

concerning § 1 II, III of the course contribution

## Diagram 1

### The mechanisms to control public administration in Germany (overview)

#### A. Non-judicial control

##### I. *Administrative self-control*

- internal control within the sphere of public administration
- 1) **Objection proceedings** [Widerspruchsverfahren] (sect. 68 et seq. CACP)
  - administrative review of the *legality and expedience* of administrative acts (= admin. decisions) by the issuing authority and (except in self-government matters) the superior authority
  - objector must claim that his own rights (not just interests) are concerned
  - objection generally has suspensive effect (admin. act cannot be executed)
- 2) Functional and legal supervision
  - a) **Functional supervision** by the superior authority [Fachaufsicht]
    - review of *legality and expedience*
  - b) **Legal supervision** by the superior authority [Rechtsaufsicht]
    - review of *legality of self-government activities* of authorities enjoying autonomy
    - limited to instruments provided in the law
    - measures can be challenged before administrative court
  - c) Supervision of the execution of federal law by the Länder by the Federal Government (federal oversight)
    - usually legal supervision (with decision by the Federal Council), in some fields functional supervision
- 3) Self-control within the administrative body
  - a) Internal audit
    - general or financial audit
  - b) Self-control by special officers with supervisory or advisory functions
    - e.g. data protection officers, gender quality officers
- 4) Disciplinary supervision of the personal conduct of officers [Dienstaufsicht]
- 5) Soft control by special government commissioners [Regierungsbeauftragte]
  - with advisory, monitory and participatory functions but no decisive powers

##### II. *External control*

- 1) Parliamentary control
  - by the German Bundestag and the parliaments of the Länder
  - in particular via committees of inquiry
  - also via auxiliary institutions, such as ombudsmen (rare) or specialised commissioners
- 2) Financial control by the courts of auditors
  - by the Federal Court of Auditors and the courts of auditors of the Länder
  - financial audit and performance audit
- 3) Soft control by independent federal or Land commissioners [Beauftragte]
  - in particular data protection commissioners

#### B. Judicial control

##### I. *Legal protection by the administrative courts*

- 1) Judicial review of administrative acts upon action for annulment (cf. sect. 42(1), 113(1) CACP)
  - review of the legality of admin. acts
  - legal action generally has suspensive effect
- 2) Adjudication on actions for the issue of an administrative act (cf. sect. 42(1), 113(5) CACP)
  - allowing the citizen to obtain required licenses, permits, approvals etc.

- 3) Adjudication on actions for other performance than the issue of an admin. act
- 4) Adjudication on actions for prohibitory injunction
- 5) Adjudication on declaratory actions (sect. 43 CACP)
- 6) Judicial review of already settled administrative acts (sect. 113(1) phrase 4 analogously)
  - in practice important to prevent similar measures in the future
- 7) Judicial review of sub-legislative legal provisions (sect. 47 CACP)
- 8) Interim protection
  - ordering, where exceptionally missing, the suspensive effect of objections & actions for annulment (sect. 80(5) CACP)
  - interim orders (sect. 123, 47(6) CACP)

## *II. Legal protection by other courts*

- 1) By the ordinary courts in state liability and certain other disputes
- 2) By the fiscal courts in tax and customs disputes
- 3) By the social courts in social security disputes

## *III. Subsidiary protection against human and fundamental rights violations by the constitutional courts and the European Court of Human Rights*

- only after all other legal remedies have been exhausted
- 1) Constitutional complaint to the Federal Constitutional Court for violation of f.r. under the Basic Law
  - 2) Constitutional complaint to the Land constitutional court for violation of f.r. under the Land constitution
  - 3) Individual complaint to the European Court of Human Rights for violation of h.r. under the European Convention on Human Rights and its protocols