# German Administrative Procedures

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# Executive summary

## 1. Purpose and scope

The study analyses the core legal and institutional foundations of German administrative procedures to derive actionable lessons for public administration reform in partner countries. It focuses on the Administrative Procedure Act (Verwaltungsverfahrensgesetz, VwVfG) and the Code of Administrative Court Procedure (Verwaltungsgerichtsordnung, VwGO), assessing their role in structuring administrative action, safeguarding citizens' rights, and ensuring effective judicial oversight.

## 2. Key findings

1. The Administrative Procedure Act (VwVfG) and the Code of Administrative Court Procedure (VwGO) are central pillars of German administrative law and regulate the relationship between the state and its citizens as well as the structure and control of administra-tive action.

2. The Administrative Procedures Act ensures consistent, transparent, and constitutional administration by structuring procedures, guaranteeing participation rights, and standardising decision-making processes. The VwGO guarantees effective legal protection and oversight of state power and is thus essential for democracy and the rule of law.

3. A uniform administrative procedure and the introduction of an Administrative Procedure Act are important requirements for reliable, transparent, and efficient administration and are of central importance for economic development, social trust in the state, admin istration, and the rule of law. This can contribute to curbing corruption.

4. The successful introduction of an Administrative Procedure Act requires careful analysis of existing structures, early involvement of relevant stakeholders, simplification and digitisation of procedures, capacity building, inter alia, through training and further education, as well as committed public communication and political support.

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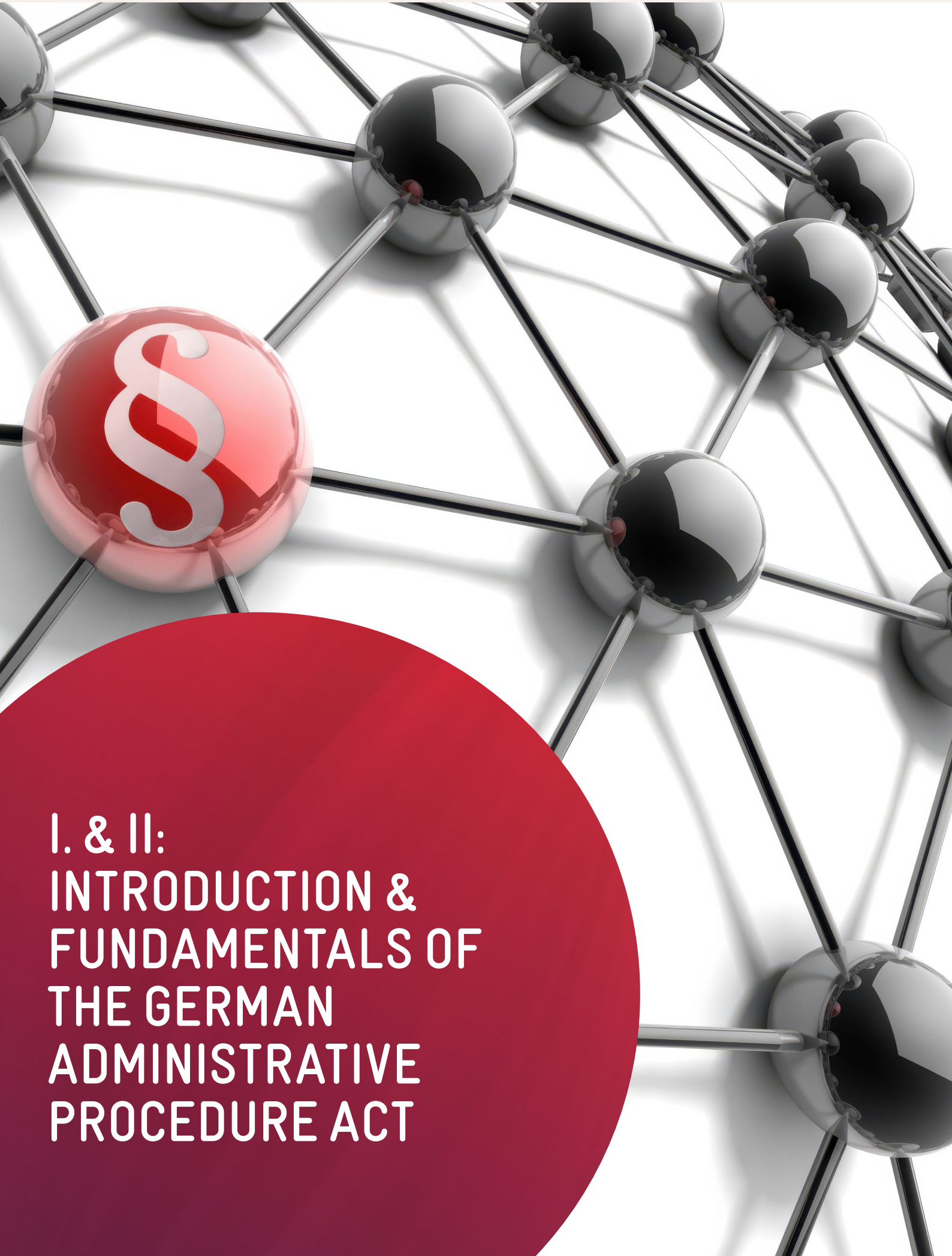

# I. & II: INTRODUCTION & FUNDAMENTALS OF THE GERMAN ADMINISTRATIVE PROCEDURE ACT

# I. Introduction

This study aims to elaborate on the importance of a regulated administrative procedure involving citizens and existing legal protection options, particularly for an effective and efficient state, for the reliability of state action from the citizens' point of view, for economic development, and for the rule of law. Based on the experience gained, the study aims to provide recommendations for the introduction and application of an administrative procedure law in other countries.

