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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:

The Supreme Administrative Court is Portugal's Supreme Court with administrative and tax jurisdiction, separate from the ordinary courts. The latter's Supreme Court is the Supreme Court of Justice (Articles 209(1)(b) and 212 of the CRP).
The Supreme Administrative Court hears disputes arising from administrative and tax legal relationships. According to the Statute of the Administrative and Tax Courts (Law No. 13/2002 of 19 February, as amended – ETAF), administrative jurisdiction is divided into three levels.
The first level comprises the Administrative and Tax Courts, which operate with a single judge and hear matters of fact and law. Some of these courts are specialised, including the common administrative court, social administrative court, public procurement court, urban planning court, environment and land use planning court, common tax court and tax enforcement and administrative offence appeals court. These specialised courts are established when the volume or complexity of work justifies it (Articles 9, 9-A, 40(1), 44, 46 and 49-A of the ETAF).

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The second instance is the Central Administrative Courts, which essentially act as courts of appeal. Consisting of two sections (one administrative and one tax), they hear cases on points of fact and law in panels of three judges. They may or may not be organised into specialised sub-sections (Articles 31(3), 37 and 38 of the ETAF). Articles 3, 37 and 38 of the ETAF.
The third instance is the Supreme Administrative Court, which is the Supreme Court of this jurisdiction. It is organised into two sections: the first deals with administrative litigation, and the second with tax litigation. Decisions are made by panels of three judges and there is no specialisation. When hearing appeals, which is the norm, the court only considers points of law (Articles 12, 17 and 24–27 of the ETAF).
Within the Supreme Administrative Court's jurisdiction for appeals, different situations must be distinguished.
Firstly, there is the appeal per saltum (Article 151 of the CPTA), whereby decisions on the merits handed down by administrative courts of first instance are appealed against when the parties raise only questions of law in their pleadings and the value of the case exceeds 500,000 euros or is indeterminate. This applies to proceedings for a declaration of illegality or for an order to issue rules, but not to proceedings concerning administrative acts relating to public employment or public or private forms of social protection. In this case, it is the rapporteur's responsibility to verify whether the conditions for 'admitting' the appeal are met. If the rapporteur considers that the appeal exceeds the scope of a review appeal, they shall refer the case to the Court of Appeal (the competent Central Administrative Court) by means of a non-appealable decision.
Secondly, the Administrative Procedure Law provides for an exceptional ordinary review appeal, which is lodged against decisions of the Courts of Appeal that have heard appeals against judgments handed down at first instance. As this essentially constitutes a third-instance hearing and a second-instance appeal, it is exceptional in nature and requires prior approval from a special panel of three of the most senior judges in each section. This panel will assess whether the legal requirements for hearing the appeal are met. In other words, they will determine whether the issue is of fundamental legal or social importance or whether the appeal is necessary for the better application of the law.
Thirdly, there is an appeal for uniformity of case law, which still exists in Portugal. This falls within the jurisdiction of the Plenary of each Section and is an extraordinary appeal against contradictory decisions of the Courts of Appeal or the Supreme Administrative Court, or contradictory decisions between different formations of Supreme Administrative Court sections. In this case, the appellant must prove a conflict between the judgment on which the appeal is based and the judgment under appeal concerning the same fundamental legal issue. This enables the Plenary Session of the Section to hear the appeal, resolve the conflict between the judgments, and standardise case law for the future. In all such appeals, the Supreme Administrative Court only considers questions of law; therefore, technical complexity invariably stems from the technical nature of the legislation itself. This applies, for example, when issues related to renewable energy production technology are at stake. In its judgment of 15 March 2017, the STA considered whether the concept of 'building' should apply to each wind turbine, as argued by the tax authorities, or to the wind farm as a whole, as argued by the producers, for property tax purposes. The STA concluded that 'the constituent elements and component parts of a wind farm cannot, in themselves, be regarded as urban buildings of the "other" type, insofar as they do not constitute economically independent parts; that is to say, they are not capable of carrying out the said economic activity independently and are characterised as elements ad integrandum domum without economic autonomy in relation to the whole of which they form part' (legislation on the taxation of real estate, dams and photovoltaic parks is currently being approved). On 4 July 2022, the Court considered whether a third party providing technical assistance for the repair of wind turbines could operate under the VAT exemption regime (pass-through accounts), or if this should always be considered a taxable activity. The STA referred the matter back to the Court of Justice for a preliminary ruling, concluding that this type of guarantee contract constituted an activity subject to VAT.
However, the Supreme Administrative Court is also the court of first instance in Portugal for actions or omissions by the following entities: The President of the Republic; the Assembly of the Republic and its President; the Council of Ministers; the Prime Minister; the Constitutional Court; the Supreme Administrative

