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Cutting Off the Heads of the Hydra: Current Reforms in German Administrative Litigation Law

Abstract

In Germany, a discussion of accelerating administrative court proceedings has been going on for years. The new federal government has joined the debate and in 2022 presented a bill to accelerate energy transition, which is primarily aimed at changes in substantive law, but also seeks to accelerate the overall duration through changes in the procedural law of the administrative courts. However, the article shows that attempts to shorten the duration of administrative court proceedings inevitably go hand in hand with losses in the effectiveness of legal protection, which is protected under constitutional law in Germany.

Keywords: administrative court process, concentration of jurisdiction, negligence of errors, provisional legal protection, suspensive effect

I Introduction

Reforms in German administrative procedural law are reminiscent of the mythological Heracles fighting the hydra: every time a malformed head of the snake is cut off, two new heads grow in the immediate vicinity. This can also currently be observed under the reign of the so-called 'traffic light coalition' of SPD, The Greens and FDP, which has been in power in Germany since December 2021. Their central political agenda is aimed at achieving the climate protection targets by accelerating the expansion of renewable energies. In this context, it has once again been criticised that this expansion is progressing only slowly in reality, contrary to the optimistic time expectations that had been set for it. This affects not only the politically desired erection of more wind turbines, but also the construction of

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power lines to transport the regeneratively generated electricity from the north of Germany to the south of the country, which has so far been supplied mainly by nuclear energy. With this criticism, the debate on acceleration that has been well-known in Germany for more than 20 years is once again entering the political arena, merely in a new guise.

In particular, in waves of increasingly shorter amplitudes, we repeatedly complain about the excessive duration of official and administrative court proceedings. In the past, it related to the construction and approval of industrial plants, today it is about the construction and approval of wind power plants. This discussion often ignores the fact that approval procedures, especially for infrastructure projects or other projects subject to environmental law, are already highly complex in themselves, which, in view of the right to full judicial review, often requires the judge to delve into scientific or technical issues. In addition, political actors often – consciously or unconsciously – send the wrong signals and nurture unrealistic hopes, such as when the public was given the impression that the transmission lines needed for the energy transition could be planned, built and put into operation within three to five years. Everyone who is halfway familiar with the process and the inherent laws of planning and zoning procedures knew from the beginning that it´s only wishful thinking that dominates; this is just a 'blue-eyed promise'.

In the meantime, politicians have also apparently identified administrative jurisdiction as a disruptive factor in the realisation of major projects. In June 2019, following several acceleration laws in the field of specialised law, the Bundesrat presented a bill to amend the Administrative Court Code,[1] which had been prepared in advance using legal opinions from the legal profession.[2] However, this draft could not finally be debated in the Bundestag due to the expiry of the legislative period. In April 2022, the new Federal Government presented an energy policy amendment in the form of the so-called 'Easter Package',[3] the aim of which is to accelerate the expansion of renewable energies. This law, which was passed by the Bundestag on 7 July 2022,[4] provides for various measures that are predominantly based on energy law and its supporters thus hope to achieve an acceleration effect. But why have the possibilities for acceleration offered by German administrative procedural

[1] BT-Dr. 19/10992.

[2] Wolfgang Ewer, 'Möglichkeiten zur Beschleunigung verwaltungsgerichtlicher Verfahren über Vorhaben zur Errichtung von Infrastruktureinrichtungen und Industrieanlagen: Gutachten für den Normenkontrollrat' (April 2019) <https://www.normenkontrollrat.bund.de/resource/blob/300864/1600406/f0613bfaa6ea13b6a35d756672387d29/2019-04-17-nkr-gutachten-2018-data.pdf?download=1> accessed 16 November 2022; Olaf Reidt, Frank Fellenberg, 'Rechtliche Stellungnahme zur Beschleunigung von Planungs- und Genehmigungsverfahren für Gewerbeansiedlungen und Infrastrukturvorhaben' (December 2018) <https://www.ihk-kassel.de/wirtschaftsstandort/standortentwicklung/schwerpunktthema-gemeinsaminfrastrukturbeschleunigen-4352752> accessed 16 November 2022.

[3] See the following bill, BT-Dr. 20/1630.

