

Codification of Administrative Law – Research Questions

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I. Introduction

Revocation: Question of Good Faith?



Decision of the Swiss Supreme Court December 16, 2010 (BGE 137 I 69)

A piano teacher had a nervous breakdown during a practical exam in concert. The board of examiners allows him to repeat the concert without an audience. He passes the exam. Later on, the conservatory revokes his diploma as the board of examiners incorrectly consented to a concert without an audience. Is the revocation permissible?

I. Introduction

Revocation: Question of Good Faith?

Federal Constitution of the Swiss Confederation

of 18 April 1999 (Status as of 11 March 2012)

Art. 5 Rule of law

¹ All activities of the state shall be based on and limited by law.

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.

Art. 9 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.

I. Introduction

Revocation: Question of Administrative Procedure?



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Revocation: Question of Administrative Procedure?



Kanton Appenzell Innerrhoden

172.600

Verwaltungsverfahrensgesetz (VerwVG)

vom 30. April 2000 (Stand 1. Juni 2018)

Administrative Procedure of the Canton Appenzell Innerrhoden

I. Introduction

Revocation: Question of Administrative Procedure?

Art. 24 - Revocation

¹ Administrative acts may be amended or revoked by the issuing authority or by the supervisory authority if the revocation does not burden the persons concerned or if it is required by important public interests.

² If someone who has trusted in the administrative act has incurred expenses, he is entitled to compensation if he is not to blame for the revocation [...]

