

Codification of Administrative Law: Theory, Methods and Consequences

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Sydney, November 14, 2019



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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

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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

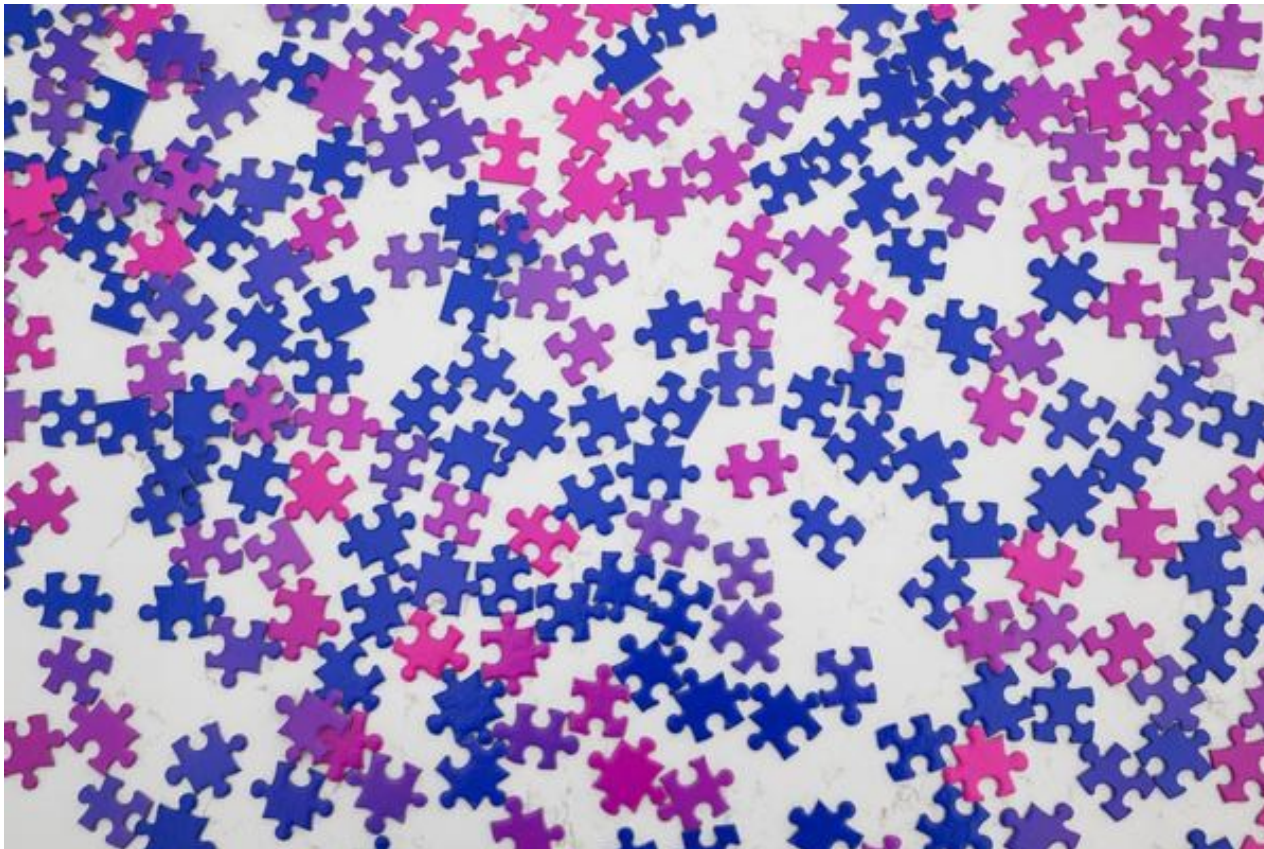


Predictability?
(legal certainty)

II. Codified and Non-codified Administrative Law

Effects of codification

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?

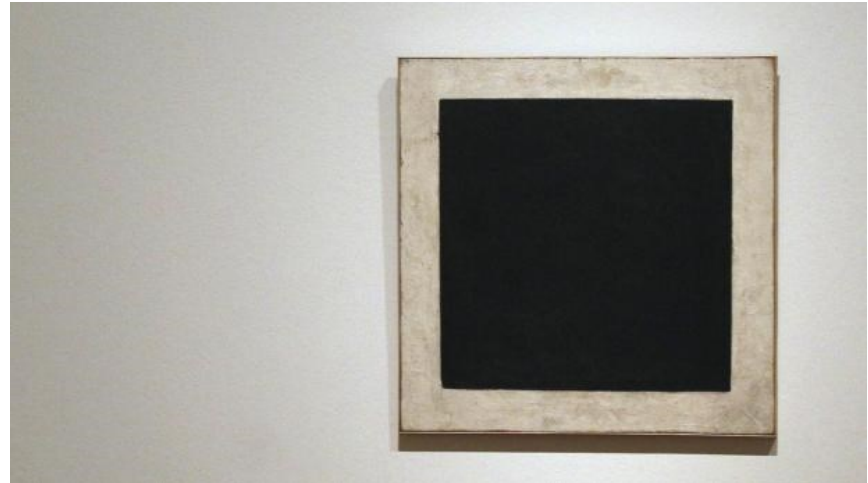
DUTCH

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?)



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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.]

III. Final remarks

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 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?

Appendix

Administrative Law

(General) Administrative Law

Every modern legal order needs a set of general rules to enforce administrative law. These rules are "general" because they apply regardless of the specific subject area. They impose principles of action, of procedure and of organization of the authorities and form the core of the general administrative law.

Appendix

Codification

Codification of Administrative Law

The legal basis of general administrative law is quite different. Countries with a common law tradition often (but with notable exceptions) have little written in Parliamentary acts. In other countries, there is a mixture between judicial development and selective interventions by the legislator. There are also countries in which the general administrative law has been converted into a comprehensive codification, in particular the Netherlands (Algemene wet bestuursrecht, Dutch General Administrative Law Act). Here, codification denominates any form of written rules issued by Parliament (or the executive branch).

Appendix

Revocation: Question of good faith

Representation (Basis)	Administrative decisions, administrative contracts, (individual) advice. Limited: Laws, administrative practice, general information, passivity.
Good Faith	Presumed. The question, whether someone is or can be in good faith, must be considered with regard to all specifics of the case.
Detrimental Dispositions	Acts or omissions based on false assumptions lead to damages or inconveniences at least.

Appendix

Revocation: Question of good faith

