



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

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





Other fields of law, which bear a technical challenge, include the cases in which the decisions are made pursuant to the Law on Air Protection, the Law on Climate Change, the Law on Mining and Geological Explorations, etc.

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:

Having in mind the wide scope of legal matter in which the judicial protection in the administrative dispute is accomplished before the Administrative Court, it is not possible to present precise data according to the given parameters.

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: **Please see the answer to the question No. 2.**

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**

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

Please explain your answer: **The Court may examine proofs through expert testimony, when the determination of a fact or clarification of a certain circumstance requires an expert knowledge that the Court does not have.**

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: **The party may recommend certain person for the expert. The experts are selected from the register of the court experts for specific area. If there is no registered court expert in the register for a specific area of expertise, the expertise may be performed by a person of the appropriate profession appointed by the court. The person appointed by the court is obliged to declare before the expertise that he/she will provide the findings and opinion in accordance with the rules of the profession and to the best of his/her knowledge, objectively and impartially.**

9. To answer technical questions: May the court rely on technical expertise as laid down in:

- **Regulations**
- **Other government documents or documents by public bodies**
- **Documents published by the EU Commission**
- **Documents published by experts or groups of experts**
- 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):**

Please explain your answer: **Depending upon the formal nature of the document, that is, in case of regulations, which are binding for the judges, the judges are obliged to apply them, while in terms of documents published by the experts and groups of experts, judges may rely on these documents, 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 case, the judges rely on free judicial conviction which is based on the application of regulations to the relevant factual circumstances.**

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: **Not applicable.**

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: According to the para. 1 of the Article 144 of the Constitution of the Republic of Serbia ("Official Gazette of RS" Nos. 98/2006 and 115/2021), a judge shall be independent and adjudicate on the basis of the Constitution, ratified international treaties, laws, generally accepted rules of international law and other general acts, adopted in accordance with the law.

In line with the constitutional principle of the right to a fair trial (Article 32 of the Constitution of the Republic of Serbia), according to the Article 2 of the Law on Administrative Disputes ("Official Gazette of RS" No. 111/2009), the Court shall decide in administrative disputes in accordance with the law and within a reasonable time period, based on the facts identified in the oral public hearing.

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: In terms of a margin of appreciation of the legislator within the context of the European Convention on Human Rights and Fundamental Freedoms, the legislator disposes of a wide margin of appreciation and in accordance with the Law on Ratification of European Convention on Human Rights (with accompanying protocols), ("Official Journal of SM – International Treaties", No. 9/03, 5/2005 and 7/2005 – correction, and "Official Gazette of RS – International Treaties", No. 12/2010 and 10/2015), the Article 2 affirms that "High Contracting Parties, in accordance with the principle of subsidiarity, have the primary responsibility to secure the rights and freedoms defined in this Convention and the Protocols thereto, and that in doing so they enjoy a margin of appreciation, subject to the supervisory jurisdiction of the European Court of Human Rights established by this Convention".

Article 10 of the Law on General Administrative Procedure ("Official Gazette of RS", No. 18/2016, 95/2018 – authentic interpretation and 2/2023 – Decision of the Constitutional Court), which refers to the principle of truth and free admission of evidence, stipulates the following: "(1) The authority shall be obliged to regularly, truthfully and completely determine all the facts and circumstances significant for lawful and proper action in an administrative matter. (2) The authorised officer shall at his/her own discretion determine which facts are to be admitted as evidence on the basis of a conscientious and careful assessment of each piece of evidence individually and the body of evidence as a whole, as well as on the basis of the outcome of the entire procedure".

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

Please explain: The administrative act may be challenged in the administrative dispute due to illegality if the factual state is incompletely or incorrectly defined or if the identified facts brought to an incorrect conclusion in terms of the factual state (Article 24, par. 4 of the Law on Administrative Disputes, "Official Gazette of RS", No. 111/2009).

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:

