



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:

In the three-instance court system of Latvia, generally district courts adjudicate cases as the court of first instance, regional courts adjudicate cases as the appellate court and the Supreme Court (Senate) adjudicates cases as the cassation instance.

The Supreme Court, as the court of cassation, does not examine evidence and does not review the findings of lower courts regarding the facts of the case, but examines whether the court has violated specific legal norms or exceeded its jurisdiction. The examination of the merits of the case, including the examination of evidence, takes place only in the court of first instance and the court of appeal. At the same time, the Supreme Court cannot completely ignore these components of judicial decision-making, given that violations found in the procedural rules for the assessment of evidence may serve as grounds for finding substantial violations, which may be a reason for overturning the decision of a lower court. Therefore, the competence of the Supreme Court in cassation proceedings





is limited to examining whether there have been procedural irregularities in the assessment of the facts. It is therefore only an indirect review of the facts, i.e. of whether the lower courts have committed any breaches of law in their assessment of the facts. These cases are mostly related to construction, urban planning and individual real estate issues, environmental impact assessment cases, cases concerning the assessment of a person's state of health (granting of disability, whether a health impairment has been acquired during service (cases concerning soldiers, special service personnel, etc.), Medical Risk Fund cases concerning compensation for damage to health, public procurement cases.

However, it must be noted that there are few exceptions to the three-instance court system in Latvia, under which the Supreme Court serves as the court of first and only instance in cases specified by law, and is competent to examine both factual and legal matters:

- in cases related to parliament elections, it reviews the decisions of the Central Election Commission on vote counting, on the confirmation of the results of the parliament elections, the decision to refuse registration of a draft law or draft amendment to the Constitution, as well as decisions adopted after criminal proceedings, on the impact of violations of election law on the distribution of mandates;
- reviews applications regarding decisions of the Minister of the Interior on the prohibition of Latvian citizens from leaving Latvia;
- reviews decision of the National Centre for Education, after testing the state language skills of a member of the parliament.

Such cases are not examined by lower courts and do not typically involve disputes of a highly technical nature. In theory, when examining a case concerning contested vote counting protocols in elections, the court may have to examine how the vote counting system works technically, but this issue has not been addressed in court practice.

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:

The answer regarding fields of law is provided in to question no. 1, which outlines the jurisdiction of the Supreme Court in cassation proceedings.

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: **7%**
- In absolute numbers: **44**

The Supreme Court does not generally collect statistics on cases with legal disputes of a highly technical nature. Therefore, the information provided in the answer has been specially compiled for the purposes of the questionnaire and refers specifically to the period covering the years 2023 and 2024.

At the same time, it should be noted that not every case in this category requires an assessment of technical issues. For example, a construction law case may need to be examined where no specific technical issues are addressed (e.g., whether the consent of the co-owner is required).





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:

Building law and issues related to specific types of building structures (for example, hydroelectric power stations), Medical Risk Fund cases concerning compensation for health damage, environmental impact assessment cases, effects of the COVID-19 pandemic.

When dealing with cases falling within these legal categories, courts often encounter technical problems that lie outside the scope of general legal knowledge. The court therefore once in a while seeks expert opinions to help it assess specific issues. In particular, issues related to construction and environmental law, such as the accuracy of chemical pollution assessments, require specialized technical knowledge where the opinion of an expert is also essential. Similarly, when examining cases involving the Medical Risk Fund, it is often necessary to obtain the opinion of medical specialists and experts.

In the examination of COVID-19-related cases, the undefined legal concepts were assessed, particularly in relation to public safety and the organization of work. The exceptional nature of the pandemic created unusual situations that required courts to assess legal standards in the context of exceptional circumstances, to find a fair balance between individual rights and the interests of public order and health.

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:

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.):

The Supreme Court has no technical staff. Each senator has an assistant who helps with the examination of cases, prepares draft documents and performs technical tasks in the court information system. The court also employs scientific advisors whose task is to carry out scientific research necessary for the work of the Senate. However, assistants and advisors are professionals with legal education and do not perform technical expertise.

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:





The principle of objective investigation is one of the main principles that characterizes administrative proceedings in Latvian courts. The court has a duty to examine the facts of the case itself, which means that the court is not limited to the evidence submitted by the parties and their requests for the obtaining of evidence. The court not only collects evidence on its own initiative, but may also summon the parties to the proceedings to a preparatory hearing to discuss unclear issues. The law also provides that the judge may request the parties to the administrative proceedings to respond in writing to questions concerning the factual circumstances and legal nature of the case. Most cases are successfully dealt with by judges based on their skills and knowledge. If this is not possible:

- A judge may order an expert examination to obtain opinion on specific issues. Such examination is conducted by an expert from the relevant expert authority or another qualified person. The court appoints a forensic medical examination authority, an expert, or an independent court expert, considering the opinions of the parties involved in the administrative proceedings. If necessary, the court has the authority to appoint multiple experts and require several expert assessments.
- Expert opinions in a case may also have been obtained before court proceedings (in the authority). In some instances, authorities employ specialists with specialized knowledge who effectively perform expert evaluations at the authority level. For example, in cases related to the Medical Risk Fund, expert opinions are prepared by Health Inspection officials who are doctors or specially engaged medical experts. The court considers expert opinions as part of the evidence. Therefore, an expert examination in court is not always required, and in certain cases, it may be sufficient to hear the experts involved at the authority stage or to rely on the expert opinions they have prepared. Judge may invite an authority to participate in the proceedings in order to provide an opinion on the case within the scope of its competence. The authority shall not acquire the status of a party to the proceedings. The Administrative Procedure Law states that the invited authority is obliged to provide the court with the requested opinion, but does not define specific quality and content requirements for an authority's opinion. The opinion provided by the authority to the court is not binding, but may be taken into account when considering the matter.
- Judge may request an *amicus curiae* opinion on aspects requiring specific knowledge of a particular field/area from an association of persons who are recognized representatives of interests in the relevant field or from whom a professional opinion can be expected, or persons whose opinion may contribute to a comprehensive and impartial examination of the matter. The application of the *amicus curiae* mechanism allows the court, with the involvement of a third party who is not a party to the case, to obtain an opinion in order to facilitate a more comprehensive examination of the case, while improving the quality of court decisions.

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 accordance with the Administrative Procedure Law, the court shall order an expert examination in cases where special knowledge in a specific field is necessary to establish facts that are significant to the case. The expert shall be selected by the court, considering the opinions of the parties to the administrative proceedings.

The expert examination shall be carried out by an expert from the relevant expert authority or another competent person. If, when appointing an expert, the court selects specialists who are not court experts,





the court is responsible for assessing whether the special knowledge of the persons invited corresponds to the expertise required in the specific case.

An expert may not participate in the examination of a case if there are reasonable doubts as to his or her impartiality. If there are circumstances that may indicate reasonable doubts about the expert's impartiality, the court must examine these circumstances and assess their impact on the admissibility of the expert in the case.

The expert opinion must be scientifically substantiated and the opinion must contain precise answers to the questions posed by the court. The expert opinion can be used as evidence in 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:

The Court:

- **Rely on EU regulations. If there is a conflict between an EU regulation and national law, the EU regulation prevails.**
- **Takes decisions in accordance with Administrative Procedure Law, which regulates the procedure for examining administrative cases, the jurisdiction of courts, the rights and obligations of parties to proceedings, and the rules for gathering and assessing evidence.**
- **Takes into account relevant specific laws and regulations relating to the subject matter of the case (e.g. laws and regulations on environmental protection, construction, public procurement, and other areas). Other government documents or documents of state authority are taken into account in the examination of the case, but are not binding on the court (e.g. Medical Risk Fund cases the court may take into account various clinical treatment guidelines).**
- **Rely on documents published by the European Commission, depending on their legal nature and purpose.**
- **May appoint experts under the Administrative Procedure Law to resolve technical or specialized issues, expert opinions provided in this context are evidence. Expert findings are not binding, however courts must give reasons if they deviate from them.**
- **Takes into account case law and Supreme Court rulings that may influence court decisions in administrative cases.**
- **International treaties and European Union legislation, insofar as they are directly applicable and form part of the Latvian legal system.**

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 **X**
- The judges are not formally, but factually bound by these documents
- Other (please provide the extent of binding effect):

Please explain your answer:

The answer is provided in the explanation 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:

If technical questions relevant to the case cannot be answered, not even with expert help, assessing the evidence in the case and the opinions expressed, the court must provide a reasoned explanation in its legal analysis as to why it accepts one opinion over another. In situations where there are no generally recognized guidelines, and the authority has relied on a scientific approach or on guidelines that are not widely accepted, the court will generally not question that approach, provided it is reasonable and free from obvious deficiencies. The assessment may also be influenced by principles specific to the area concerned, including, for example, the precautionary principle, which is commonly applied in environmental law.

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:

The Administrative Procedure Law states that a request for provisional protection shall be examined in written proceedings. The court shall examine the request within a reasonable time, taking into account the urgency of the situation, and not later than one month from the date of initiation of the proceedings or, if proceedings have already been initiated, from the date of receipt of the request. The court may apply the criteria set out in the questionnaire, however, the evidence and factual matters must be assessed within the limited timeframe available for deciding on the application of provisional protection. If it is not possible to carry out a complete assessment of the facts, the court must find a fair balance between the interests of the parties in order to avoid any risk of harm.

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.

Please explain:

Article 92 of the Constitution of Latvia states that everyone has the right to a fair trial. This means also the trial must be fair and lawful, respecting legal rules and human rights. These rights protect individuals from unfair treatment by the state and ensure that disputes with public authorities are resolved fairly, impartially, and according to law. The Constitutional Court has held that there must be a court of full jurisdiction, meaning that courts must, in principle, have the authority to examine both factual and legal matters.

Sections 1 and 253 of the Administrative Procedure Law provide the legal framework for the administrative court's duty to conduct a full and substantive review, ensuring that the individual's rights are effectively protected in public law matters.

Article 115 of the Latvian Constitution guarantees the right to live in a benevolent environment. In accordance with the Environmental Protection Law, environmental matters are subject to the principle of *actio popularis*, allowing members of the public to bring a claim to protect the environment, even in the absence of a direct personal interest.





The Supreme Court and the Constitutional Court have both acknowledged the Aarhus Convention as a binding international instrument and ensure that public authorities respect procedural rights, especially in cases involving large-scale development or environmental risks.

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 has discretion in adopting laws, and courts must generally respect that discretion. However, if a court considers that a legal provision is contrary to EU law or the Constitution, it may refer the matter to the Court of Justice of the European Union or the Constitutional Court.

The mere presence of technical questions in a case does not, in itself, confer discretionary power upon the administrative authority. Where appropriate, such technical questions should be resolved through the appointment of an expert. If the legislator has not defined a specific technical standard and instead employs an undefined legal concept to express a condition within a legal provision, the court may acknowledge that the authority enjoys a margin of appreciation—provided that there are objective grounds to support such discretion. In such instances, judicial review is limited to determining whether the authority has committed a manifest error of assessment or a procedural irregularity capable of influencing the outcome of the decision-making process.

