



**SEMINAR ORGANISED BY THE FEDERAL ADMINISTRATIVE COURT OF GERMANY**

**IN CO-OPERATION WITH ACA-EUROPE**

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**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:

According to the Hellenic Constitution, the Hellenic Council of State adjudicates disputes both as a first-and-last instance and an appellate court. This means that in the majority of disputes (approximately 60%), the Court reviews the judgments of lower courts exclusively in relation to questions of law, i.e. to legal issues critical to the resolution of the dispute concerned. According to the Court's well-established case law, its appellate jurisdiction serves its fundamental purpose, namely the unity of its case law and, more generally, the unity of law in the field of the administrative justice (CoS judgements nos. 106/2012, 1259/2024). Moreover, approximately 40% of the Court's docket concerns the so-called "annulment disputes" (i.e. cases brought before it by means of actions for annulment of administrative acts and/or omissions), which it hears and determines as a first-and-last instance Court, being competent to answer questions of law (i.e. to review of the administrative act's legality). By way of exception, the Court has a limited jurisdiction in reviewing the factual basis of these cases. This kind of factual review includes the scrutiny of the administrative act's reasoning





and whether the public authority manifestly erred in facts. The above is also applicable to disputes that raise matters of a highly technical nature. According to the Court's well-established case law, the substantive-technical assessment of the public authority is not subject -as a matter of principle- to annulment, unless there is a case of manifest error of facts, i.e. the authority based its reasoning on non-existent or inaccurate information (CoS judgements nos. 86/2025, 320/2025, 212/2024, 1892/2024) (see also the answer to question 13). Thus, the applicants' pleas regarding technical questions are rejected as inadmissible. Nevertheless, these questions are eventually subject to the Court's first-and-last instance review through the scrutiny of the administrative act's reasoning, as indicated above. The scrutiny is less strict in cases of regulatory administrative acts.

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:

Energy law, Capital market law, Data protection law, Tax 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: ~20%-25%
- In absolute numbers: ~450-550

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 all the fields of law listed in the answer to question no. 2. Special relevance is given to questions of nature conservation, water, emissions, renewable sources facilities (environmental impact assessment and installation permit), planning and protection of islands, renewable sources regulatory framework, energy networks, energy market regulatory framework, economic burdens on energy producers and providers, telecommunications, effects of the COVID-19 pandemic, market structure, claw-back and rebate in the pharmaceutical sector, technical specifications of pharmaceutical products and medical equipment regulatory framework, technical specifications in public procurement.

## 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:



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- 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
  - Judges may rely on external experts
  - 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. Moreover, the Hellenic Council of State -acknowledging the crucial role that the legislature has reserved to the judge-rapporteur during the pre-trial stage pursuant to art. 22 of the presidential decree no. 18/1989 regarding the procedural rules of the Court- has, even since its establishment, recourse to the practice of cooperation between the judge-rapporteur and the parties for the purposes of clarifying the facts and issues of the dispute. Within that context and for the purpose of formulating his/her opinion on the factual basis of the case, the judge-rapporteur communicates with the parties in order to obtain information on and comprehend technical questions that usually require special knowledge of other scientific fields.

Similarly, art. 22 par. 3 of the presidential decree no. 18/1989 provides that the judge-rapporteur may request, by any means, from any other public authority which is not a party to the dispute concerned, any information that is missing or is useful for the review of the case. The same, of course, applies to the adjudicating Court Panel, which may request information from non-party public authority by means of a preliminary judgement. For example, in a dispute concerning the compatibility with the principles of equality and proportionality of the regulatory framework for imposing a security of supply levy on electricity producers, the Court requested the Energy Regulatory Authority, which was not a party to the proceedings, to provide information and explanations on certain issues relating to the imposition of that levy on electricity producers from renewable energy sources (solar power stations owners, who had filed the action for annulment), because their participation in the Electricity Transmission System posed high risks to its stability and, hence, to the security of energy supply. The Court requested, in particular, information on the quantities fed into the Transmission System by renewable energy sources producers, on the exact amount of fees they pay compared with other electricity producers, as well as explanations of how solar power stations adversely affect the stability of the Transmission System although they feed mainly the Distribution System and of the methodology which was used by national authorities (which did not provide these explanations under their capacity as parties to the dispute) in order to define the parameters used for the levy's calculation (CoS judgement no. 2176/2023).

