



Bundesverwaltungsgericht



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**ReNEUAL I –**

**Administrative Law in the European Union**

*“Single Case Decision-Making”*

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**Answers to questionnaire: Slovenia**



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**ACA-Seminar**  
**ReNEUAL I – Administrative Law in the European Union**  
**Single Case Decision-Making**

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Verwaltungsgericht Köln (Administrative Court Cologne)

**Answers to a Questionnaire – Legal order of the Republic of Slovenia**  
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***I. Parties to Administrative Proceedings: Categories and Legal Positions***

1. a) *Are the following categories of parties to administrative proceedings for single case decision-making recognized in your legal order:*

- *addressees of onerous administrative acts / applicants of beneficial acts,*
- *other individuals (please differentiate, in its case, further, e.g. between individuals claiming subjective rights, concrete legal interests, factual interests, individuals as members of the general public),*
- *associations or non-governmental organisations (e.g. environmental, consumer, ...) (please indicate, in its case, details and/or specific requirements),*
- *other administrative bodies?*

According to the Slovenian Administrative Procedure Act (hereinafter APA) a party to an administrative procedure may be any natural and legal person under private or public law on whose request the procedure has been initiated or against whom the procedure is conducted. Both addressees of onerous administrative acts as well as applicants of beneficial acts may be parties of an administrative procedure.

Parties may also be others (a group of persons, etc.), provided that they can be the holders of the rights and obligations decided in an administrative procedure.

The right to participate in a procedure shall also pertain to a person who demonstrates legal interest. Legal interest shall be demonstrated by a person who claims to be joining the procedure in order to protect their legal benefits. A legal benefit shall be a direct personal benefit based on an Act or other regulation. Merely factual interest does not suffice.

The State Prosecutor, the State Attorney and other state authorities entitled by an Act to represent public benefits in an administrative procedure, have, within the limits of their authorisation, the rights and obligations of a party.

Sectoral legislation may authorize non-governmental organisations to participate in specific administrative proceedings under specific circumstances provided by law. The Environmental Protection Act, for example, determines that non-governmental organisations (which have previously obtained their status on the basis of a formal decision in the public interest) shall have a legal interest in participating in the procedure for the issuing of environmental consent (in a process of acquisition of a building permit) in order to protect their rights. They shall have the position of an accessory participant under regulations on administrative procedure if they have lodged a request to participate in the procedure for the issuing of environmental consent within a specific time limit.

According to the Collective Actions Act, non-governmental organisations, registered for the protection of the rights and interests of consumers, may file an action against a company that violates consumer rights set forth by the law governing consumer protection or other laws dealing with consumers. The Consumer Protection Act does not provide for participation of such organisations in administrative proceedings.

*b) Are the categories of parties to administrative proceedings defined*

- *in a general codification (i.e. Code of Administrative Procedure,...),*
- *by reference to other codifications (e.g. Code of Court Procedure,...),*
- *by custom(ary law),*
- *by jurisprudence,*
- *in another way (please explain)?*

*(cf. Art. 4 (f) EP-Res.; Art. III-2 (3) and (4), III-25 ReNEUAL)*

They are defined in the above mentioned codification APA.

2. *a) Do (sectorial) pieces of legislation establish additional categories of parties to administrative proceedings or do such pieces of legislation modify the general categories? In this case, please give examples!*

They establish additional categories of parties to administrative proceedings. For example, the above mentioned non-governmental environmental organisations, which function in the public interest.

*b) If such additional categories are established and/or such modifications are provided for, what is the rationale of such additions and/or modifications?*

Additional categories of parties are established in order to achieve different aims in different specific administrative proceedings. For example, the environmental legislation often provides for the participation of non-governmental organisations in the administrative proceedings concerning the environment due to their valuable professional knowledge and

experience on non-legal matters, all with the aim to protect values which are in the general public interest.

Additional categories of parties are, therefore, special representatives empowered to protect certain public interests that require special protection due to the fact that they can not represent themselves.

3. *As far as the parties are not parties by law (e.g. addressees or applicants), how can the different categories of (potential) parties actually become parties to administrative proceedings?*

- *Is a request of the party required?*

Yes.

- *Is a decision of the administrative authority admitting the party required?*

Yes.

- *Is the administration obliged to qualify potential parties ex officio?*

Yes.