Court; the Court of Auditors; the Central Administrative Courts and their respective presidents; the Superior Council of National Defence; the Superior Council of Administrative and Tax Courts and its president; the Attorney General; and the Superior Council of the Public Prosecutor's Office (Articles 24(1)(a) to (f) and 26(c) of the Statute of Administrative and Tax Courts (ETAF)). When the Supreme Administrative Court hears administrative actions at first instance, a panel of three judges decides on questions of fact (including the production of evidence) and questions of law. An appeal against this decision is limited to questions of law and is lodged with the Full Court of the Section.
The court has also encountered technical issues in this type of case, which has become widespread, particularly in the area of public procurement. An example of this can be seen in the judgment of 13 March 2025 [proc. 098/24.6BALSB], in which the technical specifications for purchasing computers for members of the Assembly of the Republic were discussed. The specifications included a graphics card ('Intel Iris Xe Graphics'), a network card ('Ethernet RJ45' integrated into the chassis) and a 5.0 MP camera with a maximum weight of 1.49 kg. The Assembly of the Republic, acting as the contracting authority, argued that these were effective technical specifications; however, a competitor of the excluded company claimed that they were characteristics of equipment supplied by a particular brand. The Court concluded that these were technical characteristics that any brand could comply with if it wished to do so.
The same issue arose in the public procurement procedure initiated by the Attorney General for the purchase of hardware [proc. 2614/23.1BELSB]. In this case, it was disputed whether technical solutions presented by one of the competitors, which were not entirely identical to the specified components, fulfilled the same functionalities and should be considered equivalent. The issue was so complex that the Supreme Administrative Court appointed an expert from the Ministry of Justice's IT services to prepare a report on the bids. Ultimately, the challenging company withdrew its appeal, but the evidence produced was almost entirely favourable to its claim.

2. Is your court competent in the following fields of law:

- Environmental law yes
- Health law yes
- Urban planning and building law and/or spatial planning law yes
- Telecommunications law yes
- Public Procurement law yes

Please provide other fields of law, which bear a technical challenge to your court:
Energy law, In addition to the cases already mentioned, the Supreme Court has also been confronted with technical accounting issues regarding the depreciation period for components of a wind farm (judgment of the Full Bench of the Tax Law Section of 9 December 2020).
Accounting law is now a highly complex area, with complex technical issues arising in the interplay between tax law and accounting law. For example, in its judgment of 3 July 2024 (proc. 0624/19.2BEALM), the Supreme Administrative Court considered whether *"the charge recorded for the devaluation of commercial paper corresponds to an impairment loss or a value adjustment', and whether this could impact the calculation of the taxpayer's taxable profit"*.

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: - must not exceed 1% (14-15 in the +/-1400 cases that the Court judges annually), including cases of medical liability, public procurement (in the first instance), urban planning and tax matters.
- In absolute numbers: 15

4. In what field of law, in which kind of cases do you specifically see technical challenges to the judges of your court?
Some technically complex cases have recently arisen in the context of putting the Recovery and Resilience Plan (PRR) into practice. The PRR is Portugal's plan for implementing the Next Generation EU funds. As these cases are related to the digital transformation of public administration, many public procurement procedures have been initiated for the acquisition of highly complex goods and services in the field of digitalisation.
In regulated sectors such as energy, telecommunications, financial services, water and waste, judges may struggle to understand the more technical aspects of tariff regulation when reviewing acts adopted by regulatory authorities.
In Portugal, virtually all administrative contracts (including concessions, works contracts, public-private partnerships, and some service contracts) are subject to an ad hoc administrative arbitration regime. This removes them from the control of the State's permanent courts and transfers many of the more technically complex issues to the arbitration domain. These issues only reach the Supreme Administrative Court through appeals against arbitration decisions.

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 However, there is a legal possibility that, during the preliminary investigation phase, the judge may order any evidence he or she deems necessary (Article 90(3) of the CPTA), which includes requesting information and technical opinions from public or private entities on an *ex officio* basis.

