

Administrative Justice
(“Contencioso Administrativo e Tributário”)
Academic Year 2017/2018 (first semester)

Professor Vasco Pereira da Silva
(classes in English: Professor Miguel Assis Raimundo,
miguelraimundo@fd.ulisboa.pt)

General Syllabus

I – Administrative Justice in History

- 1- From the “difficult childhood” of *Contentieux Administratif* systems to modern “traumas” of the Administrative Process
- 2- The phase of the “original sin” of the Administrative Justice. The Liberal State and the system of the “Executive Judge”
- 3- The phase of the “Christening” of the Administrative Justice. The “miracle” of the judicialization of Administrative Justice and the appearance of the Social State
- 4- The phase of “Confirmation” of the Administrative Justice. Administrative Courts and full and effective legal protection of individuals before Public Administration in the Post-Social State
 - 4.1.- The first period: Administrative Justice and the Constitution. Reality and symbol in the submission of Administrative Process to the Constitution
 - 4.2- The second period: the europeanization of Administrative Justice
 - 4.3- A brief “diagnosis” of Administrative Law in the Post-Social State

II – Administrative Justice and the Constitution

- 1- Administrative Process as “Implemented Constitutional Law”: Administrative Law depends on the Constitution and Constitutional Law depends on Public Administration and Administrative Law
- 2- Administrative Justice and the Portuguese Constitution
 - 2.1- The initial commitment of the Constitution of 1976 regarding Administrative Justice and actual practice until the 1982 amendment

- 2.2- Evolution of the constitutional model of Administrative Justice in the 1982 amendment to the Constitution and the first reform of Administrative Process rules (1984/1985)
- 2.3- The transformation of the constitutional model of Administrative Justice in the 1989 amendment and the “indifference” of the “constitutional reality”
- 2.4- The “Copernican revolution” of Administrative Justice in the 1997 constitutional amendment and the “aggravated” non compliance of the Constitution by way of failure to act by the legislature
- 2.5- A long “gestation” and... at last, the reform of Administrative Process (2002/2004)!
- 2.6- The “reform of the reform” (2015). Evolution in continuity?
- 3- “Clinical report” of the reform and “provisional diagnosis” of the perspective of future evolution of Administrative Justice

III - “Eros and Thanatos”: The elements of Administrative Justice

- 1- All Administrative Process has gained full cognition powers. Types of claims and corresponding legal actions, and powers of the court, in the new Administrative Process
- 2- Rules on the elements of the process
 - 2.1 – Subjects (of a lawsuit with equal parties)
 - 2.2 – The object of the process
 - 2.2.1- The intended legal protection
 - 2.2.2- Grounds of the intended legal protection

IV - “Ego and Id”: The Administrative Action

- 1- From two main types of legal actions (“special administrative action” and “common administrative action”) to the unity of legal actions: real or apparent unity
- 2- The administrative action and its classifications
 - 2.1- Judicial review of administrative decisions (“actos administrativos”)
 - 2.1.1- Scope
 - 2.1.2- Prerequisites for admissibility of the claim
 - 2.1.2.1 – Administrative decisions subject to judicial review
 - 2.1.2.2 – Other prerequisites: legal standing; time limits
 - 2.2- Injunction to approve an administrative decision
 - 2.2.1- Scope
 - 2.2.2 – Prerequisites for admissibility of the claim
 - 2.3 – Judicial review and injunctions related to administrative regulations
 - 2.3.1– Scope
 - 2.3.2- Prerequisites for admissibility of the claim
 - 2.4 – Legal actions related to contracts emerging from public administration activities
 - 2.4.1- Prerequisites for admissibility of claims related to contracts emerging from public administration activities
- 3- The problem of judicial protection in cases of civil liability (tort) emerging from public administration activities



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3.1- “Once upon a time...” The “long path” from a dual to a unitary system of judicial protection concerning the civil liability of public bodies. A never ending story?

VI – “Totem and Taboo”: Urgent Forms of Legal Protection

1- Urgent forms of legal protection

1.1- Electoral process

1.2 – Remedies in public procurement

1.3 – Injunction relief for access to public information (“Freedom of Information” claims)

1.4- Injunction relief for the protection of fundamental rights

VI – “Civilization and its Discontents”: Interim relief

1 – The major changes in interim/precautionary relief:

1.1- “Before” and “after” the 2002/2004 reform

1.2- The two moments of the reform (“before” and “after” 2015)

2- From the principle of a “closed list” to the principle of a “general clause” regarding the types of interim relief measures

3- Positive (injunction-type) and negative (review-type) interim measures

Summary of the Syllabus (for the classes in English)

I – Administrative Justice in History: In-depth analysis of the different methods of judicial protection related to the activities of public administration in History and in different legal systems. The divide between “Contentieux Administratif” systems and “Common Law/Common Jurisdiction” systems. Evolution. Current status. The portuguese system of Administrative Courts and Administrative Process.

II – Administrative Justice and the Constitution: the supra-legal foundations of Administrative Justice. Judicial protection before administrative action as a fundamental right in Portugal and other legal orders (including European Court of Human Rights and Court of Justice of the European Union). The role of Constitutional Law as an element of change in Portuguese law.

III – “Eros and Thanatos” – The elements of Administrative Justice: General overview of the Portuguese legal system of Administrative Judicial Protection. Types of claims and powers of the courts. The matters conferred to Administrative Courts in the Portuguese system. Comparison with other legal orders.

IV – “Ego and Id” – The Administrative Action: Structure and contents of the system of judicial protection before administrative action. Judicial review and injunctions regarding administrative decisions, judicial protection regarding administrative regulations, judicial protection regarding contracts emerging from contracts related to administrative activities, judicial protection in civil liability of public bodies cases.

V – “Totem and Taboo” – Urgent Forms of Legal Protection: the different types of urgent legal protection in the Portuguese system: with a special focus on remedies in public procurement, “Freedom of Information” claims and injunction relief for the protection of fundamental rights.

VI – “Civilization and its Discontents” – Interim relief: the importance of interim relief for a full and effective judicial protection before administrative action; the situation before and after the reform of Portuguese law (2002/2004), and in the two moments of this reform (before and after 2015). The “open clause” for interim measures and its application by the courts. The two major types of interim relief (injunction-type and review-type).

Bibliography

(in English and other languages; for bibliography in Portuguese
please refer to the syllabus in Portuguese, available online;
other specific references will be provided)

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- SÉRVULO CORREIA, «Administrative Due or Fair Process: Different Paths in the Evolutionary Formation of a Global Principle and of a Global Right», in GORDON ANTHONY et. al. (eds.), *Values in Global Administrative Law*, Hart, 2011.
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