SEMINAR ORGANISED BY THE FEDERAL ADMINISTRATIVE COURT OF GERMANY

IN CO-OPERATION WITH ACA-EUROPE

LEIPZIG 2 FEBRUARY 2026

REDEFINING THE TERMS AND LIMITS OF JUDICIAL REVIEW, PARTICULARLY IN RELATION TO DISPUTES OF A HIGHLY TECHNICAL NATURE

QUESTIONNAIRE

The prohibition of denial of justice or - as its twin principle - the right of access to justice put courts under an obligation to hear and assess the facts of a case and to rightfully apply the law to the facts established. In some cases this is easier said than done. Especially cases of a highly technical nature may pose extraordinary challenges to the court: challenges in understanding the facts and challenges in understanding scientific or technical answers to problems. This may occur in many fields of law the administrative judge works in, such as environmental law, telecommunications law, planning law, public procurement law etc.
In order to prevent a denial of justice courts will have to deal with such questions even though their answers may lie outside of the field of competence of the administrative judge. The seminar is designed to serve as a point of comparison and a point of best practice in order to facilitate the administrative judge with more knowledge and skills in this part of his and her work. Therefore, the seminar addresses questions of gathering technical and scientific knowhow, involving experts in the procedure, evaluating technical standards and measuring the binding authority of technical documents and publications - be it legal norms or scientific standards. The seminar will also have to address questions regarding margins of appreciation of authorities in technical evaluations.

Part 1: Jurisdiction in fields of law typically producing disputes of a highly technical nature

1. Is your court competent to answer:
   - Questions of fact and questions of law **X**
   - Only questions of law
   - Questions of law and partly questions of fact
   - In case your answer was " Questions of law and partly questions of fact", please explain:
     The High Administrative Court of the Republic of Croatia is in principle a court with the purpose of ensuring the legality and unifying application of law in administrative matters as an appellate court in administrative disputes. It is mainly competent to decide on questions of law. Its role is to review whether the law has been applied correctly by lower administrative courts and administrative bodies. This includes interpreting legal norms and ensuring that judicial practice is harmonized across the country. While the Court's focus is on legal questions, it can, in certain circumstances, review questions of fact. Specifically, if it finds that a first-instance administrative court has incorrectly determined a decisive fact or failed to establish a crucial fact, the High Administrative Court has the authority to annul the lower court's judgment and remand the case for retrial. This power is exercised when there has been a substantial violation of procedural rules or a significant error in the establishment of facts that could affect the legality of the decision (Art. 135. Administrative Disputes

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Act). The High Administrative Court does not generally conduct a full retrial or re-examine all factual elements of a case. Its intervention regarding facts is exceptional and typically procedural - ensuring that the lower court properly established the facts and did not commit significant errors or omissions. But also, the High Administrative Court is competent to decide in the first instance on the lawfulness of general acts (for example, regulations and other general legal acts of public authorities), which means the Court can annul or declare invalid a general act that is found to be unlawful. In addition to reviewing general acts, the High Administrative Court may also act as a first instance court in other cases specifically provided for by special laws (access to information, competition law, conflict of interest, public procurement). However, such exceptions must be justified and explained in the relevant legislation, and recent legal reforms have aimed to limit the number of these exceptions to ensure the two-instance system remains the rule. Therefore, when acting as a first instance court, the High Administrative Court is competent to answer questions of law and partly questions of fact. This means it does not limit itself only to legal questions but also considers factual matters where they are crucial to resolving the case at hand.

