



university of  
groningen

faculty of law

legal methods



# Law and Legal Skills: the Dutch Example (LLS)

**A.E. (Els) Schipaanboord**

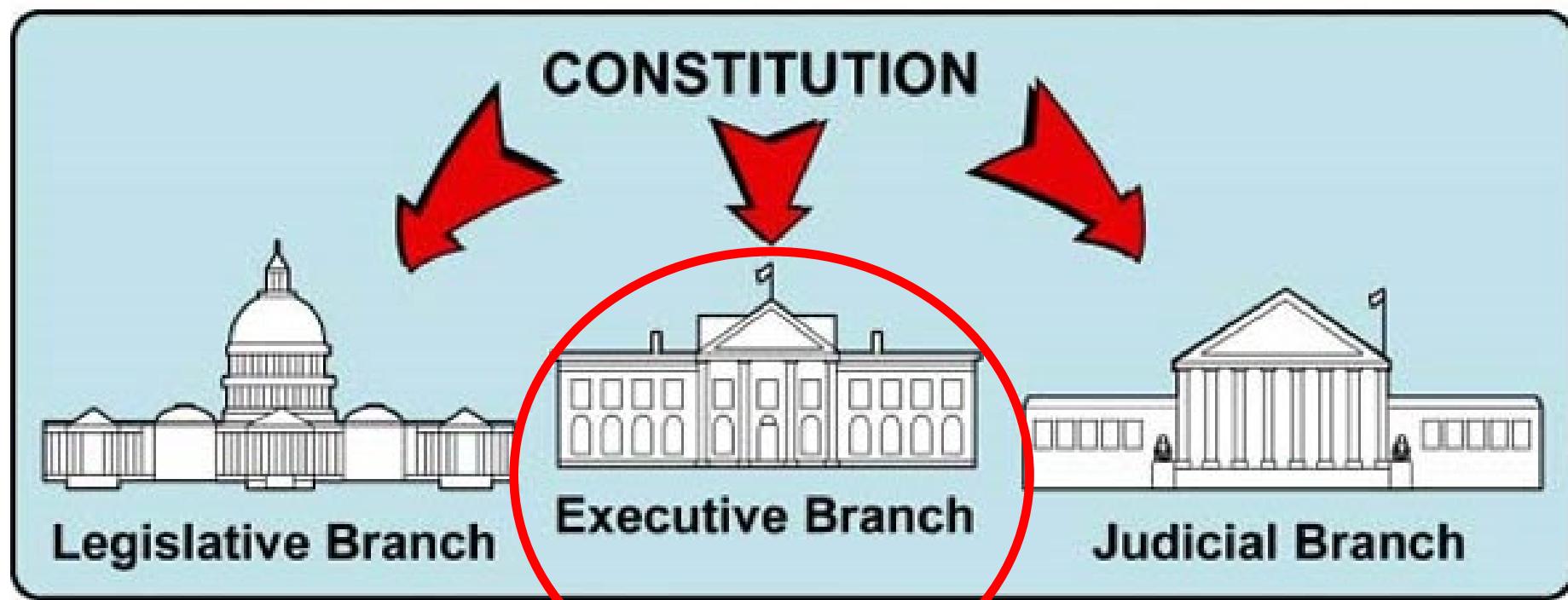
Lecturer and coordinator



e-mail : a.e.schipaanboord@rug.nl (questions?: see Brightspace)  
dept. : Department of Legal Methods

