Course Description

The course 'Administrative law for public management' provides an introduction to administrative law from a comparative and supranational perspectives, relevant to policy-makers. The legal systems covered are essentially European, but reference is also made to non-European legal systems, in particular that of the United-States. The course relies on an analysis of scholarly works and relevant legislation and case law, available in English language, and involves practical exercises. The course starts with a brief introduction to law and legal methods, as applicable to comparative administrative law, and of use to policy-makers. It then identifies and contrasts different administrative organization models and administrative justice systems, against diverse constitutional backgrounds. It continues with a comparative introduction to policy-making, rulemaking/ regulation and decision-making by administrative bodies, and discusses related accountability concerns, before reviewing the instruments and sources of administrative law, and their relationship (i.e. hierarchy of norms, parliamentary sovereignty, etc.). The course then explores the range of procedural and substantive rules which frame the acts and actions of supranational, national and local administrations and their relationships with legal and natural persons. The course continues with a critical review of remedies available against defaulting administrations, starting with non-judicial remedies (e.g. Ombudsman, mediation), then looking at judicial review (procedures, standing and merits aspects), and liability of public authorities. It ends on a reflection on the 'globalization' of administrative law and the use of comparative administrative law as a tool towards better public management.

Course goals

The course aims at providing students with a basic understanding of administrative law rules and procedures which are relevant to the activities of policy-makers, in the European context. It endeavours to equip them with the basic skills necessary to access, understand and use legal sources in the course of policy-making.

Learning outcomes

Content literacy
At the end of the course, the students should be aware of the diversity of administrative organization and justice models, have a basic understanding of the process of rule-making and be able to discuss accountability concerns. They should be familiar with the most important procedural and substantive rules which frame the actions of local, national and supranational administration, and be able to identify suitable remedies against these administrative actions or inactions.

Subject specific skills

At the end of the course, students should be able to compare and evaluate the administrative law rules and procedures from number of different legal systems. They should be able to brief administrative law cases.

Cognitive skills

At the end of the course, students should be able to identify, synthesize, analyze and evaluate primary and secondary sources of administrative law and to reason according to diverse types of administrative law paradigms.

Key academic transferable skills

At the end of the course, students should be able to communicate effectively in writing and orally to both legal and non-legal audience, and write in an analytical and critical way.

Interdisciplinary skills

At the end of the course, students should be familiar with the basic features of legal reasoning and legal research, for public policy purposes.

Course requirements

Students registered for the course must attend classes regularly and participate actively in class discussions. Missing more than 1 class without justification may result in failing the class. All students must read the mandatory reading and other tasks assigned in preparation of the class.

All students must actively participate in class discussions and activities. Each student must make a presentation on a topic assigned in advance, and must relate it to a recent news item and elaborate on it. In addition, students must write a 2000-2500 words final seminar paper on a topic under the scope of the course and approved by the teacher. The paper must include a comparative analysis of at least two legal systems. Grading is based on class participation (20%), presentation (20%) and final paper (60%).

Bibliography

Books


Craig, EU Administrative Law, Oxford University Press, 2006

P. Craig, D. Tomkins, Executive and public law (Oxford University Press, 2006)

M. Künnecke, Tradition and Change in Administrative Law, An Anglo-German Comparison (Springer, 2007)


T.T. Ziamou, Rulemaking, participation and the limits of public law in the USA and Europe (Ashgate, 2001)
C. Harlow and R. Rawlings, Law and Administration (Butterworths, 2nd ed., 1998)
J. Schwarze, European Administrative Law (Sweet & Maxwell, 2006)
P. Cane, Administrative Tribunals and Adjudication (Hart, 2009)
E. Fisher, Risk Regulation and Administrative Constitutionalism (Hart, 2007)
J. Bell, S. Boyron, and S. W. Hittaker, Principles of French Law (Oxford University Press, 1998), Ch. 4 and Ch. 6.
A. Freckmann and T. Wegerich, The German Legal System (Sweet & Maxwell, 1999)

Journals
European Public Law
Public Law
Journal of Public Policy

Web resources
TSol (2006), A Judge Over Your Shoulder (a brochure aimed at administrators)
http://www.planning.inspectorate.gov.uk/pins/agency_info/complaints/judge_over_your_shoulder.pdf
Her Majesty’s Court’s Service, Note of Guidance for applying for judicial review (UK),
http://www hmcourts service gov uk/cms/1220 htm
French law database (in French, but some documents available in English):
http://www.legifrance.gouv.fr/
Webpage of information in English about the German Federal Administrative Court (Bundesverwaltungsgericht)
http://www.bverwg.de/enid/Aktuelles/Information_in_English_g0.html
German statutes in English: http://www.iuscomp.org/gla/statutes/statutes.htm
European Group for Public Administration, Law and Public Administration Theme,
http://www.iiias-iisa.org/egpa/en-study_groups/law/Pages/theme.aspx
Syllabus

Class 1 (GYN)

A brief introduction to administrative law and legal methods

Students will discuss the concept of administrative law, its nature, purpose, scope and evolution, in a comparative perspective.

Mandatory reading:

- C. F. Stychin, Legal Method: text and materials (Sweet & Maxwell, 1999) 1-21

Class 2 (GYN)

Models of administrative organization and justice

This class introduces the diverse models for administrative organizations found in Europe, and reviews trends towards increased reliance on independent agencies and participation of private actors in public activities (contracting-out, public-private partnership, etc.). It then introduced various existing systems of administrative justice.

