REGIONAL ENVIRONMENTAL CENTER

Access to Justice under the Aarhus Convention

A user guide for the
Albania

Federal Ministry
for the Environment, Nature Conservation
and Nuclear Safety

Umwelt Bundesamt

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Access to Justice under the Aarhus Convention (2017) is an easy-to-use guide for civil society organisations on the rights, opportunities and avenues for access to justice based on national legislation and the provisions of the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. It provides practical advice on litigation, the development and initiation of administrative and court procedures, the utilisation of the national ombudsman system, the Aarhus Compliance Committee, and more. It is based on the 2004 publication Implementation of the Aarhus Convention: A User Guide for Civil Society in the Eastern Europe and Caucasus Region and the content has been revised and adapted for the Republic of Albania.

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Every constitution in the region guarantees the right of access to justice where rights have been violated. The Albanian Constitution guarantees the right to appeal against individual legal acts issued in first-instance proceedings by a court, administrative body, organisation or other institution carrying out public mandates. Article 42 of the Albanian Constitution provides for the right to a fair and public trial, within a reasonable time, by an independent and impartial court to anyone who has their constitutional and legal rights, freedoms and interests infringed.

Albania has developed procedures for adjudication in civil, criminal and administrative cases.
Albania ratified the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention) in October 2000, and the convention entered into force in November of the same year. Since then, Albania has adopted a legislation that secures the right of access to justice, if information and participation rights are breached in violation of the third pillar of the convention, which deals with the right to appeal against decisions and actions that obstruct access to information or prevent participation in decision making.
According to the Law on Environmental Protection , the interested public has the right to either request from the public authorities to undertake any appropriate measures to protect the environment or to initiate a review of decisions on the environment by the courts.
The public has the right to appeal against the decisions of a body for environmental protection, and the right to file a lawsuit in the administrative courts as provided in the Administrative Procedure Code and the law on administrative courts and adjudication of administrative disputes.
Members of the public in Albania mistrust the country's court access and appeal processes, due to the perception of corruption, slow pace of the proceedings, a lack of trust in the judicial system, or a general lack of familiarity with legal processes. However, Albania is undergoing a radical justice reform that aims to restore the public's trust in the judiciary system and the rule of law. In addition, more and more administrative cases that challenge decisions of the governmental bodies are being brought in front of the administrative courts. As provided in the law, the administrative cases follow an expedited procedure that makes it possible to complete the cases within a shorter timeframe and with fewer costs involved.
However, it should be noted that due to the high number of cases that are currently being adjudicated in the administrative courts the timeframe of adjudicating administrative cases tends to be longer than the terms provided in the law for adjudicating administrative cases.
Albania has a modern legislation on the right to information, regulating either access to general information produced or held by public authorities or the right to access environmental information. Due to this modern legislation, it is not that difficult to win a case on access to information. All Albanian and foreign legal and physical persons have the right to legally dispute any decision that limits the right to access to information.
Before filing a lawsuit in an administrative court in Albania, they need to initially file an administrative complaint against the decision of the public authority on the request for access to information to an independent supervisory authority, the Commissioner for the Right to Information and Protection of Personal Data ("The Commissioner").
The Commissioner is an independent authority in charge of two separate functions: (a) in accordance with the law on data protection, is in charge of supervising the protection of personal data and additionally (b) in accordance with the law on the right to information, is the competent authority to review complaints against other public authorities and serves as the higher public organ where administrative appeals are lodged. Furthermore, the Commissioner has the right to undertake administrative investigations aiming to establish the facts of a case, to impose fines in cases a violation of the law on the right to information has occurred and is in charge of guaranteeing the overall implementation of the law on the right to information. The Commissioner is elected by the Assembly, following the proposal of the Council of Ministers.
The right of access to environmental information is guaranteed by the law on environmental protection and its bylaws , and the law on the right to information .