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.):
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:

When the Supreme Administrative Court (STA) hears an appeal, the legal issues are discussed based on the facts that have already been established and the evidence presented in previous proceedings.
Technical issues are usually discussed throughout the proceedings, during which the public authority involved and/or the opposing party may present expert evidence, which is then made available to the court. However, either party may request expert evidence during the proceedings, or the judge may determine it ex officio (Article 467 of the Code of Civil Procedure, ex vi Articles 1 and 90 of the CPTA).
In administrative litigation, the judge hearing the case must assess the suitability of the means of evidence in accordance with the specific characteristics of the litigation. For example, in the field of administrative acts and omissions, facts tend to be proven mainly by documentary evidence. Nevertheless, other means of evidence, such as expert evidence, may be admissible if necessary, and the judge must assess its usefulness and necessity in the context of the factual dispute in question (Articles 388 of the Civil Code and 467 of the Code of Civil Procedure, ex vi Article 1 of the CPTA).
For instance, expert evidence is usually essential when facts must be assessed according to the judgements of other sciences for the decision to be handed down, and witness and documentary evidence produced in the case file may not be sufficient to clarify the issues to be decided.
The court is also recognised as having the right to be accompanied by a competent person to elucidate the investigation and interpretation of the facts it proposes to observe. This expert is appointed in the order instructing the measure and must appear at the final hearing (Article 492 of the CPC).
In cases where the STA acts at first instance, it enjoys the same prerogatives.
In practice, this means of evidence is rarely used by the STA. In most cases, the dialectical process involving external expertise gathered by the parties, as well as the court and the other parties questioning this expertise, will provide the court with sufficient grounds for its decision.

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

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

Please explain your answer:
Either party or the judge may request an expert opinion from the relevant institution, laboratory or official service. If this is not possible or convenient, the judge may appoint a single expert from among individuals with recognised expertise in the matter in question. This does not affect the provisions of the following article (Article 467(1) CPC, ex vi Article 1 of the CPTA). The parties are heard on the appointment of the expert and may suggest who should carry out the investigation. If the expert opinion is to be carried out by more than one expert, the judge will appoint them from among persons of recognised standing and competence in the matter in question, without prejudice to the provisions of the following article (Article 467(1) CPC, *ex vi* Article 1 of the CPTA). The parties are heard on the appointment of the expert and may suggest who should carry out the investigation. The expert opinion is carried out (CPC, *ex vi* Article 1 of the CPTA).
The parties shall be heard on the appointment of the expert and may suggest who should carry out the investigation.
The expert examination shall be carried out by a panel of experts, consisting of a minimum of two and a maximum of three experts, working collegially or interdisciplinarily, at the judge's discretion, when the examination is particularly complex or requires knowledge of different subjects, or when one of the parties requests a collegial examination in their request for evidence, in which case each party appoints an expert and the judge appoints a third expert.

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:
For the purposes of Article 112(6) and (7) of the CRP, regulations are general normative acts that are binding on the courts. Their provisions, including those of a technical nature, also constitute rules to be applied by the courts. However, this does not apply in the event of unconstitutionality or violation of EU law. In such cases, the court may, at the request of a party or of its own accord, render the regulation inapplicable in the specific case (Article 204 of the CRP). Alternatively, the court may rule on the regulation's illegality, the effect of which is limited to the case in question. In practice, this has the same effect as "disapplication" (Article 73(2) of the CPTA).
The STA and Portuguese courts in general may refer to technical documents from public bodies, such as opinions from the Directorate-General for Health, guidelines from the Tax Authority and reports from the Portuguese Environment Association. While these documents are not binding, they serve as auxiliary means of technical or factual interpretation, particularly in specialised fields.
The STA frequently uses European Commission documents (guidelines, reports and technical studies) when interpreting or applying European Union law. Although these documents are not legally binding, they can be highly persuasive and informative, meaning that decisions that contradict their content require the court to provide additional reasoning.
Courts may also consider technical opinions from independent experts, academics, or groups of specialists as evidence or arguments, particularly in cases involving complex technical issues. However, the probative value of these technical opinions is determined at the court's discretion, meaning it is not assessed according to pre-established legal rules, but according to the rules of common experience and the judge's free conviction. This free conviction cannot be arbitrary or subjective, and must therefore be justified. The judge may accept some opinions over others on a reasoned basis when forming their conviction and critically assessing the various opinions prepared, as they are not bound to favour one opinion over another.

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:
In addition to everything stated in point 9, it can be concluded that the elements (statistics, technical data and scientific formulations) contained in reports and documents drawn up by technical bodies serve as an auxiliary element in interpreting facts and law, as previously mentioned. They are an element of the reasoning behind the decision, which is why the judge can rely on them, but they are not bound by them; that is to say, they do not have the parametric value of normative acts.

