



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 Administrative Chamber of the Supreme Court has two main roles in the Spanish judicial system: on one hand, the court deals with the "recurso de casación", which is an extraordinary appeal created to ensure a uniform application of "State law"; that is, of legislation enacted by the central government, in contrast with legislation created by our Autonomous Communities (similar to federal states). This appeal can only be based on questions of law. On the other hand, the Supreme Court has first instance jurisdiction over cases related to acts enacted by the Council of Ministers, the General Council of the Judiciary and other, very specific, high institutions of the State. In this cases, the Supreme Court operates as a trial court, and must review the full case, including questions of fact.

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:

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:

It is not possible to provide an estimate, as these cases are not registered separately to the rest, and as such any number that may be given would be purely speculative.

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: Regulatory issues, such as the ones regarding the electric or telecommunication markets, present significant technical challenges. Also, some aspects of environmental law, urban planning, public procurement and public concessions present technical challenges frequently.

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 (With the exception of forensic medical doctors)

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 X





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

Please explain your answer: Usually it is for the parties concerned to provide relevant experts as to their points of fact (no experts are allowed for points of law), but see answer to the next question.

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: As stated, the parties involved may provide, along with the rest of the evidence, expert witnesses and their reports. The courts (including the Supreme Court) have the authority to appoint an expert (or several, if needed) if the evidence and knowledge they can provide is essential for the case at hand. This power is rarely exercised, though. In the case of the Supreme Court, as the extraordinary appeal has to deal with points of law, the facts (and thus the expert witnesses' testimony) must already be on record.

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: As long as any of those documents have been properly introduced into evidence, or are a matter of public record, the courts may rely on them. Certain technical regulations (like the Technical Building Code) are known to be considered applicable and set a technical standard, even if not introduced into evidence.

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: In Spain, save for some rare cases, judges are not bound by any specific evidence, but must use their best judgment and experience to decide the relevant facts of the case, taking into consideration the whole case and evidence presented before them. This includes expert witness testimony, which the courts may disregard if it is illogical or contradicts other evidence.

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





Please explain: The courts are under an obligation to decide all cases before them. In the aforementioned case, usually the burden of proof standard will be applied: the party with the burden to prove the technical question that failed to satisfy this burden will bear the consequences.

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: It is extremely rare that technical questions are decided, or even examined, in temporary relief decisions, which will deal far more with ensuring that an ulterior judgment may be rendered and is applicable. There is no specific provision for incorporating technical questions into this proceedings.

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 X
- Other.

Please explain: The Spanish Constitution, in Article 24, clearly states that everyone is entitled to use all pertinent means of evidence, and also completely forbids causing any sort of "helplessness" to the litigant parties, which means that the courts must examine all pertinent material the parties bring forward, and make its decision in accordance with them. Thus, the court is under an obligation to set out the relevant facts and assess them in order to properly apply the law to the case at hand.

The Aarhus Convention does not have a direct effect on technical questions before court. Yet, it lays ground especially for NGO litigation in environmental law, which in many cases raise technical questions of environmental law.

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 legislature enjoys, in principle, full margin of appreciation to enact laws, including in the technical questions that may arise. Only if those laws contradict the Constitution or EU law may the courts set them aside, using the established procedures (referral to the Constitutional Court or the European Court of Justice).

Other public authorities enjoy a margin of appreciation that should be (and usually is) considered correct, but an error in the consideration of technical questions, if properly proven, may constitute a bases for the annulment of the decision, if this decision is irrational, contrary to facts or deficient. In case of doubt, deference is given to the administrative decision.

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





Please explain: Besides ordinary appeal of lower court decisions, the Supreme Court may, in very exceptional circumstances, set aside or change the facts of the lower court proceedings (even if the extraordinary appeal is restricted to points of law) if the factual finding of the lower court is found to be flawed to the point of being irrational. This is exceedingly rare.

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:

During the years 2024 and 2025 the Supreme Court has pronounced a series of decisions in direct appeal (first instance) proceedings brought forward by electric utility companies regarding Ministerial Order TED/749/2022, dated 27th of July, that approves the incentive or penalty for loss reduction in the electric distribution network for 2016, modifies the basic payments for some electric distribution companies for 2016, and approves the payments for electric distribution companies for years 2017, 2018 and 2019.

This Order regulates the payments to electric distribution companies in accordance with the methodology set forward by Royal Decree 1048/2013, which establishes a payment system based in assets bound to the electric distribution activity, that is increased with certain investments and that is incentivized or penalized by the application of certain parameters set forth by this and other regulations, particularly another Ministerial Order (IET/2550/2015).

The complaints lodged argued against the Ministerial Order both from a formal and a material standpoint. Although the formal questions were, by their very nature, essentially solvable without needing technical expertise in the field, the material challenges required consideration of very specialized facts.

These discrepancies required the evaluation of expert witness testimony, particularly in regards to the inclusion or exclusion from the payment calculation of certain assets that aren't strictly "electric distribution assets" or the determination of the investment levels of the plaintiffs in other necessary assets for the electrical distribution activities not included in the "physical electric units". The final decision in each case was made using a critical evaluation of the expert witnesses' report and testimony in chambers, taking into account both the explanations provided to the Court and the source of their knowledge, as well as their specific expertise in the different fields.