First, following the fundamentals of the German Administrative Procedure Act (II.) are presented, along with its significance in the German legal system (1.), its key pillars and fundamental principles (2.). The importance of (administrative) jurisdiction is then discussed (III.). Against this background, recommendations for the introduction of an administrative procedure law in other countries are developed (IV.). Lastly, a conclusion is drawn (V.).

# II. Fundamentals of the German Administrative Procedure Act[01]

The adoption of the Administrative Procedure Act (VwVfG) in 1976 was preceded by many years of discussion about the need for a uniform, binding set of legal rules for administrative action. Until then, there had been a multitude of state and sectoral standards as well as requirements for administrative procedures developed by administrative court case law. There was a lack of clarity regarding normative requirements for administrative procedures and, as a consequence, a lack of legal unification. The desire for a constitutional framework and, among other things, transparency in administrative procedures gained momentum in academic and legal policy discussions. The codification of administrative procedures was already being discussed in the 1950s. At the federal level, the Conference of Interior Ministers and Senators established a committee in 1957 to develop a basic concept for an Administrative Procedure Act.

However, accompanied by diverse discussions in academia, practice, and politics, it took until 1964 for a model draft of an Administrative Procedure Act to be presented by a federal state committee.[02] After further debates, the Administrative Procedure Act was passed in 1976 and came into force on January 1, 1977. Administrative procedure laws were also enacted in a number of federal states.

In the period that followed, a number of changes were made, for example, with regard to electronic legal communication and transactions, the digitisation of administration, and public participation in administrative procedures.

In this way, the legislature responded to developments that had taken place since the Administrative Procedure Act came into force. It is always the task of the legislature to respond to further developments and to further develop the VwVfG.

## 1. Significance of the Administrative Procedure Act

As part of public administrative law, the Administrative Procedure Act (VwVfG) helps to regulate the legal relationships between the state and citizens or other legal entities.[03] It defines the administrative procedure itself as "the activity of authorities having an external effect and directed to the examination of basic requirements, the preparation and adoption of an administrative act or the conclusion of an administrative act under public law." (sec. 9 VwVfG). The following explanations under III. 1. / 2. do not claim to be exhaustive, but focus on the core principles of the German VwVfG.

01. Translation: https://www.bmi.bund.de/SharedDocs/downloads/EN/gesetztestexte/VwVfg_en.pdf?__blob=publicationFile&v=3 ; last accessed 10.02.2026.
02. Ramsauer in: Kopp/Ramsauer, Verwaltungsverfahrensgesetz, 25th ed., Introduction margin note (mn.) 29.
03. For the definition, see Waldhoff, Verwaltungsrecht, version 08.06.2022, in Staatslexikon.

### a) Functions of administrative procedural law

The codification of the VwVfG fulfills several fundamental functions. Primarily, one of its main functions[04] is to serve the substantive law for enforcement and implementation, which at the same time generates legitimacy.[05]

In addition, it bundles many different and originally scattered individual provisions into one law. In this way, it ensures legal uniformity. Previously, administrative procedural law consisted of unwritten general principles, which were then largely standardised by the VwVfG.[06] At the same time, these principles were further developed in such a way that some of the previously existing problems were eliminated. The VwVfG thus pursues the further goal of codification, even if case law initially had to accept this new circumstance and only deviated from its previous methods –the recourse to non-codified general principles – after a while.

From the perspective of the authorities, the law also serves to simplify matters, as administrative action is now systematized and clearly set out in many cases.

In addition, the VwVfG safeguards the procedural rights of citizens. If administrative action has more leeway under substantive law, formal procedural law becomes particularly important as it regulates this leeway.[07] If the steering power of substantive laws is low and, as a result, the density of control by courts provide limited oversight, administrative procedures become all the more important.[08] Another effect of a codified and established Administrative Procedure Act is acceptance, transparency, and participation *(see below for more details)*.

Administrative action can be divided into different types in relation to citizens, particularly in regulative and distributive administration ("Eingriffs- und Leistungsverwaltung"). In addition, administrative action can also have planning and regulatory aspects.

### b) Position of the VwVfG in the legal system

As part of public law, administrative procedural law applies only to the public law administrative activities of authorities (sec. 1 VwVfG), not to private law activities.

Within public law, the hierarchy of norms must also be observed. As a federal law, the VwVfG is subordinate to European law and German constitutional law. At the same time, it takes precedence over ordinances and statutes as well as the norms of the federal states ("lex superior derogat legi inferiori").[09]

Constitutional law has a major influence on administrative procedural law, even though it does not directly regulate it. The administration is directly bound by fundamental rights through the first article of the Constitution (Art. 1 (3) of the Basic Law). In particular, the principles of the rule of law and democracy (cf. Art. 20 (2) and (3) of the Basic Law) as well as the content of the individual fundamental rights have an impact on the procedure. Particularly noteworthy are the principle of equality (Art. 3 (1) of the Basic Law) and the guarantee of legal protection (Art. 19 (4) of the Basic Law). The influence of the Constitution gives rise to certain principles that must be taken into account in administrative proceedings, e.g., the principle of proportionality and the associated consideration of individual fundamental rights in matters involving discretionary decisions, or the principle of specificity *(for more on the individual points, see below)*. In addition, part of the state liability system is already laid down in the Constitution.

Unlike ordinary legal regulations, the principles laid down in Articles 1 and 20 of the Basic Law (constitution) can not be changed by the legislature (Article 79 (3) of the Basic Law).[10] By enshrining the principles laid down therein in a perpetuity clause, the core principles of the Basic Law are thus safeguarded and difficult to challenge. It should be clarified that not every administrative law is automatically constitutional when it is enacted, but must be measured against the constitutional principles, despite the legislature's leeway.

European law also takes precedence over German constitutional law and can also have an impact on administrative law in specific cases, in particular through regulations and directives, as well as European Court of Justice (ECJ) case law on individual issues.[11]

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04. On the functions of codification: Maurer/Waldhoff, Allgemeines Verwaltungsrecht, 21st ed., § 5 mn. 8. f.; on the history of codification: for example, Pünder in: Ehlers/Pünder, Allgemeines Verwaltungsrecht, 16th ed. § 13 mn. 2 ff. or Wittinger in: Obermayer/Funke-Kaiser, VwVfG-Kommentar, 6th ed. Introduction mn. 1 ff.
05. Waldhoff, Verwaltungsrecht, version 08.06.2022, in Staatslexikon.
06. For example Maurer/Waldhoff, Allgemeines Verwaltungsrecht, 21st ed., § 5 mn. 8. f.
07. Ramsauer in: Kopp/Ramsauer, Verwaltungsverfahrensgesetz, 25th ed., Introduction mn. 43 a.
08. Pünder, Grundlagen des Verwaltungsverfahrens, JuS 2011, 51 (4), p. 289 ff.
09. On conflicts of laws in general, see, for example, Gröpl, Staatsrecht I, 15th ed., § 4 mn. 147 ff.
10. For more details, see, for example: Sachs/Mann: in Sachs, Grundgesetz Kommentar, 10th ed., Art. 79, mn. 38 ff.; Jarass in: Jarass/Pieroth, Grundgesetz für die Bundesrepublik Deutschland Kommentar, 18th ed., Art. 79 mn. 8 ff.
11. The specific relationship is not discussed here; see more, for example: Streinz, Europarecht, 12th ed., § 3 VII.

### c) Federalism

Due to federalism in Germany, the federal states generally have the primary right to legislate (Art. 70 (1) and 30 of the Basic Law). If, however, there is a federal law applicable to a specific area due to exceptions regulated in the Basic Law, this law takes precedence. Federal law takes precedence over state law (Art. 31 of the Basic Law). In addition to the federal VwVfG, the individual federal states each have their own VwVfG. This is then only applicable in state matters relating to state authorities. Typically, the laws are very similar in structure, but may differ in (a few) details. On the one hand, this can have the disadvantage of complicating administrative procedures, as the applicability of the laws and the responsibilities of the authorities and courts must be clarified and there are regional differences in procedures. At the same time, however, it gives the states a certain degree of flexibility and political leeway depending on their needs.

Despite federal differences, there is the principle of federal loyalty, according to which the federal government and the states should support each other within their existing rights and obligations, i.e., take each other's interests into account and act in partnership.[12] This principle can be derived from the federal principle (Art. 20 (1) of the Basic Law).

### d) Relationship to specialized laws

The VwVfG is part of general administrative law and thus stipulates general issues that apply to most administrative law procedures. Special administrative law regulates sector specific issues, such as police and public order law, environmental law, trade law, and building law. Administrative procedural law generally applies to every administrative procedure, whether it be the granting of a building permit, the issuance of a business license, or other administrative decisions that fall within the scope of special administrative law. Accordingly, a distinction is also made between formal requirements for administrative action under the VwVfG (predominantly formal legality) and the substantive requirements, which are mainly regulated in the specialist laws, i.e., substantive administrative law. In certain areas of law, however, it may happen that, in deviation from the VwVfG, special regulations for administrative procedures are laid down in the respective specialist area. This leads to legal standardisation, reliability, and simplification, but also to flexibility.

The general and specialised laws are usually at one level (federal or state). However, the more specific law supersedes the general law (lex specialis derogat legi generali). This system offers the advantage that more specific standards are more concrete and can be applied in areas where more general laws have not set sufficient standards.[13]

Within the VwVfG, there are also general types of procedures that apply in principle to all administrative actions and special types of procedures, such as the planning approval procedure, for specific matters.

### e) Effectiveness and efficiency

The transaction cost of administrative procedural law should not outweigh its benefits.[14] The legislator should strive for an appropriate balance.

On the one hand, administrative law should be enforced effectively, i.e., the objectives of the administrative procedure established by the democratically legitimised legislature and the constitution should be achieved. At the same time, efficiency matters in order to keeping the duration and costs of proceedings low. If a procedure is complicated and involves too many parties with different procedural rights, efficiency decreases. In principle, therefore, the legislature has stipulated in sec. 10 VwVfG that proceedings shall be carried out in an uncomplicated, appropriate and timely fashion. However, efficiency gains cannot always be counted as gains in effectiveness. For example, short term procedural costs may be worthwhile in the long term if they prevent future larger proceedings with more complex decisions and even more participants.[15] At the same time, mechanisms for determining trade-offs at the beginning of administrative action can ensure greater acceptability of administrative decisions, which in turn should reduce the costs of administrative enforcement. The VwVfG therefore also provides for opportunities for participation in many areas, such as the right to a hearing, the obligation to state reasons, the right to access files, and other rights to information *(for details, see below)*.

The resulting trust between the state and its citizens enables efficiency and effectiveness, as it reduces knowledge asymmetries between the two sides and thus appropriate decisions can be achieved.[16]

12. Regarding this point: Maunz in: Isensee/Kirchhof, Handbuch des Staatsrechts, Volume IV, § 94 mn. 20.
13. Guckelberger, Allgemeines Verwaltungsrecht, 11th ed., § 7 mn. 17
14. On effectiveness and efficiency: Pünder, Grundlagen des Verwaltungsverfahrens, JuS 2011, 51 (4), p. 293; Pünder, Allgemeines Verwaltungsrecht, 16th ed. § 13 mn. 12 ff.
15. Here and below: Pünder, Grundlagen des Verwaltungsverfahrens, JuS 2011, 51 (4), p. 292 f.
16. See Pünder, Grundlagen des Verwaltungsverfahrens, JuS 2011, 51 (4), p. 291

In addition to the instruments mentioned above, the VwVfG therefore contains further provisions designed to ensure that authorities and other parties involved in proceedings can work together, such as obligations to provide advice and information.