[4] Gesetz zu Sofortmaßnahmen für einen beschleunigten Ausbau der erneuerbaren Energien und weiteren Maßnahmen im Stromsektor vom 20. Juli 2022 (BGBl. 2022 I S. 1237) [Law for immediate measures for an accelerated expansion of renewable energies and further measures in the electricity sector dated 20 July 2022)].

law been largely exhausted? The preliminary assumption of the following article is that all further shortening options under discussion inevitably lead to negative consequential effects that either counteract the hoped-for acceleration effects or even lead to unconstitutional impairment of rights.

II Extension of First Instance Jurisdiction of the OVG and BVerwG

The long duration of planning and approval procedures is first and foremost a problem of the administrative procedure before the authorities and, in this respect, not least a consequence of the cascade of public participation procedures provided for in sectoral law, which, for example, provides for sixfold public participation in the construction and modification of extra-high voltage grids.[5] If the duration of subsequent disputes before the administrative courts is also taken into consideration, one possibility for acceleration is often seen in extending the first instance jurisdiction of the higher administrative courts or the Federal Administrative Court. As such, the aforementioned draft of the Federal Council also provided for extending the catalogue of first-instance jurisdiction of the Higher Administrative Court (OVG) in section 48(1) sentence 1 VwGO to include further matters.[6] Above all, however, in order to accelerate the expansion of wind power plants, the first instance jurisdiction for 'the construction, operation and modification of plants for the use of onshore wind energy with a total height of more than 50 metres' was transferred to the higher administrative courts at the end of 2020 (section 48(1) sentence 1 no. 3a VwGO).[7] A draft bill[8] currently under discussion provides for further extensions of this catalogue of competences.

This amendment, passed towards the end of the term of office of the old federal government under Chancellor Merkel, realised a political goal envisaged in the coalition agreement of the time 'to limit administrative court proceedings to one instance for selected

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[5] See generally Thomas Mann, 'Repräsentative Demokratie in der Krise: Jahrestagung 2012' (2012) 72 Vereinigung der Deutschen Staatsrechtslehrer 546 (561 et seqq); Claudio Franzius supposes even seven participation stages by including the proposal conference within the *Bundesfachplanung*, see Claudio Franzius, 'Stuttgart 21: Eine Epochenwende?' (2012) Gewerbearchiv 225 (229).

[6] See Art. 1 Ziffer 5 of the bill from the Bundesrat, BT-Dr. 19/10992, S. 7. Regarding further plans to let the OVG decide all plan approval processes in the first instance, see NRW-Justizminister Biesenbach DRiZ 2018, 330 (332).

[7] See Art. 1 Nr. 1 des Gesetzes zur Beschleunigung von Investitionen vom 3. Dezember 2020 (BGBl. I 2022 p. 2694) [art. 1. nr.1 Law to accelerate investions dated 3 December 2020].

[8] Referentenentwurf eines Gesetzes zur Beschleunigung von verwaltungsgerichtlichen Verfahren im Infrastrukturbereich vom 18.8.2022 [Ministerial draft of a law to accelerate the lawsuits of public administration courts in the infrastructure sector] <https://www.bmj.de/SharedDocs/Gesetzgebungsverfahren/DE/Beschleunigung_verwaltungsgerichtliche_Verfahren.html> including all statements from the hearing of the associations, accessed 13 November 2022.

projects with overriding public interest [...]'.[9] From a legal point of view, this question raises the tension between substantive justice and legal certainty, both of which – on the one hand in the form of the subjective guarantee of legal protection and on the other hand as a guarantee of timely (effective) legal protection – are rooted in Article 19(4) of the Basic Law.[10] This tension is why this fundamental right does not in principle guarantee a right to several administrative court instances.[11] The restriction of the judicial procedure to only one instance of factual jurisdiction brought about by the elevation to the OVG therefore certainly promises a reduction of the overall duration of planned projects.[12] This is due to the fact that the administrative authorities have already carried out a comprehensive investigation of the facts in the plan approvals predominantly affected, which – unlike in the case of 'simple' decisions by the administration – could compensate for a lack of instance of factual jurisdiction.[13]

On the other hand, there is a non-systemic change in the catalogue of competences. The original purpose of concentrating individual projects at the OVG or BVerwG was their supra-regional significance. In this respect, both § 48 VwGO and the catalogue of jurisdiction applicable to the BVerwG in § 50 VwGO have an 'exceptional character',[14] which is intended to take account of the special function of these higher courts. The argument of complexity, which is the sole reason for the recent changes in the catalogue of jurisdiction, would also apply to numerous other matters in dispute – basically to all project approvals that are subject to an obligation to conduct an environmental impact assessment (EIA obligation).[15] In this respect, a 'backlash effect' must be warned against, because an overly generous expansion of section 48 VwGO could be to the detriment of the subjects of litigation already contained therein, which have already been identified as priority infrastructure and industrial projects.[16]