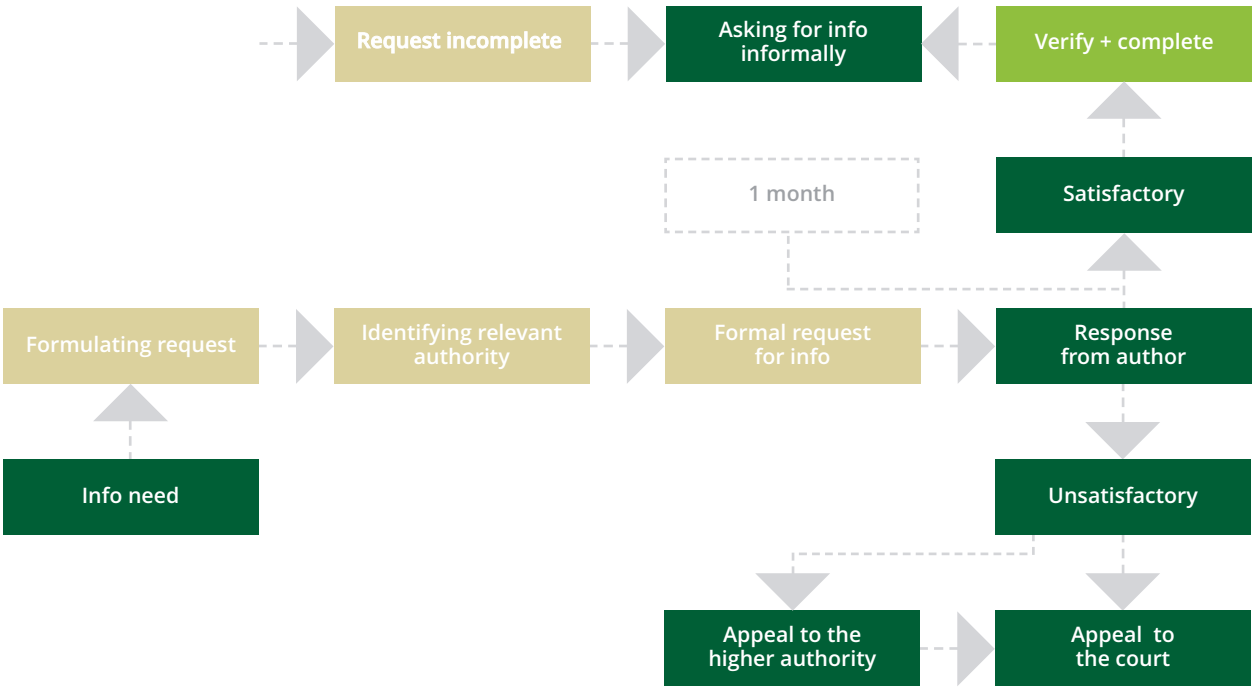
Access to information on the environment is provided in accordance with the Law on Environment and the Law on the Right to Information within 10 days of the date of the submission of the request. Taking into consideration that both the law on the right to information and the law on environmental protection stipulate that environmental information should be provided and additionally, it provides a set term for providing such information, it is very likely that the courts will decide in favour of the person requesting the information. In practice, in a large number of administrative complaints, the Commissioner for the Right to Information and Protection of Personal Data upholds the complaint and orders the authorities to give the applicant access to the requested information. Not only is the disputed information received, there is also an important added value. The case can create a precedent, meaning that a person in a similar situation, in a later date, may have an easier case. In addition, within a few years the authorities are likely to pay greater attention to responses to requests, as it is far easier to simply provide information than to spend time in court.

Albania is obliged by the Aarhus Convention to establish a good legal framework for convention implementation. The national framework should also ensure proper enforcement. However, the fact that, according to the Albanian Constitution, international agreements are directly applicable and superior to the national law, it does not relieve Albania from taking the necessary legislative and other measures to ensure the effective implementation of the convention. According to Article 9 of the Aarhus Convention, a person can submit an administrative or judicial appeal in a court of law if:

1. The right of access to information is violated (Article 9.1)
   - Information is provided but it is incomplete and/or irrelevant to the request.
   - The request for information is rejected.
   - No reply is given within the deadline (i.e. one [+ one] month)
2. The **right to participate** is violated (Article 9.2)
   - Notification about the decision- making procedure is not provided.
   - The means of notification are insufficient to reach those concerned.
   - Notification is issued at a late stage in the procedure.
   - The notification does not contain the minimum required information.
   - More detailed information about the project, programme or plan is not available.
   - The procedure does not allow for submission of comments.
   - Comments do not take due account of the following:
   — The decision maker cannot reasonably explain why a certain comment was not incorporated in the final decision.
   — The decision is not published.
   — The published decision does not
3. **Environmental laws** are violated (Article 9.3)
   - Acts or omissions of private persons who violate laws related to the environment may be challenged.
   - Acts or omissions of public authorities that violate laws related to the environment may be challenged.

