

Case Study:



Source: www.wikipedia.com

"The Inspection and the Internet"

Trier and Thessaloniki

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The first slide shows the topic.

Admissibility: Reviewable administrative act?

Wide spread definition of an individual administrative act:

- Any measure
- of individual scope
- taken by a public authority
- and having legally binding (?)
- and external effects. (?)



The key question of the admissibility test is whether the publication on the internet is a (reviewable) administrative act.

Admissibility: Reviewable administrative act? (No!)

From my perspective as a German judge
I would deny the existence of an administrative act (=decision):

Motto

No administrative act (=decision),

but only (factual) administrative action.

However, under EU law / national Constitutional law the legal protection against any administrative action has to be guaranteed, cf. Art. 47 EU-Charta.



Different legal systems may come to different results. However, if, like in Germany, the publication is not deemed as an administrative act (= decision) there must be a remedy against factual administrative action. Otherwise it would lead to a denial of justice.

Admissibility: Standing (locus standi): Yes!

“Oil unlimited Ltd.”

is directly affected (aggrieved)

in (fundamental) rights

and/or legitimate interests.

The freedom to conduct a business,

“liberté du commerce et de l'industrie”

(cf. Art. 16 EU-Charta / national Constitutional law)



The standing or locus standi of the Ltd. is given. The Company, a legal entity, is directly affected in a fundamental right which is the freedom to conduct a business under Art. 16 of the EU Charter for Fundamental Rights.

Is the lawsuit well-founded?

Legal Empowerment (vulgo: is the naming and shaming ok?)

Did the Local Authority act
within the limits of its domestic legal empowerment ?

The case does not say very much. So, let's assume there is
a domestic legal basis for the competent authority
"to make the report publicly available".

Footnote:

The Industrial Emissions Directive has to be transposed. It cannot
be itself a legal empowerment to act against the entrepreneur.



Slide 5 starts with the requirement of a proper legal empowerment. The trainer should point out that the IED as such cannot be the legal empowerment. The IED has to be transposed into domestic law.

What about Nr. 1?

„The discharge of NO_x is in accordance with the permit, but exceeds the limit values under the IED.“

Solution:

The aim of the report is to name „incompliance“ with the permit condition.

*If there is none, like here, the report insofar is **illegal**.*



Nr.1: Here, the solution lies in the “legalizing effect” of the existing permit. The IED follows this approach by focussing on the incompliance with the “permit condition”.

What about Nr.2?

„The discharge of CO exceeds the limit values of the IED and of the permit.“

Solution:

The aim of the report is to name „incompliance“ with the permit condition.

*Here, there is an incompliance, naming it seems to be **legal**.*



Nr. 2: This is an easy one. Of course, the permit conditions are not met here. Insofar the report can be published.

What about Nr.3?

„ The guard at the entrance of the facility is drunken.“

Solution:

It depends:

If there is a special security system under the conditions of the permit, it may be justified to name the drunken guard.

If not, well then Nr. 3 is illegal.



Nr. 3: The solution depends on the case. Within a mock trial, there is some room for the imagination of the actors.

What about remedies?

Can you as a national judge
issue an order saying

that the public authority

should remove parts
of the report from the internet?



In practice, time is at the essence. The question is whether the claimant can bring an application for interim relief to the court ("speedy case").

What about Interim relief (“speedy case”)
Is a provisional ruling by the Court justified?

(General Requirements drawn from the EU legal order)

- An **application** for judicial interim relief must be filed.
- **Urgency:** Will a (positive) judgment come too late?
(periculum in mora)
- The main case must be - prima facie - **well-founded**
(fumus boni juris)



Some basic requirements for a provisional ruling can be drawn from the EU legal order: Urgency and a prima facie case (fumus boni juris).

Thank you ...

... for your kind attention!

Matthias Keller



This slide speaks for itself.