II. Codified and Non-codified Administrative Law

Effects of Codification

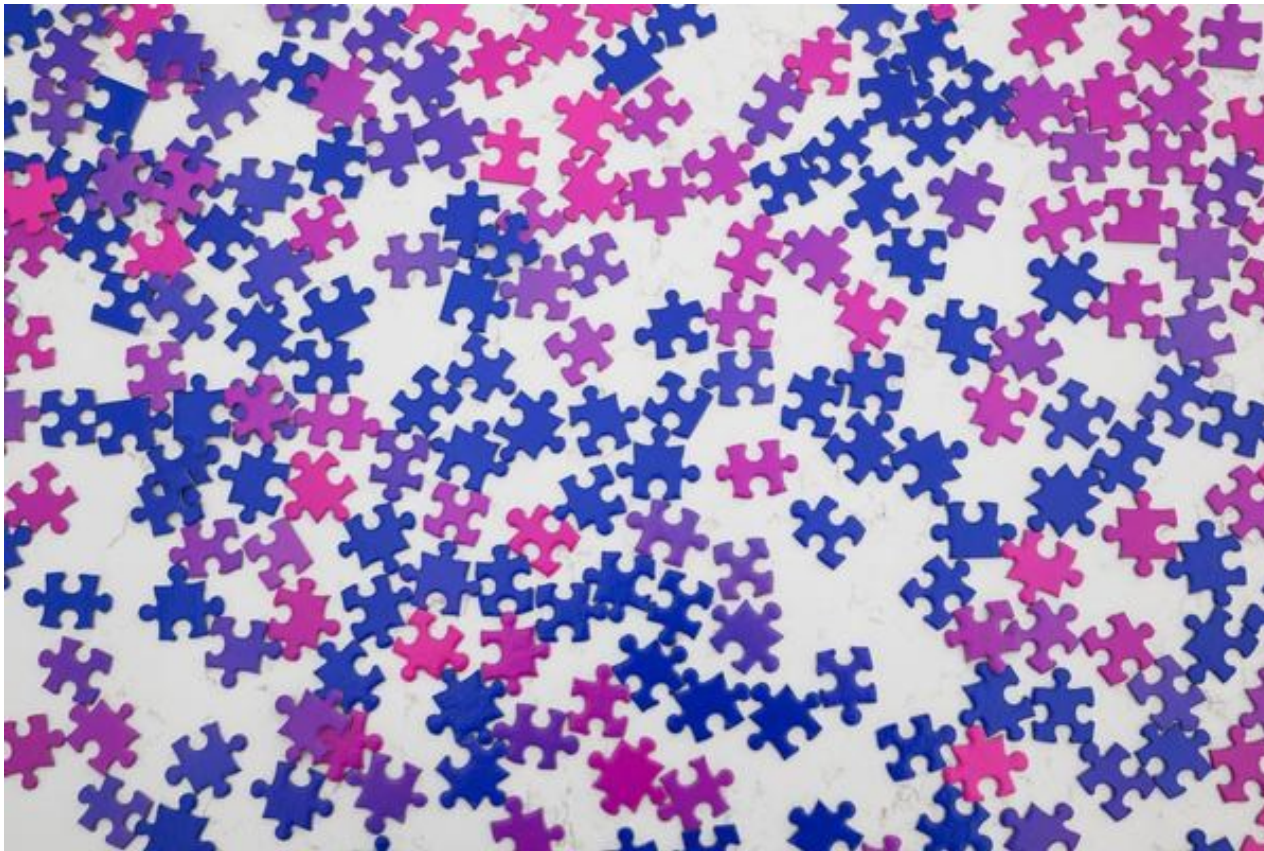


Orientation

II. Codified and Non-codified Administrative Law

Effects of Codification

Legal certainty – or the illusion of completeness?



II. Codified and Non-codified Administrative Law

Effects of Codification



Petrification?

II. Codified and Non-codified Administrative Law

Effects of Codification

Legitimacy?



II. Codified and Non-codified Administrative Law

Effects of Codification

Contradiction and conflicts?

(conflicts between judge-made law – from the constitution? – and acts of Parliament)



II. Codified and Non-codified Administrative Law

Effects of Codification

Banality?

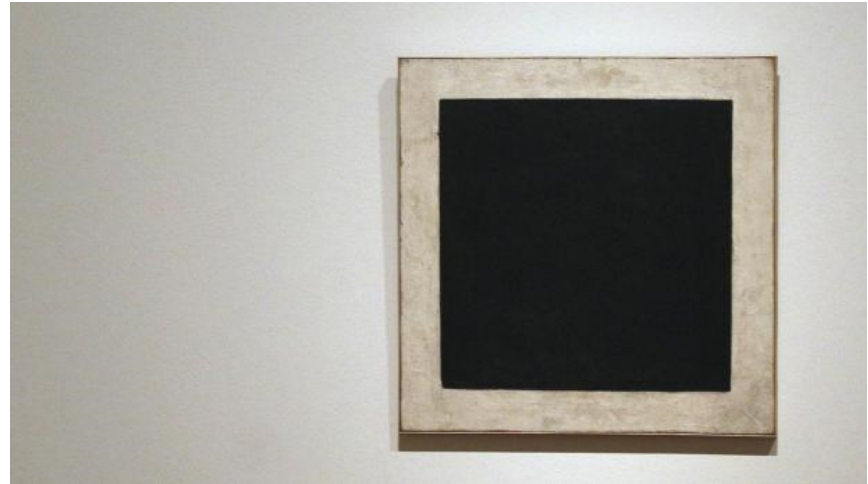
DUTCH

GENERAL ADMINISTRATIVE LAW ACT

Division 3.2 Duty of care and balancing of interests

Article 3:2

When preparing a decision an administrative authority shall collect the necessary information concerning the relevant facts and the interests to be considered.



II. Codified and Non-codified Administrative Law

Effects of Codification

Uniformity?

(Can codification create uniformity that courts are no longer able to do so?)



II. Codified and Non-codified Administrative Law

Effects of Codification

Uniformity

(Can codification create uniformity that courts are no longer able to do so?)

616.1

**Bundesgesetz
über Finanzhilfen und Abgeltungen**
(Subventionsgesetz, SuG)

Swiss Federal Law on Subsidies

vom 5. Oktober 1990 (Stand am 1. Januar 2016)

1. Kapitel: Zweck, Geltungsbereich und Begriffe

Art. 1 Zweck

² Es stellt Grundsätze für die Rechtsetzung auf und formuliert allgemeine Bestimmungen über die einzelnen Finanzhilfe- und Abgeltungsverhältnisse.

[The law stipulates principles for legislation and general rules for subsidies.]

II. Codified and Non-codified Administrative Law

Core Questions

Codification of General Administrative Law

It has hardly been researched which consequences arise from the different degree of codification of the general administrative law.

Does codification increase orientation, predictability and legal certainty? Does the codification lead to a "petrification" of general administrative law? Does codification enhance the legitimacy of administrative law? To which degree does the constitution shape administrative law and will there be conflicts in case of codification? Can uniformity be achieved only by codification?

Which areas of general administrative law are suitable for a codification, which are not, and why and why not?