This provision has several conditions, including the right to bring a case being conditional on meeting certain criteria — usually an affected interest. This right is known as "standing". Article 9 of the convention gives special status to environmental NGOs (see 2.2), recognising them as having an interest in cases of access to justice and the right to participate in decision making, and therefore "standing" to bring cases in these instances.

Figure 1. Steps in exercising the right to free access to information



Access to an appeal procedure is usually obtained by means of an administrative appeal to bodies superior to the decision maker, and through the courts. Where any of the means of access to justice cannot be used successfully, several procedures also exist internationally, including the convention's own Compliance Mechanism, and in some cases the European Court of Human Rights (see sections 6 and 7).

1. Administrative procedures

Access to justice is typically identified with courts and hearings. However, there are several other ways to appeal against decisions. The most typical ways are administrative appeals, appeals to the ombudsman and appeals to the State Prosecutor's Office. In some cases, an administrative appeal is a precondition for an administrative court procedure.

It is always important to identify the best strategy for a given situation. Going to the court can be time-consuming, and often involves significant costs. An explanation of four ways to obtain access to justice in accordance with the Albanian legislation is provided below. However, it should be borne in mind that the effectiveness of the procedure will vary on a case-by-case basis.

1.1 Filing an administrative appeal
1.2 Submitting an appeal to the Administrative Court
1.3 Submitting a complaint to the ombudsman
1.4 Submitting a request to the Environmental Inspectorate to carry out an inspection

1.1. Filing an administrative appeal

If you are not satisfied with an administrative decision or if a decision has not been adopted by the public authority within the legally prescribed deadline, you can use the administrative legal remedies. According to the Administrative Procedure Code, a party can use the following administrative legal remedies to challenge an administrative decision or an administrative omission (i.e. if a decision has not been made within the legally prescribed deadline): (a) the administrative appeal in its two forms: as an administrative appeal against the administrative act and as an administrative objection; and (b) request for reopening.

1.1.1 Administrative appeal against the administrative act

An administrative appeal, except when otherwise provided by law, can be filed against an administrative act or an omission of a public organ for issuing the act within the specified deadline. The administrative appeal needs to have at least the following information: (a) the name of the party filing the appeal, (b) the public authority which reviews the administrative appeal; (c) title, number and date of the administrative act that is being challenged or the administrative act that has been requested to be issued but the public authority did not act upon the request; (d) the object and the reasons for filing the appeal.

When filing an appeal, due consideration should be given to time limits, otherwise even in cases when your appeal might be accepted, if the deadline for filing an appeal has expired, your appeal will be rejected for that cause. The Administrative Procedure Code provides that the administrative appeal should be submitted within 30 (thirty) days calculated from the day that the administrative act or the refusal to adopt an administrative act was notified to the party.

In the case of administrative omission, unless silent approval is applicable, the appeal must not be filed earlier than 7 (seven) days and no later than 45 (forty five) days from the date of expiration of the set or extended deadline for the completion of the administrative procedure.

It is always advisable to file an administrative appeal irrespective for the probability of its success for two reasons: first, as a general rule, exhausting administrative legal remedies is a precondition to file a lawsuit in the administrative courts against that administrative act and second, unless otherwise provided by law, filing an appeal suspends the enforcement of the administrative act until the appeal has been reviewed by the competent public authority and the decision of the review procedure has been notified to the party.

In an administrative review, a complaint can be sent to the organ that issued or is competent to issue the administrative act, to the higher public organ of the body that has issued the act or is competent to issue the act, or in cases provided explicitly by law with another public organ. If the higher public organ is addressed, that authority shall immediately forward it to the competent public organ body. An appeal against an administrative act shall be first considered by the competent public organ itself, unless otherwise provided by law.

As a general rule, the competent public organ shall initially examine whether the appeal is acceptable and only if this is the case, it examines the legality and appropriateness of the administrative act subject to appeal. If necessary, the competent public organ can perform additional administrative investigations.
If the competent public organ determines that the appeal is admissible and legally founded, it issues a new administrative act that annuls, repeals, or amends the appealed act, or issues the rejected act as required by the party in the case that the public organ refused to act. The administrative act should be issued and notified to the requesting party within 30 days from the filing of the appeal.
If the competent public organ considers the appeal inadmissible and does not replace the contested decision with a new one, it shall immediately be forwarded for consideration to the higher public organ, along with all relevant documents of the file and a written report on its position. The higher public organ may (a) reject the appeal; (b) reject the appeal but provide a new reasoning and (c) if the appeal is admissible and founded, issue a new act.

