



**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 Supreme Court of Slovenia is in majority of administrative law cases examining only questions of law as the court of last instance. The competence to examine facts is given to the Supreme Court only in cases where an act of parliament expressly determines that certain cases are to be resolved in first (and last) instance by the Supreme Court or that in certain cases there is a direct appeal to the Supreme Court both on points of fact and law.

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

- Environmental law **X**
- Health law **X (partly)**





- 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, Public Subsidies.**

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: /

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:

**It is quite difficult to determine the approximate number and/or type of cases, since there have been difficult technical questions in quite a few of them, predominantly examined only in relation to questions of law, not of fact. As the Supreme Court can examine (in majority of cases) only points of law, the core disputes relating to technical issues are not common as such.**

## **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 **X**





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

Please explain your answer:

The (difficult) technical questions are decided by the Supreme Court if they are questions of law. This occurs when technical methods, standards, requirements etc. are incorporated in a legally binding act, mostly secondary legislation (governmental decrees etc.) In these cases, the Supreme Court has to establish the correct interpretation such acts, which means, that it must give correct meaning/answer to mentioned technical questions. Since the questions of law can be discussed with the parties but are not to be explained or resolved by outside experts, it is for the Supreme Court judges themselves to resolve these issues. This demanding task is in practice quite often supported by the fact that these questions have by then already been argued by parties to the dispute before the administrative court and explained in detail in the reasonings of both administrative acts and administrative court judgements.

If the Supreme Court can in exceptional cases, determined by an act of parliament, also examine the questions of fact, external experts can be used to help resolve factual technical questions. In these cases, the procedure is the same as in general civil law litigation.

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:

In those administrative disputes, where the Supreme Court can examine also facts of the case, an external expert can be chosen by the Supreme Court to give a professional explanation to a technical question using their own expertise. They can be recommended by both parties, but the formal task is ordered by the court, as in civil litigation cases.

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:

If the Supreme Court has to examine technical questions it can refer to both legally binding texts, as well as "soft law" documents. It is important to note, that the documents used are then stated in the reasoning of the decision, as a reference for the court's conclusions. The use of these documents by the Supreme Court is thereby made transparent. There is an established jurisprudence however, that an act of administration has to have a legal basis in an act of parliament (and subsequent secondary regulation) and can't be based solely on technical documents, even if made by administrative authorities. This distinction is both important and challenging at times.





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 X
- The judges may rely on these documents without being bound X
- The judges are not formally, but factually bound by these documents X
- Other (please provide the extent of binding effect): X

Please explain your answer:

A judge of the Supreme Court is bound by the Constitution and acts of parliament. If technical questions are resolved by these acts, the judge is bound to follow them, of course based on the correct interpretation of these legal acts. If – and this is much more common – the technical issues are regulated by secondary bylaws, the judge can disregard them (*exceptio illegalis*), but only if he finds them illegal (e.g. contrary to an act of parliament) and not if the judge finds them unconvincing or would have other doubts about their technical adequacy. If the technical expertise is incorporated in an administrative document that is not a legal act, the judge can be (only) *de facto* bound by such a document, if there are no other sources of expert interpretation of a certain technical question (e. g. meaning of a certain technical requirement/term). Other documents can be used as a reference for the judicial reasoning in the administrative dispute ruling by the Supreme Court (see above).

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

Please explain:

To give a short answer: technical questions relevant to the case always have to be answered.

If the technical question is related to interpretation of the law (see above), it always has to be decided by the court in administrative dispute, also the Supreme Court. It cannot refuse to rule in a case before it because the related technical question is (too) hard to resolve. The Supreme Court always has to interpret the law, so this is no exception.

Similar is true if the technical question is a factual one: it is up to the parties to prove the correct answer to the issue, also by proposing to the court to engage external experts, if needed. If a technical fact can't be proven by a party, the Supreme Court decides on the basis of general rules and principles of evaluating evidence (who has the burden of proof, etc.).

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

- Yes, without modification X
- 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.

X

Please explain:

The Supreme Court can examine facts in an administrative dispute only in exceptional cases, determined by an act of parliament (see above).

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:

There is a certain margin of appreciation of public authorities deciding on difficult technical issues, recognized in jurisprudence of the Supreme Court. It means that in an administrative dispute the court has a limited examination of these questions and establishes a violation primarily when the reasoning of the administrative body is manifestly illogical, inconsistent and/or incoherent. This approach is relevant mostly in administrative disputes against decisions of independent regulatory authorities, that are established by law to resolve these difficult technical questions (e. g. in the field of telecommunications).

It does not mean, however, that the Supreme Court and administrative courts are limited in their jurisdictions and that they cannot examine these issues. On the contrary, as mentioned above, it is always a duty of the court to examine difficult technical questions that fall within its competence, both if it is related to questions of law and of fact.

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

Please explain:

No.

#### 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 revision case No. X Ips 12/2023 of 30. 11. 2023 the Supreme Court ruled on the legality of the administrative act of the Energy Agency and Administrative Court judgement, issued in second proceedings, resolving a highly technical question (tariff methodology for use of network and energy distribution).

In first administrative dispute, the Administrative Court annulled by its judgement of 2019 the decision of the Energy Agency, issued in 2018, related to the regulatory framework for relevant tariffs, and returned the case to the Agency for a new consideration. The Energy Agency disagreed with the interpretation of the law, related to the technical questions, that has been adopted by the Administrative Court, stating that these





questions require expertise that falls within the competence of this administrative body and is therefore not bound by the court's judgement. It issued the same decision again in 2020 and gave additional reasons for its interpretation of the technical questions related to the case. The administrative dispute against this decision was unsuccessful, because the Administrative Court in 2022 (sitting in a different panel), found that the reasons of the Energy Agency for its decision (and non-adherence to the previous final judgement) were convincing enough.

The Supreme Court agreed with the plaintiff that both administrative body as well as the Administrative Court are bound by the final judgement already issued in the same case and therefore annulled the disputed decisions (administrative act of 2020 and judgement of 2022). It stressed that neither the Energy Agency nor any other administrative body has the power under the Constitution to disregard final judgements of administrative courts. This is also valid in cases, where there are technical or other related issues, requiring special expert knowledge, incorporated in legal acts that have to be interpreted by the courts. In these cases, such questions of law are to be finally resolved by the courts, as is required by valid constitutional principles (effective judicial remedy, separation of powers etc.). The Supreme Court also repeated that in technical questions a certain margin of appreciation can be given to the administration (e. g. through open, undefined legal terms), but that it is up to the legislation and the interpretation of its scope by the courts to determine the boundaries of administrative powers.

