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:

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, partly

Please provide other fields of law, which bear a technical challenge to your court:

Energy law, Financial supervision, Competition law

Co-funded by the European Union

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:
-

Unfortunately, the court does not maintain statistical data specifically identifying legal disputes of a highly technical nature, nor does it systematically record cases involving technical expert input as a separate category. However, based on a qualitative review of cases—such as those requiring expert reports in fields like construction, taxation, or specialized engineering—it may be estimated that such matters constitute up to approximately 10% of the total annual caseload. This is an informal approximation, not grounded in systematic data collection, and should therefore be treated with caution.

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.

The Law on Administrative Proceedings of the Republic of Lithuania does not specify the circumstances under which an expert examination must be conducted. However, the practice of administrative courts confirms that it is most often appointed when addressing truly complex and specific issues, where the expert's conclusion becomes an essential piece of evidence. For example, significant technical questions have arisen in cases related to construction legal relations — such as determining the causes of building defects; in tax disputes — for property valuation; in disciplinary disputes — to determine the level of work capacity; in workplace accident cases — to assess the condition of the insured person; in energy law matters — for the calculation of heat energy consumption, the assessment of the suitability and justification of gas distribution prices, and specific gas prices for regulated consumers; in land law — for the evaluation of historical and archival documents; in firearms and ammunition control cases — to determine the classification of a weapon into a specific category; as well as in competition cases, which are often difficult to resolve due to complex technical issues, such as market analysis or the assessment of dominance in a relevant market, among others.

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.):

Co-funded by the European Union

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, and they often specialize in particular areas of law, which further enhances their ability to deal with complex subject matter.

The Law on Administrative Proceedings of the Republic of Lithuania provides that if an administrative case involves questions requiring special knowledge in science, art, technology, or craftsmanship, the court or the judge shall appoint an expert or assign an expert institution to carry out an expert examination (1). Each party to the proceedings has the right to submit questions for the expert's opinion to the court, but the final determination of such questions is made by the court or the judge (2). The expert opinion shall be submitted in writing in the expert's report. If several experts are appointed in the case, the joint opinion shall be signed by those experts who agree with it. Experts who disagree with the opinion shall provide their conclusions separately (3). The expert opinion is not binding on the court. However, if the court does not agree with the expert opinion, it must provide a reasoned justification (4).

The Supreme Administrative Court of Lithuania, acting as an appellate instance, appoints expert examinations on technical matters very rarely; this is more commonly done by courts of first instance.

Additionally, in cases where the examination and evaluation of documents, objects, or actions in an administrative case requires special knowledge, the court may summon a specialist. A specialist's explanations may be recorded in a separate document, which must be signed. Judicial practice confirms that specialists are usually needed when the collected data in a case is contradictory and it is necessary to assess evidence that has already been obtained using specialized knowledge the court does not possess. Case law shows that specialists are most often involved in examining and evaluating medical records, project documentation, land management and territorial planning documents, among others.

It should be noted that, unlike experts, there is no unified list of specialists. However, there are fields of science in which such categories of individuals (e.g., certified specialists) are distinguished, which is relevant when evaluating the explanations they provide.

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 rare 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 parties are allowed to make proposals about the choice of expert which do not have to be followed by the court.

Co-funded by the European Union

It should be noted that an expert's opinion is an independent means of evidence and should not be confused with written evidence. In administrative proceedings, an expert's opinion as evidence is the conclusion obtained during an expert examination ordered by the court's decision in the pending administrative case, which is presented by the expert who applied specialized knowledge. In cases where an expert examination in the case is conducted not pursuant to a court decision issued in the administrative case under consideration, although such a written document is investigative or scientific in nature, the conclusion contained therein cannot be regarded as evidence — i.e., as an expert's opinion within the meaning of Law on Administrative Proceedings. However, such a document may qualify as written evidence, as it may contain knowledge about circumstances relevant to the case.

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 are part of positive law and have a binding effect on the court. Their stipulations, including technical provisions such as threshold values, must be followed.

Other government documents or documents by public bodies are binding if they qualify as *normative administrative acts* — legal acts adopted by public administration entities for repeated application, setting rules of conduct for an individually undefined group of persons. If they do not meet this definition, they may be regarded as soft law, and courts may consider them as guidance but are not strictly bound by them.

Documents of the EU Commission (e.g., recommendations, communications) are not legally binding, but they are considered authoritative interpretations of EU law. Courts should take them into account seriously. Deviation from such documents is allowed but must be duly reasoned.

Documents published by experts or groups of experts are not binding, but they can provide relevant and persuasive technical knowledge. Courts may rely on them when they are widely recognized and methodologically sound, especially in areas where no binding regulation or standard exists.

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:

Please see our response 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:

As noted in our response to question no. 7, the court may summon a specialist. A public administrative authority is not expected to initiate scientific research that is not yet available within 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:

When applying interim measures, the court may base its decision on the evaluation and balancing of the interests of the parties involved, if the participant in the proceedings provides a prima facie justification of the claim and if, in the absence of such measures, significant irreparable or hardly reparable harm may be caused.

