

Swiss Administrative Law (Introduction)

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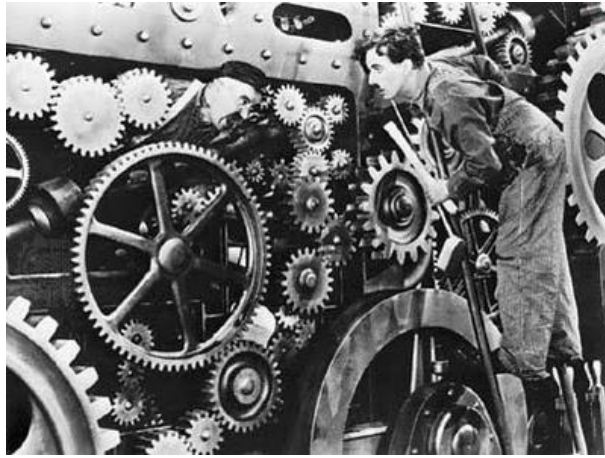
Lehrstuhl für Staats- und Verwaltungsrecht sowie Rechtsetzungslehre



Universität Zürich

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Administration as Machinery ...



Legal Sources

- No General Codification
- Laws (and ordinances) on specific subjects matters (compiled):
see www.admin.ch (<http://www.admin.ch/ch/e/rs/rs.html>)
and www.zh.ch, www.bs.ch etc.
 - Federal: Immigration, Competition, Environmental Protection, Banks, Transportation, Communication, Energy, Employment, Social Security etc.
 - Cantonal: Construction, Welfare, Health, (undergraduate) Education etc.
 - Federal and Cantonal: Taxation (→ Prof. Simonek), Zoning, Police, Civil Servants, Public Liability, Administrative Organization, Procurement etc.

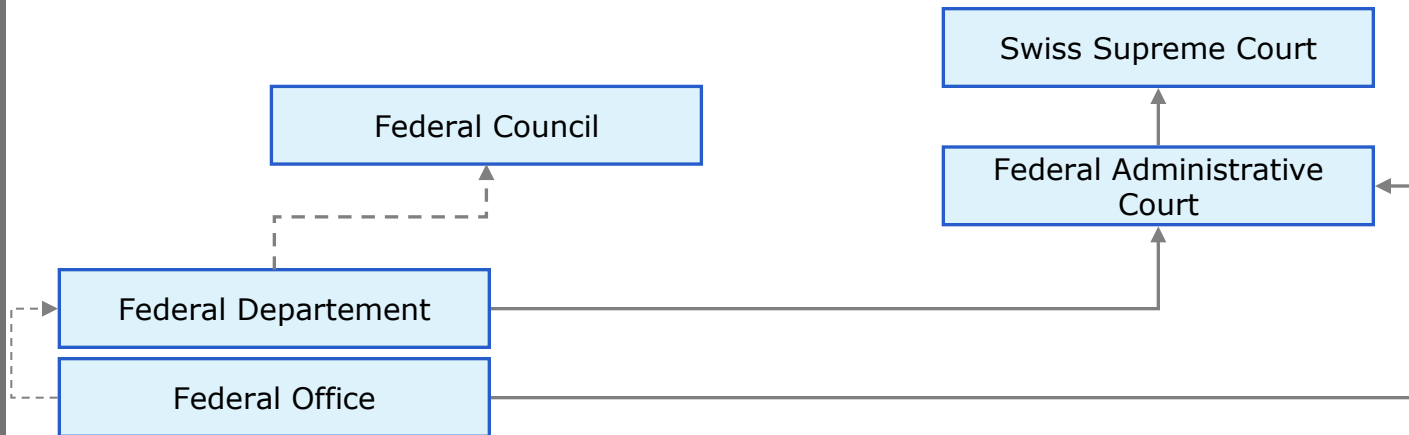
Many federal laws are executed and implemented by cantonal administrations

- (Constitutional) General Principles: Case Law
- Procedure: Federal Law of Administrative Procedure (SR 172.021)
 - What is an administrative ruling (art. 5)?
 - Right to be heard (art. 26-33b) ...

