

# The scope of Administrative Jurisdiction: Control of Administration vs. Substitution

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The scope of Administrative Jurisdiction:  
Control of Administration vs. Substitution

## Structure

1. Scope of jurisdiction, status quo
2. Expansion of jurisdiction and limits
3. Self-understanding

The scope of Administrative Jurisdiction:  
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1. Scope of competence of Administrative Courts

- **Union law**

- Courts: CJEU, GC, specialized judicial panels, and
- national courts
  
- Art. 47 FRC: effective remedy
  
- effective legal protection, (GC, judgment of 23.04.2009 - C-362/06 P – Sahlstedt, ECLI:EU:C:2009:243, par. 43).

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1. Scope of competence of Administrative Courts

-> Union law

legal actions

Art. 259 TFEU: treaty violation procedure

Art. 263 TFEU: recissory action

Art. 265 TFEU: writ of mandamus

Art. 267 TFEU: preliminary reference or ruling

Art. 268 TFEU: compensation for damages

Art. 279 TFEU: interim relief

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1. Scope of competence of Administrative Courts

- National perspective

However, the conditions laid down by the applicable national laws must not be less favourable than those relating to similar domestic claims or framed in such a way as in practice to make it impossible or excessively difficult to obtain reparation

(ECJ, judgment of 05.03.1996 – C-46/93 a.o. -, Brasserie du Pêcheur, ECR 1996, I-1029, par. 74).

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1. Scope of competence of Administrative Courts

German Code of Administrative Court Procedure, sec. 113  
par. 5:

- “(5) Insofar as the rejection or omission of the administrative act is unlawful and the plaintiff’s rights are violated thereby, the court shall announce the obligation incumbent on the administrative authority to effect the requested official act if the case is mature for adjudication. **Otherwise, it shall hand down the obligation to notify the plaintiff, taking the legal view of the court into consideration.”**

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VG Düsseldorf on 13.09.2016 and  
VG Stuttgart on 26.07.2017:

*“The defendant is obliged to adapt the AQP in a way that it contains all necessary measures which provide for the quickest possible abidance of the limits in the city area of the interested party.”*

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Federal Administrative Court of Germany, judgments of 22.02.2018:

- BVerwG 7 C 26.16 – Deutsche Umwelthilfe vs. Land Baden-Württemberg (Stuttgart) and
- BVerwG 7 C 30.17 – Deutsche Umwelthilfe vs. Land Nordrhein-Westfalen (Düsseldorf)

*“The defendant is obliged to adapt the AQP under observance of the legal opinion of the court on the legitimacy and proportionality of traffic bans; the remaining revisions were dismissed.”*



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- UK High Court of Justice, Queen's Bench Division, Administrative Court, Judgment of 21.02.2018, Case No.: CO/4922/2017, Client Earth vs. The Secretary of State for the Environment (...) -> AQP 2017 for the UK and Wales

*“It seems to me that the time has come for the Court to consider exercising a more flexible supervisory jurisdiction in this case than is common-place.”*

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2. extension of jurisdiction and limits

## Separation of powers

- Art. 13 (2) TEU, principle of limited empowerment
- Meroni v High Authority, C-9/56, EU:C:1958:7, page 152
- Parliament v Council, C-70/88, EU:C:1990:217, para. 22
- Parliament v Council, C-133/06, EU:C:2008:257, para. 57

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3. self-understanding

## Tasks for an administrative judge:

- Assessment of the legality of an administrative act
- Solving the case before the court and between the parties
- Guidance for administration

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- Is there a need for change of the current situation?
- On Union level?
- On national level?

*Thank you for your attention!*