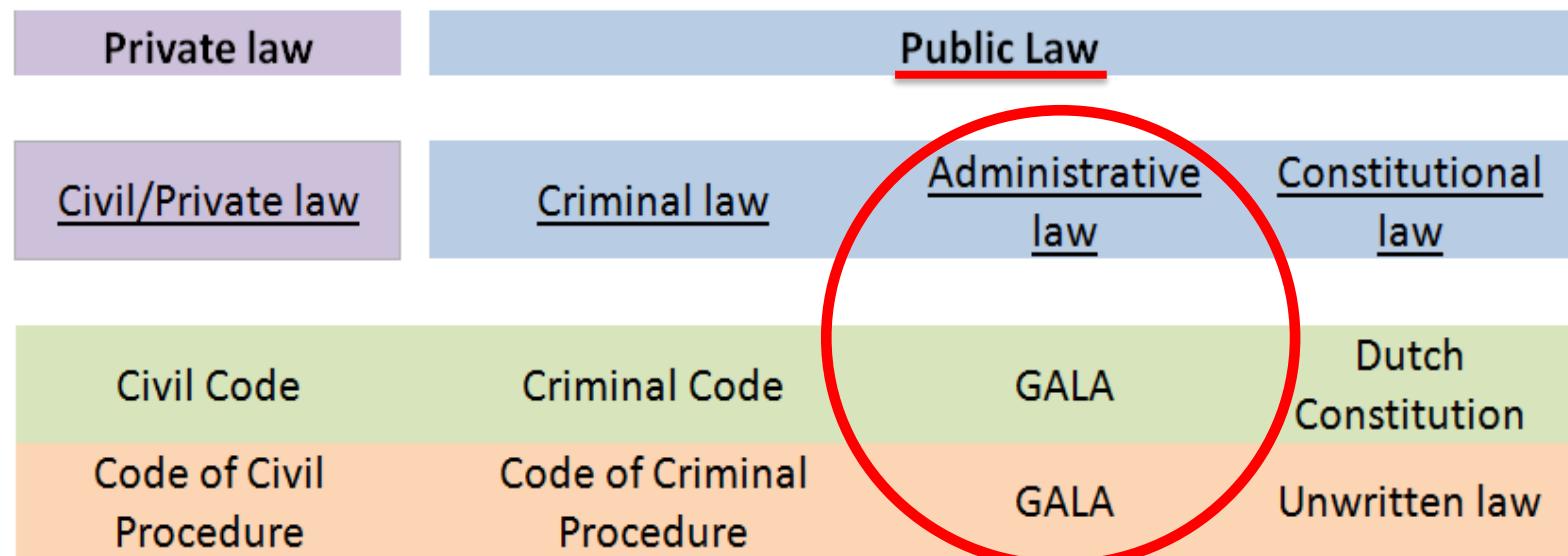


# Administrative law





# Administrative law

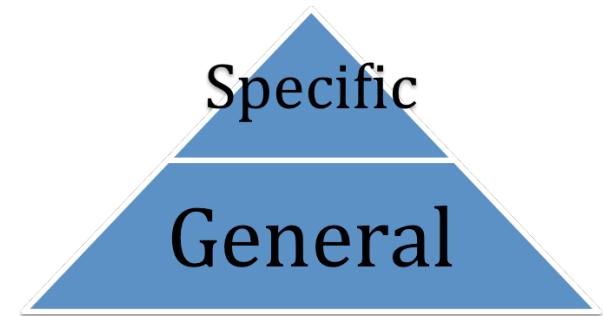


**GALA** = General Administrative Law Act (1994 >)



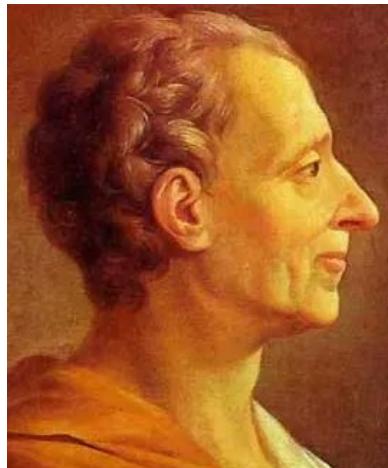
# General Administrative Law Act

- > Preparation of orders
- > Procedure of taking of orders
- > How to challenge orders
- > Often combined with specific legislation
  - E.g. Municipalities Act, Town and Country Planning Act, Student Financial Aid Act, Public Housing Act, Opium Act etc.