2. Is your court competent in the following fields of law:

- Environmental law **X**
- Health law **X**
- Urban planning and building law and/or spatial planning law **X**
- Telecommunications law **X**
- Public Procurement law **X**

Please provide other fields of law, which bear a technical challenge to your court:
Social law, Pension law, Asylum law, Access to information law, Competition law, Labour law, Intellectual property law, Conflict of Interest law, Financial law, General administration law (including citizenship and rights of foreigners)

3. Give an estimate or - if possible - a number as to how many legal disputes of a highly technical nature your court is faced with on an annual basis

- In percentage of all disputes:
- In absolute numbers:

It is not possible to estimate exact number of legal disputes of a highly technical nature the High Administrative Court has faced on an annual basis, but the most disputes were regarding public procurement. In 2024, the Court received a total of 5194 cases out of which 112 were regarding to public procurement, and by 1 July 2025 the court received a total of 2950 cases out of which 50 were public procurement cases. As mentioned in this questionnaire, there are a lot more disputes in other administrative fields in which highly technical knowledge has been applied, but there are no statistics on their exact numbers.

4. In what field of law, in which kind of cases do you specifically see technical challenges to the judges of your court?
Please explain:
In the fields of law listed in question no. 2. Special relevance is given to questions of public procurement, market competition, telecommunication, all cases where the medical knowledge is necessary and in all general administration cases covering a broad field in which expertise from different legal fields is required.

Part 2: Facing modern challenges in disputes of a highly technical nature

5. Does your court employ technical staff in order to help the judges better understand technical questions?
- Yes
  - As research assistants
  - As additional judges
  - In another function (e.g. as a separate panel etc.).
    Please explain:
- No **X**

6. In case your answer was yes:
a) How many persons of the technical staff are employed at your court?
- In percentage of all staff involved in decision-making:
- In absolute numbers of all staff involved in decision-making:

b) How are these persons involved in the decision-making process? Please explain:
c) How does the transfer of knowledge take place? Please explain (e.g. preparation of reports, discussions in session etc.):
not applicable

7. How does your court cope with technical questions, which need to be understood to solve the case?
- Judges have to understand the technical questions/have to acquire the necessary knowledge themselves **X**
- Judges may rely on external experts **X**
- Judges may rely on internal experts
- Other (please provide a method):

Please explain your answer:
In many cases, judges are capable of coping with technical questions by means of experience and/or by way of the submissions the parties make during litigation. Concerning many technical questions, the public authority involved and/or another party will have gathered external expertise during the administrative procedure which is made available to the court. Only if such external expertise is substantially questioned by another party and if the court lacks the necessary technical expertise of its own, external experts may be mandated by the court. This is a form of gathering evidence provided for by the Administrative Disputes Act. In practice, the court of first instance will most often order the taking of evidence by means of a judicial report, which evidence will be produced by the court, on a proposal from one of the parties, where, in order to establish or clarify what facts the court does not possess. The Court will also produce evidence by expert examination where, in order to clarify the facts, it is necessary to assess the professional basis of civil servants of public law bodies carried out in proceedings prior to an administrative dispute. If the court carries out an expert opinion for that reason, it may hear the official who drew up the expert basis in the proceedings preceding the administrative dispute as to the reasons for the specific basis. The Court will determine whether the expert will present his or her report orally at the hearing or in writing before the hearing, and then the Court will conduct the expert's report, identify the expert the subject matter to be examined, ask him or her questions and, where appropriate, ask him or her for explanations on the findings and opinions given. This applies to the High Administrative Court when ruling as a first instance court, but there is no data that this possibility has been used by far.
The court may not base its decision on a "burden of proof" without having previously consulted with an external expert (as a means of evidence, see above). Yet, the parties are under the obligation to contribute to the litigation. So, if external expertise is made available by the public authority and it is not substantially

put in question by one of the other parties or the court, then the court may rely on this external expertise although it was originally mandated by the public authority being a party of the litigation.

8. If judges may rely on external experts: Are these experts
- Chosen by the court **X**
- Recommended by one of the parties
- Recommended by a public authority
- Other (please provide a method):

Please explain your answer:
In the cases where external expertise is mandated by the court (see above, question no. 7), the court is under full obligation to choose the external expert. The right to be heard will put the court under an obligation to previously consult with the parties about the choice of expert. The parties are allowed to make proposals which do not have to be followed by the court.