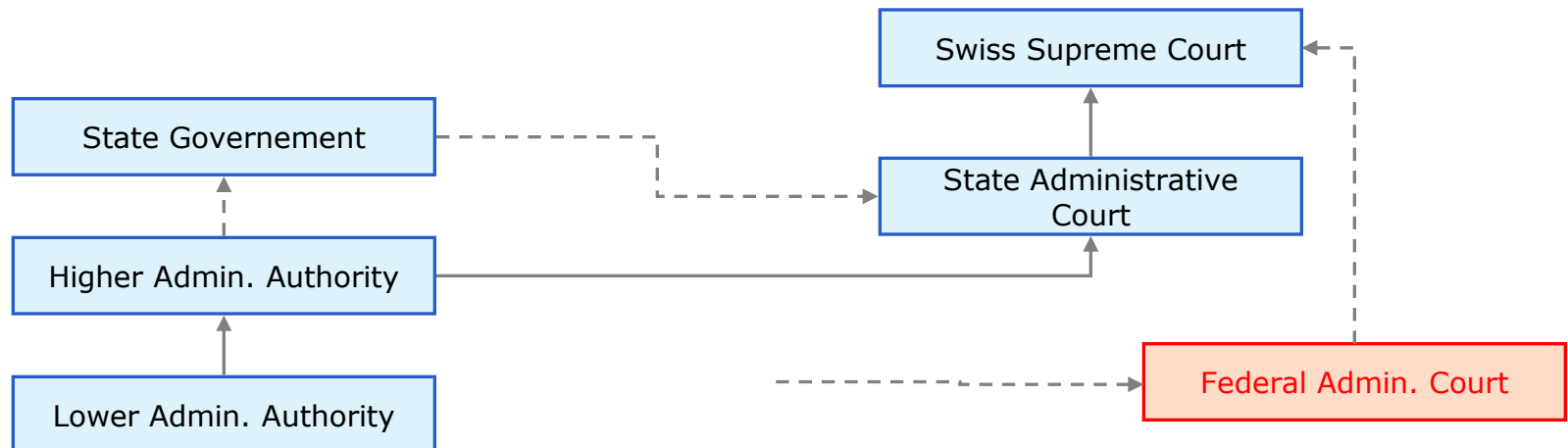


Administrative Law Court System

A. Appeal System before Federal Authorities



B. Appeal System before Cantonal (State) Authorities



Forms of Administrative Action

- Administrative Acts ("Rulings")
- Administrative Contracts
- Private Contracts

- "Real Acts"



English is not an official language of the Swiss Confederation. This translation is provided for information purposes only and has no legal force.

Federal Act on Administrative Procedure (Administrative Procedure Act, APA)¹

of 20 December 1968 (Status as of 1 January 2011)

Art. 5

B. Definitions

I. Rulings

¹ Rulings are decisions of the authorities in individual cases that are based on the public law of the Confederation and have as their subject matter the following:

- a. the establishment, amendment or withdrawal of rights or obligations;
- b. a finding of the existence, non-existence or extent of rights or obligations;
- c. the rejection of applications for the establishment, amendment, withdrawal or finding of rights or obligations, or the dismissal of such applications without entering into the substance of the case.

² Rulings are also enforcement measures (Art. 41 para. 1 let. *a* and *b*), interim orders (Art. 45), decisions on objections (Art. 30 para. 2 let. *b*, 46 let. *b*, and 74 let. *b*), appeal decisions (Art. 61 and 70), decisions in a review (Art. 68) and on explanatory statements (Art. 69).²³

³ Declarations made by authorities on the rejection or raising of claims that must be pursued by taking legal proceedings do not constitute rulings.



Administrative Action

Art. 44

A. Principle⁷⁵ Any ruling shall be subject to an appeal.

Art. 25a⁵⁹

Fbis. Ruling on
real acts

¹ Any person who has an interest that is worthy of protection may request from the authority that is responsible for acts that are based on federal public law and which affect rights or obligations that it:

- a. refrains from, discontinues or revokes unlawful acts;
- b. rectifies the consequences of unlawful acts;
- c. confirms the illegality of such acts.

² The authority shall decide by way of a ruling.



General Principles (Constitution)

Art. 5 Const. (Rule of law)

- ¹ All activities of the state shall be based on and limited by law. [see also: art. 36]
- ² State activities must be conducted in the public interest and be proportionate to the ends sought.
- ³ State institutions and private persons shall act in good faith.
- ⁴ The Confederation and the Cantons shall respect international law.



