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**Support for Improvement in Governance and Management**

A joint initiative of the OECD and the European Union, principally financed by the EU

## **ADMINISTRATIVE JUSTICE IN ALBANIA**

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The following account of administrative justice in Albania covers regulations existing before the '90s, as well as the present regime. It rests on the assumption that the notion of administrative justice comprises more than just judicial review of administrative action. Indeed, it refers to mechanisms designed to balance the exercise of public power (presumably in pursuit of the public good) and individual rights, which need to be factored into administrative action. The following is a description of remedies available to private persons in Albania, both in its recent communist past and today.

### **Available Legal Redress during the Communist Period**

Redress through administrative law in communist Albania could be grouped along four main themes:

1. Hierarchical control;
2. Redress through the Attorney General's Office;
3. State Arbitration;
4. Complaints and suggestions by the people; and
5. Redress through the courts.

Via these remedies, the following interests were supposed to be reconciled:

1. The interest of the state in achieving its political goals; and
2. The interests of the individual seeking to address suffered injuries.

It must be noted that the latter interest took second seat in administrative law and its practice.

*Hierarchical control* made up the bulk of redress. It flowed from the constitutional doctrine of unity of power assuming that such a form of control was best suited to spot and rectify irregularities given power organs' unimpeded access to relevant administrative activity. The outcome of hierarchical control was supposed to be efficiency and legality of administrative action. Financial control exerted by the High State Audit Office constituted a de facto internal form of control given complete absence of independence from the executive. The High State Audit Office had no jurisdictional role whatsoever concentrating instead on across-the-board control of fiscal matters.

*Redress through the Attorney General's Office.* Perhaps I should point out immediately that the Office of the Attorney General had a different function in most former communist countries of central and Eastern Europe including Albania, than in modern democracies. Its scope of competencies included so-called "general supervision of legality", which covered administrative activity, as well as the work of the courts. Based on this principle, the Office could become active on its own initiative, as well as upon claims and information coming from the outside. Whenever the Attorney General found out or was informed of illegal behaviour on the part of government agencies or functionaries, it would demand rectification. The precise action used by the Attorney General in these cases was called *Protest*. Even though the Office could not order the immediate amendment of contested administrative acts, its opinion carried enormous authority and would usually bring about change. Some authors argue that such a role was determined by the limited scope of judicial review of administrative activity. Quite clearly, the objective of general supervision was not individual redress of administrative wrongdoings, but rather the control of bureaucracy on behalf of the state with a view of ensuring a certain consistency in the implementation of administrative duties.

*State Arbitration* was a centralised jurisdictional forum set up to resolve economic conflicts and other financial disputes between units of government, state-owned enterprises, as well as agricultural and craftsmen cooperatives etc. Usually, some evidence of prior efforts to settle the issue amicably was required before the issue was formally taken up by the "*arbitrazh*".

*Complaints and suggestions by the people.* Outlets of the Bureau of Letters and Complaints from the People were ubiquitous throughout the administrative system. Under this arrangement, citizens could lodge complaints, but also submit suggestions and proposals. What concerns the Bureau's main thrust and objective, I would say that it was devised both to give the leadership an insight into the way public administration was run and, on the other hand, to act as an effective remedy for citizens in their dealings with its various segments.

*Redress through the courts.* As could be expected, the scope of judicial review of administrative actions in communist Albania was narrow. The right to challenge administrative acts in court which had violated individual rights (officially protected under socialist law) was formally recognised at constitutional level. However, in practice, the only cases where judicial review would apply were requests of private persons to have personal civil registry data rectified, as well as correction of electoral lists. In line with the real intent of administrative law in communist Albania (namely, to uphold state interest), the courts in fact did have

somewhat wider powers to review all kinds of administrative acts. As a precondition, the complaint setting in motion judicial procedure had to relate to shortcomings of an act due to incompetence *of the issuing organ* or *lack of indispensable elements of form*. This did not constitute ideological incoherence, as the courts were not challenging administrative organs from a substantive point of view, but merely identifying those acts that could not be regarded as such due to gross formal deficiencies. Of course, this provision could have had the potential to expand the scope of judicial review in communist Albania to benefit injured private persons who could try to argue that their rights had been infringed by such administrative acts. However, orthodox interpretation of the provision by the courts made this impossible.

