

SUBJECT: ADMINISTRATIVE LAW

TAUGHT IN:	CREDITS:	MODULE NO.	MODULE ORGANISER
Level 6	10	LEG 361	Kevin Gibbons

RECOMMENDED PRIOR KNOWLEDGE: Constitutional Law (LEG 212)

MODULE AIMS

This course aims to explore and critically compare the administrative law systems of England and the Czech Republic. Administrative law exists to regulate the powers and actions of public authorities, especially in relation to their dealings with citizens subject to their authority. The module attempts to show the varying mechanisms by which this achieved including:

- the constitutional basis for the respective powers of public bodies
- the special function played in this by delegated legislation
- the various mechanisms used to make public bodies accountable for their actions (ministerial accountability to Parliament, judicial review of administrative action, the role of tribunals, the work of the ombudsman etc.)

LEARNING OUTCOMES

On successful completion of the module, students should:

- understand the scope and function of administrative law and be familiar with its most important branches;
- be able to identify and explain the legal basis for the powers exercised by public bodies;
- possess a clear understanding of the role of judicial review and the different grounds available for questioning administrative decisions, along with a detailed knowledge of the relevant case-law;
- understand the role of the ombudsman, and be able to explain the degree to which his function and powers differ in the two countries;
- be aware of the various criticisms made of the current administrative law arrangements and ready to evaluate appropriate proposals for their reform;
- be able to assess the role played by historical, cultural and political forces in shaping the differing administrative law traditions in England and the Czech Republic.

TEACHING AND LEARNING STRATEGIES

The course will be taught over the period of 15 weeks during one semester for three hours a week. Of these 15 weeks, 13 are teaching, 1 is the mid-term break, and the final week is reserved for the final exam.

A variety of different teaching methods is used: lectures, pre-class readings, in-depth analysis of selected cases and legal texts during seminar discussions, weekly written seminar assignments, a research paper based on detailed independent study of a particular topic, practical exercises and discussions. In addition to the basic weekly readings set from the course reader, active assistance and encouragement will be given to students to explore the subject further through independent research of cases and specialist literature.

INDICATIVE CONTENT

The module is divided into the following weekly parts in many of which the detailed study of particular cases will play an important role:

1) INTRODUCTION TO ADMINISTRATIVE LAW

History and development of administrative law in England and on the Continent. Function of administrative law. Differences between British and Czech constitutions. Legal basis of powers of public bodies. Accountability of public bodies.

Readings: Bradley & Ewing, pp. 657-673

2) INTRODUCTION TO JUDICIAL REVIEW

Judicial review of administrative action. Remedies. Access to judicial review: *locus standi* and time limits. Exclusion of judicial review.

Readings: Bradley & Ewing, pp. 759-784

3) JUDICIAL REVIEW: PROCEDURAL IMPROPRIETY (1)

Natural justice in English and Czech law. *Nemo iudex in causa sua*: the rule against bias.

Readings: Barnett, pp. 742-763

4) JUDICIAL REVIEW: PROCEDURAL IMPROPRIETY (2)

Audi alteram partem: the right to a fair hearing. When is it necessary?

Readings: Bradley & Ewing, pp. 742-753

5) JUDICIAL REVIEW: PROCEDURAL IMPROPRIETY (3)

Procedural fairness. Legitimate expectations. Failure to give reasons.

Readings: Bradley & Ewing, pp. 753-759

6) JUDICIAL REVIEW: ILLEGALITY (1)

The *ultra vires* rule. Errors of law and of fact. Using powers for the wrong purpose.

Readings: Barnett, pp. 717-727

7) Mid-term break

8) JUDICIAL REVIEW: ILLEGALITY (2)

Taking irrelevant factors into account. Failing to take relevant factors into account. Acting in bad faith.

Readings: Barnett, pp. 727-734

9) JUDICIAL REVIEW: ILLEGALITY (3)

The nature of administrative discretion. Fettering discretion. Unauthorised delegation. Failure to act. Failure to comply with Convention rights.

Readings: Barnett, pp. 734-742

10) JUDICIAL REVIEW: IRRATIONALITY

The concept of unreasonableness in English and Czech law. *Wednesbury* unreasonableness. The doctrine of proportionality. Influence of European law.

Readings: Bradley & Ewing, pp. 735-738

11) TRIBUNALS

What is a tribunal? Advantages of tribunals over courts in theory and practice. Structural and functional differences between English and Czech tribunals.

Readings: Bradley & Ewing, pp. 695-705

12) THE OMBUDSMAN (I)

What is an ombudsman? Historical background. Differing powers and jurisdiction in England and the Czech Republic. Ability to influence governmental bodies and provide a remedy in the individual case. Proposals for reform.

Readings: Bradley & Ewing, pp. 715-724

13) THE OMBUDSMAN (II)

Selected case studies of complaints dealt with by the Ombudsman in England and the Czech Republic. How effective is the Ombudsman?

Readings: Barnett, pp. 765-785

14) DELEGATED LEGISLATION

Historical background. Justification of delegated legislation. Control by Parliament and by the courts.

Readings: Bradley & Ewing, pp. 674-692

15) Final exam

METHODS OF ASSESSMENT

Seminar assignments (30%), research-paper (20%) and final written-exam (50%).

TEXTBOOK

Bradley, A.W. & K.D. Ewing *Constitutional and Administrative Law* (Pearson Education, 14th ed., 2007)

RECOMMENDED LITERATURE

Barnett, H. *Constitutional and Administrative Law* (Routledge-Cavendish Publishing, 7th ed., 2008)

Craig, P. *Administrative Law* (Sweet and Maxwell, 6th ed., 2008)

Hendrych, D. a kol. *Správní právo. Obecná část*. (Praha, C.H. Beck, 7. vydání, 2009) [exerpts in translation]

Sládeček, V. *Obecné správní právo* (Praha, ASPI, 2009) [exerpts in translation]

Thompson, B. and M.J. Allen *Cases and Materials on Constitutional and Administrative Law* (Oxford University Press, 8th ed., 2005)

An AAU reader containing selections from the cases and basic literature accompanies this module.