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

Please explain:

The rules below apply to courts of first instance and courts of appeal, but not to the Senate when acting as a court of cassation. If the court, upon examining the merits of the case, finds that the assessment of the facts is incomplete, unfounded or contradictory, it has the right to request additional evidence, explanations or even a re-examination of the facts. The court has the right to point out the deficiencies found to the administrative authority and request that they be remedied, if this is possible within the framework of the proceedings. If the shortcomings in the assessment of facts significantly affect the outcome of the case, the court may adopt a judgment, revoking or declaring the administrative act unlawful, or referring the case for a new hearing. The court has a duty to ensure that an administrative act and its adoption comply with both the actual circumstances and the regulatory requirements.

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:

The Supreme Court generally does not examine issues of fact. These are assessed and decided by the court of first instance (district court) and the appellate court (regional court), as outlined in the response to question no. 1.

Some examples from case law relating to the questions asked in the questionnaire:

- **The Supreme Court reviewed a Medical Risk Fund case (*judgment of 2023, Case No. SKA-[A]/2023*) concerning compensation for health damage. In this case, the Court emphasized that an expert opinion is a form of evidence that assists the court in reaching a fair and lawful decision. Such an opinion is ordered when the case involves facts requiring specialized knowledge that the court itself does not possess. However, an expert opinion is not final or beyond question.**

To be valid, an expert opinion must be well-reasoned and must clearly describe the methods used, the conclusions reached, and provide reasoned answers to the questions posed by the court. The





court is obliged to assess the credibility of all evidence, including the expert's conclusions. For this evaluation to be possible, the expert's reasoning must be clear, logical, and coherent. If such reasoning is lacking, the court may order a supplementary or repeated expert examination.

If a party raises objections to the expert opinion — for instance, by arguing that the cited sources do not support the conclusions — the court must consider these objections. Expert opinions, like any other evidence, can be questioned and are not beyond examination.

- Reviewing other case of the Medical Risk Fund (*judgment of 23 September 2021, case No. SKA-457/2021*) concerning compensation for damage to health, the party to the case argued that the court should have appointed an independent expert to the hearing to provide impartial and scientifically based information on the specific aspects of dentistry, including implantation and prosthetics. The court determined that an independent expert examination is not required in every case challenging a decision on compensation from the Medical Risk Fund. The court must evaluate whether the existing evidence and the Health Inspectorate's findings are reliable and sufficient. If objections raise serious doubts about the evidence or the findings, or if the court otherwise sees the need, an expert examination should be ordered. However, if the evidence is clear, consistent, and sufficient to resolve the dispute, and the objections do not raise valid concerns, the court may decide that an expert examination is not necessary.

In this case, the Supreme Court found that the applicant had submitted evidence supporting the existence of a causal link, including an opinion from a specialist in the relevant field of medicine, based on an analysis of examination data. Appellate court did not conduct a full and comprehensive evaluation of the evidence concerning causality. Because this could have influenced the outcome, the Supreme Court overturned the judgment and returned the case for a new hearing.

- The Supreme Court reviewed a case (*judgment of 28 March 2024, case No. SKA-142/2024*) about the technical standards for printing equipment. Supreme Court did not agree with the lower court's view that only another expert can assess the reliability of an expert opinion. Supreme Court explained that an expert opinion is one type of evidence that is allowed in administrative court cases. According to Section 154 of the Administrative Procedure Law, courts must examine all evidence, including expert opinions, together with the rest of the case materials. They must also consider the litigants arguments about how reliable and acceptable the expert opinion is. Since the expert opinion in this case was not complete or impartially assessed, the Senate overturned that part of the lower court's decision and sent the case back for a new hearing.
- In one of the rare cases where the Supreme Court itself chose to examine the factual circumstances in order to determine whether the fundamental rights of a party had indeed been affected, however, the issue was not of a highly technical nature (*judgment of 21 August 2015, case No. SKA-567/2015*). The Supreme Court organized on-site inspection hearing to ascertain the technical condition of the road. The court found the road unsuitable for use and ruled that the municipality has a duty to maintain public roads in a traffic-safe condition. It also affirmed that a person may claim compensation for damages caused by a violation of their property rights.