III. Challenges – Additional Complexity



III. Challenges – Additional Complexity

Interplay of Courts, Government/Administration, and Legislator



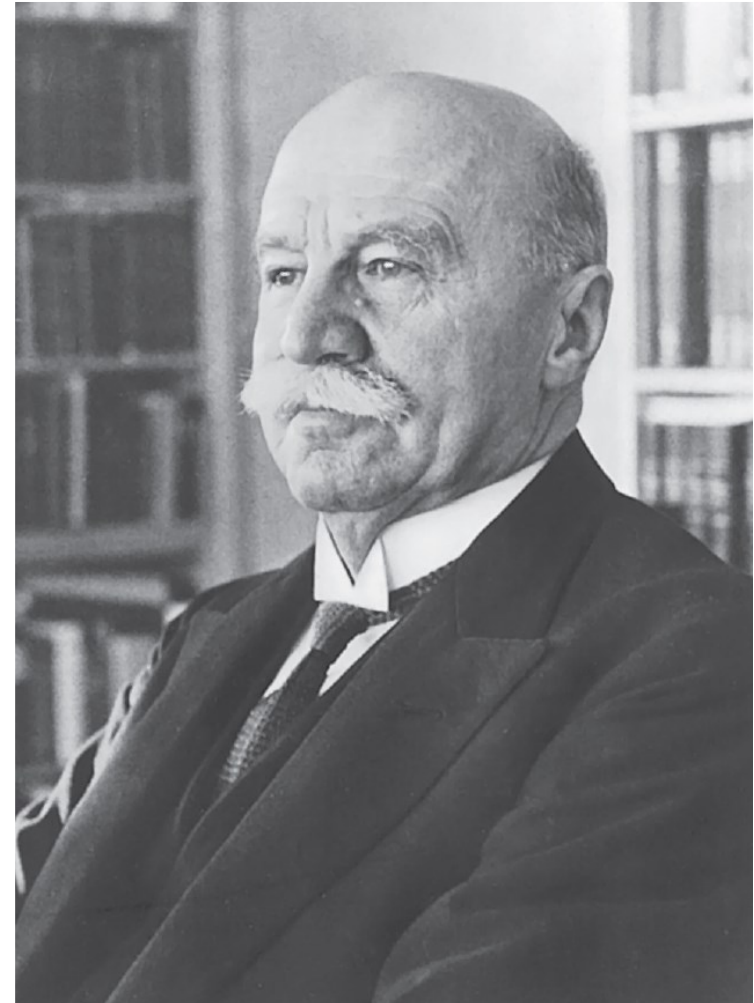
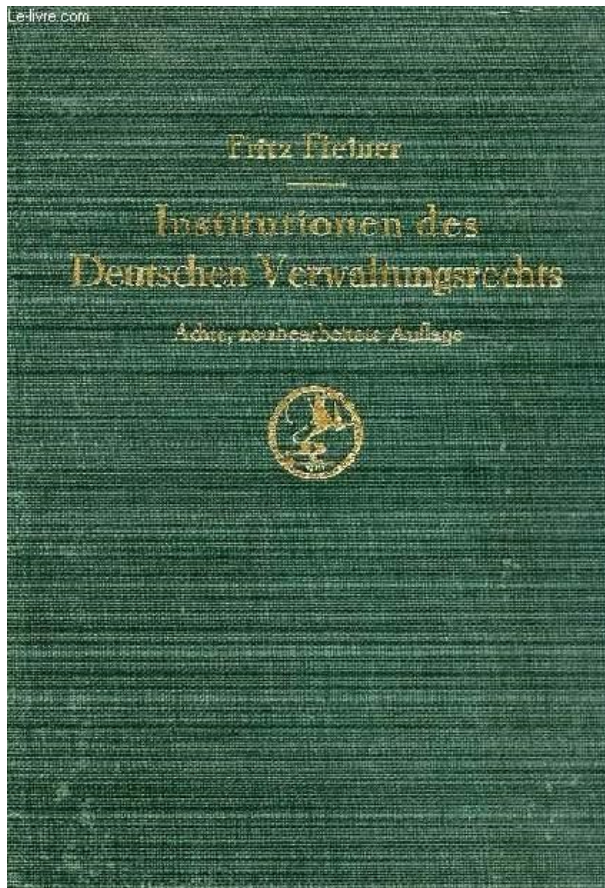
III. Challenges – Additional Complexity

Impacts of Human Rights (Legislation)



III. Challenges – Additional Complexity

Role of Doctrine



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III. Challenges – Additional Complexity

Administrative Procedure and Substantive Rules



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Density of Codification (Principles v. Rules)



III. Challenges – Additional Complexity

Specific Legislation: Source for General Administrative Law and Being Shaped (unified) by (Codified) General Administrative Law?