# Montesquieu revisited...



On the Executive branch:

*"The sublimity of administration consists in knowing **the proper degree of power** that should be exerted **on different occasions.**"*

Charles Louis de Secondat,  
baron de La Brède et de Montesquieu (1689 - 1755)



# Administrative ↔ Penal law

- Subsidized housing
- Scholarships
- Subsidized health care
- Temporary COVID relief subsidies
- Building permits
- Renewable energy subsidies
- Parking permits
- Child care subsidies
- Refusal/expiration passport
- Statement of proper conduct
- Emission standards (etc.)
- ???





# What do we see?





# Fighting criminal behavior with non-criminal law

Right to a fair trial – Art. 6 ECHR

Closure of drug  
premises

Imposing area  
bans on  
hooligans

Revocation of  
liquor licenses in  
case of money  
laundering



# Lecture outline

## Substantive administrative law

- Administrative authority
- Orders
- Enforcement & sanctioning
- Principles of good governance

## Procedural administrative law

- Appealable/contestable orders
- Who can appeal?  
(in)direct interested party
- Preliminary: notice of objection
- Administrative appeal  
(judiciary)



# Administrative authority

Competence to make unilaterally one-sided binding decisions  
-> only administrative authorities; check exceptions!

Definition (Art. 1:1 par 1 GALA): “Administrative authority”

- (a) organ of a legal entity under public law (-> ‘a’- organ)
- (b) another person or body invested with any public authority  
(-> ‘b’- organ)

! GALA only applies to those who fall under the definition of adm. authority





# Legal entity / Legal person

- ❖ Legal personality

- Established under **public law**: 1:1 (1) (a) GALA
  - by legislator -> statute.
- Established under **private law**: 1:1 (1) (b) GALA
  - by notary -> agreement + formation through private law.



corporation

public limited liability company

shares money legal shareholders

inc. inc. company

federal state

state

control articles written benefits

members filing for profit

organization stock

ownership protection formation

limited s-corp

written

for profit



# Legal entities

Established under public law  
(art. 2:1 Civil Code)

1. The State, the provinces, the municipalities, the water control corporations and all bodies which under the Constitution have the power to issue regulations possess legal personality.

2. Other bodies charged with part of the duties of government possess legal personality only, if this follows from provisions of, or is provided pursuant to the law.

Established under private law  
(art. 2:3 Civil Code)

Associations, cooperatives, mutual insurance societies, companies limited by shares, private companies with limited liability and foundations possess legal personality.



## Adm. authority under 1:1 par 1, under a

Requirements:

I) *Legal entity* (= legal person) under public law

- State, Provinces, Municipalities, Water Boards, Autonomous adm. authorities
- Public legal entities > created by legislator
- Art. 2:1 Dutch CC

II) *Organ* of this legal entity -> mentioned in legislation

- E.g. burgomaster (mayor) *organ* of municipality and mentioned as authority in Municipalities Act (e.g. art. 6) and Opium Act Decree (e.g. art. 13b)



# Other examples a-authorities

- > Government, Ministers
- > Royal Commissioner, Provincial Executive, Provincial Council
- > Burgomaster/Mayor, Council of Burgomaster and Alderman, Municipal Council (check art. 125 Dutch Constitution)
- > Water Board management

## **Autonomous administrative authorities:**

- > Authority for Consumers and Markets (ACM), DUO, Medical Insurance board, Media Authority, Authority for Financial Markets, Forest Service, National Insurance Institute, University of Groningen etc.
  - > Own legal personality
  - > No subordination to minister



## **Adm. authority under 1:1 par 1, under b**

Requirements:

I) 'Another person or body' = legal entity under private law

- Private legal entities > created by a notary
- Art. 2:3 Dutch CC

II) Invested with any public authority

- Clear-cut public task
- Power to make one-sided binding decision(s)



# Examples b-organs

Closed corporation (BV)



Art. 83 Road Traffic Act

Corporation -> public  
limited corporation (NV)



Eg. art. 3:276 Financial Supervision Act



# Exceptions

Art 1:1 par 2 GALA

- Parliament
- Judiciary
- National Ombudsman
- Etc.