However, a decisive element, both for the hoped-for acceleration effect and for the associated effective legal protection of the plaintiffs, is the accompanying significant increase in the number of judges at the OVG. The example of North Rhine-Westphalia has

[9] See the coalition agreement between CDU, CSU and SPD for the 19th legislative period 'Ein neuer Aufbruch für Europa, Eine neue Dynamik für Deutschland, Ein neuer Zusammenhalt für unser Land' (March 2018) 75 lines 3417 et seqq.

[10] BVerfG, Urt. 16.5.1995 – 1 BvR 1087/91, BVerfGE 93, 1 (13); BVerfG, Beschl. v. 24.9.2009 – 1 BvR 1304/09, Neue Zeitschrift für Sozialrecht (2010) 381 (382).

[11] BVerfG, Beschl. v. 24.6.2014 – 1 BvR 2926/13, BVerfGE 136, 382 (392) = Neue Zeitschrift für Verwaltungsrecht (2014) 2853 (2856).

[12] Reidt, Fellenberg (n 2) 49.

[13] Thus in the readings of the bill Peter Biesenbach, BR-PlProt. 977, p. 183 et seqq.

[14] Nicolai Panzer in Friedrich Schoch, Jens-Peter Schneider, Wolfgang Bier, *Verwaltungsgerichtsordnung* (C.H. Beck 2022, München) § 48 margin nr. 2.

[15] See the consistent suggestion to extend the jurisdiction of the OVG as first instance on all litigation regarding the *Umweltrechtsbehelfsgesetz* (Environmental legal remedy law) by Klaus Rennert, Verhandlungen des 71. Deutschen Juristen Tages in Essen, 2016, Bd. II/1 – Thesis 13.

[16] Ewer (n 2) 11.

shown that, without such an increase in personnel, the acceleration expectations placed in the expansion of the catalogue of section 48 VwGO cannot be fulfilled. Before the aforementioned amendment to the law at the end of 2020, seven administrative courts in North Rhine-Westphalia had jurisdiction at first instance for actions against the erection of wind turbines; thereafter only one senate with three judges at the Higher Administrative Court had jurisdiction for all such proceedings while also having jurisdiction for other subject matters. It is obvious that such a personnel constellation does not contribute to speeding up the proceedings, but to slowing them down, thus thwarting the plans of the federal legislator. It took more than a year before a new specialised senate, specifically responsible for wind turbines, could be established at the OVG in Münster. On the one hand, this has led to a specialisation of the judiciary, which creates an expectation of acceleration, but it has not eliminated the problem of the high volume of business. Seven administrative courts can bring several cases to a conclusion simultaneously, while one senate can only deal with its cases consecutively.[17]

III Disregard of Remediable Deficiencies in Preliminary Legal Protection

The draft bill,[18] which is currently in a formal association hearing, intends to supplement the concentration of jurisdiction in sections 48 and 50 VwGO by taking precautions to avoid delays in proceedings for interim relief. To this end, it provides for the insertion of a section 80c VwGO, which – in relation to certain proceedings before the OVG, such as the approval of wind power plants pursuant to section 48(1) sentence 1 no. 3a VwGO – wants to allow the courts to disregard a defect in the administrative act in proceedings for the order or restoration of the suspensive effect 'if it is obvious that it will be remedied in the foreseeable future'. Examples of defects affected by this are 'a violation of procedural and formal requirements or a defect in the weighing of interests in the context of the plan approval'. The applicants are only granted the right to apply for a stay of execution if a period of grace granted by the courts to remedy the deficiencies has expired without success.

This legal innovation calls into question the very essence of provisional legal protection under the VwGO. After all, this precisely concerns preventing the occurrence *of faits accomplis*. However, if the aforementioned deficiencies of the administrative act are now excluded as legal arguments from the proceedings for interim relief, this regulation leads to a conflict with the effective guarantee of legal protection under Article 19(4) of the Basic Law. Furthermore, it would be worth considering whether this would not contradict Article 9(4) sentence 1 and Article 9(2) of the Aarhus Convention. In any case, it is doubtful from a practical point of view

[17] On further criticism see Thomas Mann, 'Adhäsionsverfahren, konzentriertes Verfahren, OVG-Zuständigkeit' (2020) 53 (1) Zeitschrift für Rechtspolitik 20 (21).