FOR EXAMPLE

Higher Public Organ

The Inspectorate on the Environment, Forestry and Waters is the institution in charge of supervising the enforcement of the legal framework on the protection of the environment and forests. The Inspectorate is organised in regional directorates and one central directorate. The regional directorates have the right to carry out inspections and to fine infringements of the applicable legislation. The fine is an administrative act which is issued by the regional directorate. The Central Inspectorate is the higher public organ of the regional directorates. Therefore, the higher public organ (the Central Inspectorate) when reviewing appeals may (a) reject the appeal; (b) reject the appeal but provide a new reasoning and (c) if the appeal is admissible and founded, issue a new act.

The higher public organ shall reject the appeal if it determines that the first-instance procedure was properly implemented, that the decision was proper and had a legal basis, and that the appeal is unfounded. If the higher public organ finds that the ordering part of the appealed decision is in compliance with the law but the reasons provided by the competent public organ for adopting such decision are incomplete or a different reasoning should be used for adopting the administrative act, it can decide to reject the appeal and provide a new reasoning.

If the higher public organ finds that, on the basis of the established facts, the administrative matter should be resolved in a way that differs from that of the competent public organ, through a new act, it can annul, repeal and amend, in whole or in part the appealed act.

The decision on the appeal must be made and delivered to the party as soon as possible and at the latest within 30 days from the date of receipt of the appeal, if a shorter deadline is not stipulated in a special law. The appeal suspends the enforcement of the decision, except in cases where the law specifies that the appeal does not delay the execution of the decision.

Administrative decisions adopted through an administrative complaints procedure, as well as administrative acts for which the administrative complaints procedure is not provided by law, are subject to administrative dispute (see 1.2).

FOR EXAMPLE

Practical application of the law

A group of inhabitants in Bënça Village in Tepelena, living next to Bënça River requested access to information held by the Ministry of Energy and Industry regarding a contract for the construction and operation of a hydropower plant in the Bënça River. The Ministry rejected their request for information on the grounds that the contract contained commercial information and therefore it was classified as trade secrets. The inhabitants then contacted a local NGO that reasoned that under Articles 3, 11 and 17 of the Law on Right to Information, a request for free access to information related to a contract for construction and operation of a power plant may not be rejected. The Inhabitants, represented by the NGO, appealed to the Commissioner for the Protection of Personal Data and the Right to Information in order to exercise their right to access to information.

1.1.2 Administrative objection

The Albanian Administrative Procedure Code, as explained above, provides the right to file an appeal not only against administrative acts or administrative omissions but it also against another administrative action, under the regime of administrative law. An administrative objection can be filed against an administrative action that does not fulfil the criteria to be classified as an administrative act or administrative omissions.

By filing an administrative objection, the party may require from the public organ (a) the ceasing of the performance of another administrative action; (b) the performance of another administrative action to which the party is entitled, if such action has been required by the party but the public organ has failed to act; (c) the withdrawal or amendment of a public statement; and (d) the declaration as unlawful of another administrative action and the rectification of its consequences.

Additionally, through an administrative objection a party may require the exercise of regulatory functions or supervision by the regulatory, supervisory, or licensing organ where a public utility service or any other public service failed to provide a service. The administrative objection in this case aims to force the regulatory body, that has under its supervision the organ providing public services, to exercise its supervisory powers and make sure that the public services organ is performing in accordance with applicable legislation (indirect performance of public services).

An administrative objection should be filed within 15 (fifteen) days from the day the party has become aware of the fact it is objecting. In cases where a party is requesting indirect performance of public services, the administrative objection is addressed and considered by the public regulatory, supervisory, or licensing organ. In cases where a party is requesting (a) the ceasing of the performance of another administrative action; (b) the withdrawal or amendment of a public statement; and (c) the declaration as unlawful of another administrative action and the rectification of its consequences, the administrative objection is addressed and considered by the competent organ. Lastly, in cases where a party is requesting the performance of another administrative action to which the party is entitled, but the public organ has failed to act, the administrative objection is addressed and considered by the superior organ. In this case, if the superior organ rules in favor of the party, it sets a deadline for the competent organ to perform the other administrative action as requested by the party.