9. To answer technical questions: May the court rely on technical expertise as laid down in:
- Regulations **X**
- Other government documents or documents by public bodies **X**
- Documents published by the EU Commission **X**
- Documents published by experts or groups of experts **X**
- Other (please provide a means of technical expertise):

Please explain your answer:
Regulations as part of the positive law have a binding effect on the court. Their stipulations have to be followed by the court.
Some legal conventions which formally are only binding on the administration have been recognized by the administrative jurisprudence to set the technical standard. They are being applied in the same manner as laws.
Documents of the EU Commission (recommendations etc.) have to be considered an authoritative interpretation of the law. They have major importance for the interpretation of EU law. Yet, they are not binding. This means that decisions contrary to the content of these documents is possible, but it would put the court under the obligation of providing good reasons for deviating from the content.
In scientific areas in which the legislator has not yet set standards the courts may rely on scientific or technical guidelines set up by private experts or expert organisations insofar as they are widely recognized. The preparation of these guidelines will usually require a large-scale effort of several renowned experts, which allows public authorities and their experts, the general public and NGOs to participate in the process. On such a guideline the court may rely. The court may consider technical documents, reports, and analyses produced by government agencies or public bodies as part of the evidence or background for its decisions.
Where there is neither a legislative measure nor a recognized guideline of the described quality the public authority may rely on a scientific approach or guideline which does not have to be generally recognized. As long as this approach seems reasonable and is not obviously deficient, the court is not in a position to question the public authority's decision based on such an approach. The court does not have to get into a discussion which of several reasonable approaches is more suitable. Insofar, the public authority is granted a certain margin of appreciation.
All in all, the Court may consider scientific studies, expert reports, and publications by recognized experts or professional groups when such information is relevant to the technical aspects of a case.
As mentioned in question no. 7, the best way is to order expert examinations and appoint independent experts to provide opinions on specialized technical matters. This is a direct way for the court to obtain and rely on technical expertise that goes beyond the written record or regulatory assessments.

10. If your answer was yes regarding any of the criteria of question 9: To what extent does this technical expertise have a binding effect.

- The judges are bound by these documents
- The judges may rely on these documents without being bound
- The judges are not formally, but factually bound by these documents
- Other (please provide the extent of binding effect):

Please explain your answer:
See answer to question no. 9.

11. How does the court react if technical questions relevant to the case cannot be answered, not even with expert help?
Please explain:
Article 53 (2) of the Administrative Disputes Act stipulates that if the court cannot positively establish a fact on the basis of the evidence adduced, it will conclude on the existence of a fact by applying the rules on the burden of proof without that being detrimental to the rights of the ignorant parties. As explained in the answer to question no. 9, concerning scientific or technical questions which are not answered with expert help, the court may rely on any reasonable expertise served during the administrative proceedings, if the applicant has failed to prove the outlined facts, because the applicant (complainant) bears the burden of proof.

12. Do these criteria described in part 2 of the questionnaire also apply to proceedings granting temporary relief?

- Yes, without modification **X**
- No.

Please explain the modifications:
When deciding on requests for temporary relief (such as interim measures or suspensions), the Court must often assess technical, factual, or regulatory complexities quickly and effectively. This approach ensures that even in urgent or provisional proceedings, the Court's decisions are informed by the necessary technical expertise and factual understanding, just as in regular proceedings. The use of technical expertise is not limited by the type of procedure but is a general principle that applies whenever such knowledge is needed to resolve the matter at hand.