[18] See (n 8).

whether the hoped-for acceleration effect can be achieved. In particular, if the deficiencies of the administrative act are 'obvious', as envisaged in the draft bill, a decision could be taken quickly, which would help the applicants to obtain their rights. The rectification that would then be required would possibly lead to a new application for interim legal protection, but the gain in time that could be achieved by setting the envisaged court deadline is only marginal, especially since the court would always have to enter into an additional examination after the supposed 'rectification' as to whether the authority has also fully complied with its petition to rectify the deficiencies, because. it is only if this is the case that an application for a stay of execution could be excluded.

IV Abolition of Suspensive Effect

The aforementioned considerations also show the limits of another acceleration instrument already in use. The above-mentioned Investment Acceleration Act of December 2020[19] introduced a new section 63 into the Federal Immission Control Act. It provides that 'objections and actions for annulment by a third party against the approval of an onshore wind turbine with a total height of more than 50 metres [...] have no suspensive effect'. Actions against wind turbines located at the higher administrative courts of first instance are thus affected. Although such legal changes in specialised law, which deny the suspensive effect of legal remedies by third parties (private individuals or nature conservation associations) against the approval of such installations, have always been included in administrative procedural law via § 80 para 2 sentence 1 no. 3 VwGO, they do not generally lead to a shortening of the legal dispute. Instead, plaintiffs now additionally resort to the constitutionally guaranteed path of provisional legal protection, so that their actions are exceptionally granted a suspensive effect by the court due to overriding private interests. The acceleration effect achieved on the one hand is thus accompanied by an increase in proceedings on the other hand; a vicious circle is created by the legal protection guarantee of Article 19(4) of the Basic Law.

This is where section 80c(4) VwGO of the current draft bill on the amendment of the VwGO[20] comes in. It has the effect of interweaving the VwGO with the stipulation in the Renewable Energy Sources Act (EEG) made by the current Federal Government through the 'Easter Package' that the use of renewable energies is in the overriding public interest and serves public safety [section 2(1) sentence 1 EEG]. In this respect, the draft amendment to the VwGO provides that the court 'shall give special consideration to the importance of infrastructure measures within the framework of a balancing of enforcement consequences if a federal law determines that they are in the overriding public interest'.

[19] See (n 7).
[20] See (n 8).

If this regulation becomes applicable law, it will become more difficult for applicants for interim legal protection to assert their interests in the weighing of interests to be carried out pursuant to section 80(4) VwGO. The number of cases in which applicants will be able to assert themselves successfully in preliminary legal protection proceedings will then probably decrease significantly.

While on the one hand this planned amendment has the potential to speed up proceedings, on the other there is already a conflict with the state objective of environmental protection laid down in Article 20a of the Basic Law, insofar as altruistic actions by environmental associations are concerned. Precisely because the BVerfG, in its climate protection decision of March 2021,[21] particularly emphasised the special value of environmental and climate protection concerns, it can be eagerly awaited how the administrative courts will make their balancing decisions on the tightrope stretched between constitutionally enriched environmental protection and legally forced procedural acceleration. If only because a priority standardised in simple law does not also prevail over private interests secured by fundamental rights and public interests of constitutional rank (e.g. animal protection in Article 20a of the Basic Law), which are asserted in practically every individual case, the acceleration effect hoped for in this respect is also likely to fizzle out in many cases.

V Concentrated Proceedings

A significant delaying factor in German administrative court proceedings involving the approval of large-scale industrial or infrastructural projects is the written submissions by the parties. In addition to the statement of grounds and the statement of defence, the parties often respond to the arguments of the opposing side with extensive pleadings, the page-length of which is in the upper two-digit range, or they submit arguments on factual details that are supposedly of central importance for the decision. This is because the applied court regularly does not pre-structure the subject matter of the case or limit it by setting court deadlines. This is where a second reform proposal comes in, which is intended to shorten complex administrative court proceedings. In the Bundesrat draft, the insertion of a new section 87c VwGO was planned, which would make so-called concentrated proceedings possible. The idea behind this is that the court will agree on the further course of action in a kind of 'procedural timetable' in an early meeting with the parties and that the chairman or rapporteur will then issue an 'order on the progress of the entire proceedings' [section 87c (2) VwGO-E] as early as possible. This innovation is expected to have a disciplinary effect, both on the part of the court (problem-focused conduct of proceedings) and on the parties (more cooperative conduct of

[21] BVerfG, Beschl. vom 24.3.2021 – 1 BvR 2656/18 u.a., BVerfG E 157, 30 ff. = NJW 2021, 1723 ff.

proceedings).[22] In order to achieve this, the administrative courts are to be allowed, with the consent of the parties, to set deadlines for submission and deadlines for decisions by which the parties must, for example, present their case on certain legal issues, state facts, designate evidence or even finally present their case. If these deadlines can be set with preclusive effect, the court should be able to reject late submissions and decide without further investigation.