## 2. Fundamental pillars and principles of administrative procedural law

### a) Principle of legality of administration

Two principles in particular can be derived from the principles of the rule of law and democracy that have a decisive influence on administrative procedural law: the reservation and the primacy of the law. No action may be taken without or against the law.[17] This means that every administrative action requires a basis for authorisation and must, at the same time, be in accordance with applicable law. This mechanism helps to ensure that a balance between the three powers – legislative, executive, and judicial – is also maintained in administrative law. The legislature legitimises executive administrative action. This preserves the principle of democracy.[18] At the same time, administrative action can be reviewed by the courts. In addition, legal relationships become predictable and calculable for citizens.

These principles, which are derived from the Basic Law, are so strongly protected by the Constitution through the eternity clause (Art. 79 (3) of the Basic Law) that they cannot be changed by the legislature. However, according to widespread opinion, there is no total reservation of law. Without exception, the reservation of law only applies to burdens on citizens and all essential decisions, i.e., all measures relevant to fundamental rights. In particular, infringements of fundamental rights may only be carried out by or on the basis of a law. Put simply, a legal reservation is necessary for burdensome administrative action (regulative administration ("Eingriffsverwaltung")), but not for favorable action (distributive administration ("Leistungsverwaltung")) or purely informational action.

If there is a legal basis for authorising administrative action, the administrative action must also be formally and materially lawful. The requirements for formal legality are largely laid down in the VwVfG itself. The core elements are the competence of the acting authority, the correct type of procedure, and the correct form of administrative action. Some of the most important principles of administrative procedure are incorporated here the right to a fair hearing, the obligation to give reasons, transparency, and traceability.

### b) Right to be heard

Sec. 28 (1) of the VwVfG stipulates that in the case of any administrative act that is detrimental to the parties involved, they must be given the opportunity to comment on the facts relevant to the decision. The main function of the hearing is to inform the parties involved about the decision so that they are not surprised by an adverse decision and can thus exercise their rights. At the same time, it serves to clarify the facts of the case, which in turn benefits efficient and effective processing.[19] The transparency this creates can increase the legitimacy of the decision on an administrative act.[20]

In individual cases, the law contains exceptions which, although not exhaustive are interpreted restrictively.[21] The reasons for this can be found in particular in procedural economy, in the public interest, or in the interest of the persons concerned. The principle of the right to a fair hearing is guaranteed by constitutional principles.[22] Art. 103 (I) of the Basic Law guarantees this right, which can be derived from the concept of the rule of law.

The right to a fair trial is also guaranteed by European standards such as Art. 6 of the European Convention on Human Rights (ECHR).

### c) Obligation to state reasons/ transparency and traceability

In principle, sec. 39 VwVfG provides for an obligation to state reasons for written or electronic administrative acts. In doing so, the essential factual and legal reasons that led the authority to its decision must be communicated (sec. 39 (1) sentence 2 VwVfG). Public authorities are thus forced to disclose their considerations within their scope of discretion (see III. 2. e) bb) below). This challenges the public administration to deal with the matter in depth and to present arguments for a decision, thus effecting self control.[23] At the same time, citizens are comprehensively informed about the decision and can thus make a balanced decision about possible legal

17. For general information on this, see, for example: Ossenbühl in: Isensee/Kirchhof, Handbuch des Staatsrechts, vol. 5, 3rd ed., § 101.
18. Maurer/Waldhoff, Allgemeines Verwaltungsrecht, 21st ed., § 6 mn. 6.
19. Ramsauer in: Kopp/Ramsauer, Verwaltungsverfahrensgesetz, 25th ed., § 28 mn. 2; Pünder in: Ehlers/Pünder, Allgemeines Verwaltungsrecht, 16th ed., § 14 mn. 32.
20. Ramsauer in: Kopp/Ramsauer, Verwaltungsverfahrensgesetz, 25th ed., § 28 mn. 2.
21. Ramsauer in: Kopp/Ramsauer, Verwaltungsverfahrensgesetz, 25th ed., § 28 mn. 44; among others Mau-rer/Waldhoff, Allgemeines Verwaltungsrecht, 21st ed., § 19 mn. 28; Pünder in: Ehlers/Pünder, Allgemeines Ver-waltungsrecht, 16th ed., § 14, mn. 39.
22. It is disputed where exactly it is derived from the constitution. However, there is a consensus that it is derived from the constitution.
23. Guckelberger, Allgemeines Verwaltungsrecht, 11th ed., § 14, mn. 23.

remedies.[24] Information on legal remedies (cf. sec. 37 (6) VwVfG) can also contribute to a balanced decision being made about the path to court.

In addition, parties involved in administrative proceedings have the right, in accordance with sec. 29 (1) VwVfG, to inspect files whose contents are necessary for the assertion or defense of legal interests. Exceptions to this rule apply in cases where confidentiality interests conflict with this right. The right to information is further supplemented by freedom of information/transparency laws. In addition, the authority has a duty to advise and provide information to the parties involved in the proceedings (sec. 25 VwVfG).

Transparency is thus also an important pillar of administrative procedure, the necessity of which can be derived from the principle of the rule of law.[25]

### d) Forms of administrative action

The distinction between different forms of administrative action primarily serves to structure and rationalise administrative action. The core function here is to strengthen predictability for citizens while increasing the effectiveness and efficiency of the administration. This fulfills both legal protection and control functions.[26]
The different forms of action are relevant depending on the situation, and each has different requirements or is treated differently in the proceedings.