## **Applicable Remedies in Present-day Albania**

Administrative law remedies in present day Albania fall into three main categories:

1. Administrative/Hierarchical control;
2. Redress through the courts;
3. Redress by the Ombudsman.

Some authors are of the opinion that the existing system for logging complaints (more or less present in all major government institutions, albeit with varying degrees of organization) are not just a remnant of the *anciene regime*. They believe that this mechanism qualifies as a fourth category of remedies available to Albanian citizens today. The concept is rather close to the Ombudsman, but it is fragmented and decentralized. However, I have taken the liberty not to include this category in the list of administrative justice remedies for two reasons:

1. The function is increasingly performed in the framework of public relations by government institutions. Hence, its interpretation as a remedy is no longer appropriate;
2. The practice of registering complaints merely draws attention of high level administrators to particular problems affecting the individual without triggering formal administrative proceedings to that effect.

The twin objectives of state interest/ individual redress have been combined out of a concern for the rule of law. Accordingly, administrative justice now focuses on whether an administrative act is invalid and therefore, should be struck down.

### **1. Administrative/Hierarchical Control**

#### Grounds for administrative review

Doubts regarding the validity of administrative acts triggers internal review of administrative activity. However, concerns other than the legality *strictu sensu*, such as the wisdom and the propriety of an administrative act can also lead to internal administrative review, especially in the form of a motion for reconsideration (see below). Invalidity is subdivided into two main groups: Absolute invalid and relative invalid. The notion of invalidity as specified above gives rise to the following grounds for administrative review:

*Non-competence*: In essence, this relates to the claim that an administrative entity issuing a contested act lacked the authority to issue it. Non-competence may be discerned through choice of subject matter, time and place. In other words, if an administrator acts in an area in which he or she was not authorized to act, his/her action is deemed to lack competence. Secondly, if an official acts beyond the time limit envisaged by law or by a higher administrative act, his/her action will again be deemed to lack competence. Finally, if an official or entity acts beyond his/her office's physical jurisdiction, his/ her act will be considered to be lacking in competence as well. In all aforementioned cases, relevant acts will be considered as absolute invalid.

*Vice of Form*: This ground consists in the omission of important formalities required for administrative acts to take effect. These formalities are for the most part spelled out in the Code of Administrative Procedures (APC). All those acts affected by a vice of form as explained below shall be considered absolute invalid acts:

1. When the administrative act has been issued by an unidentified organ of public administration;
2. When the administrative act has been issued contrary to the form required by the APC or the law in general;

3. When the administrative act has been issued contrary to the procedure required by the Code or the law in general.

In terms of legal effect, absolute invalid administrative acts are null and void. All subjects, both administrative entities and private persons called upon to enforce or comply with such acts are free to ignore them. Of course, this is easier said than done. As long as the act is not formally repealed, it will likely produce some effects. However, interested parties may request that an administrative act be declared an absolute invalid act at any time. Such a request is to be lodged with those entities competent to assess requests for the reconsideration or review of administrative acts (see below).

#### Violation of the Substance of the Law

Non-compliance with the substance or the actual content of the law is ground for administrative review of an administrative act. The APC states that all those violations, other than the ones that lead to absolute invalidity shall make an administrative act relatively invalid, for example:

1. The administrative act authorizes actions or grants rights and privileges that are not prescribed by the law;
2. The administrative act hinders actions, denies rights and privileges that are prescribed by law;
3. The administrative act is based on an administrative act of a higher-ranking organ which is itself invalid;
4. The administrative act is issued under the influence of threat, violence, or temporary mental instability;
5. The administrative act pursues aims and goals that are different from those of the law.

Some scholars argue that the situation in which an administrative authority issues an act within its sphere of competence, but with an objective other than that for which it can be legally performed, qualifies as a separate ground for administrative review. In any case it must be noted that this form of invalidity and the respective ground for administrative review is concerned with the subjective intentions of the public agent, with psychological, personal motives such as vengeance, political motives etc.

In terms of effect, the APC stipulates that the relatively invalid administrative acts shall produce their legal effect for as long as they have not been reconsidered or reviewed following the submission of the respective requests by the interested parties or upon the initiative of the competent organ of public administration.

#### Concrete actions of administrative review

*Motion for Reconsideration:* This sort of action is based on the idea of an “administrator judge”, or administrator in the hierarchy of the administrative authority which has issued an offensive act to whom an appeal can be made. It is essentially a request to reconsider the allegedly offensive act and since it is asking the administrative authority to “please” change its mind, its application seems to be quite informal. The way the Code of Administrative Procedures regulated the motion for reconsideration is such that the entire procedure leaves no trace and is therefore useless for further recourse. However, one can safely assume that the general regulations of the Code as to the form of requests, the obligation of the administration to record requests, the obligation to respond etc should help to formalize the action for reconsideration.