One advantage of this solution for complex authorisation proceedings is obvious: If the court pre-structures the subject matter of the proceedings at an early stage and separates the issues that it considers unproblematic from those that are relevant to the decision, the parties' further submissions can thus concentrate on the issues that have been identified as essential. The necessity to replicate in detail all issues raised by the opposing side as a precautionary measure is eliminated, and the submissions could be channelled in a solution-oriented manner. On the other hand, even under the legal situation already in force, an administrative court is not prevented from making appropriate procedural orders. The adjudicating court can point out the legal questions which, in its opinion, are relevant to the decision and invite the parties to make specific submissions.[23] Above all, § 87b VwGO,[24] which was already introduced in 1991, opens up the possibility to call upon the plaintiff to make a submission substantiating the action (para. 1) and to order all parties to state facts, designate evidence or submit documents (para. 2), in each case setting a time limit. Statements and evidence submitted after the expiry of the time limit are to be rejected pursuant to section 87b(3) VwGO and the court can then decide without further investigation. The draft bill currently under discussion takes up this criticism and only provides for one early hearing for discussion of the written submissions in section 87c(2) VwGO draft. At the same time, section 87b VwGO is to be supplemented in a new paragraph 4 by a possibility to reject unexcused late submissions.[25]

The only truly new thing would be the request to the parties to 'finally present their case', which would be linked to a time limit. This would at least put an end to the bad practice of extensive written submissions being received by the court on the days immediately preceding a scheduled oral hearing. These writings often only repeat the arguments from the case material already known, but sometimes also surprisingly present a new submission on detailed questions, which then causes the opposing side to again submit a long sprint brief in the procedural home stretch.

From a constitutional point of view, however, one will have to ask whether such a procedural 'conclusion' is compatible with the principle of the right to be heard [Article 103(1) GG, section 108(2) VwGO]. In my opinion, this is the case, since the request is intended to give the parties the opportunity to comment on the facts and evidence relevant for the judge's

[22] See the reasons to section 7 of the bill from the Bundesrat, BT-Dr. 19/10992, S. 17.

[23] See Martin Beckmann, 'Gerichtliche Vollprüfung und zeitgerechter Rechtsschutz' (2019) Die Öffentliche Verwaltung, 773 (777).

[24] This rule applies also to the appeal proceeding pursuant to § 125 para 1 VwGO.

[25] See the ministerial draft (n 8) 4.

need to form an opinion. However, it would have to be ensured that no preclusion occurs if the affected party is not responsible for their delay.[26] This also reduces the likelihood of an unconstitutional surprise judgement, in other words a decision in which the court expresses a legal or factual point of view that had not been discussed until then as the basis of its decision and thus gives the legal dispute a turn that the parties had no reason to expect after the previous course of the proceedings.[27]

However, it is questionable whether a legal standardisation in § 87c VwGO will lead to the judges using this instrument more frequently[28] than the possibilities for setting deadlines already given so far under § 87b VwGO. Above all, it is doubtful that the replacement of the unilateral regulation by the court pursuant to section 87b VwGO, the previous acceleration effect of which is seen negatively anyway,[29] by shortening the procedure agreed upon with the parties, has a chance of materialising in court practice. Just as in more extensive planning and approval procedures in nuclear law or in the construction of power lines (keyword: underground cabling[30]), the fronts between the parties involved in the construction of new wind turbines are often so hardened that an acceleration effect through a voluntary limitation of submissions is not to be expected.[31]

Accordingly, it is questionable whether there is a legal policy need at all for the introduction of a voluntarily entered preclusion. Because the parties involved cannot yet adequately assess the spectrum of issues that may become relevant at the beginning of the proceedings, the actual satisfying function of court proceedings will be missed and the intended acceleration effect will turn into its opposite.[32] This fear is mainly based on the fact that the preclusion of late submissions can lead to further 'sideshows', in which the existence of the prerequisites for rejection can be disputed,[33] as is already the case with regard to section 87b(3) VwGO.[34] Such a development could hardly be avoided, even if the rapporteur

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[26] Regarding the last aspect see also Peter Biesenbach, BR-PlProt. 977, S. 183.

