



**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
- Only questions of law
- Questions of law and partly questions of fact      X
- In case your answer was " Questions of law and partly questions of fact", please explain:

*The Supreme Constitutional Court's main tasks is the preservation of the constitutional order, through the interpretation of the Constitution and the safeguard of the Rule of Law.*

*The Supreme Constitutional Court has, among other powers, exclusive jurisdiction to:*

1. *Decide in a final and conclusive way on constitutional and administrative matters.*
2. *Decide in a final and conclusive way on every matter concerning Articles 137 to 151 of the Constitution, such as:*





- i. *Recourses concerning conflict or questioning of authority or competence, raised between any organs or authorities of the Republic (Article 139).*
- ii. *Referrals by the President of the Republic for an opinion in relation to the constitutionality of laws, before they come into force (Article 140).*
- iii. *Referrals by other Courts for a preliminary ruling regarding the constitutionality of a law, which has already been enacted and is already in force (Article 144).*
- iv. *The Supreme Constitutional Court, in a case provided by law, where an appeal is referred before it by the Court of Appeal, shall have jurisdiction, as a law may provide, to determine on such appeal and the Court of Appeal, in any other case, shall have jurisdiction to determine on an appeal made against a decision of an Administrative Court having exclusive jurisdiction to decide in the first instance on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority is contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person. Additionally, the Supreme Constitutional Court shall have jurisdiction to determine, in a case provided for by law and as a law may prescribe, on a decision given by the Court of Appeal on an appeal pending before it against a decision of an Administrative Court (Article 146(1)).*

*The Supreme Constitutional Court is empowered to answer questions of fact under its jurisdictions, paragraph 2(iv) above. However, even under these jurisdictions, the Court functions as a revisional Court and cannot go into the merits of a finding of technical nature nor it can substitute the findings of the administrative body decision with its own, except in tax and asylum cases. Nevertheless, the Court will annul the decision of an administrative body, concerning technical matters, if it is satisfied that:*

- (a) it violates one or more constitutional provisions and or*
- (b) it is not in accordance with the law and or*
- (c) the administrative body acted in excess or abuse of powers and or*
- (d) the administrative body acted under misconception of fact or law and or*
- (e) did not examine the factual basis of the case thoroughly.*

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:

Competition law & Copyright law





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: -

*No data is available on this matter.*

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:

*See answers to questions 1 and 2 above.*

## 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
  - o As research assistants
  - o As additional judges
  - o In another function (e.g. as a separate panel etc.).

Please explain:

- No X

6. In case your answer was yes: *Not applicable*

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.):

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
- Judges may rely on internal experts
- Other (please provide a method): The submissions of the parties.

Please explain your answer:

*In cases where judges have to decide on technical issues, in order to do so, they rely on the facts, including technical facts, stated in the submissions, provided that those facts are not contested.*

*(Please note that when a case is tried, first instance, if its facts are contested, the parties may obtain permission from the court to provide further evidence, including oral evidence.)*

8. If judges may rely on external experts: Are these experts

- Chosen by the court





- Recommended by one of the parties
- Recommended by a public authority
- Other (please provide a method):

Please explain your answer: *Not applicable*

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
- Other (please provide a means of technical expertise): *The parties' submissions and reports/ documents in the administrative file.*

Please explain your answer:

1. Regulations have a binding effect. Their stipulations, including those of a technical nature, are followed by the Supreme Constitutional Court.
2. Documents of the EU Commission (recommendations etc.) provide guidance as to the interpretation of EU law, even though they are not binding.
3. The Supreme Constitutional Court, as already stated above, takes into consideration facts stated in the parties' submissions and reports/documents in the administrative files.

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 9 above.*

11. How does the court react if technical questions relevant to the case cannot be answered, not even with expert help?

Please explain:

*As explained in answer to question 1, above, the Supreme Constitutional Court has no jurisdiction to decide on its own, technical questions. Hence, no such case has been recorded.*

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

- Yes, without modification
- No X

Please explain the modifications:

Courts may issue interim relief/order (order granting temporary relief) suspending the effects of the administrative act until the case is fully heard only if it is satisfied that there is a risk of irreparable harm or manifest illegality, meaning that the administrative act is *prima facie* illegal and the illegality is evident from the administrative act itself. Therefore, during these interim proceedings, Courts do not proceed to examine in a *conclusive way* the technical issues.