The decision on the merits of the administrative objection should be taken and notified to the requesting parties within 30 (thirty) days from the date of its submission. If the administrative objection is not examined within the set deadline or is rejected, the requesting party may file a direct lawsuit to the competent court for administrative matters.

1.1.3 Reopening

The last administrative legal remedy provided by the Albanian Administrative Procedure Code to challenge an administrative decision or an administrative omission is the reopening. A party has the right to request a reopening if new circumstances or new written evidence relevant to the case is discovered. However, two conditions need to be fulfilled (1) such new evidence was not known or could not have been known by the requesting party during the conduct of the administrative procedure which led to the administrative act and (2) the party cannot file an appeal against the administrative act due to the expiry of the deadline provided for in the law.

The request for reopening should be submitted within 30 days from the date that the requesting party became aware of new circumstances or new evidence in writing that are relevant for the case. However, in any case, the reopening cannot be accepted if more than 2 years have passed since the cause for reopening has occurred. The request is submitted to the same organ that has issued or refused to issue the administrative act subject of the request for reopening.

1.2 Submitting an appeal to the Administrative Court

In Albania, administrative disputes are resolved by a specialised administrative courts system. The administrative court system is composed of 6 first instance administrative courts (in Tirana, Durrës, Gjirokastra, Korça, Shkodra and Vlora) and one appeal level court located in Tirana. Additionally, the High Court has a special administrative chamber in charge of adjudicating administrative cases. The court decides on the legality of the administrative act, as well as other administrative activities that determine or otherwise affect the rights, obligations and legal interests of a natural or legal person, when required by law. Administrative disputes are initiated by filing a lawsuit.

An administrative dispute can be launched against:

- a second-instance administrative act (an administrative act that has been issued/reviewed by a higher public organ following a complaint from a party);
- a first-instance administrative act against which an appeal or objection is not permitted in the administrative procedure, or other administrative activities when required by law; or
- a public authority that has failed to issue an administrative act or to undertake an administrative activity (i.e. that has maintained administrative silence rather than deciding on the party's appeal).

An administrative act or other administrative activity can be challenged due to:

- a violation of the procedural rules;
- the incorrect and incomplete establishment of the facts; or
- the incorrect application of substantive law.

In the appeal, the plaintiff (or interested person) must state the following:

- the court before which the lawsuit is filed;
- first name, father's name, surname, domicile or residence of the plaintiff, the defendant and persons representing them respectively, if any. If the plaintiff or the defendant is a legal entity, its denomination as it appears in public registers, showing the seat or the headquarters, where the notification shall be served.
- the administrative act or administrative activity against which the complaint is filed;
- an indication of concrete facts, circumstances, documents and other evidence, grounds on which the lawsuit is based on, as well as the concrete claim of the plaintiff;
- value of the lawsuit, if the subject of the lawsuit is calculable.

The original document or a certified copy of the decision against which the lawsuit is being filed, or evidence of the administrative activity being challenged, must be attached to the lawsuit.

If a refund or compensation is being claimed via the lawsuit, the lawsuit must also include a claim requesting the return of the object or of the amount of the damage sustained. The lawsuit may be submitted to the Administrative Courts in person or by mail. As a rule, the lawsuit does not suspend the execution of an administrative act — that is, the legal effect of other administrative activities against which the lawsuit is filed. If the public authority has not suspended the execution of the administrative act by the time the final decision on the administrative matter is made, at the request of the plaintiff the court may suspend the execution of the administrative act or the legal effect of other administrative activity pending the court decision if, by the execution of the administrative act or by the legal effect of other administrative activities, irreparable damage will be inflicted, if the delay does not seriously violate public interest. At the request of the plaintiff, the court must make a decision no later than five days from the receiving date of the application.

The Administrative Courts shall reject the application if it determines that the lawsuit does not meet the formal criteria to be filed and the administrative court shall refuse the lawsuit if it finds that the administrative action is lawful and grounded.

In first instance administrative disputes, the Administrative Courts adjudicate the cases on the basis of an oral hearing. Initially, within 7 days from the filing of the lawsuit, the presiding judge undertakes a number of preparatory actions including the following: notifies the defendant of the lawsuit and the acts accompanying it, sets a time period of up to ten days for the defendant to depose his objections in paper, the list of persons that the defendant seeks to be called to the trial in the quality of witness or expert, and their addresses, as well as full written acts, on which the performance of the administrative act and the examination of the administrative appeal were based. In cases where expert knowledge is required, the judge takes a decision to appoint an expert and deliver an expert opinion.

