeal on points of law in lieu of an appeal on fact and law, and if it is admitted by the Administrative Court in the judgment or on request by order. The request

shall be made in writing within one month of service of the complete judgment (section 134, subsection 1 of the Code of Administrative Court Procedure).

Decisions of the Higher Administrative Courts are subject to an appeal on points of law to the Federal Administrative Court. Only a violation of federal law may be invoked. The admissibility reasons are settled by law. Appeal to the Federal Administrative Court must be declared admissible if (1) the legal case is of fundamental significance, (2) the judgment deviates from a ruling of the Federal Administrative Court, of the Joint Panel of the supreme courts of the Federation or of the Federal Constitutional Court and is based on this deviation, or (3) a procedural shortcoming is asserted and applies on which the ruling can be based (section 132, subsection 2 of the Code of Administrative Court Procedure).

The non-admission of the appeal to the Federal Administrative Court may be challenged by a complaint. The complaint is to be lodged within one month after service of the complete judgment. The complaint shall be reasoned within two months after service of the complete judgment. The Federal Administrative

Court adjudicates upon this complaint by way of an order in written proceedings.

27. Form of application

The appeal and the complaint against a non-admission of the appeal to the Federal Administrative Court must be lodged in writing to the court whose judgment is impugned.

28. Possibility of bringing proceedings via information technologies

Those concerned may convey electronic documents to the court insofar as this has been permitted for the respective jurisdiction by legal ordinance of the Federal Government or of the State Governments. The legal ordinance shall determine the time from when documents may be conveyed to a court in electronic form, as well as the nature in which electronic documents are to be submitted. A qualified electronic signature in accordance with section 2 No. 3 of the Signature Act (Signaturgesetz) shall be prescribed for documents which are equivalent to a document to be signed in writing. In addition to the qualified electronic signature, another secure procedure may also be permitted which safeguards the authenticity and the integrity of the electronic document conveyed (section 55a, subsection 1 Code of Administrative Court Procedure).

At present, the Federal Government and several State governments have met the prerequisites for this form of electronic communication. So far it is only open to legal professionals and public authorities.

From 2026 on case files will only be provided in an electronic form (section 55b, subsection 1 of the Code of Administrative Court Procedure). All written communication will be scanned and added to the electronic file.

29. Court fees

The introduction of the motion and other recourse is not subject to a down payment. Legal fees are certainly outstanding with filing of the request, but proceedings do not depend on their settlement. The amount due depends on the value of the claim.

30. Compulsory representation

For a motion before the Administrative Court, legal representation is not compulsory but it is possible. Each party filing a motion must be represented by a lawyer before the Higher Administrative Court and the Federal Administrative Court. Public companies and administrative authorities may also be represented by an agent entitled to carry out the duties of a judge (jurist with two State Examinations).

31. Legal aid

Legal aid is granted when there is sufficient probability of success of the legal action and when the economic status of a party remains under a certain capacity defined by law. Eligibility to receive legal aid is decided upon by the respective court for the hearing. In the context of eligibility to receive legal assistance, the assistance of a lawyer may be granted on request. The court determines the success of legal proceedings by way of prognosis. The law sets the amount that may be requested from a party in accordance to his/her income and properties. In the event the Administrative Court refuses legal assistance, possibility of appeal before the Higher Administrative Court is open to the affected parties.

32. Fine for abusive or unjustified applications

The losing party bears the costs of the procedure. But there is no fine for abusive of unjustified applications.

B. MAIN TRIAL

33. Fundamental principles of the main trial

The fundamental principles controlling legal proceedings and the legal procedural course are set by the Code of Administrative Court Procedure. One of the main principles is the investigation of the facts ex officio. The court is held to consult the parties. Yet it is not bound by their submissions and to the motions for the taking of evidence.
The petitioner is bound to indicate the material elements and means of proof that might help with the proceedings motivation. The defendant and other parties
have the possibility to take a position on the petitioner’s conclusions and to introduce offers of proof on their side.

The court must suggest that parties collaborate in seeking facts (obligation of support). If, despite support of the parties some matters remain unclear, the court is bound to clarify these facts even without offers of proof (investigation ex officio).

The law determines which party assumes legal consequences of a failed clarification (burden of proof in a material sense).

Further principles are the entitlement to a hearing in accordance with the law (Art. 103 paragraph 1 of the Basic Law) and the concept of the legal judge.