4. a) *Are administrative authorities obliged to identify third parties entitled to participate or potentially interested in administrative proceedings?*

Throughout the procedure, the authority must ensure ex officio that all those persons whose rights or legal benefits could be affected by the decision, participate in the procedure.

b) *Is the administrative authority obliged to announce the beginning of administrative proceedings to (potential) third parties to enable their participation?*

Prior to the beginning of a fact-finding procedure, the authority shall invite persons for whom it establishes that they have a legal interest in participating in the procedure.

If the authority cannot establish which persons have a legal interest in participating in the procedure, it shall invite them by a public notice posted on its information board and on the state web portal, or in some other locally usual manner.

c) *Are there any consequences, if the (potential) party does not make use of its right to participate in the administrative proceedings? Does your legal order provide for a foreclosure of the exercise of the party's rights (preclusion regulation), particularly with regard to later court proceedings (ability to challenge the final decision, legal standing in this regard)?*

If a person that was duly invited to participate as an accessory participant and informed of the consequences, has not duly notified their accessory participation by the issuing of the decision at the first instance, they cannot seek legal remedies against the decision.

5. *If individuals / organisations / other public authorities are not admitted as parties to administrative proceedings by the competent authority on their request, what are the legal consequences?*

a) *Are they entitled to direct court actions against the administrative decision to not admit them as parties to the administrative proceedings? Are (only) original parties (parties by law) to the administrative proceedings entitled to do so?*

Yes, persons who are not admitted as parties are entitled to direct court action.

b) *In contrast, do the parties not admitted to the administrative proceedings have to wait for and then challenge the final administrative decision claiming a procedural defect in not admitting them?*

No.

c) *Can the competent authority remedy any omission to admit a party?*

Yes.

6. a) *Do all categories of parties to administrative proceedings enjoy the same procedural rights:*

- *to be heard (orally or in writing),*
- *to be advised by the competent authority concerning the relevant procedural rights,*
- *to submit documents,*
- *to have access to the file, including documents submitted by other parties,*
- *to call witnesses or to initiate other gathering of evidence,*
- *to be provided with a copy of the final decision,*
- *to file a claim in the administrative proceedings?*

Yes, they have all of the above mentioned rights, naturally all in the context of their own legal interest.

b) *Or do different categories of parties to the administrative proceedings have different rights? If so, please provide information about the most important differences!*

No.

*(cf. Art. 9, 11, 14, 15 EP-Res.; Art. III-15, III-23, III-24 ReNEUAL)*

7. *Is there a political or academic discussion concerning any kind of reform with regard to the participation rights of third parties to administrative proceedings in your country? Are*

*there recent legislative proposals concerning the participation rights of third parties to administrative proceedings?*

No.

*8. What is the most important and most recent case law of your court relating to the status of third parties to administrative proceedings and their procedural rights therein? Please identify up to three cases and provide some information about the content and relevance of the judgements!*

Judgement of the Supreme Court of the Republic of Slovenia X Ips 156/2014, dated 15. 3. 2016:

Company A. was allocated certain radio frequencies by a temporal decision. Competitive company B. wanted to take part in a proceeding for the extension of the mentioned temporal decision. Agency for communication networks and services of the Republic of Slovenia rejected the company B.'s request for the recognition of the position of an accessory participant. Supreme Court of the Republic of Slovenia (when deciding on a revision against the Administrative Court decision) confirmed the decision. It held that by stating that the temporal decision might not be extended or could be extended for a shorter period (less than three years), which would result in a public tender, in which the company B. would have the opportunity to participate, the company B. pursued only its economic interest. Nor did company B. show its legal interest in participating in the procedure by referring to the legal principles of objectivity, transparency, non-discrimination and proportionality. These principles are important from the point of view of the general legality and shall be guaranteed by the defendant (agency). These, however, do not form an individual legal interest.

## ***II. Determination of Facts and Discretionary Powers***

*1. a) In administrative proceedings, do administrative authorities have a general duty to carefully and impartially investigate the facts of the case ex officio in your jurisdiction (principle of investigation)?*

Yes.

*b) Are, in contrast, the parties to administrative proceedings generally obliged to present facts or evidence of their own accord (principle of party presentation)?*

No. However, if the case does not concern generally known facts, the party must propose evidence for their statements and, if possible, submit it. If the party fails to do so by themselves, they shall be required to do so by the official person conducting the procedure.