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

With regard to scientific or technical issues for which there are no generally accepted guidelines, the STA may rely on reasonable or common experience. There is no requirement to initiate or order new scientific investigations that are not yet available within the scientific community.
For example, we can cite cases involving landslides on beach cliffs that cause serious bodily injury or loss of life. In these cases, the injured parties and their legal representatives allege that the State has breached its duty of care. In its judgment of 7 September 2023 (proc. 01435/12.1BELRA), the Supreme Administrative Court based its decision on established evidence and the principle of reasonableness to conclude that the evidence that the signs warning of the risk of falling from the cliffs were not on the stairs leading to the beach on the day of the accident was insufficient to attribute wrongdoing and fault to the State for the accident (fall from a cliff) that killed the users. The study on the stability of the cliffs, carried out by the entity responsible for coastal conservation, was also relevant to the outcome.

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:

Precautionary and temporary measures serve their own purpose: to ensure the usefulness of disputes that would otherwise take much longer. They involve full cognition and have a preventive function against the delay inherent in main proceedings. Precautionary measures have typical characteristics: they are instrumental to the main action, ensuring its usefulness.They depend functionally, rather than just structurally, on the main action; they are provisional, in that they are not intended to definitively settle the dispute; and they are summary, since this is the level of judicial review, in terms of both fact and law.
In precautionary relief, the following is therefore assessed summarily (summaria cognitio): the probability of merit of such relief (fumus boni juris), and the periculum in mora, expressed by a well-founded fear of the creation of a fait accompli situation or damage that would be difficult to repair to the interests that the applicant seeks to secure in the main proceedings.
The purpose of the interim measure is not to protect or safeguard the legal situation, but rather to guarantee the right, provisionally regulate the situation, or anticipate the relief sought in the main proceedings.
Thus, interim measures require only summary evidence of the threatened right, i.e. proof of the likelihood of the right in question and of the fear of its infringement. Regarding the strength of the evidence, mere justification or fumus boni juris is sufficient.
However, expert evidence may exceptionally be admitted in preliminary proceedings if it is necessary and indispensable for the proper decision of the proceedings, even if this means sacrificing the principle of speed.

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:

In general, the provisions of Articles 205(1) of the Constitution of the Portuguese Republic and 154 and 607(3) and (4) of the CPC impose a duty on the Judicial Magistrate to specify the factual and legal grounds for their decisions, ensuring a fair trial for all citizens (see Article 20 of the Constitution of the Portuguese Republic, 'Access to the law and effective judicial protection').
To comply with this duty, it is necessary to indicate not only the proven facts, but also the unproven facts and the logical and rational process that led the judge to form a conviction regarding the facts he considered proven or unproven, in accordance with the burden of proof on each party (see Article 607(4) of the CPC).
Failure to indicate the facts that the court a quo considered to be unproven, along with the reasons for this decision, may result in the annulment of the judgment, as outlined in Article 615(1)(b) of the CPC. This could ultimately lead to a finding of denial of justice and malfeasance, as outlined in Article 369(1) of the CPC. This may, as a last resort, constitute a crime of denial of justice and malfeasance, as provided for and punished by Article 369(1) of the Penal Code. This crime is systematically included in the category of crimes against the State, specifically in the chapter on crimes against the administration of justice. The legal right protected is the administration of justice in general. The law seeks to ensure the supremacy of objective law in the actions of judicial bodies, particularly courts. The constituent elements are unlawful conduct in the context of a procedural investigation, judicial proceedings, an administrative offence or disciplinary proceedings by a civil servant, which is done consciously and with aggravating circumstances if the agent intends to harm or benefit someone.
This principle is closely linked to the protection of fundamental rights, which are constitutionally guaranteed. These include the right to private property (Article 62 of the CRP), the right to health protection (Article 64), and the right to a healthy and ecologically balanced environment (Article 66). When these rights are at stake, particularly with regard to health and environmental protection, the courts must carefully analyse the facts to ensure the effective protection of these rights, which often requires expert/technical evidence.
Additionally, the Aarhus Convention, which has been ratified by Portugal and incorporated into domestic law, strengthens access to justice in environmental matters, particularly for non-governmental organisations and citizens. The convention imposes requirements regarding public participation and the effective judicial review of environmental decisions. This obliges courts to analyse the relevant scientific and technical facts in a reasoned manner, which is essential in environmental matters.

