



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

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

There are around 500 different types of cases in the Supreme Administrative Court. Having in mind the question of technical challenges, the following can be mentioned: cases concerning radiation protection; judicial review of certain government decisions; cases concerning work environment issues. In the field of





health law, cases concerning deprivation of liberty according to regulations on forensic psychiatric care or involuntary psychiatric care regularly involves medical questions of a technical nature that poses challenges to the administrative judge to assess.

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:

No statistics are available.

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 rather common that technical aspects arise in the Supreme Administrative Court in public procurement cases.

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.):

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: The court may, on its own motion, obtain a statement of views on issues requiring expertise, from an authority, from a public officer, or from a person who should otherwise make a statement on the matter. The court may also engage other experts on the matter. (Section 24 of the Administrative Court Procedure Act [1971:291]).

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





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

Please explain your answer: **See the answer to question no. 7.**

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): **X**

Please explain your answer: **Occasionally laws or ordinances may contain provisions that state that the decision-maker should have regard to expert opinions within a certain field. However, such provisions rarely regard technical issues. More often they may regard, for instance, questions on what weight to be attributed to the interest of state defence in certain types of cases. Nonetheless, the parties are always free to present any evidence they are able to obtain. And the court is equally free to assess the value of that evidence in the case at hand. In addition, the *iura novit curia* principle applies.**

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): **X**

Please explain your answer: **It depends on the circumstances of a case and varies in different cases. It cannot be stated, in general terms, to what extent a certain document, or source of technical information, is binding upon the court. As a general rule, however, regulations contain binding provisions within the national legal order. The same can oftentimes be said with regard so certain documents published by the Commission. Occasionally, documents by the Government and other administrative authorities contains rules that are binding, but more often they are not. The rules may bind the court to have regard to technical expert opinions. At the same time, normally they presuppose that the court shall make its own assessment of the issue and not rely purely on the assessment of the experts.**

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

Please explain:

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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:

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 X
- Human rights X
- Aarhus Convention X
- Other.

Please explain: There's a variety of principles determining the assessment of a case's factual basis. The right to a fair trial is a fundamental right and is set out in Article 6 of the ECHR and Chapter 2, Section 11 of the Instrument of Government (IG), which is one of Sweden's four fundamental laws (usually referred to as the Constitution). According to the IG (Chapter 2, Section 19), no act of law or other provision may be adopted which contravenes Sweden's undertakings under the ECHR. Since 2005, Sweden has been a party to the Aarhus Convention. Other principles that can be mentioned are, for example, that public power is exercised under the law (the principle of legality; Chapter 1, Section 1 IG) and that all public bodies shall pay regard in their work to the equality of all before the law and shall observe objectivity and impartiality (the principle of objectivity; Chapter 1, Section 9 IG).

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: It would be fair to say that both the Government and the central government administrative authorities that come under the Government have a certain degree of margin of appreciation in their decision-making. In addition, the administrative authorities usually have persons with technical and other expertise knowledge in their respective fields as employees. The courts' role is predominantly of a supervisory nature. The courts assess, for example, whether the authority's decisions are supported by facts and law and are not arbitrary or disproportionate. But the courts may also assess the material issues of a case and take another approach, replacing the authority's decision with its own. The Swedish Riksdag (the Parliament) has a broad freedom to regulate technical issues through acts of law. The legislation must, of course, comply with the Constitution and EU law and respect fundamental human rights.

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

Please explain: The court shall, according to Section 8 of the Administrative Court Procedure Act, ensure that a case is investigated to the extent that is required by its nature. The court can intervene in the investigation either by guiding the parties and encouraging them to complete the investigation, or by obtaining the investigation itself. The court may also refer a case back to a lower court or to the initial decision-making body, if that instance has not fulfilled its obligation to investigate the matter thoroughly.

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:

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