Finally, the judge can -exceptionally- rely on the administrative law's doctrine of "scientific common knowledge", which essentially represents disseminated and popularised scientific research. For example, in a case regarding the imposition of surcharges on the energy producers' windfall profits due to the recent energy crisis in the EU, the applicants complained that the law was vague, due to the absence of a definition of the term "gross profit margin", which was critical for the surcharges' calculation. The Court rejected the





complaint, arguing that the legislature intended to refer to the meaning of the term commonly accepted in Economics (CoS judgement no. 188/2024). In another case, the applicants complained that the denial of the public authority to redraw the coastline in a specific area, in order to depict the so-called “old coast” where construction activity is permitted, was not adequately reasoned from a scientific point of view. The applicants, who were the owners of a plot of land in the contested area, invoked a technical report of the National Center for Sustainable Development, a study of the Institute of Geological, Mining Research and a technical report of a private surveyor engineer, in order to support their claim that their plot of land was now part of the old coast. The Court rejected the complaint, holding that the original draw of the coastline by the competent authority, where the contested plot of land was presumed not to be part of the old coast, is founded on a long-term assessment of all the evidence submitted, based on photographs taken over the years by the Hydrographic Service of the Hellenic Navy. Hence, the authority’s presumption regarding the legal status of the plot of land is adequately reasoned, because “it is based on common experience and scientific data known to everybody” (CoS judgement no. 2272/2022).

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 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 provisions - including those of a technical nature- have to be followed by the court.
- The Court can rely on other government documents or documents by public bodies, which are not binding. For example, in order to better understand and review the constitutionality of the provisions of Law no. 4387/2016, which introduced radical reforms to the national social insurance system and imposed pension cuts, the Court drew on the following documents issued by public authorities: (a) a study by the National Actuarial Authority entitled ‘Financial development of the pension system, projections for 2015-2060’; (b) a report by the Council of Economic Experts of the Ministry of Finance entitled ‘Reasonable living expenses: Use of limits for the social security system’, regarding the adequacy of the newly introduced pension scheme; c) the ‘information note’ of the Head of the General Directorate of the Ministry of Labour, Social Security and Social Solidarity "on the impact assessment of the reform of Law no. 4387/2016". In cases regarding mandatory vaccination against COVID-19 of certain categories of civil servants (e.g. health workers, firefighters, etc.), the Court took notice of a relevant Recommendation of the National Commission for Bioethics and Technoethics (CoS judgments nos. 463-468/2023).
- Documents of the EU Commission (recommendations, communications, white and green papers etc.) regarding guidelines for implementing EU law or *lato sensu* preparatory works of EU legislation, are considered an authoritative interpretation of this law.





- In scientific areas in which the legislature has not yet set standards, the Court may rely on scientific or technical guidelines set up by private experts or expert organisations insofar as they are widely recognised.  
- Where there is neither a legislative measure nor a recognised guideline of the described quality, the public authority may rely on a scientific approach or guideline which does not have to be generally recognised. 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. For example, in a case concerning the licensing of an industrial aluminium processing plant, the applicants challenged the legality of an environmental requirement demanding a decrease in annual heavy fuel oil consumption from 220 kt to 70 kt. According to the applicants, this requirement did not constitute a best available technique (BAT). The Court rejected that argument invoking a document from the Air Pollution and Noise Control Agency, according to which that requirement constituted a BAT (CoS judgment no. 102/2018). Hence, in the absence of any official or generally recognised documentation regarding the above technique, the Court did not question the public authority's assessment.

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): **X**

Please explain your answer:

See the answer to question no. 9 in conjunction with the answer to question no. 1.

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

Please explain:

The public authority should, in any case, give reasons for its choice regarding a technical question. If sufficient reasons are given, the Court will defer to the public authority's choice. Yet, if the technical question posed by the applicants cannot be answered, not even with expert help, the Court does not have to initiate new scientific research which is not yet available in the scientific community.

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:

According to art. 52 of the presidential decree no. 18/1989, the Hellenic Council of State grants interim relief if it is deemed that the imminent enforceability of the contested act would cause the applicant irreparable or hardly reparable damage in the event that the action for annulment is to be upheld. Furthermore, the Court may grant interim relief if it considers that the application for annulment is manifestly well founded. On the other hand, the Court may not grant interim relief if, after weighing the applicant's damage, the interests of third parties and the public interest, it is considered that the negative consequences of granting interim relief would be more significant in relation to the applicant's interests. In view of the foregoing, technical issues do not have to be answered in these proceedings, considering the narrow time frame, within which the Court is called upon to grant or to dismiss interim relief. Nevertheless, the criteria described in part 2 of the questionnaire apply to interim relief cases regarding Public Procurement Law. By way of exception, in cases regarding mandatory vaccination against COVID-19 of certain categories of civil servants, the applicants asked interim relief, arguing that they would suffer irreparable financial damage if they refuse to be vaccinated, since they would be suspended from their office. They also invoked the Council of Europe's





Resolution no. 2361/2021, according to which vaccination cannot be mandatory. The Court rejected the applicants' pleas after balancing their damage claim with the need for protection of public health, considering the fact that "according to the unanimously accepted view of the international scientific community", vaccination is necessary to combat the pandemic (CoS Interim Relief Committee judgements 250,303/2021, in Plenum).