- c) *Do the rules for determining the facts distinguish between administrative proceedings initiated ex officio or by application?*

No.

- d) *Do the rules for determining the facts distinguish between facts which are favourable to the individual and others which are unfavourable to him?*

No.

- e) *Do different models of fact finding in administrative proceedings exist in your country with regard to different subject matters (e.g. ex officio administrative orders prohibiting or requiring specified actions of individuals, licensing of private projects on application, administrative sanctions, specific sectors of administrative law,...)?*

No.

*(cf. Art. 9 EP-Res.; Art. III-10, III-11 ReNEUAL)*

2. *If your jurisdiction provides for the duty of the competent administrative authority to carefully and impartially investigate the facts of a case:*

- a) *Are the parties to administrative proceedings obliged to cooperate in the investigation (e.g. by providing documents or by answering questions)?*

Yes.

- b) *What are the consequences, if a party to administrative proceedings does not comply with its duty to cooperate?*

If the party fails to submit evidence in a specified time limit set by an administrative body, the authority may not reject the request solely because of this reason, but must continue the procedure. The party must, however, bear its burden of proof and accept the consequences of not proving a certain fact.

If a certain document, important for the fact finding process, is found with the opposing party and such party does not wish to produce it voluntarily or does not wish to show it, the official person conducting the procedure shall require that they produce or show it at a hearing so that other parties may comment thereon.

If the party that has been required to produce or show a document fails to do so, the authority conducting the procedure may in view of the circumstances of the case evaluate the influence this may have on the resolution of the case.

- c) *Are there differences in the duty to cooperate among different categories of parties (applicants, potential addressees of the final decisions, third parties)?*

No.

*(cf. Art. 10 EP-Res.; Art. III-13, III-14 ReNEUAL)*

3. a) *In the fact finding process, is the administrative authority in your legal order bound by strict procedural rules (e.g. demanding for a certain organisation) or is this process subject to discretion of the administrative authority?*

As regards the APA the fact finding process is subject to discretion of the administrative authority.

- b) *Has the administrative authority broad discretion in evaluating the facts found in the administrative proceedings?*

Yes.

- c) *Does your national legal order provide for rules concerning composite investigations, i.e. the collaboration of different administrative authorities (like establishing a responsible officer of one administrative authority) or the collaboration of different officers within one administrative authority, e.g. a hearing officer who may hold hearings with applicants (like asylum seekers) while another officer takes the final decision based on written reports of such a hearing officer?*

Yes. For example, if presenting evidence before the authority conducting the procedure is infeasible or involves disproportionate costs or a great delay, presenting evidence or the demonstration of single evidence may be carried out before the requested authority.

4. a) *Does your national legal order provide for specific rules of evidence for the fact finding in administrative proceedings?*

Yes. These rules are specific as they are determined by APA. They are, however, of a general nature and known in other proceedings apart from administrative ones, as well (for example: the civil court procedure).

- b) *If this is the case, what are the most important principles?*

It is not necessary to prove generally known facts.

If the existence of a fact is presumed by an Act, it is not necessary to prove its existence, however it is allowed to prove their non-existence, unless otherwise provided by an Act.

A document issued in a prescribed form by a state authority, a self-governing local community authority or a bearer of public authority within the limits of their competence, proves the fact which is confirmed or determined therein (public document). It is allowed to prove that in a public document or in a copy of a public document facts are untruly confirmed, or that a public document or a copy of a public document is incorrectly composed.

The authority which decides on the case may require that the party submit a public document issued by the competent foreign authority, confirming which law applies in the foreign state. The proving of a foreign law against such public document shall be allowed, unless otherwise provided by treaty.

*c) If this is not the case, what other (general) rules apply?*

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*d) What is the rationale for the model applied in your jurisdiction?*

There is no need for specific rules of evidence apart from the mentioned ones and the ones regulating the following evidence: documents, witnesses, statements by the parties, expert witnesses and views.

*e) Are there any rules in your national legal order providing for the inadmissibility of certain evidence? If so, please give some details!*

There are no specific rules that determine inadmissibility of certain evidence. Evidence obtained in violation of the Constitution or APA, however, might be challenged as inadmissible. There has been no judicial practice on this subject yet.