Part 3: Principles determining the assessment of a case's factual basis

13. Which constitutional or other general principle of law determines the obligation of the court to assess the case on a factual basis:

- The prohibition of the denial of justice **X**
- Human rights **X**
- Aarhus Convention **X**
- Other. **X**

Please explain:
The obligation of the High Administrative Court of the Republic of Croatia to assess cases on a factual basis primarily stems from the constitutional principle of the right to judicial review and fair trial, which is part of the broader framework of human rights guaranteed by the Croatian Constitution. Article 19 of the Constitution explicitly guarantees judicial review of individual decisions made by governmental agencies and other public authorities, ensuring that such decisions are grounded in law and subject to court scrutiny. This

constitutional guarantee implies that courts, including the High Administrative Court, must examine both legal and factual aspects of a case to ensure justice is served.
Furthermore, the prohibition of the denial of justice, as enshrined in article 29 para 1 of the Croatian Constitution, stipulates that everyone has the right to have a legally established independent and impartial court rule fairly and within a reasonable time on his rights and obligations, or on suspicion or accusation of a criminal offence. The Judiciary Act reinforces this by mandating that courts decide cases in compliance with the Constitution, laws, and international treaties, and that everyone is entitled to have their rights fairly and publicly argued before an independent and impartial court within a reasonable time. This legal framework obliges the High Administrative Court to assess cases on their factual merits to uphold the rule of law and protect fundamental rights.
In that point of view, human rights principles require the court to conduct a thorough factual and legal examination of administrative decisions to ensure they comply with the law and respect individual rights; guarantee procedural fairness, including the right to a fair hearing and the right to appeal, which are fundamental human rights protected under Croatian law and international human rights treaties; prevent arbitrary or unlawful detention and other administrative measures, as highlighted by the European Court of Human Rights (ECtHR) case law, which influences Croatian administrative judicial review, especially in sensitive cases such as migrant detention; and promote transparency and good administration, in line with pan-European general principles of good administration, which have been integrated into Croatian administrative law and court practice.
Considering a broad field of decision making in administrative matters, all rights derived from international treaties and European human rights standards have a elevated importance and need to be take into a consideration, but most often it is the right to property and the prohibition of discrimination.
Yet, if there is no unanimous opinion in the expert community the court is not obliged to initiate new scientific research (see above, answers to questions no. 9 and no. 11). If the public authority bases its decision on a reasonable scientific approach, the court will only review this decision under the aspect of obvious deficiencies in this approach.
The Aarhus Convention does not have a direct effect on technical questions before court. Yet, it lays ground especially for NGO litigation in environmental law, which in many cases raise technical questions of environmental law.

14. In your jurisprudence, does the legislature and/or the competent public authority dispose of a margin of appreciation when addressing technical questions?
Please explain:
In Croatian jurisprudence, both the legislature and competent public authorities do enjoy a margin of appreciation when addressing technical questions, especially those involving complex factual assessments or policy considerations. This concept aligns with the broader European human rights framework where the margin of appreciation doctrine recognizes that national authorities are generally better placed to evaluate the necessity, appropriateness, and proportionality of certain measures, particularly in areas requiring specialized knowledge or balancing competing interests. The European Court of Human Rights (ECtHR) has explained that this margin is based on the idea that national authorities have better access to factual information and are more familiar with their own constitutional values and legal traditions. Therefore, courts - including those in Croatia - tend to defer to national decision-makers on technical or policy matters unless their decisions are clearly unreasonable, arbitrary, or manifestly disproportionate.
In practice, this means that when Croatian courts review administrative or legislative acts involving technical questions - such as economic regulation, environmental standards, or public health measures - they typically allow a degree of discretion to the legislature or competent authorities. The courts intervene primarily if there is a clear violation of fundamental rights or if the decision lacks a reasonable justification.

Thus, the margin of appreciation in Croatian administrative and constitutional law functions as a flexible standard of judicial deference, balancing respect for national sovereignty and expertise with the protection of fundamental rights.