An administrative act is "any order, decision, or other sovereign measure taken by an authority that regulates an individual case in the sphere of public law and intended to have a direct, external legal effect."
(sec. 35 (1) VwVfG).

There are several functions of the administrative act.[27] First, it fulfills a **regulatory function**. The administrative act specifies the abstract and general provisions of administrative law in such a way that they apply to citizens in individual cases. The administrative act has a number of effects that are of particular importance for the administrative procedure. The definition of administrative action as an administrative act gives rise to certain requirements for the issuance of such an act, so that it fulfills a procedural function. Thus, after proper notification (which is also regulated by the VwVfG, cf. sec. 43 (1) second sentence VwVfG), an administrative act is initially legally effective with reservation, even if it should be unlawful in substance. Citizens must therefore first be informed of the planned administrative action. However, citizens are not without protection in the event of an administrative act that is actually unlawful, they can challenge it in court.
*(For administrative jurisdiction, see IV.)*

After the expiry of the appeal period, an administrative act becomes final, regardless of whether it is lawful or unlawful. The administrative act thus has a finality function and ensures legal certainty.

Furthermore, from the authority's point of view, the administrative act has an **enforcement function** in that it provides the public administration the opportunity to enforce its content independently, known as the administration's right of selftitling.

Overall, the administrative act thus contributes significantly to the effectiveness and efficiency of administrative action by creating legal certainty, as it specifies the relationship with citizens in a large number of individual situations. The administration can rely on the validity of the administrative act, while the administrative act gives citizens the opportunity to use regulated instruments to deal with the decisions of the administration.

The administrative act has a subcategory known as the general ruling. This is defined as "an administrative act that is directed at a group of persons defined or definable on the basis of general characteristics or relating to the public law aspect of a matter or its use by the general public at large" (sec. 35 (2) VwVfG). This subcategory thus enables rulings of individual cases, but rather groups of persons or individual objects.

In contrast to an administrative act, the public authority can also act without legal regulatory effect/informally. The real act has an actual effect, known as a simple administrative action.[28] Authorities can use this instrument to act quickly and unbureaucratically when the situation requires it, especially if citizens are not affected. This is particularly important for schools and the police, for example. However, an administrative act may precede

24. Wolff, in: ibid./Decker, Studienkommentar VwGO VwVfG, 4th ed., § 39 VwVfG mn. 4.
25. At the European level, particular attention should be paid to Art. 6 ECHR – Right to a fair trial and Art. 42 Charter of Fundamental Rights.
26. Waldhoff, Verwaltungsrecht, version 08.06.2022, in Staatslexikon.
27. On the functions in the following: see, for example, Ruffert in: Ehlers/Pünder, Allgemeines Verwaltungsrecht, 16th ed. § 21 mn. 1 et seq., 7 et seq.; Guckelberger, Allgemeines Verwaltungsrecht, 11th ed., § 12, mn. 33; Maurer/Waldhoff, General Administrative Law, 21st ed. § 9 mn. 40 f.; Ramsauer in: Kopp/Ramsauer, Verwaltungsverfahrensgesetz, 25th ed., § 35 mn. 9 ff.
28. See, for example: Maurer/Waldhoff, Allgemeines Verwaltungsrecht, 20th ed., § 15.

the real act, which determines whether or not a real act will take place. In addition to the actual performance of tasks, real acts also include declarations of knowledge or warnings by the state.

Another type of action that will not be discussed in detail here is the public law contract (sec. 54 ff. VwVfG).

### e) Scope for decisionmaking

The substantive legality of administrative action is systematically divided into compliance with the facts of the basis for authorisation, and the legal consequences, whereby the basis for authorization itself must be lawful.

#### Binding decision

In a number of provisions, the legislature has not provided any scope for discretion for authorities. Once the facts of the case are established, the authority must act in accordance with the prescribed legal consequences. Linguistically, these norms are characterised in the formulation of the legal consequence by words such as "must" or "is."

#### Discretion

In contrast to binding decisions, other administrative regulations allow for discretionary power. Discretionary power is indicated by verbs such as "can" or "may." Discretion can refer to various levels. These include, in particular, discretionary powers of decision, i.e., the decision on the "whether" of an action, and discretionary powers of selection, i.e., the decision on the "how" of an action.

However, discretion is not unlimited. In a democratic state governed by the rule of law, the authority must exercise dutiful discretion, preserve the purpose of the basis for authorisation, and not exceed legal limits.[29] The scope of discretion is subject to limited review by the courts.

Three types of errors can be reviewed by the courts:

- Failure to exercise discretion – Discretion is erroneously not exercised at all.
- Excessive exercise of discretion – The respective scope of discretion is exceeded.
- Misuse of discretion – The reasons selected for wthe exercise of discretion are flawed.

In some cases, despite the scope for decisionmaking, there is only one possible decision option, known as the reduction of discretion to zero.

The administration's obligation to comply with the Basic Law (Art. 1 (3) of the Basic Law) can result in the special feature of discretionary reduction through selfcommitment on the part of the administration. In this case, the administration is also bound by the principle of equal treatment and the prohibition of arbitrariness. This means that similar cases may not be treated differently by the administration, at least in the case of lawful administrative action.[30]

This principle can also extend to decisions that have been made on the basis of internal administrative guidelines. These administrative regulations are set by a superior authority or superior civil servants. In principle, they have no external effect unless the administration is bound by them on the basis of the general principle of equality. Apart from that, these standards are not subject to judicial review. In practice, however, these regulations constitute a large part of the administrative procedure.[31] This allows public administration to easily compare cases and process matters more quickly.