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 31(2) of the Constitution of the Republic of Lithuania enshrines the individual's right to a fair, impartial, and independent court. The Constitutional Court of the Republic of Lithuania has repeatedly emphasized that the constitutional principle of a state governed by the rule of law, as well as the individual's right of access to a court (Article 30(1) of the Constitution), implies the right to due legal process, including proper court proceedings. The constitutional requirement to examine a case fairly entails that the court must accurately determine the true circumstances of the case.

These constitutional requirements are also reflected in the provisions of the Law on Administrative Proceedings. Article 56(1) of the Law on Administrative Proceedings establishes that evidence in an administrative case consists of all factual data accepted by the court hearing the case, on the basis of which the court, in accordance with the procedure established by law, establishes the existence or absence of circumstances that substantiate the claims and counterclaims of the parties, as well as other circumstances relevant for the fair resolution of the case. Based on this definition, the following characteristics of evidence can be distinguished:

a. specific information about facts constituting the subject matter of proof;

b. relevance (connection) of the evidence;

c. admissibility of the evidence.

The requirements of human rights protection imply that the outcome of administrative proceedings should depend as little as possible on a party's ability to defend its interests before the administrative court, and that the court's decision should correspond as closely as possible to the actual legal relationship between the parties and the legal norms applicable to it. From the perspective of evidentiary matters, the European Convention on Human Rights and the case law of the European Court of Human Rights are also relevant. For example, they establish that the closely interrelated principles of adversarial proceedings and equality of arms are fundamental aspects of a "fair trial." These principles require a "fair balance" between the parties: each party must be given a reasonable opportunity to present their case under conditions that do not place them at a substantial disadvantage compared to their opponent.

The Aarhus Convention 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:

The legislator enjoys its legislative margin of appreciation to which the court is bound. Only if it considers the stipulations of the law to be in breach of EU law or of constitutional law it may refer the matter to the European Court of Justice or the Constitutional Court of the Republic of Lithuania 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. The court, which usually will fully assess the use of such a margin of appreciation, is limited to review the approach used by the public authority under the aspects of obvious deficiencies, erroneously established facts or ill motivation.

The competence of the administrative court includes verifying whether the public administration institution has not exceeded the external limits of the discretion granted to it. The existence of broad discretion in certain areas assigned to the public authority does not imply that it is exempt from substantiating its conclusions with valid arguments gathered through thorough and careful investigation, nor does it mean that it is not required to provide detailed reasoning that reveals the specific logical considerations underlying its decision. A public administrative body must support its assessment with arguments that are not manifestly irrelevant, that justify the conclusions drawn from them, that reflect the actual factual circumstances, and that are sufficient for justification, taking into account all relevant factors.

For example, when assessing the applicant's arguments regarding the justification of the surcharge amount for the liquefied natural gas terminal as determined by the decision of the National Energy Regulatory Council (hereinafter – the Commission), the Supreme Administrative Court noted that the administrative court cannot entirely substitute the Commission. The court does not conduct the economic analysis and assessment which, by law, is assigned to the Commission, nor does it adopt decisions that, upon conducting the relevant analysis and assessment, are legally entrusted to the Commission. For these reasons, when reviewing the complex assessments performed by the Commission, the court's role should essentially be limited to verifying whether, in exercising its discretion, the Commission made a manifest error, abused its powers, or clearly overstepped the limits of its discretion. The court should also assess whether the relevant procedural rules were observed when adopting the contested decision and whether the factual circumstances on which the disputed decision is based were correctly established.

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

Proper assessment of the facts and the application of law in resolving a dispute are inextricably linked. Only after establishing the legally relevant facts necessary for the correct application of the law can a decision be considered lawful and well-founded.

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. It is specifically the court of first instance which, when examining a complaint concerning the lawfulness and substantiation of an individual administrative act, must in each case request from the public administrative authority all the material that was relied upon when adopting the contested individual administrative act.

In cases where the Supreme Administrative Court of Lithuania identifies procedural shortcomings in the decision of the administrative court of first instance — such as an insufficient establishment of the case's factual circumstances — usually there are grounds to refer the case back to the first instance court for a new hearing. The Supreme Administrative Court of Lithuania under certain circumstances may also request the submission of new evidence and, after obtaining the parties' views on it, evaluate such evidence within the appellate proceedings. Especially when required by the public interest or when the rights of the state, municipalities, or individuals, as well as legally protected interests, would be significantly violated. Nevertheless, in order to ensure a fair and efficient court process, new evidence that was not submitted before the court of first instance is examined by the Supreme Administrative Court of Lithuania only if the court recognizes that there were justified reasons for not submitting it earlier, or if the necessity to submit new evidence arose at a later stage.

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:

Although the court has encountered cases relating to the themes raised in this questionnaire, the solutions adopted have largely reflected the particular facts and context of each case, rather than establishing broadly applicable precedents.

The court also faces a considerable number of particularly complex cases in the field of financial supervision, which often involve technical issues such as the assessment of compliance with intricate regulatory requirements, the evaluation of complex financial instruments, or the interpretation of sector-specific supervisory standards.