

Chapter 7

Administrative Adjudication

I. History

Whereas in Germany or France there exist complete systems of administrative courts including several levels of appeal,¹ Austria until 1991 had only limited judicial review of administrative rulings. There was only one (Supreme) Administrative Court (*Verwaltungsgerichtshof*), established in 1867 and operative since 1876, which could be petitioned after exhausting all internal appeals within the various administrative structures. In these structures (municipal, *Land*, and federal authorities), decisions were made and appeals heard on several levels by civil servants who did not enjoy judicial independence, but were subject to the orders and instructions of their superiors. Only as a last resort, an independent judicial authority, the Administrative Court, ensured judicial control over the legality of administrative action.

In 1988, however, the Federal Constitution was amended² to include "Independent Administrative Panels in the *Länder*" (*Unabhängige Verwaltungsenate in den Ländern, UVS*), to be in effect as of 1991. These panels represent an important step forward in supervising the legality of administrative rulings, but still fall short of the quality of genuine courts. Their quasi-judicial decisions may be reviewed subsequently by the Administrative Court.

II. Independent Administrative Panels in the *Länder*

A. Tribunal Quality

When Austria ratified the European Human Rights Convention in 1959, the Austrian administrative penalty procedure was incompatible with the right to liberty as formulated in article 5 of the Convention. Thus, Austria made a reservation excluding the application of that article to measures of deprivation of freedom provided for under the Austrian Administrative Procedure Acts of 1950. Yet Austrian procedure also deviated from article 6 of the Convention, which grants everybody "in the determination of his civil rights and obligations or of any criminal charge against him" the right to a hearing

¹ In Germany, administrative courts have jurisdiction in all public law disputes, unless special administrative courts have been established (social courts, financial courts and the Federal Patent Court), or the question concerns constitutional review, which is reserved to a special Constitutional Court. Trial and appeals courts (*Verwaltungsgerichte, Oberverwaltungsgerichte*) are *Länder* courts, the supreme administrative court is federal (*Bundesverwaltungsgericht*, Federal Administrative Court in Berlin).

² Articles 129 to 129b of the Constitution.