

Comparative Administrative Law (CAL)

Prof. Dr. Felix Uhlmann

Chair of Constitutional Law, Administrative Law and Legislation
Centre for Legislative Studies



University of Zurich

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Administrative Action



Administrative Action



Administrative Action

General Questions

- 1. Why does the form of administrative action matter?** (legal protection, due process, administrative prerogatives etc.)?
- 2. Possible challenges of administrative acts** (informal governmental actions etc.)
- 3. What are the particularities if an agency stipulates rules and regulations?** (legal basis, legal effects, procedure etc.)?



Administrative Action

ECtHR, Yöyler v. Turkey



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

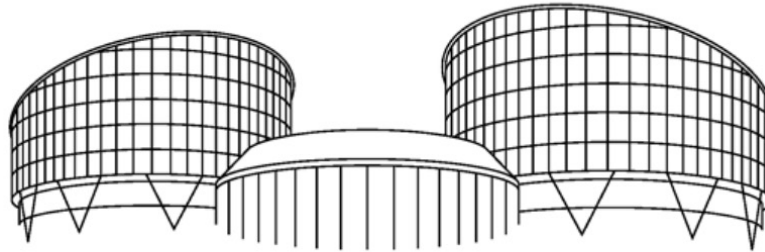
[In its composition before 1 November 2001]

CASE OF YÖYLER v. TURKEY

(Application no. 26973/95)



Administrative Action
ECtHR, Verein Klimaseniorinnen Schweiz v Switzerland



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

**CASE OF VEREIN KLIMASENIORINNEN SCHWEIZ
AND OTHERS v. SWITZERLAND**

(Application no. 53600/20)



Questions to the Decision

- 1. What impact has the form of administrative action when the court applies Articles 6 and 13 of the European Convention of Human Rights?**
- 2. What are the reasons for this court practice?**
- 3. Does the form of administrative action matter?**
- 4. (Do you agree with the court's relatively broad interpretation of the notion of victim status in the Klimaseniorinnen case? What consequences may the possibility of an action popularis have on the efficiency of administrative activity?)**
- 5. Considering your answers to the question above, do you think there is a conflict between the need for administrative efficiency and the protection of rights in transnational contexts?**

Administrative Action

GALA

General Administrative Law Act (NL)

- 1. What follows form the form of issuing an “order” (in Switzerland an administrative decision)?**
- 2. What advantages or disadvantages do you see in using/codifying orders?**



Administrative Action

US, Perez et al v Mortgage Bankers Association

(Slip Opinion)

OCTOBER TERM, 2014

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Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

PEREZ, SECRETARY OF LABOR, ET AL. *v.* MORTGAGE
BANKERS ASSOCIATION ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

No. 13–1041. Argued December 1, 2014—Decided March 9, 2015*

The Administrative Procedure Act (APA) establishes the procedures federal administrative agencies use for “rule making,” defined as the process of “formulating, amending, or repealing a rule.” 5 U. S. C. §551(5). The APA distinguishes between two types of rules: So-called “legislative rules” are issued through notice-and-comment rulemaking, see §§553(b), (c), and have the “force and effect of law,” *Chrysler Corp. v. Brown*, 441 U. S. 281, 302–303. “Interpretive rules,” by contrast, are “issued . . . to advise the public of the agency’s construction of the statutes and rules which it administers,” *Shalala v. Guernsey Memorial Hospital*, 514 U. S. 87, 99, do not require notice-and-comment rulemaking, and “do not have the force and effect of law,” *ibid.*



Administrative Discretion



Administrative Discretion



Administrative Discretion

General Questions

- 1. What is the role of courts in the administrative system?** (What is “applying” the law?)
- 2. What is the idea of administrative discretion?**
- 3. What is the role of the legislator in framing judicial review and administrative discretion?**



Administrative Discretion

UK, Associated Provincial Picture Houses Ltd v Wednesbury Corporation

**IN THE SUPREME COURT OF JUDICATURE
KING'S BENCH**

Royal Courts of Justice
10 November 1947

Before:

**MASTER OF THE ROLLS
(Lord Greene)**

**LORD JUSTICE SOMERVELL
and
JUSTICE SINGLETON**

ASSOCIATED PROVINCIAL PICTURE HOUSES LTD **Plaintiffs
(Appellant)**

WEDNESBURY CORPORATION **Defendants
(Respondents)**

**MR GALLOP K.C. and MR S. LAMB (instructed by Messrs. Norman, Hart & Mitchell)
appeared on behalf of the Plaintiffs (Appellants).**

**MR FITZGERALD K.C. and MR V. GATTIE (instructed by Messrs. Pritchard & Co.)
appeared on behalf of the Defendants (Respondents).**



Administrative Discretion

US, Chevron USA Inc. V Natural Resources Defense Council, Inc.

CHEVRON U. S. A. *v.* NATURAL RES. DEF. COUNCIL 837

Syllabus

CHEVRON U. S. A. INC. *v.* NATURAL RESOURCES
DEFENSE COUNCIL, INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

No. 82–1005. Argued February 29, 1984—Decided June 25, 1984*

JUSTICE STEVENS delivered the opinion of the Court.

In the Clean Air Act Amendments of 1977, Pub. L. 95–95, 91 Stat. 685, Congress enacted certain requirements applicable to States that had not achieved the national air quality standards established by the Environmental Protection Agency (EPA) pursuant to earlier legislation. The amended Clean Air Act required these “nonattainment” States to establish a permit program regulating “new or modified major stationary sources” of air pollution. Generally, a permit may not be issued for a new or modified major stationary source unless several stringent conditions are met.¹ The EPA regulation promulgated to implement this permit requirement allows a State to adopt a plantwide definition of the term “stationary source.”² Under this definition, an existing plant that contains several pollution-emitting devices may install or modify one piece of equipment without meeting the permit conditions if the alteration will not increase the total emissions from the plant. The question presented by these cases is whether EPA’s decision to allow States to treat all of the pollution-emitting devices within the same industrial grouping as though they were encased within a single “bubble” is based on a reasonable construction of the statutory term “stationary source.”



Administrative Discretion

US, Loper Bright Enterprises v Raimondo

(Slip Opinion)

OCTOBER TERM, 2023

1

Syllabus

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SUPREME COURT OF THE UNITED STATES

Syllabus

LOPER BRIGHT ENTERPRISES ET AL. *v.* RAIMONDO,
SECRETARY OF COMMERCE, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

No. 22–451. Argued January 17, 2024—Decided June 28, 2024*