**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
- Human rights X
- Aarhus Convention
- Other. X

Please explain:

As explained in the answer to question 1, when adjudicating disputes as a first-and-last instance court, the Hellenic Council of State reviews the legality of administrative acts and omissions. Article 20 par. 1 of the Hellenic Constitution, which prescribes that "[e]very person shall be entitled to receive legal protection by the courts and may plead before them his views concerning his rights or interests, as specified by law", does not oblige the Supreme Administrative Court to assess cases on a factual basis. This is because of a special constitutional provision [art. 95 par. 1 (a)] regarding the Hellenic Council of State's jurisdiction, which provides that the Court adjudicates disputes regarding "[t]he annulment upon petition of enforceable acts of the public authorities for excess of power or violation of the law". This does not mean, however, that the Hellenic Council of State is not a judicial body that has "full jurisdiction" pursuant art. 6 of the ECHR, because the factual review is possible through the review both of the administrative act's reasoning (as explained in the answer to question 1) and, in addition, of how the public authorities exercise their discretionary power (CoS judgement no. 23/2024: "[T]he Court examines, on the one hand, all the complaints raised and, on the other, all the legal issues of the dispute. Furthermore, the Court may review compliance with the principle of proportionality and the manner in which the public authorities exercised their discretionary power and, finally, annul that act in whole or in part on various grounds, including manifest error of fact or unlawful and inadequate reasoning"). In view of the above, the Court may review the facts of cases relating to technical questions. This is true regardless of whether natural or legal persons' legal standing (*locus standi*) to bring the action for annulment is based on the infringement of their own (property or other) rights, since art. 47 of the presidential decree no. 18/1989 provides that natural or legal persons may file an action for annulment, as long as they claim that the contested administrative act or omission violates their legitimate interests (and not just rights). In the same context, and according to well-established case law regarding environmental law and planning law cases, natural persons have legal standing to invoke any infringement of the relevant legislation (i.e. not only relating to their property rights), provided that they reside or they are financially involved in close proximity to the area affected by the acts of the public authorities (CoS judgements nos. 589/2025, 1972/2024, 1174/2022, 1807/2018). Likewise, legal persons have also legal standing to invoke any infringement, provided that their statutory goals include promoting environmental protection (CoS judgements nos. 320/2025, 194/2024, 48/2023). This understanding of *locus standi* stems from the Court's long-standing broad interpretation of the above art. 47 of the presidential decree no. 18/1989 in these types of disputes. After the constitutional amendment of 2001, it also stems from art. 24 par. 1 and 2 of the Hellenic Constitution, which are interpreted in conjunction to each other and provide the following: "1. The protection of the natural and cultural environment constitutes a duty of the State and a right of every person. The State is bound to adopt special preventive or repressive measures for the preservation of the environment in the context of the principle of sustainable development. [...] 2. The master plan of the country, and the arrangement, development, urbanisation and expansion of towns and residential areas in general, shall be under the regulatory authority and the control of the State, in the aim of serving





the functionality and the development of settlements and of securing the best possible living conditions. The relevant technical choices and considerations are conducted according to the rules of science. The compilation of a national cadastre constitutes an obligation of the State”.

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:

The legislature enjoys the margin of appreciation to which the Court is bound. Only if the latter considers the provisions of the law to be in breach of the Constitution (and the ECHR) or of the EU law, it can either hold the provision to be unconstitutional (or contrary to the ECHR) and thus inapplicable in the case before it, or refer the matter to the European Court of Justice, respectively.

In cases without binding legislation or a generally recognised scientific or technical guideline, the public authority enjoys some margin of appreciation when choosing the scientific approach it bases its decision on. As already explained, it is well-established that “the substantive assessment of purely technical and scientific considerations by public authorities is not subject to judicial review, pursuant to the principle of the separation of powers, prohibition of judicial interference in the executive function in matters for which the latter has exclusive competence” (CoS judgement no. 3044/2017). Nevertheless, the Hellenic Council of State has the power to review whether the public authorities manifestly exceeded their margin of appreciation, i.e. to review the approach used by the public authority under the aspects of obvious deficiencies, erroneously established facts or ill motivation.

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

Please explain:

No (see the answers to questions 1 and 13).