#### Indeterminate legal terms

In addition to discretionary powers, there may be administrative regulations that allow for discretion at the factual level by leaving the specific content of a factual element undefined. The legal review standards are largely comparable. Both undefined legal terms with and without discretionary powers may be relevant here. However, this only results in discretionary powers for the authorities in a few recognised case groups (such as examination decisions or forecast and risk decisions). In these cases, only limited judicial review by the courts is possible. According to the normative doctrine of authorisation, public authorities mostly do not possess discretionary powers of their own when faced with undefined legal terms.[32] The idea behind this system is the legal protection provided by the Basic Law (Art. 19 (4) of the Basic Law), as well as the separation of powers and the principle of the rule of law, according to which the courts assume effective control of the administration.[33]

29. Tipke/Kruse/Brandis, AO/FGO, preliminary remarks on Sections 134–139d, margin numbers 1–2.
30. For detailed information on reporting obligations, see Gosch/Beermann/Schmieszek, AO/FGO, Section 137 AO margin numbers 7–10.
31. Tipke/Kruse/Brandis, AO/FGO, Section 139a AO margin number 3.
32. See Ramsauer, in: Kopp/Ramsauer, Verwaltungsverfahrensgesetz, 25th ed., § 40 mn. 85.
33. See, for example, Detterbeck, Allgemeines Verwaltungsrecht, 20th ed., mn. 357 ff.

### f) Proportionality[34]

The principle of proportionality follows from the principle of the rule of law (Art. 20 (3) of the Basic Law) and thus from the constitution. As soon as administrative action has a burdensome effect on citizens, this principle must be taken into account as the prohibition of excess. In essence, this is a question of the relationship between purposes and means, which also strikes a balance between state and civil interests. Citizens may only be restricted to the extent necessary for the common good. A four-step process has been established to assess proportionality, which is applied as standard in public authorities and case law.

For a measure to be considered proportionate, the purpose of the administrative action must first be legitimate (1). An interest is legitimate if it is not excluded under constitutional law. Furthermore, the administrative action must be suitable (2) for achieving the legitimate goal in the first place, or at least for promoting the purpose. In addition, the measure must be necessary (3). This means that the mildest equally suitable measure must be chosen. In the last part, the appropriateness (4) of the measure is assessed. First, the nature and severity of the burdensome measure are identified. This must not be disproportionate to the legitimate purpose. Thus, a weighing of interests is carried out at this level.
The uniform application of this principle systematises administrative decisions and makes them comparable. At the same time, it gives practitioners the necessary flexibility, as not every situation in life has to be assessed in advance by the legislator. The latter would be inconceivable anyway, as not every situation in life is predictable.

### g) Control mechanisms / effective legal protection

The guarantee of legal protection under Article 19 (4) of the Basic Law means that administrative law must be subject to judicial review. This ensures that the rule of law and citizens' rights can be realised. In addition to the VwVfG, the Code of Administrative Court Procedure (VwGO) is therefore applicable. This Code regulates individual types of proceedings, which will not be discussed in detail here. It also regulates a preliminary procedure, the objection procedure, in which citizens are involved in the review even before legal proceedings. This can improve the effectiveness and efficiency of the administration. Some federal states have abolished this procedure.

34. For more details, see, for example: Jarass in: Jarass/Pieroth, Grundgesetz für die Bundesrepublik Deutschland Kommentar, 18th ed. Art. 20 mn. 112 ff.; Sachs, in: Sachs, Grundgesetz Kommentar, 10th ed. Art. 20 mn. 145 ff.

# III. SIGNIFICANCE OF ADMINISTRATIVE JURISDICTION

# III. Significance of administrative jurisdiction

Administrative jurisdiction is an important component in the separation of powers between the legislature, the executive, and the independent judiciary, and is therefore of fundamental importance to the rule of law under the Basic Law. As part of the judiciary, the third branch of government, administrative jurisdiction controls state action. It deals with disputes between citizens and the administration. In addition to administrative jurisdiction, there are other specialised jurisdictions such as labor, social, and financial jurisdiction, as well as the ordinary jurisdiction such as civil and criminal courts.

Administrative jurisdiction has three levels: administrative courts are the court of first instance, followed by the higher administrative court as the court of second instance, usually as the court of appeal, and above that, the Federal Administrative Court as the court of third instance. The Code of Administrative Court Rules (VwGO) governs court proceedings. An essential element is the principle of official investigation (sec. 86 VwGO), i.e., the court must investigate the facts underlying the court decision ex officio. In addition to the main proceedings, the possibility of summary proceedings (sec. 80 and 123 VwGO) is also available in order to ensure provisional legal protection in urgent cases.

### 1. Significance for citizens and legal entities

Administrative jurisdiction ensures the effective legal protection guaranteed by the constitution (Art. 19 (4) of the Basic Law). It guarantees citizens and legal entities under private and public law, such as companies, associations, foundations, but also municipalities and universities, the right to have state actions reviewed by the courts.

This constitutional guarantee is realised by the administrative courts. Citizens can have any administrative decision that affects them personally (subjective legal protection) reviewed by a court. This includes, for example, building permits, residence permits, police measures, decisions under civil service law, and decisions under asylum and immigration law. In doing so, the administrative courts review both the formal legality—i.e., in particular, issues such as the competence of the acting authority or compliance with general procedural requirements such as the right to a fair hearing (see III.2.b) above)—and the substantive legality of government action, i.e., whether the legal requirements of the relevant specialized law, such as building law, have been complied with.

Protection against arbitrary state intervention is another key function. Administrative jurisdiction is intended to protect citizens and legal entities from unlawful or arbitrary interference by state authorities and ensure the transparency, traceability, and reliability of state action.

