



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 Polish administrative judiciary is competent to control public administration activities (decisions and other forms of administrative acts) and inactivity based on law. But if a party raises an objection concerning the facts of the case, the administrative court shall also review the contested act in that regard. This means that if the facts are established incorrectly or unlawfully, the administrative court should annul the decision and order the authority to repeat or correct the fact-finding proceedings.

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:

They are present in the following fields of law:

geodesy and cartography
geology and mining
property management
energetics and atomistics
water management
technical supervision
telecommunication cases
EU financial assistance
cases concerning expropriation and compensations for property taken without legal basis

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:

The following statistics concern only the Supreme Administrative Court – inflow cases and decided cases regarding cassation appeals in 2024:

INFLOW CASES (2024)

Global number (18 669 = 100%)

Percentage of all disputes:

Construction law: 7,71%
Spatial development and planning: 4,94%
Environmental protection: 3,13 %
Geology and mining: 0,13%
Water management: 1,68%
Energy and nuclear law: 0,07%
Banking, securities and trusts: 0.28%
Industrial property: 0,37%

In absolute numbers:

Construction law: 1440 cases
Spatial development and planning: 922
Environmental protection: 584 cases
Geology and mining: 25 cases
Water management: 314 cases
Energy and nuclear law: 13 cases
Banking, securities and trusts: 69 cases
Industrial property: 69 cases





DECIDED CASES (2024)

Global number 21 264 (=100%)

Percentage of all disputes:

Construction law: 7,72 %
Spatial development and planning: 4,21 %
Environmental protection: 2,30%
Geology and mining: 0,16%
Water management: 1,35%
Energy and nuclear law: 0,01%
Banking, securities and trusts: 0,12%
Industrial property: 0,25%

In absolute numbers:

Construction law: 1669 cases
Spatial development and planning: 910
Environmental protection: 497 cases
Geology and mining: 35
Water management: 292 cases
Energy and nuclear law: 2 cases
Banking, securities and trusts: 25 cases
Industrial property: 53 cases

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:

All fields of law mentioned before are strictly combined with technicalities. It would not be easy to distinguish between them.

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.):

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):

Please explain your answer:

Case file usually includes expert opinions that may help the judge to understand the technical issues of the case. Another possibility to explain technical matters is a public hearing. If judges have any doubts or clarification questions, they can ask the public administration employee if he or she came to the hearing.

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:

Non 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:

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:





The binding effect of any technical expertise presented in the documents mentioned in question 9 depends on the binding effect of the document itself. Regulations are part of the law and, as such, are binding on the court. As for the remaining documents, judges may rely on them, but they are not bound by them.

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

Please explain:

In such a case, the court should verify whether the authority acted in accordance with the expert opinion available for that particular case, to the extent that it is possible.

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

- Yes, without modification
- No.

Please explain the modifications:

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
- Aarhus Convention
- Other.

Please explain:

National law requires an assessment of the facts if there is an allegation of a procedural violation. If the facts are not determined well, a court quashes the decision and the dispute is redirected to the public administration authority. In this sense, the prohibition against denying justice or human rights can serve as a basis for assessing facts as wrongly established (they have their basis in the Polish Constitution, for example, in Article 2, which contains a broad basis for protecting the rule of law in a democratic state). The Aarhus Convention helps citizens and NGOs participate in proceedings and challenge contested procedures. Their actions may make the court verify whether all relevant facts were taken into consideration by the administrative authority.

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 margin of appreciation can only be used by an authority if an act of parliament (or regulation) allows it (e.g. if there are several different possibilities for the authority to act). This applies when addressing technical (or any other questions) in the case at hand. In such cases the administrative judge has to assess if the authority has done it properly (if it has not overstepped the statutory limits).

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

Please explain:





There is no special procedure for that.

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:

Case II OSK 2472/23 (construction law)

– the judgment of the Supreme Administrative Court of 21 January 2025

The principal matter of the case pertained to the construction of a single-family residential building with significant deviations from the conditions stipulated in the granted building permit which changed the geometry of the slope by undercutting it at the base. The authorities imposed obligations on investors to secure the slope against landslides (such as installing "Larsen sheet pile walls"). These obligations included the preparation and submission of an amended construction project reflecting the changes resulting from the construction works already undertaken and the implementation, in a specified manner, of retaining structures in accordance with the technical expertise regarding the said structures at the boundary of the property. In the opinion of the authority this should have enabled the restoration of the original topography of the neighboring properties.

The Regional Construction Supervision Inspector reopened the administrative procedure due to a new circumstance occurred after the final decision had been issued. The authority cited as a new circumstance the information contained in an expert opinion prepared by a geologist, who is a certified court expert on construction and environmental protection. This expert report pertained to the "potential consequences of installing Larsen sheet pile walls and the vibrations caused by such installation, which could pose a threat to the life or health of multiple individuals or result in substantial property damage, or cause a direct and imminent threat of such consequences on the construction site." During the reopened proceedings, the administrative body also obtained an expert opinion concerning the stability of a slope located in the town of "Z," situated on the subject property. This opinion, prepared in May 2022 at the request of the Mayor of "Z," was prepared by a team of university experts. The report comprehensively described the properties of the soils forming the slope, the potential risks associated with it, and additionally proposed preventive solutions. The circumstances addressed in this report had not been precisely determined during the initial standard administrative proceedings.

The Regional Construction Supervisor Inspector annulled the first decision (mentioned above) and imposed new obligations on the investors, specifying other methods of reinforcing the slope in accordance with the new experts' opinions.

The Chief Construction Supervision Inspector shared the merits of the decision of the authority of the first instance. The Chief Inspector noted that the Regional Inspector had correctly identified, as a new and previously unknown factual circumstance, not merely the expert opinions themselves (dated October 2021 and May 2022) but rather the data derived from them. The data addressed the properties and mechanics of the soil within and along the boundaries of plot of land, the impact of completed works on that soil, and the potential need for additional soil stabilization measures.

The decision of the Chief Construction Supervision Inspector was challenged before the Regional Administrative Court. The court of first instance partially questioned the reliability and accuracy of the abovementioned expert opinions. Additionally, the court challenged the validity of the administrative authority's analysis of said expert reports, which had led to the reopening of the administrative proceedings.





The judgment of the Regional Administrative Court was in turn appealed to the Supreme Administrative Court by way of a cassation appeal. Consequently, the Supreme Administrative Court, in order to evaluate the correctness of the judgment of the court of first instance, had to analyze both expert opinions. The Supreme Administrative Court determined that attempts by the court of first instance to undermine the reliability of one of the expert opinions were unfounded, as they were not supported by any technical evaluation within the required scope. The Supreme Administrative Court emphasized that the expert opinion in question had been prepared by a certified court expert in construction and environmental protection, who is also a licensed expert in environmental management and protection. The report had been prepared in compliance with unchallenged principles of technical knowledge and the expert's acquired professional experience.

As a result of its thorough analysis of both expert opinions, the Supreme Administrative Court annulled the contested judgment and dismissed the complaint filed with the administrative court of first instance against the administrative decision on the reopening of the proceedings.