*(cf. Art. 9 (2) and (3), Art. 11 EP-Res.; Art. III-10 (2), III-15 ReNEUAL)*

**5. In court proceedings, who is responsible for the presentation and investigation of facts and evidence?**

*a) The court or the parties?*

The parties.

*b) Are there differences between the responsibilities of claimants and defendants or between individuals and administrative authorities?*

No.

*c) Is the administrative court free in the consideration of evidence or are there certain rules of evidence? In the latter case, please give details!*

The administrative court is generally free in the consideration of evidence. However, there are certain rules of evidence the court has to follow, as well. For example: the above mentioned rules on generally known facts, public documents, conditions on how to deal with witnesses, experts etc.

6. a) *What is the general standard of control applied by administrative courts in regard to the fact finding of the administrative authority? Are there limitations in the scope of judicial control?*

If in the administrative procedure the facts of the case were not established correctly or completely, or if a wrong conclusion was drawn from the facts that had been established, an administrative act may be contested before a court.

There are no limitations in the scope of the judicial control as regards the fact finding process apart from the rule that the plaintiff may state in the lawsuit new facts and evidence, but he must explain why he did not state them in the procedure of issuing the administrative act.

New facts and new evidence may only be taken into consideration as the reasons deriving from the claim if they existed during the period of deciding in the first instance of the procedure of issuing the administrative act and if the party could not submit or state them in the procedure of issuing the administrative act.

b) *Does your national legal order know standards of (limited) control in regard to complex factual evaluations comparable to the concept of technical discretion applied by the ECJ (see annex to this question below)?*

No.

c) *If this is the case, what are typical cases in which such a standard of reduced control is applied?*

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d) *Are these cases qualified as a specific category of administrative discretion or are they subject to the general principles concerning discretionary powers of administrative authorities?*

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7. a) *In your national legal order, are the procedural standards to be observed by administrative authorities in their fact finding the more stricter the more the administrative authorities are conceded substantive discretionary powers?*

No.

*b) What is, as far as applicable, the rationale of reduced (substantive) controls exercised by the administrative courts?*

Full control of the administrative court would represent an interference with the executive branch of power which determines public interest in administrative matters.

Also, the legislature often can not precisely anticipate all the circumstances important for the protection of the public interest in certain areas, and therefore leaves it to the (free) discretion of the administrative body, which is acquainted with the facts of the concrete case and practice.

*c) Are administrative courts reluctant to interfere with material decision-making of administrative authorities?*

If the administrative body is authorised to adopt discretionary decisions (by an Act or local community regulation), the court shall test whether the administrative act is illegal because the limits of discretionary decision-making have been transgressed, and whether the discretionary right was used in a manner that does not suit the purpose for which it was granted.

Apart from the legal discretionary decision-making, the administrative courts are not reluctant to interfere with material decision-making of administrative authorities.

*d) Do they prefer to focus on procedural aspects?*

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*e) Does your national legal order know prepositioned or anticipated expert opinions (e.g. in environmental law) to which a superior validity is conceded?*

Yes. For example, an expert opinion of a national cultural heritage authority in the process of gaining a construction permit.

*f) As far as the concept of technical discretion applied by the ECJ in regard to administrative decisions (or similar) is applied in your national legal order (cf. II.6.b)), can the reduced standard of control be regarded as a consequence of different institutional capacities of courts and administrative authorities?*

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*8. Are there any constitutional provisions and/or principles governing the questions*

a) *of the determination of facts of a case by the administration,*

No.

b) *of the possibilities of the administration to enjoy discretion therein and*

No.

c) *of the standards of control to be applied by the administrative courts (e.g. a constitutional guarantee of effective judicial remedy, a strict duty of administrative bodies to comply with legal requirements)?*

Yes. Slovenian Constitution guarantees an effective judicial remedy (Article 23) and conformity of legal acts (Article 153). The latter stipulates that individual acts and actions of state authorities, local community authorities, and bearers of public authority must be based on a law or regulation adopted pursuant to law.

9. *Is there a political or academic discussion concerning any kind of reform with regard to the discretionary powers of the administration, especially with regard to the determination of facts, and the corresponding reduced judicial control by administrative courts in your country? Are there recent legislative proposals concerning the discretionary powers of the administration and the corresponding reduced judicial control?*

No.

