Law, Public Administration and Social Change

18-29 August 1997

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The scope of administration can most easily be defined residually, as the sum of all activities of the State or any other public authority other than legislature, judiciary or government. Thus administration comprises all activities of public authorities executing constitutional mandates and directives of State institutions, especially legislature and government, and additionally any activity of pbulic agencies authorized specially to act in the public interest.

The distinction between interventive and community service administration touches upon our basic understanding of public administration, i.e., the organization, procedures and relationship between public authorities and citizens. A look into the history of public administration shows that, in continental European countries (administrative-law countries), public administration has undergone a relatively similar development in the last two centuries. With the evolvement of the modern state, public administration gained acceptance as an institution in its own right. In Germany, the later development was marked, in particular, by the concept of the constitutional state in which any administrative act involving the citizen is regarded as an application of law. It is the law that authorizes the administration to regulate the relationship between citizens and the state.

Administrative procedure is the activity of an administrative authority aimed at the taking of a decision or another measure, or at the conclusion of an agreement. This broad definition comprises numerous different procedures, according to the different kinds of measures being enacted (statutory orders, administrative acts, agreements, physical acts and other measures) and

to the different branches of administrative law (such as building law, police law, communal law or tax law).

The course offers a general introduction to comparative concepts of administrative law and action (A) followed by empirical comparisons of solutions in Eastern Europe and the West (specifically in planning, environment protection and police law) (B). These issues are discussed in the broader theoretical framework of social change and transition in Eastern Europe.

A. Theoretical Overview[1] (Prof. LILIC, GALLIGAN AND LEVINSON)

1. INTRODUCTION

I. THEORETICAL CONCEPTS OF ADMINISTRATION

A. INTRODUCTION.

1. Legal and political concepts; 2. Socio-technological concepts; 3. Administration as a system of social regulation.

B. ADMINISTRATION AS FUNCTION (Functional concept of administration).

1. Introduction; 2. Material functional concept of administration: a) Administrative function (administration as administrative power, b) Administrative action (administration as public service); 3. Formal functional concept of administration.

C. ADMINISTRATION AS ORGANIZATION

1. Introduction; 2. Concept and elements of organization: a) Normative element (organizational goals); b) Human element (personnel), c) Material element (organizational means), d) Structural element (organizational structures and processes), e) Autonomy (legal status); 3. Subjects vested with authority for administrative action: a) Introduction, b) Organic concept of administration, c) Public administration, d) Public service, e) Classification of administrative organizations (administrative agencies).

D. THE ADMINISTRATION AND THE SEPARTION OF POWERS. The US experience. The independence of administrative agencies from direct presidential control *(S. Levinson)*

Reading:
Marbury v. Madison
The Nondelegation Doctrine
Where Do Administrative Agencies "Fit"
P. Schuck: Foundations of Administrative Law
C. Farina: Statutory Interpretation and Balance of Power

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[1] All topics by prof Lilic, except otherwise stated.

According to the traditional doctrine of separation of powers, all governmental functions within a State are divided into three branches: legislature, judiciary and executive. Administration forms part of the executive which additionally includes the government as supreme political body within every state.

II. ADMINISTRATIVE LAW

A. SUBJECT OF ADMINISTRATIVE LAW

1. Concepts on the subject of administrative law; 2. Comparative administrative law; 3. Administrative law and the legal system; 4. Institutions of administrative law; 5. Administrative reform.

B. DOCTRINE OF ADMINISTRATIVE LAW.

1. Doctrine and system of Administrative Law; 2. Methods in Administrative Law.

III. SOURCES OF ADMINISTRATIVE LAW

1. General Features of Administrative Law Sources; 2. Classification of Administrative Law Sources; 3. Other Sources of Administrative Law.

2. **ADMINISTRATIVE ACTION**

I. INTRODUCTION

1. Administrative action and the role of administration; 2. Classification of types and forms of administrative action.

II. ADMINISTRATIVE ACTS

1. Introduction; 2. Administrative statutory acts; 3. Individual administrative acts; 4. Material administrative acts; 5. Administrative contracts.

III. ADMINISTRATIVE PROCEDURE

A. GENERAL ADMINISTRATIVE PROCEDURE

1. Introduction; 2. Yugoslav legislation on general administrative procedure; 3. Features of administrative procedure; 4. Classification of administrative procedures.