After all preparatory actions have been performed, the presiding judge issues an order determining the date and time of the judicial hearing. The time limit for holding the judicial hearing may not be longer than 15 days.

The legitimacy of the disputed administrative act or other administrative activity is examined by the Administrative Courts within the scope of the lawsuit, yet without being bound by the cause of the claim. In its judgment, the court either accepts the lawsuit as having grounds, or rejects it as unfounded. If the court accepts the lawsuit, it can undertake the following actions:

- Repeal the administrative act wholly or in part;
- Amend the administrative act wholly or in part or oblige the public organ to amend an administrative act;
- Find the administrative act as absolutely invalid;
- Oblige the public organ to perform an administrative action that has been refused or as to which the public organ has been silent although it has had a request;
- Find illegal an administrative action that no longer produced legal consequences, if the plaintiff has a reasonable interest for this;
- Better define the rights and obligations between the plaintiff and the public organ;
- Force the public organ to perform or prohibit the performance of another administrative action necessary for the protection of the rights or interests of the plaintiff;
- Determine the organ that is competent to resolve the concrete case, also ordering, as the case may be, the repeal of an act issued by the non-competent organ;
- Compensation of extra-contractual damage, according to a separate law;
- Resolution of labour disputes, when the employer is an organ of the public administration.

A decision of first level administrative courts can be appealed in the Administrative Court of Appeals located in Tirana. However, it should be noted that not every decision can be appealed. Administrative acts/ administrative infractions with a value less than twenty times the minimum pay are not reviewed by the Administrative Court of Appeals.
As a rule the Administrative Court of Appeals decides in chambers, without the parties being present. However, an oral hearing with the presence of the parties can be held in the following cases

- New facts should be verified and new evidence received to find the factual situation in a full and accurate manner;
- The decision against which the appeal was submitted was based on serious procedural violations, or on a wrongly found factual situation or in an incomplete manner;
- To correctly find the factual situation, it should repeat the taking of some or all the evidence received from the court of first instance.

Recourse against a final administrative court decision and a request for the reopening of the proceedings may be filed against the final decision of the Administrative Court. The High Court of Albania decides on the recourse, and the Administrative Courts decide on the reopening of proceedings.

1.3 Submitting a complaint to the Ombudsman

The institution of ombudsman comes originally from Scandinavia, and in translation means “people’s representative”. The ombudsman represents the interests of the people regarding governmental institutions. Some countries even have several ombudsmen that specialise in certain areas. In Hungary, for example, in addition to the regular ombudsman, there is one that looks into matters affecting ethnic minorities, and another that deals with data protection and information.
The ombudsman undertakes investigations of alleged violations of citizens’ rights through actions or omissions by public authorities, and issues opinions with regard to such violations. While the opinions of the ombudsman are not binding, they tend to be highly respected.

Institution

In Albania, the ombudsman is appointed by, and accountable to, the Parliament. The ombudsman is an autonomous and independent body that works independently of the executive power. The ombudsman is elected for a term of five years, with the right to re-election. Individuals need to have vast knowledge and renowned activity in the field of human rights and with a high personal and professional standing to be elected as ombudsman.

The ombudsman is assisted by Commissioners elected by the Parliament on the proposal of the ombudsman.

Tasks

The Ombudsman:

- reviews cases on the basis of submissions from the public;
- responds to complaints related to the work of the courts in the case of delays in proceedings, abuses of procedural powers or failure to enforce court decisions;
- reviews cases on his/her own initiative;
- submits initiatives to the Parliament for the passing of laws, other regulations and general acts in order to comply with internationally recognised standards in the field of human rights and freedoms;
- initiates proceedings before the Constitutional Court of Albania; and
- deals with general issues of importance for the protection and promotion of human rights and freedoms, and cooperates with organisations and institutions dealing with human rights and freedoms

Accountability and independence

The ombudsman submits to the Parliament an annual report containing a statistical presentation of the cases on which he/she has acted; a review of the situation with respect to human rights and freedoms in Albania; and recommendations and measures for the improvement of human rights and the elimination of observed failures. A copy of the report is also sent to the President and to the Council of Ministers. As the ombudsman looks into the actions of the executive branch, it is vital that the institution itself is independent from the executive bodies of government.