Mandatory reading:

- Section I to VI of the Bundesverwaltungsgericht information webpage in English: http://www.bverwg.de/enid/Aktuelles/Information_in_English_g0.html

Optional reading:

- D. H. HaJlerstam, ‘The Promise of Comparative Administrative Law: A Constitutional Perspective on Independent Agencies’ in S. Rose-Ackerman, P. Lindseth, eds., Comparative Administrative Law, S. Edward Elgar, 2010; also available as U of Michigan

Class 3 (MPG)

Policy/ rule-making and individual decision-making by administrations

This class deals with the types of measures that public bodies, or private bodies fulfilling public functions, can adopt, and review (some) mechanisms guaranteeing greater accountability of administrative actions, such as the principles of legality (linked to the hierarchy of norms).

Mandatory reading:
- Tsol (2006), A Judge Over Your Shoulder (a brochure aimed at administrators) http://www.planning-inspectorate.gov.uk/pins/agency_info/complaints/judge_over_your_shoulder.pdf pps 8-10

Class 4 (GYN)

Normative framework I: good administration and human rights

This class starts with exploring the concept, nature and scope of the principle of good administration, which serves as a benchmark for all European legal systems, and engages in a discussion of good governance in a legal perspective. It continues with an analysis of how human rights norms frame administrative actions, with a particular focus, as a case study, on the impact of the Human Rights Act in the UK.

Mandatory reading:
- Article 41 of the EU Charter of Fundamental Rights (Right to Good Administration)

Optional:

Class 5 (GYN)

Normative framework II: ‘due process’

This class will provide a comparative overview of the procedural norms which constrain administrative actions, sometimes referred to as the rights of the defense (or procedural due
process' in the U.S., or the rules of natural justice (U.K.), the right to adequate notice, the right to assistance and representation, the duty to give reasons, the right of access to one's file, the principles of transparency and access to documents, the right to a hearing, rights to participate in decision-making procedures, legal privilege, protection against self-incrimination, etc.)

Mandatory reading:


Optional:


Class 6 (MPG)

Normative framework III: ‘substantive’ principles of administrative law

In this class, we will focus on substantive rules of law which constrain administrative action and which find expressions in the various European legal systems, such as legitimate expectations and proportionality/reasonableness. We will compare and contrast the way these concepts are labelled and operationalized in various administrative law traditions, and discuss to what extent these rules and their application are being ‘harmonized’ across Europe.

Mandatory reading:


Further reading (e.g. for presenters)

R. Thomas, Legitimate expectations and proportionality in administrative law (Hart Publishing 2000).

Class 7 (MPG)

Risk regulation in Europe, and the precautionary principle

In this class, we will explore the increasingly delicate issue of risk regulation, and to what extent the legal principle of precaution can help (or not) in improving the ability of public authorities to manage risk effectively, whilst also satisfying legitimacy demands.

Mandatory reading (alternative list):


Or
Class 8 (GYN)

**Non-judicial remedies**

This class will review the range of non-judicial remedies available against administrative bodies, such as complaints procedure, mediation, and ombudsmen.

Mandatory reading:

- Consult the website of the European Ombusman at [http://www.ombudsman.europa.eu/home/en/default.htm](http://www.ombudsman.europa.eu/home/en/default.htm), and identify an action of the Euro-Ombusman which seemed to have ‘made a difference’.

Class 9 (MPG)

**Judicial review I: admissibility aspects**

In this class, we will examine the admissibility aspects of judicial review, i.e. which acts can be reviewed and who has standing to challenge administrative acts, as well as time-limits. We will compare and contrast the ways various European legal systems give different emphasis to these questions, as compared to the merits dimension. We will also review the forms of suit/causes of actions available across selected legal systems.

Mandatory reading (short extracts):

After an analysis of the scope and intensity of judicial control over administrative acts, and the grounds of annulment traditionally relied on in European legal systems, we will have a little ‘practice’ session, which will help us identify, compare and contrast the ‘treatment’ of one particular set of facts in different legal systems, examining both processes and outcomes. The students will be given a scenario at the beginning of the class, and relying on the knowledge acquired so far in the course, present the way the ‘case’ would be handled in a selected numbers of legal systems.

Mandatory reading:

- L. Bär, lawyer at Scharpf and Associates, ‘Introduction to the system of legal protection under administrative law in Germany’ at [http://www.scharpf-law.de/LegalProtection.pdf](http://www.scharpf-law.de/LegalProtection.pdf)

Optional:


Class II (MPG)

Public authorities’ liability

In this class, we will examine the possibility to sue the administration for damages. In order to understand the nature and scope of state liability for administrative actions, we will compare the way different legal systems approach a similar issue in different manners and which outcomes they reach.

Mandatory reading:

- W. van Gerven, Cases, Materials and Text on National, Supranational and International Tort Law (Oxford and Portland Oregon: Hart, 2000), section on
Conduct of public authorities’ pps 358-394

- M. Künnecke, Tradition and Change in Administrative Law, An Anglo-German Comparison (Springer, 2007), Ch. 5 - Governmental Liability [English-German Comparison], pp. 174-191

Optional:
- D. Fairgrieve, State liability in Tort Law (Oxford University Press 2003), Ch. 2 pp. 7-27

Class 12 (MPG-GYN)

12 Conclusions: towards global administrative law?

In this last class, we will place administrative law in a wider context, and examine whether there is convergence around universal or global administrative law standards and procedures, which frame public authorities’ actions in national, supranational and transnational contexts. Students should read one of the following texts, as allocated in advance, and be able to interact actively in the class debate.

Mandatory reading (alternative list):