

Administrative Acts and Procedures I

ADMINISTRATIVE PROCEDURE


- Administrative activity and administrative procedure
- Activity of administrative bodies with external effect resulting in the issuance of administrative or normative act, as well as action or omission with actual consequences for persons (Art. 3).
- Administrative procedure is the activity of administrative body directed at the adoption of administrative act (Art. 19).
 - How AA and AP relate to each other?
 - Is AP always an AA?
 - Is AA always an AP?
 - What is the aim of all administrative procedures?

Administrative Procedure

- Link between procedural and substantive rules
- Substantive rule
 - Right to pension
- Procedural rule
 - Pension award procedures
- Constitutional significance of procedure
 - Procedural fairness in the field of administration
 - Foreseeability of state action affecting public rights/human rights
- Is the admin act lawful, if procedural actions were unlawful?
 - Primary nature of substantive rules
 - Subsidiary nature of procedural rules

Stages of Admin Procedure

- Commencement
 - (Written) application by individual
 - Initiative of the administrative body
 - Required by law
 - Necessity deriving from law
 - Discretionary power reserved to AB
- Conduct
 - All activities for the resolution of the case
- Conclusion
 - Adoption of administrative act
- Exceptional situations: AA without AP
 - Prevention of immediately imminent danger
 - Elimination of the consequences of harm that has already occurred
 - Other cases prescribed by law

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- Administrative body
 - Participants
 - Addressee
 - Third persons
 - Other persons
 - Representation
 - No parties, no dispute among the participants

Conduct

- AB examines the request and decides if it can be granted
 - Determines the essential facts and circumstances, collects evidence
 - Decides the applicable law
 - Conducts site examinations
 - Engages experts
 - Hears the applicant, witnesses
 - Decides the legal consequences
- Procedural principles:
 - *Ex officio* establishment of facts
 - Duty to examine comprehensively, completely & objectively
 - Duty to act speedily
 - Duty to provide access to materials of the AP
 - Duty to provide help & support during AP
 - Duty to hear