### 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
- Other. *Rule of law, Principle of legality, Article 30 of the Constitution which guarantees the right to a fair and public hearing (and Article 6 of the European Convention on Human Rights).*

Please explain:

*As explained in answer to question 1 above, the Supreme Constitutional Court has primarily jurisdiction to answer questions of law. Nevertheless, the Supreme Constitutional Court is empowered to answer questions of fact, under its jurisdictions numbered 2(iv) listed in the answer to question 1 above and it will also examine the grounds for annulment based on legal issues even when those issues are intertwined with technical assessments.*

*The obligation of the Court to assess the case on a factual basis, is not recorded as a single "doctrine or principle" but it is based on various and fundamental doctrines and principles such as the rule of law, the rule of legality and the obligation of the Court to safeguard the right to a fair hearing.*

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:

*Both the legislature and the competent public authority are granted a margin of appreciation.*

*The Legislature generally enjoys a broad margin of appreciation when addressing technical matters. Technical questions, eg public health, environmental regulations, urban planning, financial regulations and others, often require specialized knowledge that Courts may lack. The Legislature is presumed to have the democratic legitimacy and expertise to draft appropriate rules and standards.*

*Similarly, competent public authorities that implement and enforce laws often enjoy a significant margin of appreciation regarding technical questions. Their expertise and proximity to the subject matter allow them discretion in interpreting and applying rules within their remit, especially when the law grants them discretionary powers.*

*The Supreme Constitutional Court exercises limited judicial review over technical decisions. This approach reflects the margin of appreciation doctrine: respecting the specialized role of the legislature and the authorities but ensuring at the same time legality and fairness. The Court intervenes in the following circumstances:*

- (a) the decision is manifestly unreasonable or arbitrary and or*
- (b) there is a clear violation of law or fundamental rights and or*
- (c) the decision exceeds the scope of discretion granted by law and or*
- (d) there is evidence of bad faith or procedural irregularity.*

15. Is there any (legal) procedure established to remedy shortcomings in the assessment of the case's factual basis?





Please explain:

*The legal procedures established to remedy shortcomings in the assessment of the case's factual basis are the following:*

- 1. If the Court is satisfied that the investigation of the facts, by the administrative body, was inadequate or insufficient, it will then annul the administrative act or decision. In such a case, the administrative body is obliged to reexamine the factual basis of the case.*
- 2. If the applicant, who has the burden of proof, satisfies the Court that the respondent has acted under a misconception of fact or raises a doubt in the mind of the Court, in this respect, then the Court will annul the administrative act or decision. Following the annulment judgment, the administrative body has a duty to reassess the case on the correct factual basis.*

#### **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:

- 1. The Supreme Constitutional Court in their judgement, in an appeal against the decision of the Administrative Court, **M.T. v The Republic of Cyprus through the Tenders Review Authority, number 54/2019, 16/10/2024** ruled that the relevant authorities failed to investigate the conditions in Iran regarding the criminalisation of homosexuality and unanimously overturned a decision by the Administrative Court to reject an asylum application based on fears of persecution due to sexual orientation. The administrative body was, according to the ruling, obliged to investigate the conditions that prevailed in Iran for homosexuals, regardless of the appellant's answers during the interview.*
- 2. Referral **President of the Republic v House of Representatives, number 5/2024, 09/04/2025** - the Supreme Constitutional Court ruled that the legislation concerning copyright management law is unconstitutional and that it violates three key articles of the Constitution of the Republic, Articles 23, 26 and 179.1 (protection of property rights, freedom of contract and the supremacy of the Constitution of the Republic, respectively). As expressed by the Law Office of the Republic the decision is considered to be a milestone for the beneficiaries of intellectual property rights and related rights, since, for the first time, the Court, at the highest level, analyses the property rights of the beneficiaries of intellectual property and related rights, and how this is protected through the Collective Management Organisations that represent the beneficiaries.*
- 3. The Supreme Constitutional Court, in an appeal against the decision of the Administrative Court, **Cyprus Telecommunications Authority v 1. Commission for the Protection of Competition 2. The Republic of Cyprus through the Commission for the Protection of Competition, number 67/2017, 12/05/2025**, ruled that when grounds for annulment concern the legality of the administrative act, these must be examined substantively even where they are intertwined with technical assessments.*