A problem in Portugal is that ordinary courts sometimes consider themselves competent to hear cases involving alleged violations of environmental law when applicants invoke violations of personality rights (Article 70 of the Civil Code). For example, in an injunction brought by a horseman defending his and his family's right to rest, the Lisbon Court of Appeal allowed the removal of a wind farm with a positive environmental impact assessment (judgment of 13 January 2009).

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:

Judicial review of discretionary power is limited to assessing legality and constitutionality, and does not extend to the sphere of opportunity, where discretionary power reigns supreme. Even more intense areas of administrative assessment exist, such as discretionary assessment. However, precisely because they allow greater freedom in the administration's assessment, they impose stricter rules on external control. For example, on 30 January 2025, the STA ruled that the Superior Council of Administrative and Tax Courts' competition for recruiting judges for the second instance was illegal because it approved a selection test that

did not comply with Article 19 of Law No. 13/2016.The STA ruled that the competition was illegal on the grounds that it had approved sub-criteria for evaluating candidates that modified the outcome of the more general criteria, despite the candidates' CVs already being known. The grounds for annulment in this case were based on the 'concrete danger of harm and partiality, even if there was no actual violation of the interests of any of the candidates', in violation of the principles of transparency, impartiality and independence.

In judicial reviews of discretionary administrative decisions, the STA verifies whether the administration's decision has a legal basis, respects the different manifestations of the rule of law (legality, proportionality, equality and impartiality), is substantiated, and is not manifestly arbitrary or unreasonable.
Violation of the constitutional principles of proportionality and equality only assumes independent relevance when the administration acts under discretionary powers.

STA case law has held that discretionary and technical power is not outside the legal domain, nor is the administration subject only to rules of good administration when acting under discretionary powers, contrary to any precise normative parameters of control. This is because discretionary power shares the characteristic of constituting a legal power with strictly binding power.

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

As set out in Articles 12(4) and 24(2) of the Statute of Administrative and Tax Courts and in Articles 150(3) and 150(4) of the Code of Procedure in Administrative Courts (CPTA), the STA generally only considers legal issues in appeals. Errors in the assessment of evidence and in the determination of the material facts of the case cannot be reviewed unless there has been a violation of an express legal provision requiring a certain type of evidence for establishing a fact or establishing the probative value of a particular means of evidence (Article 150(4) CPTA).
However, when acting as a court of second instance, the STA (hearing appeals against decisions handed down at first instance by the Central Administrative Courts) may rule on issues that the court of first instance failed to address, particularly if it considered them to be prejudiced by the solution given to the dispute. This is provided that the appeal is admissible and there are no obstacles to examining those issues. The STA may then rule on them in the same judgment in which it revokes the appealed decision (Article 149(3) of the CPTA).
Additionally, in the context of appeals or complaints of nullity, omissions or contradictions in the factual grounds affecting the legal outcome may be invoked. If the STA finds that the court a quo's decision is based on an incorrect or incomplete assessment of the facts that impacts the application of the law, it may annul the decision and order its reform.

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 a recent judgment on 4 December 2024 [proc. 071/24.4BELRA], the Supreme Administrative Court examined whether one of the bids for a public tender to procure Asian hornet nest extermination services should have been excluded because it violated legal or regulatory requirements on the use of biocides. The appellant claimed that the bid in question proposed a biocide with a prohibited concentration under Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012, and that the tender committee had acted unlawfully by failing to take this into account. The court of first instance dismissed the case, but the Court of Appeal concluded that the tender submitted by the competitor who proposed the use of that substance should have been excluded, as was apparent from the product instructions in the tender.

However, the Supreme Administrative Court concluded that the Court of Appeal could not classify the manufacturer's instructions as a parameter for assessing 'breaches of legal or regulatory obligations' that could lead to a tender being excluded, in accordance with Article 70(2)(f) of the CCP. Product manufacturer instructions are not legal rules, and determining whether they violate legal rules is a matter of fact on which the courts would have had to order the production of evidence. The Supreme Administrative Court also concluded that Articles 17(5) and 22 of Regulation (EU) No 528/2012, which were allegedly infringed, do not stipulate the maximum concentration of the biocidal product in question (Draker 10.2), but merely set out rules for authorising its use. Therefore, to conclude that the jury's decision not to exclude the bid was unlawful, it was necessary to prove that the bid was based on applying the product in a way that violated the terms of that Regulation, which was not the case. The Court of Appeal's decision, which was based on the 'illegality of the manufacturer's rules for applying the product', was therefore overturned.