IV. ADMINISTRATIVE CONTROL AND SUPERVISION

1. Introduction; 2. Classification of administrative control and supervision.

V. SPECIFIC CASES OF ADMINISTRATIVE ACTION

1. General and specific cases of administrative action; 2. Civil status; 3. Official registers; 4. Administrative misdemeanor; 5. Administrative limitations of property; 6. Damage liability.

3. **ADMINISTRATIVE SUPERVISION AND JUDICIAL CONTROL**

I. SUPERVISION OF ADMINISTRATIVE ACTION AND CLASSIFICATION

II. POLITICAL SUPERVISION CONTROL
III. LEGAL SUPERVISION OF ADMINISTRATIVE ACTION
A. ADMINISTRATIVE SUPERVISION OF ADMINISTRATIVE ACTION
1. Classification of types and forms of administrative supervision; 2. Internal administrative supervision; 3. External administrative supervision.

B. JUDICIAL SUPERVISION OF ADMINISTRATIVE ACTION
1. Judicial review of individual administrative acts; 2. Judicial review of individual financial administrative acts; 3. Judicial review in regard to constitutional liberties and rights;
4. *Judicial supervision of the administration: the nature and purpose of judicial supervision, procedures, standing, remedies. (Galligan)*
4. Constitutional Appeal.[2]

C. SPECIFIC FORMS OF ADMINISTRATIVE SUPERVISION
1. Public Prosecutor and administrative supervision; 2. Ombudsman. *Special commissioners, their nature and purpose, procedures, how well are they functioning (Galligan).*

Reading: (Lilic)
Article on Administrative Transition - Beijing
Article on the Yugoslav Constitution - Tokyo

B PROCEDURE IN EAST AND WEST: the Practical Experience *(Prof. Galligan, Blankenagel, Levinson and Péteri)*

1. Introduction, the nature, purposes, and scope of administrative procedure

2. Administrative procedures: including the case for a code of procedures, what should be included, ideas of participation and hearing, disclosure, reasons, and impartiality.

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[2] For the US experience see under discretion (Sect. B. Prof Levinson).

4. . Freedom of information: the importance of FOI, the different approaches, problems of implementation, progress in the region.

5.. The quality of administrative act and decisions: what are the aims of good administration, what standards of good wuality should be set, how should they be achieved, what part does administrative law play.

Reading (Galligan):
The Sigma Programme
Part I: Administrative procedures and the Supervision of the Administration in Hungary, Poland, Bulgaria, Estonia and Albania
Part II: Judicial and Non-Judicial Supervision of Administrative Processes

7. The forms of action of the public administration.

The Public Administration may act in different forms. Leaving aside the legislative functions (statutary orders and By-laws) and looking at the action in individual cases, the most important form is still the administrative act. While the administrative act is - at least in its "classical form" - a sovereign unilateral measure corresponding to the old scheme of subordination, between the state and the individual, a form of action corresponding to the scheme of coordination also exists: the agreement under public law. Here, the obligations of both sides are negotiated and fixed in a formal agreement.

Other forms of action are the simple sovereign action (such as the giving of information or driving an official car) and administrative planning.

Furthermore, a planning procedure can be necessary to prepare carefully the administrative decision on large-scale projects such as the construction of an airport, of a nuclear power station, or of a road. In such cases, the planning procedure must ensure that all affected interests of the individuals and of the community are considered and carefully wighed against each other. The prerequisite of a reasonable balancing of interests is the complete knowledge of all relevant factors and the hearing of the affected persons.

A. Blankenagel:

"Discretionary" and "Bound" Administration - Germany
As to the margin of appreciation left by the law to the administrative agents, we distinguish "bound administration" from "discretionary administration".
Reading:
Introduction to German Law
H. Siedentopf: The Principle of the Rule of Law
Ch. Hauschild: The Changing Functions of Public Administration
K. Sommermann: Basic Elements of German Administrative Law
K. Sommermann: The Concept of Administrative Procedure and its Legal Basis

K. Sommermann: The Codification of the Administrative Procedure
Law on Administrative Proceedings of 25 May 1976
The Administration and You

S. Levinson:
The theoretical difference between political (or "discretionary") decisionmaking, which is presumably unreviewable except at the margins, and obligatory "ministerial" decisions that are reviewable by ordinary courts (and not only by special administrative courts) - the US

