

Final exam observations

Dear course participants,

I have corrected and graded your answers to my question in the final examination and returned your papers to the IUP management, together with a *correction sheet* which I completed *for each paper* individually. Please see the form for the correction sheets attached.

The purpose of an exam is not only to generate grades but also to allow you to identify the strong and weak sides of your work, so that you can improve your performance and avoid making the same mistakes again in the future. Therefore, you should *study the individual correction sheet for your paper carefully, together with my direct comments in your paper*. You are also welcome to discuss it with me in my office (A.IV.11). The paper and the correction sheet are available at the IUP management. Since this was an offline exam, the correction sheet exists only in paper form and I am therefore unable to send it to you electronically.

There were some excellent and even some amazing, more than excellent answers to my question, but also many that failed. Some even needed to be graded with 00 (of 40) points because they did not contribute to answer the question at all. Many of you did not read the question carefully, which is a fatal mistake in a legal exam. The *question* was about the *control of public administration "by public administration itself"*, **not about judicial control** (which is not performed by public administration itself but by the courts) **and also not about external non-judicial control** (outside public administration, e.g. parliamentary control or financial control by the courts of auditors). To write about these latter forms of control is like writing about ships when the exam question is about airplanes. **In an academic exam, you must answer precisely - and only - what is asked for in the exam question!** This was even required expressly in the note to my exam question. It requires you to **think** and analyse the exam question thoroughly before writing the answer.

Moreover, some answers were too superficial. For example, when presenting the supervisory control by the superior authority, some answers did not differentiate between the two different forms *functional supervision* and *legal supervision*, which have a different scope of review and also show other differences. This distinction, with its consequences, is an important feature and one of the reasons why I presented the supervisory control in the course. Some of you also confused the two forms of supervisory control and their features or the supervisory control with the administrative self-control in the objection proceedings. Some also focused not on the most important but the less important ways of administrative self-control. Maybe it was not a good idea that some of you never attended the lectures. Maybe you need to study the course materials more thoroughly in the preparation for the exam and not be shy to contact the lecturer with any questions.

Do not worry, the next exams will offer you the opportunity to improve your performance. However, make sure that in the next exams you will read and analyse the exam questions carefully!

Best wishes for your further studies,

Thomas Schmitz

More information on this course contribution at www.thomas-schmitz-yogyakarta.id. For any questions, suggestions and criticism please contact me via WhatsApp or e-mail (tschmit1@gwdg.de) or in my office (Building A, room A.IV.11).

Prof. Dr. Thomas Schmitz

Semester 1, 2022/2023

NON-JUDICIAL AND JUDICIAL CONTROL OF PUBLIC ADMINISTRATION IN GERMANY

Contribution to the course *Oversight of State Administration* from a comparative perspective

Question for the final examination

(40 of 100 points for this final exam)

In Germany, public administration is not only controlled by the courts but also by public administration itself. Please describe the two most important ways for that (the relevant mechanisms, their functions and limitations, who can initiate them, what is reviewed and how they complement each other).

Note: This is not about writing an essay but an academic exam. So think carefully before you formulate your answer. It must be exhaustive but limited to what is asked for, precise, concise and well-structured. Be aware that evidently irrelevant remarks are not just ignored but considered negative in the grading. After the exam, all students are welcome to contact me to discuss the strong and weak points of their answer (e-mail: tschmit1@gwdg.de).

The topic was discussed in the online lectures and presented in my course materials [slide 2](#) (on administrative self-control) and [diagram 1](#) (overview on the mechanisms to control public administration in Germany), which can be downloaded on the special website for the course contribution, www.thomas-schmitz-yogyakarta.id/Courses/Control_Public_Administration_Germany.htm.

- I. Administrative self-control initiated by the citizen: the **objection proceedings** (term mentioned: 1 p.) **/ 22 points**
- initiated by the citizen: a *legal remedy* but more simple and cheaper than judicial review **/ 2 p.**
 - complements supervisory control (→ II.) by specifically protecting the citizen's rights
 - proceedings before the issuing authority and only if necessary before the next higher authority **/ 4 extra**
 - functions: **/ 10 p.**
 - *protection of citizen's rights* (therefore *suspensive effect*)
 - *administrative self-control*
 - *relief for administrative courts* (precondition for judicial review)
 - limitation: only against administrative acts (admin. decisions), only for the defense of own rights **/ 4 p.**
 - and only within one month **/ 2 extra**
 - scope: review of *legality* and *expedience* **/ 6 p.**
- II. Admin. self-control initiated and carried out by superior authorities: supervisory control (term mentioned: 1 p.) **/ 18 points**
- initiated (ex officio) and carried out by the superior authority **/ 2 p.**
 - complements objection proceedings (→ I.) by a mechanism for an *objective* enforcement of law and efficiency
- 1) Functional supervision **/ 8 p.**
- the standard case in any hierarchically structured public administration; supervised authority must follow instructions
 - *measures are internal affairs* and cannot be challenged before the courts
 - function: to ensure compliance of public admin. with the law but also to align it with the relevant policies
 - protection of citizen's rights only secondary function/side effect
 - scope: review of *legality* and *expedience* of administrative action
 - limitation: no functional supervision of self-government activities
- 1) Legal supervision **/ 8 p.**
- in case of *self-government activities of authorities enjoying autonomy*
 - function: to ensure compliance of public administration with the law
 - protection of citizen's rights only secondary function/side effect
 - scope: review of the *legality* (not *expedience!*) of administrative action
 - limited to instruments provided in the relevant laws (formal complaint, binding order etc.) **/ 2 extra**
 - measures interfere with right to self-government and therefore can be challenged before the administrative courts