Authority

The ombudsman is not a judicial body. Although the ombudsman's opinions often resemble judicial decisions, they are not binding. In Albania, the ombudsman is entitled to:

- indicate, warn, criticise, suggest or recommend;
- suggest that a certain procedure be implemented pursuant to the law;
- submit to the competent authority an initiative for a disciplinary procedure or for a procedure for the dismissal of a person whose actions or refusal to act have violated human rights and freedoms; and
- submit a request to the competent Public Prosecutor for the initiation of a procedure to determine criminal responsibility.

The ombudsman expresses an opinion as to whether, in what way, and to what extent, there has been a violation of human rights and freedoms. If a violation of human rights and freedoms is found, the ombudsman's opinion must contain a recommendation on what should be done to eliminate the violation, as well as the deadline for its removal. The person in charge of the body to which the recommendation is related is obliged to submit a report on the actions undertaken for the implementation of the recommendation within the prescribed deadline.

Due to the nature of the institution and the status of the individual who holds the post, these opinions and rulings are typically respected and followed. Furthermore, if the case is ever brought before a court, it is likely that the court will form a judgement based on the opinion of the ombudsman.

Turning to the Ombudsman

A procedure for examining a violation of human rights and freedoms is initiated on the basis of a complaint, or on the ombudsman's own initiative. Complaints shall be submitted in writing, or filed verbally on the record.
Filing a complaint to the Ombudsman is not conditioned on any specific form, but a complaint/request needs to clearly state the subject of the complaint or request. Anonymous complaints or requests are not accepted.
It should be noted that the opinion of the ombudsman is not binding on the executive, meaning that, in our example, the Ministry of Energy and Industry can still refuse to provide information to the group of inhabitants of the Bënça Village, even if it is established that information on the concession contract should not be confidential.

If the person responsible for managing the body does not act on the recommendation within the specified deadline, the ombudsman can report directly to a higher authority, submit a special report, or inform the public. Although ombudsman procedures are similar to judiciary procedures, the ombudsman is not a judicial body. It is still possible to file a lawsuit in a court of law at the same time as, or after, filing a complaint with the ombudsman.

1.4 Submitting a request to the Environmental Inspectorate to carry out an inspection

The State Inspectorate for Environment and Forests may be involved in an out-of-court defence of environmental rights. The Environmental Inspectorate carries out inspection supervision of the implementation of environmental regulations.
In the case of non-compliance with environmental norms, the Environmental Inspectorate can issue a fine, order a subject to remedy the infringements and its consequences, and file a criminal complaint against the responsible person with the competent state prosecutor.
Anyone (without stating an interest) may submit a request to the Environmental Inspectorate to inspect the implementation of legal provisions (i.e. initiate an inspection procedure). The request may be submitted anonymously.
If the violation of the provisions is recognised as a criminal offence in the Criminal Code of Albania, it falls within the competences of the state prosecutor.
The tasks of the public prosecutor relevant to the implementation of Article 9 of the Aarhus Convention include:

- the investigation of crimes;
- the protection of human rights and freedoms in the case of established criminal offences;
- the protection of citizens' rights and interests; and
- the implementation of preventive activities.

The benefits of using the Environmental Inspectorate and State Prosecutor's Office

The Environmental Inspectorate and the State Prosecutor's Office review public requests for investigations related to violations of the law. Some of the benefits of turning to the Environmental Inspectorate and the State Prosecutor's Office are outlined below.
As with most administrative complaints, requests sent to the Environmental Inspectorate are dealt with within a short deadline. For example, the Environmental Inspectorate must act on a request in accordance with the regulations governing inspection and administrative procedures. However, it should be noted that the party filing the complaint/request is not part of the administrative procedure that is initiated based on its complaint/ request. As for the Public Prosecutor, when filing a criminal complaint, the public prosecutor needs to take a decision whether or not to start a criminal investigation within 15 days
. In the case of complaints submitted to the State Prosecutor's Office:

- the proceedings before the State Prosecutor do not incur any costs;
- there is no need to follow a set form, as is the case with an appeal or complaint in administrative decision making; and
- there is no need for a lengthy procedure from the Prosecution Office to obtain documentation relevant for the criminal investigation.

What are the competencies of the Environmental Inspectorate and the State Prosecutor's Office?