15. Is there any (legal) procedure established to remedy shortcomings in the assessment of the case's factual basis?
Please explain:
In cases where the administration's assessment of the case's factual basis of the case shows deficiencies, the court will have to gather and investigate the facts. If this is not possible or highly uneconomic, it may also oblige the public authority to remedy these deficiencies.
As mentioned above, the High Administrative Court of Croatia has the authority to review both legal and factual aspects of administrative decisions, as prescribed by the Administrative Disputes Law and the Constitution, which guarantees judicial protection of rights against public authorities. This means that if a lower administrative court or authority has failed to properly assess the facts, the High Administrative Court can re-examine the factual circumstances during its review. Moreover, the Croatian judicial system has formal mechanisms for evaluating judges' performance and conduct, which indirectly contribute to remedying factual assessment shortcomings. The Courts Act and the Methodology for Evaluating the Performance of Judicial Duties provide criteria and procedures for assessing judges, including their handling of factual issues, and allow for appeals and reviews within judicial councils. This system aims to ensure judicial decisions are well-founded both legally and factually. In addition, procedural rules and inspection mechanisms exist to oversee court proceedings and ensure compliance with fair trial standards, including the requirement for reasoned decisions, which obliges courts to explain how they assessed the facts. If a party believes the factual assessment was flawed, they may seek remedies through appeals or constitutional complaints, which can lead to re-examination of the case facts.

Part 4: Case study

16. Can you name any cases your court has had to answer which are of special relevance to the questions asked in this questionnaire?
Please give a brief description of the case and your court's solution to it:

In a recent case (judgement of 28 May 2025 – Us II – 86/2025-8) the Court had to decide a case concerning the subject of public procurement - replacement of existing lighting fixtures with more efficient LED lighting fixtures in the City of Umag in 2025. The contracting authority specified in the procurement documents (DON) the technical characteristics of the lighting fixtures, including the power requirement: "to the 35W", as well as for the luminous flux: "≥ 5000 lm" and the obligation to hold CE, ENEC and ENEC + certificates. On 5 March 2025, the contracting authority adopted a selection decision selecting the applicant's tender. On appeal of another bidder (interested person in the dispute), the contested decision of the State Commission for the Control of Public Procurement Procedures (DKOM) annulled the selection and the case was returned to the contracting authority for re-examination. The (legal) question to be answered was whether the contracting authority was right to conclude that the applicant had demonstrated that the lamp PLX-890-Mini-35W_3000K_CLII had the required ENEC + certificate or whether that lamp met the technical characteristics required by DON in the tendering procedure in question (luminous flux ≥ 5000 lm). The applicant argued that the luminous flux depends on the type of optical lens accompanying the lamp and that the offered lamp, without an optical lens, has a luminous flux of 7070 lumens, well above the 5000 lumens required. On the other hand, the lamp sent to the SIQ test laboratory, in the process of lamp certification, had lens A, which dimmed the light source, so the output luminous flux of the finished lamp (LED + optical lens A) was recorded at 4183 lumens. The lamp offered in the tendering procedure in question is prepared with lens B, so that the

output luminous flux of the finished lamp (LED + optical lens B) is recorded with 5050 lumens. It follows that the luminous flux of the lamp offered is greater than that recorded in the ENEC + certificate. The court does, of course, not dispose of an own technical competence in this field. Yet, it was able to decide whether the applicant has provided technical documentation from which it can be established unequivocally that the product offered fully complies with the requirements of the technical specification. The Court upheld the DKOM's assessment that the applicant had not established on what basis the fact that the offered lamp PLX-890-Mini-35W_3000K_CLII satisfied all the requirements of DON in terms of technical characteristics. It is not disputed that the data contained in the ENEC + certificate provided by the applicant in the present proceedings relating to the luminous flux of the lamp at issue PLX-890-Mini-35W_3000K_CLII do not correspond to the required luminous flux values laid down in the client's cost statement (luminous flux ≥ 5000 lm). In doing so, the Court did not accept that THE ENEC + certificate IS not a document from which the light flow of the lamp to which the certificate relates would be evident. In the light of the DKOM's finding that it has not been established that the applicant's tender, which was selected as the most advantageous, meets the requirements of the DON, with the result that the case was referred back to the contracting authority, it must be pointed out that, in the course of the proceedings, all the decisive facts of the case will be re-examined, in which case the applicant will have the opportunity to prove that the products offered satisfy the requirements of the DON in their entirety.