THE COUNCIL OF STATE



# Recap adm. authority

- A-auth: - Legal entity under public law
  - Organ mentioned in legislation
- B-auth: - Legal entity under private law
  - Invested with any authority



# Orders

**Definition**, art. 1:3 par 1 GALA:

1. Written decision
2. Of an administrative authority
3. Constituting a public law act (juridical act)

What is a juridical **fact**?

What is a legal (juridical) **act** in public law?

-> intention to create public law consequences

! GALA: -> *law act* and *legal act*

Dutch Civil Code: *juridical act*, e.g. art. 3:33



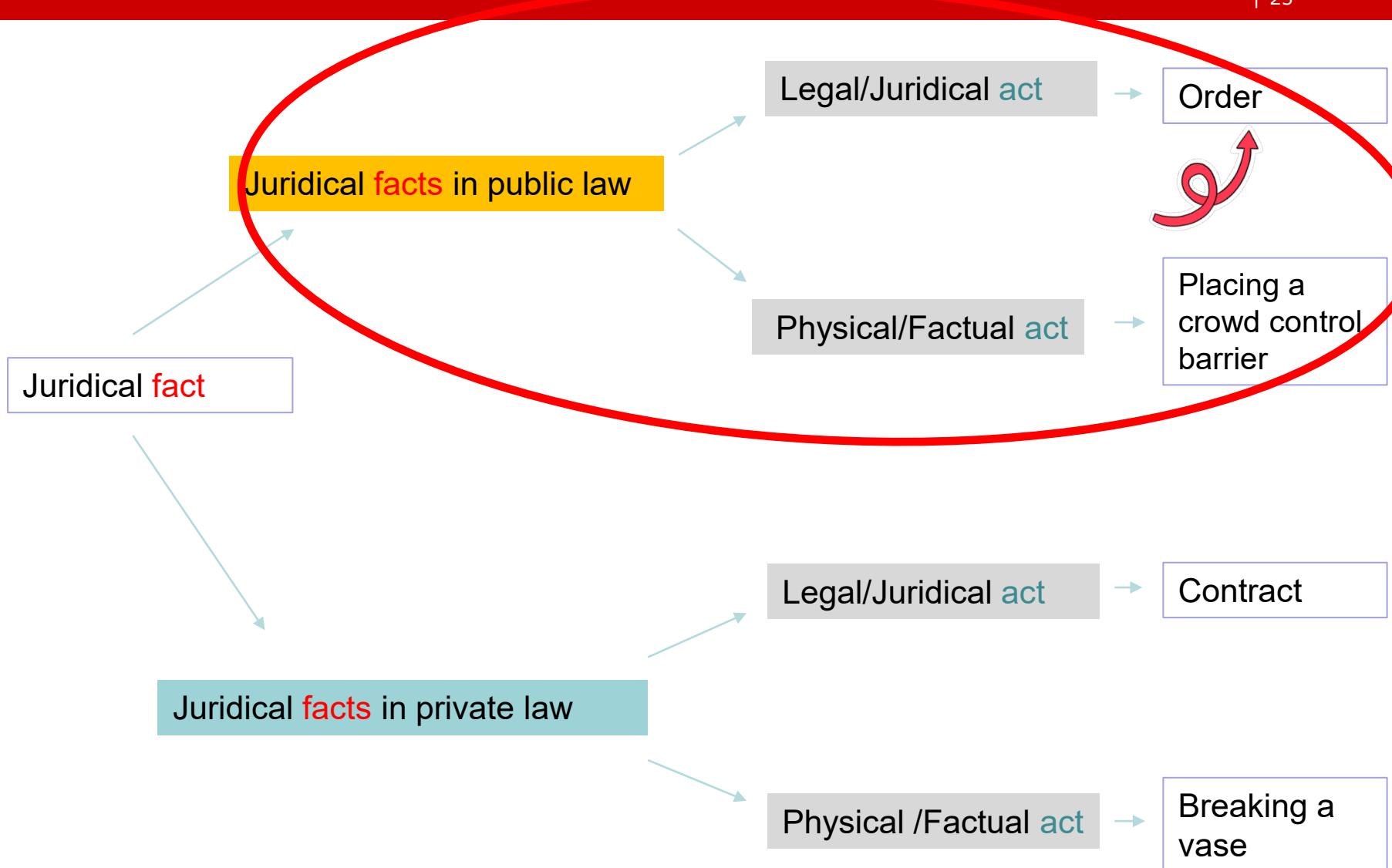
# Juridical facts

Juridical **facts** in public law



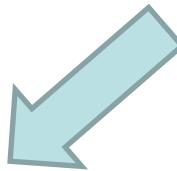
Juridical **facts** in private law







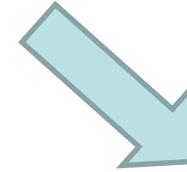
# Juridical facts public law



## Physical ACT

- No legal consequence (intended)
- Physical deed

E.g. pave public road, work in public garden or sewer, dig canal, provide information



## Legal ACT -> order

- Intended legal consequence
- Change in legal status, creates right or duty

E.g. give out license, assign subsidy, impose tax, condemnation of a dwelling, prohibition to park





## Recap 'Order': General characteristics

1. Written -> 3:40 GALA



2. Of an administrative authority



3. Constituting a public law **act** (legal **act**)

- Public -> Authority exercises public power
- Law act -> Intended legal consequence
  - Conscious change in legal reality



# Types of orders

**Classification:** Article 1:3 par 2 GALA

A. *Orders of a general nature*

1. General binding regulations (gbr)
2. Administratives measures
3. Policy rules



B. *Orders NOT of a general nature*

1. Administrative decision (= individual)
2. Rejection of application for an administrative decision a equals a decision





# Orders

## A. 1) General binding regulation (GBR)

- General rule