### 2. Significance for the administration

Administrative jurisdiction fulfills a legitimizing function for the administration. The judicial determination of the legality of an administrative decision promotes the acceptance of state action and, equally, the possibility of having potentially unlawful or even arbitrary administrative decisions reviewed by a neutral, independent court. This also promotes lawful administrative action as a preventive measure, because the administration must bear in mind that its decisions could be overturned if they are found to be unlawful by a court.

Administrative jurisdiction can guarantee the uniform application of the law. Laws often leave room for interpretation. There may also be differences in the understanding of legal provisions, in this case, procedural provisions, among the various administrative authorities. Court decisions, especially those of the higher courts in the context of appeals, can promote uniform legal practice and thus create legal certainty. This also includes decisions on cases of fundamental importance as well as the development of the law. In this way, important guidelines can be established for the administration (and also for the legislature).

### 3. Significance for society

In summary, it can be said that administrative jurisdiction occupies an indispensable place within the framework of the third branch of government (the judiciary) and thus the rule of law. It implements fundamental principles of the rule of law for both citizens and public administration. It guarantees effective legal protection, controls state power, and contributes to the democratic legitimacy of administrative action. It must take into account both the rights of the individual against interventions by the state and the public interest in the functioning of the administration. It thus plays an important role in ensuring the acceptance, predictability, and transparency of state action, as well as legal certainty for the economy.

# IV. RECOMMENDATIONS FOR AN ADMINISTRATIVE PROCEDURE LAW

# IV. Recommendations for the introduction of an administrative procedure law in other countries

## 1. Preliminary remarks

A uniform administrative procedure can promote economic development (a)), strengthen citizens' trust in the state (b)), and ensure that the administration acts in accordance with the rule of law (c)), as follows:

a) It can promote **economic development**. From a business perspective, predictability, clear rules and transparency in the actions of the administration, clear structures and recognizable responsibilities are important decisionmaking parameters for economic activity and, for example, investment decisions. This plays a particularly important role for foreign investors and can thus become a significant draw for companies and investors. One of the first questions that foreign companies, in particular, ask when deciding where to locate is about legal certainty, transparency, and the reliability of the authorities in approval procedures. At the same time, the duration and complexity of the procedures play a role. These are important risk factors for business decisions! A modern administrative procedure law should therefore be legally secure but flexible. The establishment of companies can, in turn, result in valuable economic synergy effects and thus, among other things, an increased climate of innovation.

b) Transparency and comprehensibility, as well as efficiency and effectiveness of government action, are important prerequisites for **citizens' trust in the state** and thus for social peace. The most frequent points of contact that citizens have with the state are with the public authorities, whether it be with regulatory authorities such as the police or supervisory authorities, or when it comes to official approvals or the granting of state benefits.

c) An administrative procedure law, in conjunction with an independent (administrative) judiciary, can also help to **prevent corruption**, which, like a creeping poison, jeopardizes a country's economic and social development.[35]

## 2. Recommendations

When considering the introduction of an administrative procedure law in other countries the following recommendations should be taken into account.[36] The list is not exhaustive, nor do they apply to every individual case. They can provide guidance for the successful development and implementation of an administrative procedure law.

a) As a first step, establish an inventory of the status quo for the country in question, particularly with regard to the framework conditions, such as:

- the organisation, structure, and working methods of the administration: What administrative structures exist? Are there specialised ministries or corresponding administrative units? How is the relationship between (specialised) ministries and the executive administration regulated? Is there a central government and/or a federal system with, for example, independent provinces? How are city and local administrations organised?
- fundamental principles and/or legal bases: Are there specialist laws or special legislation regulating general procedural principles or a corresponding, as yet unstandardised regular practice? In this context, it is advisable to consider the cultural background, the respective understanding of the law, and the respective understanding of the relationship between the state and its citizens.
- Jurisdiction: Is there a specialised jurisdiction?
- Are there existing reform approaches?
- Starting points for initiating a reform process with the drafting of an Administrative Procedure Act and its implementation in administrative practice
- Identification of needs from different perspectives/roles
- Possible relevant training content in legal education
- Level of training and knowledge in the judiciary.

35. See Acemoglu/Robinson, Why Nations Fail: The Origins of Power, Prosperity, and Poverty, 2012.
35. See Schaich/Reitemeier, The Republic of Kazakhstan's New Administrative Procedures Code, ZOIS Spotlight 25/2021 https://www.zois-berlin.de/en/publications/the-republic-of-kazakhstans-new-administrative-procedures-code; Pudelka/Deppe, Allgemeines Verwaltungsverfahrensgesetz in Zentralasien in der Entwicklung, Ost/Mag 3.8.2017, https://www.ostinstitut.de/documents/Pudelka_Deppe_Allgemeines_Verwaltungsrecht_in_Zentralasien_in_der_Entwicklung_OL_2_2017.pdf; Vijayalakshmi, Comparative Examination of Administrative Law in Developed and Developing Countries, International Journal of Innovative Research of Science, Engineering and Technology (IJIRSET) 2024, https://www.ijirset.com/upload/2024/december/132_Comparative.pdf; Implementation of laws on general administrative procedure in the Western Balkans (document for EU and OECD), SIGMA Paper No. 62, https://www.oecd.org/content/dam/oecd/en/publications/reports/2021/05/implementation-of-laws-on-general-administrative-procedure-in-the-western-balkans_d3379dd3/e5162057-en.pdf; Sieden-topf/Hauschild/Sommermann, Implementation of Administrative Law and Judicial Control by Administrative Courts, Forschungsinstitute für öffentliche Verwaltung bei der Deutschen Hochschule für Verwaltungswissenschaften Speyer, Speyerer Forschungsberichte 180 (1997), 1997 – Report concerns the monitoring of the drafting of the Ad-ministrative Procedure Act for Thailand between 1992 and 1997); see also list of GIZ projects on Promotion of the Rule of Law in Central Asia (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan), https://www.giz.de/en/projects/promotion-rule-law-central-asia; (all last accessed on October 7, 2025).