10. *What is the most important and most recent case law of your court relating to the discretionary powers of the administration, especially with regard to the determination of facts, and the corresponding reduced judicial control by administrative courts? Please identify up to three cases and provide some information about the content and relevance of the judgements!*

Judgement of the Supreme Court of the Republic of Slovenia X Ips 24/2016, dated 29. 8. 2018:

Mayor A. dismissed directress of the municipal administration B. from her position within one year from the day the mayor took up her post. Although directress B. due to her pregnancy belonged to a protected category of workers at the time of the dismissal, mayor A. held that dismissal was legal.

The Supreme Court (when deciding on a revision against the Administrative Court decision) confirmed the legality of the situation. It explained and emphasized the meaning of the provision which stipulates that an official in a position may be dismissed regardless of the reasons for it by a decision taken within one year from the day the functionary competent for appointments came to office. The provision was adopted in order to provide functionaries the

possibility to select those who do they particularly trust for the positions of leadership in the state and municipal administration. The Constitutional Court of the Republic of Slovenia decided that such a purpose of the legislator is legitimate and as such constitutionally admissible.

Accordingly, a dismissal of an official is in full discretion of a functionary, which means that the court can not judge whether the reasons for the dismissal were justified. A functionary who decides on a dismissal of a particular person on the mentioned legal basis is granted legal unlimited power to take such a decision which is, according to the position of the Supreme Court, an act of political discretion that can not be challenged before an administrative court.

### **III. Case Study**

*Initial Case:*

*Applicant A applies for a construction permit for the construction of a commercial building at a location on the edge of the built-up area of municipality M.*

*The competent administrative authority of the district (S – a state authority, not a municipal one) invites F, a farmer who owns the neighbouring piece of land, to express himself on A's application in a given time limit. S informs F that he will not be heard after the time limit has expired. F does not react.*

*S also consults M, which supports the project because it hopes for a better economic development.*

*O, a nature protection organisation, learns about the project from the local newspaper and asks S to be involved in the proceedings. O remarks that there have been sightings of red kites (*milvus milvus*, a species listed in Annex I of the Bird Protection Directive 2009/147/EC) at the designated location of the project. S does not reply to this, but internally consults the environment protection authority E (also a state authority). E explicates in its statement to the application, mostly relying on an expert opinion handed in by A as part of his application, that a population of red kites does exist in the concerned area, but from its scientific point of view of nature protection the project was scientifically justifiable because the known breeding areas were sufficiently distant from the designated location of the project and O had not brought forward anything concrete.*

*M changes its mind and decides to draw up a development plan for the area concerned which is supposed to provide for a residential area.*

*S issues the permit to A after a procedure without (other) defects and sends a copy to F and M, each containing an accurate instruction on the right to appeal to the administrative court within one month.*

*F is against the settlement of commercial companies in his vicinity. He thinks there are already enough commercial companies in the village and moreover he is afraid of facing disadvantages in managing his soil because of increasing traffic.*

*M, F and P, the president of the local "Association for Preserving the Traditions", who wants to defend the beauty of the homeland and thinks that A's project does not fit into the landscape, all bring actions before the competent administrative court against the permit. M also feels itself impaired in its exclusive municipal planning competence.*

*O learns only five months later, again from the local newspaper, that A received the permit and immediately refers to the competent administrative court. O argues that it should have*

*been involved in the administrative proceedings. O points out that the risk for the red kite also was not justifiable because, very close to the designated location of the project, an eyrie had been found. The designated, up to now not built-up location constituted an important hunting ground for the red kite. If a construction was allowed here, the breeding success of the local population of red kites would be seriously endangered. O submits an expert opinion of an internationally respected ornithologist which supports its allegations.*

*Questions:*

- 1. How is the court going to decide on the objections of M, F and P?*
- 2. How is the court going to decide on the action brought by O? Is the mere fact that S did not involve O in the administrative proceedings going to help O's action to succeed? Supposing that this is not the case, how is the court going to assess the question of the risk for the red kite?*

The court may overrule them all due to the fact that none of them is in a position to challenge the permit before the court:

- F was duly invited to participate but did not react on time,
- P was not a party or accessory participant in the administrative proceeding,
- M does not have its own legal interest and is not empowered by an Act to challenge the decision before a court,
- O has not stated legitimate grounds for the participation in the administrative proceeding.