- Repeatable
- No deviation possible
- Independent regulation



**NB** The formal legislator is not an AA (1:1-2(a) GALA)  
GBR's from formal legislator are not an order



# Orders

## A. 2) Administrative measures

- Effect general as well as specific
- No independent legal character (requires gbr)
  - Fills in range of general binding regulation



Example:

- Prohibition in by-law (gbr), f.e. municipal by-law
- Placing relevant traffic signs in applicable zones (measure)

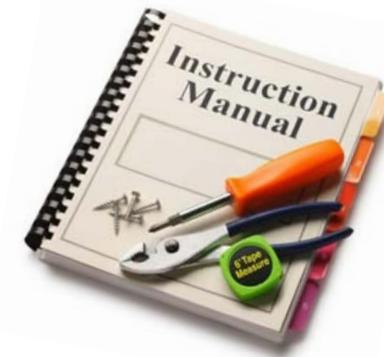




# Orders

## A. 3) Policy rules

- Defined in art. 1:3 par 4 GALA: General rule for:
  - weighing of interests
  - determining facts
  - interpreting statutory legislation
- Similar to general binding regulations
- Discretion: instruction for civil servants
- Deviation (Art. 4:84 GALA)
- Binding if rules are made public





# Orders

## B. 1) Administrative decision



- A specific person or object = Not of a general nature
- Creates right/duty or changes legal status
- Favourable/unfavourable



# Orders

## B. 2) Rejection of application

- Equals a decision, 1:3 par 2 GALA
- Strictly speaking no legal consequence
- GALA nevertheless applicable



Problem: a rejection has no legal consequences!

Thus: not a juridical public law act...

Solution: a rejection equals a decision

Consequence: possibility to contest rejection





# Recap + example

- **Gbr** = prohibition to cultivate cannabis + option coercive action
- **Adm. measure** = ban on smoking cannabis in specific areas in Amsterdam 'blowverbod'
- **Policy rule** =
  - \*home cultivation  $\leq$  5 plants or less for private use -> law not enforced, seizure may follow
  - \* $\geq$ 5 plants or more -> no warning before imposing sanction
- **Adm. decision** = decision with notice of coercive action





# Power?

- > Criminal law, or
- > Administrative power?