In addition, interviews should be conducted with important local stakeholders. Possible discussion or interview partners include:

- Representatives of various administrative units (state, city, municipal level, etc.)
- Representatives of ministries such as, depending on their responsibilities, the Ministry of Justice and the Ministry of the Interior, in particular, the ministry responsible for the relevant legislative process
- Representatives of the jurisdiction responsible for administrative disputes
- Representatives of university law faculties
- Representatives of trade associations
- Ombudsman (if established)
- Foreign missions and international organisations.

b) Involve relevant stakeholders (identified based on the results of the inventory) to make sure the development or revision of the administrative procedure law is needs-based and will be accepted by key stakeholders.

c) Pay attention to administrative structures in place. They need to form the foundation for a successful reform of administrative procedure (law). Care must be taken to simplify and streamline administrative procedures.

d) Harmonise existing special and technical laws (special administrative law) with the Administrative Procedure Act. Otherwise, there is a risk that authorities will continue to follow the special legal regulations instead of the general principles that apply.

e) Design the provisions of an Administrative Procedure Act to ensure simple, accessible interaction between citizens, businesses and public administration.

f) Take into account possible effects of ongoing or forthcoming digitisation of the administration, for example, with regard to summary procedures, applications, etc.

g) Aim for a lower density of regulations to ensure comprehensible administrative procedure law, thus enhancing transparency and acceptance among both users and addressees, thereby minimising possible resistance from public authorities and the government.

h) Administrative jurisdiction plays an important complementary role in the introduction of an Administrative Procedure Act. It is necessary for the enforcement and implementation of the legal principles standardised in the Administrative Procedure Act. Judicial review of administrative acts is a key factor in increasing governance efficiency. Ensure that administrative procedures and administrative jurisdiction, or administrative court proceedings, are considered together in any reform process. Organisational and institutional independence from the administration must also be guaranteed.

i) Examine whether an appeal procedure is appropriate as part of the administrative procedure. Consider introducing self review of an administrative decision by the administration itself as a low threshold, cost-effective review procedure as part of a two tier administrative procedure. Such approach may make sense depending on the specific circumstances in a country, for example, in view of a poorly functioning judiciary.

i) Build capacity as the various parties involved will not be familiar with the requirements of a new Administrative Procedure Act. Train administrative officials and staff, as well as judges, lawyers, and other legal practitioners. The three most important pillars for capacity building, also and especially with the aim of ensuring uniform and thus reliable administrative practice for citizens on the basis of the Administrative Procedure Act, are likely to be the administration, the judiciary, and universities. A few suggestions:

- Develop an explanatory memorandum to the law as an effective means of enabling uniform application in the administration. It can be designed as a textbook, explaining the meaning and purpose of the respective regulation, the guiding interpretation and application. For example, regulations on discretionary powers or scope for assessment could include a test structure for decision making. This can also be helpful for judicial review, as it clarifies the legislative intent and thus prevents the court from "creating law" in the absence of clear guidelines.[37]

37. See, for example, The Federal Republic of Ethiopia Attorney General "Explanatory Note for the Provisions of Fed-eral Administrative Procedure Law" Ethiopians, 2021 https://chilot.wordpress.com/wp-content/uploads/2023/02/fc535-administrative-procedure-proclamation-explanatory-note.pdf

- Train the trainer: experts train selected employees from administration, the judiciary, and universities or, where available, administrative schools with the relevant prior knowledge and skills, who then act as multipliers and trainers. This is also advantageous in view of the large number of administrative units, courts, and educational institutions that will require training.
- Teach in tandems of a locally based trainer with the appropriate qualifications and a foreign expert with the same qualifications. Experience has shown that this is a win-win situation for the respective trainers, as it increases acceptance and promotes a better understanding of expectations and access to technical requirements for foreign experts.
- Tandem teaching is particularly suitable for training judges and in universities, for example, in connection with use cases in case resolution.
- Develop learning materials that are not too detailed (i.e., do not go into the intricacies of German administrative procedural law that have developed over the years in an unfiltered way, but rather tie it in with local needs).
- Train in mediation, in particular the teaching of relevant skills such as questioning techniques, dealing with emotions, and identifying the (actual) concerns of citizens, for example. It can help improve the quality, effectiveness, and efficiency of administrative action. It can also make an important contribution to the training of judges.
- In addition to involving individual experts from the judiciary, administration, and legal education, it may also be advisable to collaborate with other administrative training institutions. The Hamburg State Center for Education and Training (ZAF) for instance offers a wide range of education and training courses for newcomers and administrative staff using the latest educational methods. Consider This opens up opportunities for supporting the establishing of corresponding training institutions incountry if missing.

j) Raise awareness of the new Administrative Procedure Act and its benefits for citizens and the economy through public relations measures.

k) Successful reform requires political will and leadership to promote a project such as the development/drafting of an Administrative Procedure Act and its implementation. Bureaucratic inertia and disinterest, as well as institutional resistance, can be among the major challenges for such a reform project.

# V. CONCLUSION

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An Administrative Procedure Act and the corresponding administrative jurisdiction can make a valuable contribution to the development of countries by anchoring and strengthening constitutional structures, thereby helping to enhance the effectiveness and efficiency of government action, promote a country's economic stability, and help build citizens' trust in government action.

In such a reform project, the respective framework conditions in the individual countries, such as the political situation, structural, capacity related, and cultural challenges, as well as institutional circumstances, must be taken into account.

The German administrative procedure can provide a starting point for administrative reform.

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