34. Judicial impartiality

A judge is excluded from his/her duties according to law in cases where he/she, his/her spouse or a close relative is a party, where he/she is a party's agent or legal representative, where he/she was heard as a witness or where he/she took part in a decision in a preliminary hearing. Moreover, each party may prevent a judge from sitting due to a reasonable suspicion that a fair trial will not be given. An act of impeachment is adjudicated by the court by way of judgment without any collaboration of the impeached judge. The impeachment is well-founded, if there is a legitimate motive justifying suspicion of the judge's impartiality. Suspicion is sufficient; the impartiality does neither have to be given nor proved.

35. Possibility to rely on the new legal arguments in the course of proceedings

The petitioner may regularly claim new facts as new means of action and defence during the hearing before the Administrative Court and the Higher Administrative Court until the end of the oral debates. Since the Federal Administrative Court only hears cases on matters of law, no new facts may be introduced.

36. Persons allowed to intervene during the main hearing

If third parties are involved in the contentious law report to such a degree where a uniform decision appears necessary, they must be summoned to attend proceedings. If the decision is related to a third party's legal interests, he/she may be summoned by the court. A person involved may vindicate his/her own means of action and defence in the context of the dispute objective and file motions. The judgment has legal authority as regards the persons involved.

37. Existence and role of the representative of the State ("ministère public") in administrative cases

A Representative of the Intererest of the Federation appointed by the Federal Government has the opportunity to make a statement in each case before the Federal Administrative Court (section 35 of the Code of Administrative Court Procedure). A representative of the general interest has the corresponding rights before the Administrative Court and the Higher Administrative Court if provided for by state law (section 36 of the Code of Administrative Court Procedure). In most federal states a representative of the general interest does not/no longer exist.

38. Existence of an institution or a person with a role analogous to the French «Commissaire du gouvernement »

The Representative of the Interest of the Federation may independently and impartially make a statement in the context of proceedings before the Federal Administrative Court.

39. Termination of court proceedings before the final judgment

Before the final judgment is delivered it is within the discretion of the parties to withdraw an action, to declare an action concluded by other means or to reach a settlement for the record of the court.

40. Role of the court registry in serving procedural documents

The court registry service hands over notifications of the parties to other affected parties by writ. Recourse notification is prescribed by the Head of Chamber.

41. Duty to provide evidence

Searching of fact elements forming the dispute material lies both with the parties and the court in the context of its investigation obligation. The parties may present offers of proof. In its search for proof, the court is not bound to offers of proof from the parties (see no. 33).

42. Form of the hearing

Oral hearings are public. They are opened and chaired by the presiding judge. During oral hearings, the parties expose and motivate their motions, the court debates facts and the legal situation with the parties and proof is collected. The hearing may take place in camera under certain legal conditions, such as privacy protection of a party or a witness, in case of danger for national security or in respect for trade secrets and professional secrecy.

Oral debates start with the case appeal and establishing the parties' appearance. The reporting judge presents the essential contents of the files. Parties are afforded the opportunity to speak in order to make and reason their applications. The presiding judge shall discuss the dispute with those concerned in factual and legal terms. The presiding judge concludes oral debates.

43. Judicial deliberation

Once oral debates are concluded, the judges leave to deliberate. The in-camera sitting concerns the facts and the appreciation of the legal situation. It ends with a vote. The in-camera sitting and vote are subject to secrecy on deliberations. Professional judges and – wherever this applies (see no. 10) – lay judges have the same vote.

C. JUDGMENT

44. Grounds for the judgment

The judgment must be reasoned in writing. The judgment shall state the grounds which were decisive for the judicial conviction. The judgment may only be based on facts and results of evidence on which those concerned have been able to make a statement (section 108 of the Code of Administrative Court Procedure).

45. Applicable national and international legal norms

The administrative courts apply national laws and regulations emanating from the federal or the state level. In most subject-matters state law cannot be the object of a revision case before the Federal Administrative Court. European Union Law and the European Convention of Human Rights are also being applied directly, European Union Law only as far as the primary law and the jurisdiction of the European Court of Justice demand its direct application. Public International Law as a principle is only directly applicable if transferred into national law. Yet, Art. 25 of the Basic Law declares the general rules of international law an integral part of federal law. They shall take precedence over the laws and directly create rights and duties for the inhabitants of the federal territory.

46. Criteria and methods of judicial review

The scope for review depends mainly on relevant substantial law. As a principle, actions of the administrative authorities underlie full judicial review including the facts and the law. Where the law provides for the authorities to act within their judicial review is limited to control whether a full competence to act was legally granted to the administrative authority (grant of full powers to act), whether this competence was actually carried out (exercise of powers to act) and whether the considerations were carried out in the context of the legal objective (abuse of power or excess of authority).