[27] BVerfG, Urt. v. 19.5.1992 – 1 BvR 986/91, BVerfGE 86, 133 (144 f.); BVerwG Beschl. v. 15.5.2008 – 2 B 77/07, Neue Zeitschrift für Verwaltungsrecht (2008) 1025 margin nr. 20; Beschl. v. 2.3.2010 – 6 B 72/09, Neue Zeitschrift für Verwaltungsrecht (2010) 845 margin nr. 14.

[28] Thus the reasons to section 7 of the bill from the Bundesrat, BT-Dr. 19/10992, S. 17. See also Biesenbach, BR-PlProt. 977, S. 183.

[29] Harald Geiger in Eyermann et al. (eds), *VwGO* (14th edn, C.H. Beck 2014, München), § 87b margin nr. 1; Peter Kothe in Redeker, v. Oertzen (eds), *VwGO* (17th edn, Kohlhammer 2022, Stuttgart), § 87b margin nr. 2; Beckmann (n 23) 773 (777); Karsten Ortloff, Kai Riese in Schoch, Schneider, Bier, *VwGO* (C.H. Beck 2022, München) § 87b margin nr. 47 (*keine praktische Bedeutung* ['no practical meaning']).

[30] On this subject Thomas Mann, *Rechtsfragen der Anordnung von Erdverkabelungsabschnitten bei 380 kV-Pilotvorhaben nach EnLAG* (Nomos 2017, Baden-Baden); Thomas Mann, Shaghayegh Kian, 'Erdkabel bei Abstandsunterschreitungen zu Dorf- und Mischgebieten?' (2016) Neue Zeitschrift für Verwaltungsrecht 1443 ff.

[31] In this sense with empirical findings see Ewer (n 2) 12; see also Beckmann (n 23) 773 (777).

[32] See the concerns in the reasons to the recommendation of the committee, BR-Dr. 113/1/19 (neu) 11.

[33] See also Ortloff, Riese (n 29) § 87b margin nr. 47 with reference to the, in this respect, extensive jurisprudence in the civil lawsuit.

[34] With more sources from the jurisprudence see Christian Baudewin, Sabine Großkurth, 'Die Präklusion im Verwaltungsrecht: Bedeutung, Chancen, Risiken' (2018) (22) Neue Zeitschrift für Verwaltungsrecht 1674 et seqq.

acted particularly carefully, even if they first comprehensively ascertained the state of the facts and of the dispute in order to be able to make their order in accordance with them. This would also require more work, which would counteract the desired acceleration effect and would therefore not arouse much enthusiasm on the part of the administrative judges for such 'acceleration legislation' through the introduction of a concentrated procedure.

Above all, however, it would have to be examined, before realising such a reform project, whether or not the preclusion of late submissions within the proceedings would, lead to a conflict with the principle of investigation in administrative proceedings,[35] which is constitutionally secured by Article 19(4) sentence 1 of the Basic Law, the principle of the rule of law in Article 20(3) and fundamental rights.

VI Conclusion

The initiatives presented to accelerate and improve administrative court proceedings demonstrate the necessity and possibility of moderate reforms, but at the same time they face the challenge of having to strike a fair balance between the opposing maxims of a full administrative judicial review and timely legal protection. The possibilities for this are limited, and it will not be possible to find an ideal solution that is beyond criticism. However, many of the reform proposals fail to achieve the goal of further reducing the duration of administrative court proceedings for infrastructure projects that are important for the energy transition, without compromising the constitutionally guaranteed effectiveness of legal protection. Heracles must think of another tactic – otherwise Hydra will continue to keep her many heads high.

[35] On this subject Wolf-Rüdiger Schenke, *Verwaltungsprozessrecht* (17th edn, C.F. Müller 2021, Heidelberg), margin nr. 23 et seqq; Friedhelm Hufen, *Verwaltungsprozessrecht* (12th edn, C.H. Beck 2021, München) § 35 margin nr. 21 et seqq; Thomas Mann, Volker Wahrendorf, *Verwaltungsprozessrecht* (4th edn, Vahlen 2015, München) margin nr. 48.