2. The willingness of courts to monitor discretionary administrative decisions in the modern regulatory state

C. SOCIAL AND ADMINISTRATIVE CHANGE: Theories applied to Eastern European Legal Development *(prof Sajo)*

Political philosophy debates progress and circularity while theories of social change consider differences in the outcome of the process using a number of interrelated indicators (e.g new distribution of property relations, new trends in GDP growth, new patterns of social stratification, new codes of comunication including culture). A second component of the analysis regards the actors of the process. Institutional analysis concentrates on institutions including public administrative organizations (as actors of change). Law is to be perceived as a system of communications shaping social change as well as the outcome and institutionalization of the results of the change.

The transition and reform in Eastern Europe cannot be understood without taking into consideration the institutional conditions of the change. Administrative structures and the legal system guiding the administration can be used (with sufficient resource reallocation) as a means to social reform, however, given the actual trends of the transition these elements may help to perpetuate (thorugh discretionary powers the emerging power of the former nomenklature elite and/or that of the state bureacuracy. On the other hand lack of a strong (i.e. efficient) state results in suboptimal; performance of the administration (see non-enforcement in environment protection, the failure of the police to maintain public order etc.). Even the rule of law may contribute to the paralysis of the administration.

Reading:
Giddens: Sociology
Environmental Protection; Law and Policy
R. Unger: Law in Modern Society
S. Holmes: Cultural Legacies or State Collapse

Law, Public Administration and Social Change
Week 1

Room 409* **(FACULTY TOWER)**

	Mo Aug. 18.	Tu Aug. 19.	We Aug. 20	Thu Aug. 21.	Fr Aug. 22.	Sa Aug 23
9:00 to 10:00	**INTRODUCTORY CLASS A. SAJÓ**					
10:00-10:20	BREAK					
10:20 to 12:20	**CLASSES POPPER ROOM A. SAJÓ**	**10:00-12:00 CLASSES A. BLANKENAGEL**		**10:00-12-00 CLASSES G. PÉTERI**	**10:00-12:00 CLASSES A. BLANKENAGEL**	
12:20 to 13:20	**WELCOME LUNCH**	12:00-14-00 LUNCH		12:00-13:00 BROWN BAG LUNCH - A. SAJÓ -	12:00-13:00 BROWN BAG LUNCH A. BLANKENAGEL	
13:20 to 14:00	BREAK	BREAK		13:00-14:00 BREAK	13:00-14:00 BREAK	
14:00 to 16:00	**CLASSES A. BLANKENAGEL**	**CLASSES S. LEVINSON**		**CLASSES A. BLANKENAGEL**	**CLASSES S. LEVINSON**	
16:00-16:30	Break	16:00-17:00 Break		16:00-17:00 Break	16:00-16:15 BREAK	
16:30-17:00	**Computer Lab Tour (1st group)**	17:00		17:00	**16:15 to 19:15 INTERNET**	
17:00-17:30	Computer Lab Tour (2nd group)	**PUBLIC LECTURE**		**PUBLIC LECTURE AUDITORIUM**	**BIT (Basic) CompLab1**	
17:15:18:15	Library Tour (1st group)	**AUDITORIUM GYÖRGY ENYEDI**		**GYÖRGY BENCE**	AIT(Advanced) CompLab 3	
18:30-19:30	Library Tour (2nd group)					

NATIONAL HOLIDAY

SIGHTSEEING TOUR

* If not indicated otherwise

Law, Public Administraion and Social Change, Week 2
Room 409

	Mo Aug. 25.	Tu Aug. 26.	We Aug. 27.	Thu Aug. 28.	Fr Aug. 29.
10:00 to 12:00	**CLASSES A. SAJÓ**	**CLASSES AUDITORIUM A. SAJÓ**	**CLASSES S. LILIC**	**CLASSES S. LILIC**	**CLASSES D. GALLIGAN**
12:00-13:00	BREAK	BROWN BAG LUNCH - S. LILIC -	BREAK	BROWN BAG LUNCH -S. LILIC -	BROWN BAG LUNCH - D. GALLIGAN -
13:00-14:00	BROWN BAG LUNCH - S. LILIC -	BREAK	BROWN BAG LUNCH - D. GALLIGAN -	BREAK	BREAK
14:00 to 15:00	**CLASSES S. LILIC**	**CLASSES**	**CLASSES**	**CLASSES**	**14:00 - 15:00!!! CLASSES S. LILIC**
15:00 to 17:00	**CLASSES D. GALLIGAN**	**D. GALLIGAN**	**D. GALLIGAN**	**D. GALLLIGAN**	**15:00 -17:00 CLASSES AND EVALUATION A. SAJÓ**
		16:00-16:15 BREAK		16:00-16:15 BREAK	
17:00-17:15	BREAK	**16:15-19:15**		**16:15-19:15**	
17:15-20:15	**INTERNET BIT (Basic) CompLab 1 AIT(advanced) CompLab3**	**INTERNET BIT (Basic) CompLab 1 AIT(advanced) CompLab3**		**INTERNET BIT (Basic) CompLab 1 AIT(advanced) CompLab3**	
					200:00-21:30 FAREWELL PARTY