Clearly, it is the very organ that issued an act in the first place that is entitled to revoke or confirm it following the motion for reconsideration. The decision of the organ of public administration hearing the request for reconsideration shall be considered another administrative act and shall have all the features of the act as stipulated in other parts of the Code.

*Motion for Review:* The motion for review (you won’t find those precise terms in the Albanian APC) is yet another action envisaged by the Code that can be grouped under the internal administrative remedies. The motion for review is submitted to the relevant supervising administrative organ and is by definition intended to be more formal than the motion for reconsideration. Ideally, from the standpoint of the private person, a motion for review leads to the abrogation of the contested administrative act. It must be noted that abrogation can also come at the initiative of the supervising authority without any motion being submitted. Other possible outcomes of the review procedure can for example be the changing or the confirmation of the contested act.

## 2. Redress through the Courts

### Grounds for Judicial Review

Maybe a good way to start the description of judicial review in Albania is to mention that the presumption of non-reviewability that existed under communism has effectively been replaced by the general principle of reviewability of administrative action by the courts. Presumption of legality of administrative action characterises judicial review in accordance with the constitutional principle of checks and balances and more practical considerations, such as the presumed expertise of an administrative authority on the subject matter.

### Actions

There are four ways prescribed by the Civil Procedures Code (CPC) as to how judicial control can take effect:

*Annulment Proceedings (article 324 of CPC)* — Annulment intends to simply annul an administrative act. It is usually used in connection with a claim of incompetence of an administrative authority, “vice of form” of an administrative act and violation of the substance of the law (see above). This particular action is primarily concerned with ensuring the legality of an administrative act.

*Full jurisdiction proceedings* — Another facet of the annulment proceeding is its ability to actually change the defective administrative act. This second facet of annulment is sometimes referred to by scholars as a separate action, the so called *full jurisdiction action*, hinting at its ability to regulate a legal relationship *ex novo*. Naturally, the courts have been cautious with this second aspect, the amendment of the administrative act in question, displaying a degree of deference for the presumption of legality.

*Positive Proceedings (article 324 of CCP)* — These apply in situations in which the plaintiff is negatively affected by inaction of an administrative authority and resorts to judicial proceedings in order to have the court oblige the administration to act.

These were the specific procedures of judicial review available in Albania until the 1998 amendment the CPC. Clearly, the aforementioned actions allowed the court to make important rectifications of administrative activity, but they miserably failed to address damages suffered by private individuals as a consequence of administrative action or inaction. The 1998 amendments to the Code addressed this “sterility” of judicial review by adding one more action, the *rectification proceedings*.

*Rectification Proceedings* — These proceedings deal with those situations, in which the plaintiff has suffered some sort of injury at the hands of an administrative authority and is seeking compensation (in the language of CPC “the reinstatement of the violated entitlement”). Such action may concern both questions of law and fact. It can seek annulment, the awarding of damages and maybe also some sort of revision of the act itself.

*Interpretation Proceedings* — The 1998 amendments added one final action, the so-called interpretation proceeding. Such action, completely unused so far, is intended to have the court determine the meaning of a relation involving an administrative agency and a private person in the light of the law or their bilateral agreement.

## 3. Redress by the Ombudsman

Despite wide-spread scepticism that accompanied the adoption of the Law “On the People’s Advocate”, Albania’s Ombudsman, in 1998, the institution has established itself as an important actor of administrative justice in Albania.

Albania’s Ombudsman is an independent agency that reports directly to the Parliament. In essence, it hears complaints from citizens about government agencies and seeks to get the offending administration to remedy its transgressions through revocation, abrogation or change of the contested administrative act.

The Ombudsman’s working methods are informal and citizen-friendly. Its effectiveness in cutting through red tape has indeed been notable and illustrates the importance of non-litigation procedures in addressing administrative abuses.

The office of the Ombudsman is in the process of seeking ways to bring about systemic change in administration through a string of specific actions such as public reports, national conferences, proposals for a uniform understanding and implementation of various laws, as well as mediation on behalf of the public for public goods such as the environment, cultural heritage and consumers’ rights etc.