# Lecture outline

## Substantive administrative law

- Administrative authority ✓
- Orders ✓
- Enforcement & sanctioning
- Principles of good governance

## Procedural administrative law

- Appealable/contestable orders
- Who can appeal?  
(in)direct interested party
- Preliminary: notice of objection
- Administrative appeal  
(judiciary)



# Enforcement & sanctions

Title 5 GALA

## Classification of sanctions

- Reparatory
  - coercive action
  - coercive penalty payment
- Punitive
  - administrative fine
- See: 5:2 par 1 under b and c GALA





# Reparation sanctions

## Coercive action

- Instruction with threat of physical intervention + deadline
- After time limit -> cost reparation for wrongdoer
- See 5:1, 5:2 par 1 under b, 5:21 GALA
  - Legislator brought phenomenon under scope/protection of GALA



www.bigstock.com · 8245593



# Reparation sanctions

## Coercive penalty payment



- Instruction under threat of paying sum of money + deadline
- After time limit -> collection of forfeited sum
- See 5:1, 5:2 par 1 under b, 5:31d GALA
- Alternative to coercive action -> 5:32 GALA



# Punitive sanctions

## Administrative fine

- Direct (unconditional) obligation to pay sum of money
- Punitive -> art. 5:40 par 1 GALA
- Transferred from criminal law to administrative law
- No judicial intervention beforehand but access to court afterwards -> 6 ECHR (right to fair trial)



# Type of sanction?



Punitive sanctions



Restorative sanctions



# To sum up

- Concept 1: administrative authority
  - a- and b- authorities
- Concept 2: order
  - gbr, adm. measures, policy rules, adm. decision
- Enforcement and sanctions
  - Coercive action, coercive penalty payment, adm. fine



# Principles of good governance

- Limits power of public body / adm. authority
  - 'General principles of proper administration'
  - Substantive norms for decision-making
- Not all codified in GALA
- E.g. principle of legitimate expectations, administrative principle of equality



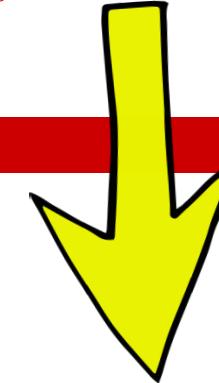
# Lecture outline

Substantive administrative law

- Administrative authority
- Orders
- Enforcement & sanctioning
- Principles of good governance

Procedural administrative law

- Appealable/contestable orders
- Who can appeal?  
(in)direct interested party
- Preliminary: notice of objection
- Administrative appeal  
(judiciary)





# Procedural administrative law

Invoking legal protection in administrative court

## Three requirements:

- Appealable/contestable order
- Interested party
- Preliminary procedure (administrative authority)



Administrative Court





# Appealable/contestable orders?

- › Types of orders in general:
- Gbr
- Policy rules
- Adm. measure
- Adm. decision (rejection included)

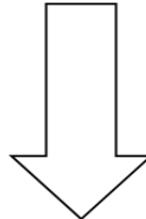
Which order appealable/contestable in  
***administrative*** court?



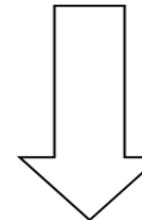
# Jurisdiction adm. court

- Generally binding regulation
- Policy rules
- Physical action
- Private disputes
- Adm. measures
- Adm. decision (incl. refusal)

**! See art. 8:3 GALA**



Civil Court



Adm. court



# Procedural administrative law

Invoking legal protection in administrative court

## Three requirements:

- Appealable/contestable order ✓
- Interested party
- Preliminary procedure (administrative authority)



Administrative Court





# Interested party

Art. 1:2 par 1 GALA

'Interested party' means a person whose interest is directly affected by an order.