In the context of prognostication decisions legally undertaken by the administration, the Administrative Court only reviews (1) if the prognostication took place on a basis of sufficiently reliable facts, (2) if the appreciation is appropriate to the case and (3) if the final decision is maintainable. Some similar limits to control exist in the context of planning decisions as well as administrative operations based on freedom for appreciation that prioritizes administration appreciation. In these situations, the court is not deemed to control the expedient nature of the administrative decision or to replace the appreciation put forward by the administration with one of its own, even if other decisions seem more expedient or if other decisions are more favourable to the petitioner.

When the scope for control is limited, verification of proceedings gains more significance.

47. Distribution of legal costs

The losing party bears the costs of the proceedings. If a party concerned is partly successful and partly unsuccessful, the costs shall be offset against one another or shared proportionately. The costs of an appeal lodged unsuccessfully shall be imposed on the party who lodged the appeal. The legal fees and extrajudicial proceeding fees, including the lawyer's fees and disbursement are considered as costs. Costs cannot be charged to a person involved unless he/she filed motions or introduced reform recourse. The extrajudicial proceedings fees incurred by the person involved are not payable unless the motion he/she presented was successful.

48. Composition of the court (single judge or a panel)

As a general rule administrative courts sit in panels At the Administrative Court level a panel consists of three professional judges and two honorary judges. Such a panel is called a chamber (Kammer). The chamber should as a rule assign the legal dispute to one of its members as an individual judge for a ruling if (1) the case does not show any particular factual or legal difficulties, and (2) the case has no fundamental significance. At the Higher Administrative Court level a panel consists of three professional judges. Only some states provide for panels enlarged by two honorary judges. The panels are called senates (Senat). At the Federal Administrative Court the senates are composed of five professional judges.

49. Dissenting opinions

In all proceedings by the administrative jurisdiction, the publication of deliberations by individual judges and of dissenting opinions is not authorized.

50. Public pronouncement and notification of the judgment

The judgment is pronounced orally to the public. Following this, the judgment must be presented in written form. Notification of the integral judgment must be made in writing to the parties. Judgment notification in writing is also receivable in lieu of the verdict. The court may waive oral debates with agreement of the parties. In this case, written notification of the integral judgment replaces the verdict.

D. EFFECTS AND EXECUTION OF JUDGMENT

51. Authority of the judgment. *Res judicata*, *stare decisis*

Insofar as the subject-matter of the dispute has been adjudicated, the judgment only binds the parties and their assigns. If the state of facts and the legal situation remain unchanged, the losing administrative authority is not entitled to enact a new administrative act towards the relevant person regardless of court's reasons for disapproval. This effect of the final judgment authority is justified by its purpose, which is to serve public peace and to preserve trust in legal certainty.

52. Powers of the court in limiting the effects of judgment in time

The judge may not temporally limit effects of a judgment.

53. Right to the execution of judgment

The execution of administrative court decisions is regulated in the Code of Administrative Court Procedure. In the context of the sentence, judgments conferring rights are directly efficient and therefore, they do not need an act of execution. Judgments declaring rights are not enforceable. Other decisions having the force of a final judgment and judgments for tentatively enforceable order to pay costs may be executed. General conditions differ according to whether the execution is an act by the administration or by private individuals.

The administration can proceed with carrying out financial claims and may compel proceeding with action, to bear or abstain from it. Private individuals may proceed to carry out financial claims against an entity of public law. In the event the administrative authority involved does not defer to the obligation to go back on an administrative act already executed or to undertake an administrative act, the court may, on request, impose and execute a constraint. It cannot carry out seizure itself.

54. Recent efforts to reduce the lenght of court proceedings

In reaction to the jurisdiction of the European Court of Human Rights on the excessive length of court proceedings the German legislator introduced the legal institution of redress in such cases in 2011. As a principle, section 198, subsection 1 of the Courts Constitution Act (Gerichtsverfassungsgesetz – GVG) now provides, that whoever as the result of the unreasonable length of a set of court proceedings experiences a disadvantage as a participant in those proceedings shall be given reasonable compensation. The reasonableness of the length of proceedings shall be assessed in the light of the circumstances of the particular case concerned, in particular the complexity thereof, the importance of what was at stake in the case, and the conduct of the participants and of third persons therein. In addition, the federal states have recently created more judges' posts in order to face the augmented number of cases arising especially in the field of asylum and refugee law.

E. REMEDIES

55. Sharing out of competencies between the lower courts and the supreme courts

Generally, the authority for introduction in an administrative contentious proceeding is the Administrative Court. In some cases, the Higher Administrative Court is competent as1st authority for disputes related to large technical projects (building and exploitation of nuclear and thermal power plants, incineration of waste centres, public airports, construction of high tension open-wires, railway lines, federal roads, federal waterways) as well as recourse against association prohibitions at state level.