Law, Public Administration and Social Change

Last Name	First Name	Country	Course
Alexandrova	Matilda Ivanova	Bulgaria	Law, Public
Bakradze	David	Georgia	Law, Public
Cheng	Jie	China	Law, Public
Chiritoiu	Bogdan	Romania	Law, Public
Daraganova	Nina	Ukraine	Law, Public
Dmitrieva	Jasmina	Macedonia	Law, Public
Dong	Yuyu	China	Law, Public
Enneveer	Erle	Estonia	Law, Public
Gagnidze	Ketevan	Russia	Law, Public
Iliaz	Fathne	Bulgaria	Law, Public
Kargaudiene	Ausra	Lithuania	Law, Public
Khmaladze	Vakhtang	Georgia	Law, Public
Kiseleva	Oksana	Moldova	Law, Public
Kojanikulova	Lyazat Tolegenovna	Kazakhstan	Law, Public
Leschenko	Snezhana	Belarus	Law, Public
Litvinova	Leila	Russia	Law, Public
Mandia	Ledina	Albania	Law, Public
Moukhtarova	Karligash	Kazakhstan	Law, Public
Nikiforov	Alexander	Russia	Law, Public
Ospischev	Leonid	Hungary	Law, Public
Pihlak	Anne	Estonia	Law, Public
Rroji	Artan	Albania	Law, Public
Schweitzer	Gabor	Hungary	Law, Public
Skopac	Roberto	Croatia	Law, Public
Skril	Sergej Anatolijevich	Ukraine	Law, Public
Snisarenko	Larysa	Ukraine	Law, Public
Stobiecka	Agnieszka	Poland	Law, Public
Vasecka	Michal	Slovakia	Law, Public

total participants 28

Restaurant Guide

The following is a list of restaurants in the neighborhood offering lunch or dinner for a reasonable price. Please check the map on the back of this guide for the venue of the restaurant.

Under 600 HUF

1. Merleg Etterem, Merleg u 8
2. Arany Aszok, Jozsef nador ter
4. Szendvics Duran, next to Oktober 6. utca 15 (small sandwiches)
5. Csarnok Vendeglo, Hold u 1 (cold drinks, Hungarian cuisine)
6. Music Corner, at the corner of Hercegprimas u. and Arany J.u. (good food, good music)
7. Amstel Etelbar, Vadasz u 10 (small and cheap place)
8. Burger King (whoppers, whoppes and more whoppers)
9. Paprika, Zrinyi u 11 (fast service, close to CEU)
11. Csirkefogo, next to Bajcsy Zs u 7 (tasty chicken with dressing)
12. Duran Szendvics, next to Bajcsy Zs u 7 (small sandwiches)
13. Grosser Etterem, Nador u 32
14. Riviera Salad Bar, next to Nador u 32 (tiny place)
15. Pick etterem, Kossuth ter 9 (upstairs from salami store)
17. Kisharang Etkezde, Oktober 6.u. 17 (try their palacsintas for just 100HUF)
18. Parlament Cafe (drinks only)
19. Pizza Mix (good pizza for a reasonable price)
20. Istvan cukraszda, Oktober 6.u. (good ice cream and tasty pastries)
21. Pekseg, Arany J. u .(fresh bread and cola)
22. Merleg Borozo , Merleg.u (good wines)

Under 1000 HUF

3. Bertalan vendeglo, next to Oktober 6. utca 3
10. Dom Sorozo, Hercegprimas u 7
16. LouLou Etterem, Vigyazo F u 4