Two variants:

1. Directly interested party
2. Interested third party (case law, Groningen!)

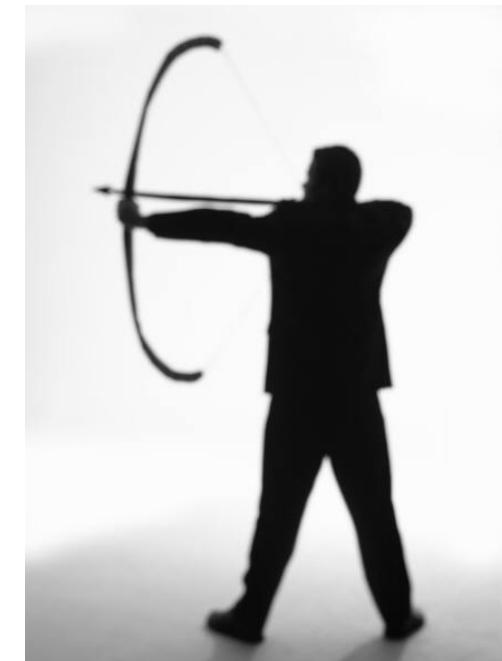


# Directly Interested party

Directly interested party:

Addressee of the order (person or object)

- recipient of right/duty





# Interested third party

Concern should be:

- Own* -> not caretaker
- Personal* -> distinguishable from mass
- Objective* -> NOT merely emotional
- Current* -> not dependent on future event
- Directly linked to decision* -> causal connection





# Procedural administrative law

Invoking legal protection in administrative court

## Three requirements:

- Appealable/contestable order ✓
- Interested party ✓
- Preliminary procedure (administrative authority)



Administrative Court





# Notice of objection procedure

(preliminary proc.)

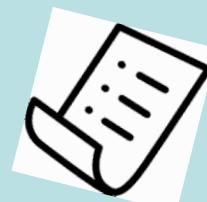
-> Administrative authority takes



1) Original decision



- interested party objects to 1<sup>st</sup> decision
- hearing + advise from committee to adm. authority



2) Decision after objection



# Notice of objection procedure

- > Reconsideration by *adm. authority*
  - \* Usually the *original decision maker* (6:4-1 GALA)
- > Threshold before court
- > Free of charge!
- > Art. 8:1 and 7:1 GALA
- > Full reconsideration: judicial and functional!





# Notice of objection procedure

Notice of objection must contain:

- Name, Address, Date
- Description decision
- Objections -> Not only legal arguments
- Signature



6:5 GALA

> Explain point of view at hearing



# Procedural administrative law

Invoking legal protection in administrative court

## Three requirements:

- Appealable/contestable order ✓
- Interested party ✓
- Preliminary procedure (administrative authority) ✓



Administrative Court





# Contestability decision

- Contestable order?  
1:3 (1) GALA: 3 requirements  
[Check: 8:1 jo 7:1 jo 8:3 jo 1:2 GALA?]
- Interested party?  
1:2 GALA: direct vs indirect (case law)
- Preliminary procedure?  
8:1 jo 7:1 jo 8:3 (and following)