The Federal Administrative Court adjudicates as 1st and last authority on non-constitutional disputes between the Federation and the federal states or between various federal states; the association prohibitions at federal level, , as well as on disputes with regard to all and any disputes related to project approval procedures and plan approval procedures for projects designated in the General Rail Act, the Federal Highways Act, the Federal Waterways Act, the Transmission Line Extension Act, the Federal Requirement Plan Act or the Magnetic Suspension Train Planning Act.

56. Recourse against judgments

The right of review in the administrative jurisdiction is performed at three levels. The Higher Administrative Court reviews the Administrative Court decisions in fact and in law. The Federal Administrative Court acting as the authority on cassation only adjudicates on matters of law.

F. EMERGENCY AND SUMMARY PROCEEDINGS / APPLICATIONS FOR INTERIM RELIEF

57. Existence of emergency and/or summary proceedings

The Code of Administrative Court Procedure provides for summary proceedings. The competent court is the court dealing with the main case. All authorities are subject to the same regulation in the context of summary proceedings. If the case is transferred to a sole judge before the Administrative Court, he/she also adjudicates on urgent proceedings. In other cases, the chamber adjudicates.

58. Requests eligible for the emergency and/or summary proceedings

There are two types of summary proceedings. Contentious recourse of an administrative act limiting a right generally has a suspensive effect. Insofar as the suspensive effect of recourse is excluded from immediate execution according to law or an administrative order, the Administrative Court may, on request, (re-) establish the suspensive effect. Such a decision presumes that full judicial review will probably be successful or, if the result of recourse is uncertain, that the petitioner’s interests prevail over the public interest in the immediate execution of the administrative act.

In cases where a motion tends to obtain an individual administrative act or an omission in the substance of the case, the court may take a provisional order. Summary orders presume the petitioner proves the legitimateness of his/her right and the urgency of the case. The content of the provisional order lies within the discretion of the court; it shall not foreclose the final decision.

59. Kinds of summary proceedings

The summary regulation is identical both for individual disputes and public law institution disputes.

III – NON-JUDICIAL SETTLEMENT OF ADMINISTRATIVE DISPUTES

60. Role of administrative authorities in the settlement of administrative disputes

In as much as prior recourse is necessary, the administration considers legality and appropriateness of the administrative act. This control seeks an administrative authority or a competent commission to adjudicate on the contestation.

61. Role of independent non-judicial bodies in the settlement of administrative disputes

Administrative disputes may be settled by independent and impartial organisations if the parties assent thereto. In this event, the case may be committed to a judicial or extra-judicial mediator. In the case where mediation is unsuccessful, the case lies with the administrative court authority.

62. Alternative dispute resolution

According to legal regulation, recourse before the administrative courts may be excluded by attributing the case to arbitration courts that meet constitutional conditions required by a court. The competence of an arbitration court may also be stipulated by contract. The arbitration treaty excludes authority of the administration courts if this might in turn hinder action.

IV – ADMINISTRATION OF JUSTICE AND STATISTIC DATA

A. FINANCIAL RESOURCES MADE AVAILABLE FOR THE REVIEW OF ADMINISTRATIVE ACTS

63. Proportion of the State budget allocated to the administration of justice

Needs for staff and buildings are established by the Federation and the Länder pursuant to the trend in business according to set respective standards and are funded by State budgetary funds. Needs are established separately for the ordinary jurisdiction and administrative jurisdiction respectively. For certain material assets (library, office supplies, furniture) and other costs (complementary training program, auxiliary clerks), and in certain Länder, Administrative Courts receive their own budget. The amount depends on the extent of the court constituency and amounts to, on average about 250,000 € per court and per year. The Ministry of Justice and the superior court presiding judge agree upon the budget for the Land's administrative jurisdiction, and the Higher Administrative Court presiding judge and various Administrative Courts, on the budget for Administrative Courts. Local budgeting turned out to be highly advantageous.

64. Total number of magistrates and judges

On January 28th 2016 (reference date), there were 20,300 magistrates in Germany throughout the jurisdictions.

65. Percentage of judges assigned to the review of administrative acts

The rate of magistrates placed in a general administrative jurisdiction in comparison to the total number of magistrates was around 9.0 % on the reference date. The rate of magistrates placed in the general administrative jurisdiction, social jurisdiction and tax jurisdiction was around 20.7 % in comparison to the total number of magistrates.