The court can not ex officio assess the question of the risk for the red kite. Representative of the public interest may in cases stated by an Act be involved in a procedure.

*Modification:*

*Case like the initial case, but A now applies for a permit under pollution control law for the construction of a small wind farm (project according to Annex II of the Environmental Impact Assessment Directive 2011/92/EU) in the outskirts of M. M initially supports the project as in the initial case, but then decides to plan a commercial area which is supposed to include the designated location of A's project. E additionally explicates, based on the opinion handed in by A, too, that the risk of collisions of the red kite with the blades of the wind generators was negligible because of the distance of the known breeding areas from the designated location, whereas the opinion brought by O sees an unjustifiable risk because the designated location of the project constituted an important hunting ground of the red kite.*

*How is the court going to decide on the actions now?*

The same.

## **Annex to question II.6.b)**

*In recent case law concerning European Union state aid law and European Union competition law (anti-competitive practices, merger control) the European Court of Justice established – according to recent academic writings – a concept of three levels (stages) for the judicial control of administrative fact finding and legal qualification of facts<sup>1</sup>:*

- 1. (abstract) interpretation of legal provisions;*
- 2. determination (or establishment) of (simple) facts (the factual basis);*
- 3. only in case of complex factual matters (interdependencies, causalities, uncertainty, ...) evaluation (or appraisal) of complex facts (economic impact, complex prognosis, certain risks for health and safety);*
- 4. (concrete) legal qualification (or characterisation) of simple facts or of the results of a complex evaluation with regard to a legal term – sometimes based on the interpretation of a legal provision.*

*Concerning levels 2 and 4 the European Court of Justice applies a strict scrutiny while the Court reduces its control on level 3 under the rubric of a so called technical discretion which must be differentiated from classic discretionary powers. For example the European Court of Justice takes the view that the finding that a state aid favours (!) a certain undertaking as prohibited by Art. 107 (1) TFEU requires in some cases (!) a complex (!) economic evaluation of the factual situation. Thus, in such specific factual situations the Commission has a technical discretion and the Court will apply a reduced standard of control (“manifest error”) focussing on procedural requirements especially with regard to the duty to carefully and impartially investigate the case<sup>2</sup>. In contrast, articles 107 (3), 108 (3) TFEU provide for a classic discretionary power (“may be considered”) of the Commission according to the Court.*

*Many commentators compare this four-level-concept with concepts in French administrative law. Other jurisdictions tend to omit the 3<sup>rd</sup> level and to focus on levels 2 and 4. Nevertheless, some jurisdictions have established a broad understanding of discretionary powers probably comprising also categories like the technical discretion under European Union law. Also the German concept of “Beurteilungsspielräume” concerning the administrative concretisation of legal requirements (a form of discretion with a view to the facts rather than with a view to*

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<sup>1</sup> ECJ case C-104/00 P (DKV/HABM); case C-449/99 P (EIB/Hautem); see also case 56/64 (Consten and Grundig/Commission); case 42/84 (Remia/Commission); case C-525/04 P (Spain/Lenzing); case C-269/90 (TU München/Hauptzollamt München-Mitte); case C-12/03 P (Commission/Tetra Laval).

<sup>2</sup> See ECJ case 56/64 (Consten and Grundig/Commission); case 42/84 (Remia/Commission); case C-525/04 P (Spain/Lenzing); case C-269/90 (TU München/Hauptzollamt München-Mitte); case C-12/03 P (Commission/Tetra Laval).

*legal consequences) may share some parallels with the judicial control of technical discretion in European Union law. In both jurisdictions the judicial control focusses on:*

- 1. compliance with procedural requirements,*
- 2. especially concerning the careful and impartial investigation of the case/facts:*
  - a. strict scrutiny concerning the factual basis of the complex factual evaluation,*
  - b. relevance of different standards of proof in various fields of substantive law,*
- 3. compliance with general standards of evaluation of complex factual matters (especially if these standards are set in legislation, statutory instruments, administrative guidelines or publically accepted (private) technical guidelines or norms),*
- 4. avoidance of arbitrary considerations,*
- 5. correct interpretation of the relevant legal terms.*

*Nevertheless, a major difference between the control by German and European Union courts exists as German administrative courts have a duty to investigate the facts of the case ex officio while the European Union courts tend towards assuming an obligation of the parties to present the facts or evidence.*