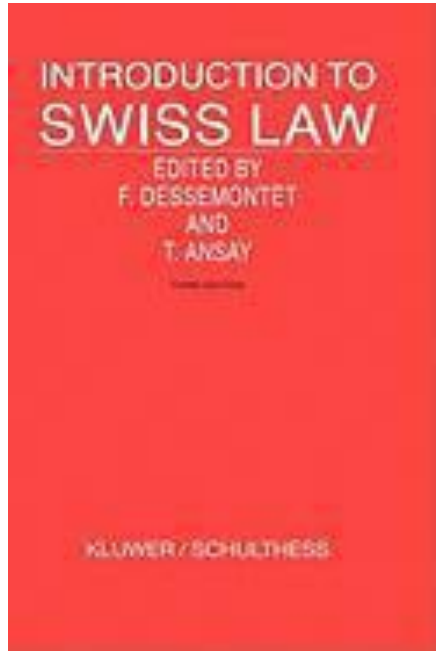
General Principles (Constitution)

Art. 9 Const (Protection against arbitrary conduct and principle of good faith)

Everyone has the right to be treated by state authorities in good faith and in a non-arbitrary manner.



Books



Education in Administrative Law

(General) Administrative Law, including

- General Principles
- Administrative Action and Enforcement
- Administrative Organization
- Taking, Public Liability, Monopolies, etc.

Administrative Procedure

Specialized areas of administrative law



Example 1

Vacherin Mont d'Or

Demand of Vacherin Mont d'Or sharply declines after the Federal Office of Public Health informs of the danger of listeriosis in cheese (BGE 118 Ib 473).



Example 2

New Billboard

A request for a new billboard is rejected because the billboard is not – as the law requires – "esthetically satisfying".



Example 3

Storehouse

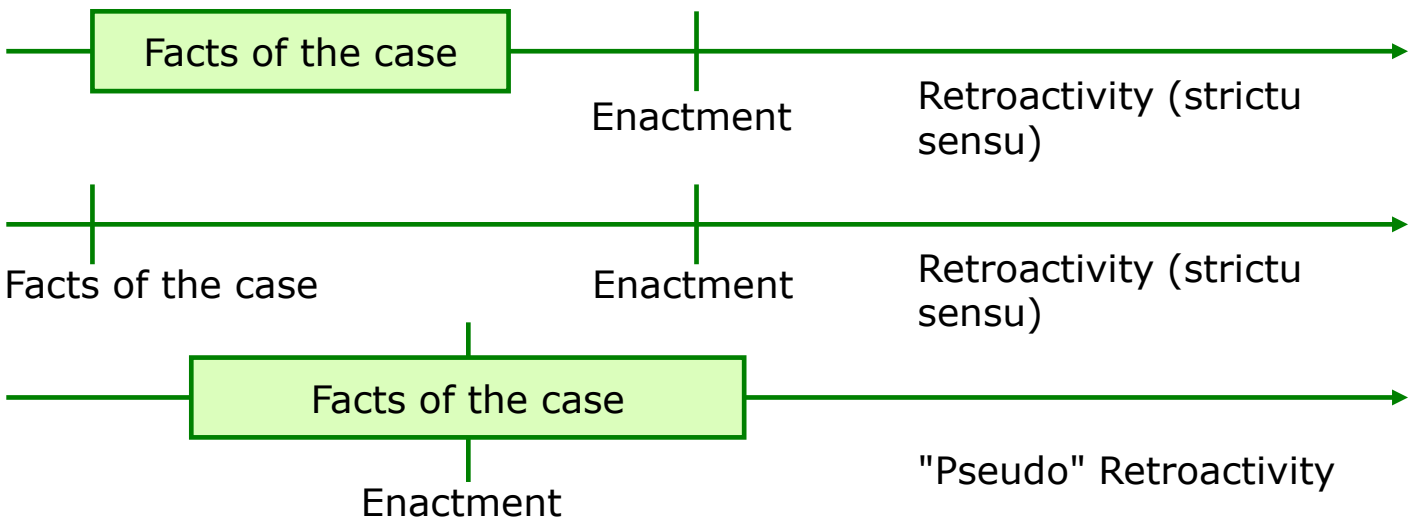
Swissmedic (Swiss "FDA") requires drugs for sale in Switzerland to be stored within the country; a storehouse in Germany is not permissible (BGE 131 II 44).



Example 4

Tests and such ...

During your studies, tests – obviously and intentionally – become more difficult.



Example 5

Art. 72 Constitution: Church and state

[...]

³ The construction of minarets is prohibited.