66. Number of assistants of judges

At the level of federal courts (except for the Federal Constitutional Court), judges of lower instances are employed as scientific collaborators for a renewable two-year-period. On average there is one scientific collaborator for five federal judges. There are between 50 to 60 scientific collaborators in total per year within the federal courts.

Within all courts of first and second instance, candidates who have passed the first set of state examinations (Staatsexamen) are trained. They assist magistrates to a certain extent.

67. Documentary resources

Each court has a library with mainly legal publications (official bulletins of laws and statutes, law reports, law commentaries, manuals, monographic publications as well as specialised legal periodicals and other periodicals). There is also access to digital data bases on jurisdiction including legal research websites of private editors.

68. Access to information technologies

Almost all German courts have modern computer means. The magistrates, the court registry and the editorial department have individual computers with word processing, department administration and communication programmes (e-mail, Internet) as well as printers. Moreover, magistrate's individual computers have special calculation and data base programmes. In most courts, computer techniques are inter-connected.

69. Websites of courts and other competent bodies

All Administrative Courts have their own Internet site where citizens can obtain information about functions and competences, the judiciary and personal organization as well as access to court addresses, etc. In addition, the courts themselves publish hearing dates, press releases and more partially, decisions. It will be possible to file rights of review and reports by computer in the near future. This is already the case for certain courts, e.g. the Federal Administrative Court.

B. OTHER STATISTICS

70. Number of new applications registered every year

New motions in 2015, with the distinction of various authorities as well as proceedings defining background of disputes and summary proceedings (without Numerus-clausus proceedings):

Administrative courts:	
Proceedings on background of disputes	144,628
Summary proceedings	63,323
Superior administrative courts:	
Proceedings of first authority	930
Appeals	14,000
Summary proceedings	6,195
Federal Administrative Court:	
Proceedings of first authority	87
Appeals to the Supreme Court and appeal recourses	1,273

71. Number of cases heard every year by the courts or other competent bodies

Files processed in 2015, with distinctive various courts of various authorities as well as proceedings defining dispute backgrounds and summary proceedings (without Numerus-clausus proceedings):

Administrative courts:	
Proceedings on dispute background	147,293
Summary proceedings	64,156
Superior administrative courts:	
Proceedings of first authority	1,040
Appeals	13,451
Summary proceedings	6,244
Federal Administrative Court:	
Proceedings of first authority	68
Appeals to the Supreme Court and appeal recourses	1,227

72. Number of pending cases

Pending proceedings in 2015 (end of the year), with a distinction from various courts for various authorities as well as proceedings defining dispute background and summary proceedings (without Numerus-clausus proceedings):

Administrative courts:	
Proceedings on dispute background	122,532
Summary proceedings	7,539
Superior administrative courts:	
Proceedings on dispute background for first authority	1,323
Appeals	11,236
Summary proceedings	1,314
Federal Administrative Court:	
Proceedings of first authority	67
Final court of Appeals and appeal recourses	618

73. Average time taken between the lodging of a claim and a judgment

Average delay of proceedings (months) in 2015, with a distinction from various courts for various authorities as well as proceedings defining dispute background and summary proceedings (without Numerus-clausus proceedings in months):

Administrative courts:	
Proceedings on dispute background	10.1
Summary proceedings	1.5
Superior administrative courts:	
Proceedings on dispute background in first authority	18.6
Appeals	10.0
Summary proceedings	2.8
Federal Administrative Court:	
Proceedings of first authority	8.0
Appeal recourse	4.4
Final court of Appeals	11.4

74. Percentage and rate of the annulment of administrative acts decisions by the lower courts

Results of proceedings adjudicated in 2015 before the Administrative Courts in first authority:

Proceedings on dispute background:
Administrative authority wins the case 76.6 %
Administrative authority partially wins the case 7.5 %
Administrative authority loses the case 15.8 %

Summary proceedings (without numerus-clausus):
Administrative authority wins the case 85.5 %
Administrative authority partially wins the case 1.8 %
Administrative authority loses the case 12.7 %

75. The volume of litigation per field

Volume of litigation before the Administrative Courts of first authority in 2015 (selected fields in %):

civil service law 8.4 %
commercial administration law 4.3 %
police law 8.4 %
urban planning and building regulations law 5.8 %
asylum application procedures 32.7 %
immigration law 6.7 %
local rates and taxes 13.8 %

C. ECONOMICS OF ADMINISTRATIVE JUSTICE

76. Studies or works concerning the influence of judicial decisions against the administrative authorities on public budgets

There is no scientific study demonstrating the influence of administration sentencing on public budgets or illustrating thoughts of magistrates on consequences of their decisions as regards cost to public finance.