#### 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 its recent judgment 1046/2024, the Plenary of the Court was asked to rule on the legality of a normative act of the President of the Hellenic Telecommunications and Post Commission (HTPC) regarding the installation and deployment of a 5G network in several areas of the country. The applicants, who claimed to reside close to the sites of the 5G infrastructure, complained, *inter alia*, about the violation of the precautionary principle enshrined in art. 191 par. 2 of the TFEU and in art. 2 and 8 of the ECHR. More specifically, the applicants, referring to numerous studies and documents [Ofcom (UK) and Public Health Committee (the Netherlands) reports on 5G networks and radiation, resolutions of the EU Parliament and the Council of Europe, the French Senate's Scientific Commission on public health and the environment, the WHO's Q+A regarding 5G mobile networks and health], argued that, despite the scientific information emerging from those studies and documents concerning the serious adverse effects on human health and the environment due to the exposure to electromagnetic radiation, the HTPC failed to provide for a sufficient risk assessment in relation to the installation and functioning of the 5G network, so that appropriate precautionary measures could be taken [distances between residential and work premises and antennas, measures in relation to the composition of the population (infants, young children, adolescents etc.) exposed to radiation]. On the other hand, the competent public authority relied on the International Commission on Non-Ionizing Radiation Protection (ICNIRP) Guidelines on Limiting Exposure to Electromagnetic Fields, on 1999/519/EC Council Recommendation on the limitation of exposure of the general public to electromagnetic fields (which, according to the ICNIRP, continues to correspond to the best available





scientific knowledge), on studies of the “US National Toxicology Program” and a specialised research institute in Italy, in order to support its argument that the aforementioned risks have been duly assessed, hence the existing guidelines relating to the protection against the occurrence or aggravation of cancer do not have to be supplemented with further special restrictions regarding 5G networks. The Court attached great importance to 1999/519/EC Council Recommendation and its Annexes, to Decision No 243/2012/EU of the EU Parliament and of the Council establishing a multiannual radio spectrum policy programme, to the 2020 ICNIRP Guidelines for limiting exposure to electromagnetic fields and to the observations submitted to the Court on behalf of the HTPC, in order to find that the national legal framework, which the contested administrative act took into account, sets strict standards for the protection of public health and the environment against the risks of the installation and deployment of 5G networks. In this context, the Court held that this framework does not enter in conflict with the constitutional provisions on the protection of the environment and public health, nor with the principles of prevention and precaution, as a more specific aspect of such protection, thus rejecting the relevant pleas for annulment as inadmissible, as far as the technical assessments relating to the adequacy of the above framework of EU and national law were challenged (see the answer to question 1). But, in doing so, the Court further noticed that the applicants failed to specify whether the studies they invoked so as to contest the legality of the public authority’s act had considered the much stricter standards imposed by national legislation in order to reach their conclusions.

In its judgment 991/2021, the Plenary of the Court was called to decide on another issue of a high technical nature, regarding the construction of a metro station in Thessaloniki. During the excavations, important antiquities (parts of the ancient city) were revealed, thus making necessary the project’s redesign. By a decision of the Minister of Culture, the contractor and the competent public authorities were ordered to temporarily extract the archaeological artifacts from their original site by use of modern technical methods and equipment, and then return, exhibit and conserve them *in situ* after the end of the project. According to the public authority’s assessment, the extraction aimed both to protect the monument as a whole and to carry out an important public service project. An association for the protection of nature and cultural heritage filed an action for annulment of the above decision, claiming that the extraction was contrary, *inter alia*, to the Valletta Convention for the Protection of the Archaeological Heritage of Europe and that the only viable method for the protection of the revealed archaeological complex was either the relocation of the metro station or the continuation of the project without the antiquities being removed. The applicant invoked private technical reports supporting the feasibility of the initial planning, according to which the monuments would remain *in situ* throughout the construction. Based on a very complex case file with many scientific studies regarding both the antiquities’ status and the project’s technical and financial aspects, especially the expert opinion of the Central Archaeological Council (i.e. a public authority), the Court held, by a marginal majority, that the Minister’s decision was sufficiently reasoned regarding the necessity of the extraction and the following return of the contested antiquities. The Court held that the measures ordered and the technical solutions suggested struck a balance between the need for material protection of the monuments and the completion of a project of major importance for the public interest, setting the necessary requirements for the antiquities’ temporary removal and the preservation, as far as possible, of their integrity and authenticity by returning them to their original site and ensuring their permanent preservation there. The Court further rejected the applicant’s *in situ* claim, holding that its arguments do not undermine the sufficiency of the contested act’s reasoning, given that i) the invoked private technical reports in question were not submitted to the Central Archaeological Council for assessment within the limits of its competence, during the procedure prior to the adoption of the contested act, and ii) the content of those private reports concerns technical issues that cannot be directly reviewed.

