



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:

Questions of fact are usually resolved by a lower administrative court. Where the Supreme Administrative Court decides in the first instance (for example, in proceedings on the action of the General Prosecutor of the Slovak Republic to dissolve a political party or in proceedings on election matters) and in disciplinary matters, it also resolves questions of facts. It can also partially resolve factual issues in matters of administrative punishment.

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 definition of the relevant market in connection with the assessment of a violation of competition rules, for example, abuse of a dominant position, can bear a technical challenge.

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 number of such disputes is very low, not even dozens of 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:

As mentioned in answer to question 2, the definition of the relevant market in connection with the assessment of a violation of competition rules, for example, abuse of a dominant position, can bear a technical challenge. Technical challenges may also arise in other types of cases, such as those related to environmental matters, tax calculations, or public procurement.

Part 2: Facing modern challenges in disputes of a highly technical nature

5. Does your court employ technical staff in order to help the judges better understand technical questions?

- Yes
 - As research assistants
 - As additional judges
 - In another function (e.g. as a separate panel etc.).

Please explain:

- No **X**

Each judge of the Supreme Administrative Court is assigned an assistant with a law degree, who can also be assigned to examine technical issues, if these issues are not complex in nature or do not require professional qualifications in a given field. The Supreme Administrative Court also has an analytical department, whose employees also have a law degree and their task is to prepare research at the request of judges. In the case of a complex technical problem, the solution of which requires professional qualifications, it can turn to expert witness in the given field either through an expert opinion or as part of expert evidence. However, it is a means of evidence and therefore is not usually conducted in cassation proceedings.

The Supreme Administrative Court does not have the legal authority to approach institutions. Only the Grand Chamber (which decides e.g. in cases where a chamber of the Supreme Administrative Court arrives at a legal opinion that differs from a legal opinion expressed in a previous decision) may approach the General Prosecutor and request a legal opinion.

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
- Judges may rely on external experts **X**
- Judges may rely on internal experts
- Other (please provide a method):

Please explain your answer:

Judges search in libraries and public sources.

In the case of a complex technical issue that requires expert qualifications to resolve, the court may turn to specialists in the relevant field, either through an expert opinion or as part of expert evidence. However, this is a means of evidence and is therefore not typically used in cassation proceedings.

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
- Other (please provide a method):

Please explain your answer:

If it is necessary to assess facts that require expert knowledge, the court shall, upon motion, request an expert opinion from a professionally qualified person. If an expert opinion is not sufficient due to the complexity of the issues being assessed it is necessary to conduct expert evidence. The court may appoint an expert either at the request of a party to the proceedings or select an expert from the list of experts maintained by the Ministry of Justice.

In cassation proceedings (i.e., proceedings concerning remedies against final decisions of lower administrative courts), an insufficiently established factual situation is rather a reason for annulling the decision.

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:





Anything that was obtained in accordance with the law and the reliability of which is not in doubt can serve as evidence of a technical nature.

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 court is bound by law; if a subordinate regulation is, in the court's opinion, in conflict with the law, the proceedings shall be suspended and a motion shall be submitted to the Constitutional Court of the Slovak Republic to initiate proceedings.

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

Please explain:

The court's task is to primarily assess legal questions. If there is no established scientific knowledge about something that is the subject of assessment, it is not the court's role to resolve it.

The resolution of expert matters primarily falls under administrative authority, which for this purpose uses what is known as administrative discretion.

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 court may grant temporary relief if the applicant demonstrates that serious harm is imminent, as provided by law. For the purpose of assessing imminent serious harm, it is not necessary to carry out full procedures; it is merely a preliminary assessment. It is the applicant's responsibility to prove that there is imminent danger. The court does not request this on its own, but it may assess the evidence submitted.

Certain types of cassation complaints grant temporary relief. The suspension only applies to the effects of the decision of the administrative court. It is not possible to suspend the effect of the decision of the administrative authority.

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
- Other. **X**





Please explain:

The Supreme Administrative Court of the Slovak Republic and administrative courts primarily address legal questions. However, the law permits or obliges the court—in certain cases, such as monetary or sanction moderation—to conduct evidence. In such instances, this constitutes a statutory expression of the principle of full jurisdiction, the right to judicial protection, and the right to a fair trial.

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 Constitution and EU law are respected. The law may grant a competent authority a certain degree of discretion when deciding on rights and obligations, allowing it to take into account the specific circumstances of the case.

An administrative authority has the power to exercise discretion, within the limits set by law, in certain matters, including technical issues. If the law allows for such discretion, it may also extend to expert or specialized questions, provided that the legal framework permits it.

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

Please explain:

In the event that there are deficiencies in the established facts, the main task of the court is not to eliminate these deficiencies. The court may, pursuant to Section 120 of the Code of Administrative Court Procedure, itself conduct the taking of evidence if it deems it necessary for the decision in the case or in the types of proceedings specified by law. In principle, however, it is the task of the administrative authority to sufficiently establish the facts.

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:

Judgment of the Supreme Administrative Court of the Slovak Republic of 27th March 2024, Case No. 7 Ssk 45/2023 (social matter case in which the plaintiff was deprived of a benefit for compensating increased expenses related to the operation of a personal motor vehicle):

The administrative court generally does not conduct expert evidence proceedings, because if such a need is identified, it constitutes grounds for annulling the reviewed decision and returning the case to the administrative authority.

Judgment of the Supreme Administrative Court of the Slovak Republic of 30th January 2024, Case No. 5 Spv 2/2020:

This case concerned a **rejected application a declaration of invalidity of the utility model** “Gas Convection Heater.” The plaintiff argued that the new utility model was nearly identical to their earlier solution and had





been created by former employees who had access to the plaintiff's technical drawings. In the administrative proceedings, the plaintiff submitted expert witness judgments intended to support these claims. These expert witness judgments were taken into account only to the extent that they demonstrated technical differences between the solutions.

In this case, the Supreme Administrative Court of the Slovak Republic stated that if the plaintiff, referring to the submitted expert witness judgments, argues that the experts concluded the technical solution protected by the utility model is not new, such conclusions represent an inadmissible determination of a legal question by the experts, which the administrative authority and the administrative court rightly disregarded. **The expert witness judgments were therefore relevant to the authorities only insofar as they provided answers to technical questions concerning the disputed technical solutions—such as differences in the elements of the solutions and the potential impact of those differences on the effectiveness of the technical solution.** These conclusions from the expert opinions submitted by the plaintiff were duly considered and addressed by the administrative authority, the appellate body, and the administrative court in the reasoning of their decisions.

The Supreme Administrative Court of the Slovak Republic therefore dismissed the plaintiff's cassation complaint.