So 1:3 jo 1:2 jo 8:1 jo 7:1 jo 8:3 and following



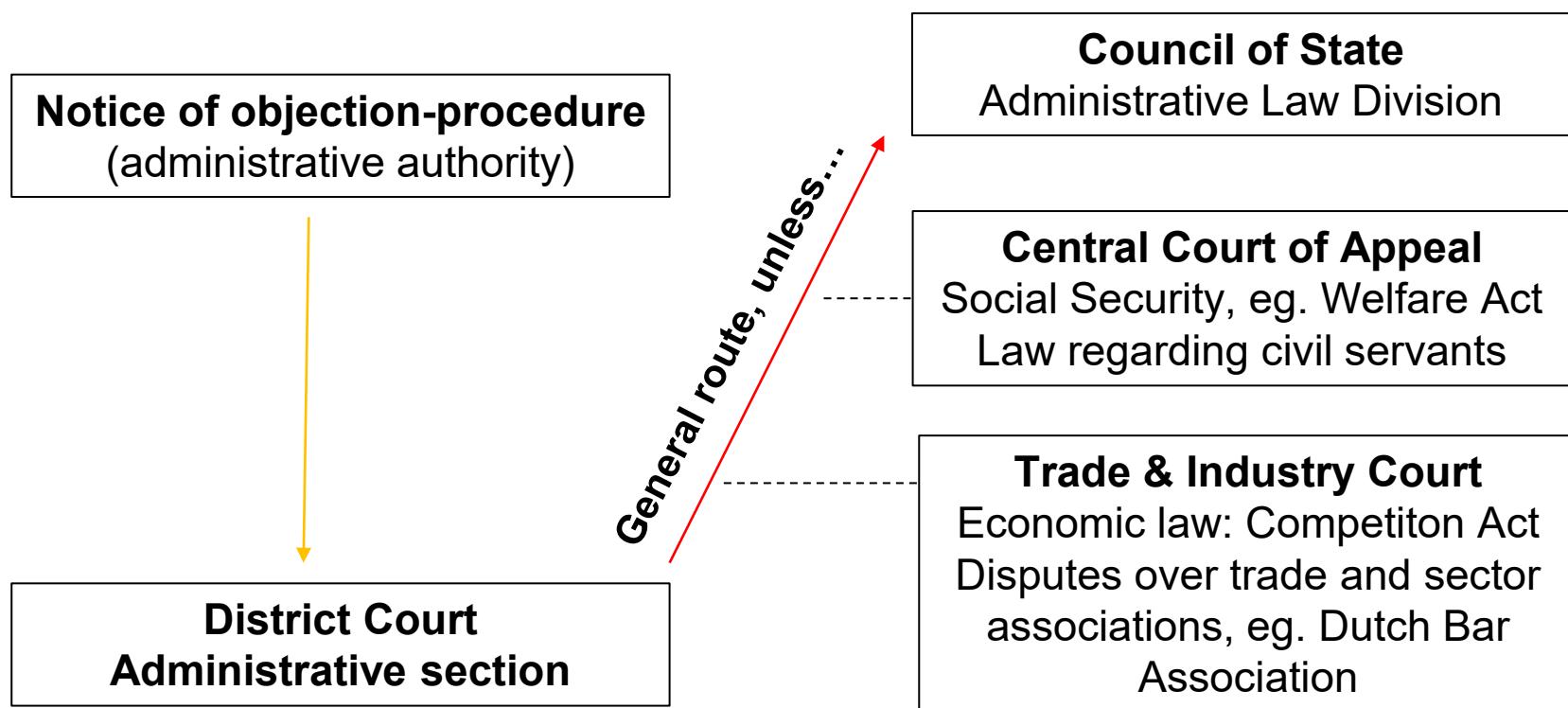
# Appeal in court



- > Two litigation paths
- > 1. Adm. proceedings:
  - 1<sup>st</sup> inst. *Notice of objection procedure*
  - 2<sup>nd</sup> inst. Appeal at District court, adm. Sector
  - 3<sup>rd</sup> and last inst. -> highest courts:
    - Council of State, Adm. Law Division
    - Central Appeals Court
    - Trade and Industry Court
- 2. Civil proceeding (oldest courts, left overs)



# Administrative proceedings





# Outcome administrative appeal

Possible verdicts administrative judge: (8:70)

- Lacks jurisdiction → Other court jurisdiction
- Inadmissible → Appeal filed too late; not an interested party
- Unfounded → Plaintiff loses
- Well-founded → Authority loses



After verdict well-founded: (8:72)

- Annulment/quashing decision → Back to adm. authority
- Annulment + judge replaces decision himself



# Lecture outline

## Substantive administrative law

- Administrative authority
- Orders
- Enforcement & sanctioning
- Principles of good governance

## Procedural administrative law

- Appealable/contestable orders
- Who can appeal?  
(in)direct interested party
- Preliminary: notice of objection
- Administrative appeal  
(judiciary)



# See you next week!

Good luck with the preparations!!