During the inspection procedure, in order to eliminate identified irregularities, the inspector is authorised and obliged to:

- indicate to the subject of supervision the established irregularities and determine the deadline for their removal;
- order the undertaking of appropriate measures and actions;
- temporarily prohibit the performance of the identified activities or other activities;
- temporarily seize objects or assets in relation to which a criminal offence has been committed;
- impose fines;
- initiate a misdemeanour procedure; and
- submit a report of a criminal offence or other appropriate complaint.

The decision as to whether or not initiate criminal proceedings will be made by the competent state prosecutor. Exceptionally, in the case of certain minor crimes for which a milder penalty is imposed, criminal proceedings may be initiated by an injured party (an individual, or exceptionally an association, chamber, group of persons or organisation, and only if specifically provided by law). Under the prescribed conditions, if the state prosecutor finds that there is no basis for initiating or prosecuting criminal proceedings, the injured party may take on the role of prosecutor.

Inspectors and prosecutors are also obliged to take all possible measures to prevent or put a stop to any possible violation of the law. Finally, the inspector and the prosecutor must take measures to ensure the safety of individuals if there is any possible danger to individuals' life or health.

Submitting a request

The best way to submit a report or complaint to the Environmental Inspectorate and the State Prosecutor's Office is to send it via registered mail. This means that the sender has confirmation of the submission of the request/application. Reports/ complaints to the Environmental Inspectorate can also be submitted via e-mail or telephone.

It is also possible to submit a report/complaint in person. In this case, it is a good idea to make two copies of the report/complaint and to retain one, although the receiving officer should indicate the number and date of receipt of the report on both copies. The legal timeframe will be calculated according to the date written on the report.

The State Prosecutor's Office has a hierarchical structure: criminal complaints are filed first with the basic State Prosecutor's Office.

What are the benefits?

Requesting a review by the State Prosecutor's Office is a tactical step: if nothing else, it gives you more time to prepare for a court hearing. However, you may be confronted with lengthy procedures and overburdened officials at the Prosecutor's Office.

2. Standing: Who has the right to bring a case

According to Albanian legislation, administrative complaint procedures must first be followed before one can turn to the Administrative Court. In legal terms, this is referred to as the "exhaustion of administrative remedies". In practice, it means that the inhabitants of Bënça village have to appeal to a higher authority (the Commissioner for the Protection of Personal Data and the Right to Information) before filing a lawsuit with the

Administrative Courts.

The legislator typically makes this a prerequisite in order to avoid further burdening the already overloaded courts. The law that regulates the specific issue or decision making will usually determine whether such a step is necessary.

2.1 Standing for individuals

To bring a case before any court you have to prove to the judge that you indeed have an interest in the case — that is, that your right or legal interest has been violated. Standards differ for civil and administrative matters. To determine whether you have ground you should check whether the claim meets one of the requirements described below.

Access to justice regarding access to information

(Aarhus Convention, Article 9.1)

This is the simplest case. It is enough to prove that you have asked for information and that you received a response that was not, in your opinion, satisfactory, or not fully satisfactory, or that there was no reply at all.

Access to justice regarding public participation

(Aarhus Convention, Article 9.2)

Because the qualification of "the public concerned" is a precondition for participation in a specific or strategic decision-making process, you must prove that you can be affected by the decision, and describe how (e.g. you are a resident in an area for which a permit is being issued, or in which a plan will be implemented). You do not have to prove that the procedure has been violated in some way: this is something that the court will decide in its ruling.

Enforcement of environmental law

This is probably the most difficult standing to prove. Most countries do not recognise the right of an individual or legal entity to bring to court cases that do not affect them individually, but are rather an attempt to prevent violations of environmental protection legislation. The usual way, as discussed above, would be to try to deal with the matter by bringing it to the attention of the Environmental Inspectorate or State Prosecutor's Office. However, Article 9.3 of the Aarhus Convention refers to various possibilities for standing in law enforcement cases. Practice shows that courts in some countries have ruled that any individual has an interest in the protection of the environment, corresponding both to the constitutional right to a healthy environment and to the duty to protect the environment.

Access to justice to protect one's environmental or civil rights

In civil proceedings, any individual or organisation may file a claim for damage suffered through the endangering of their environmental rights, as well as a lawsuit in order to prevent the occurrence of environmental damage, for which purpose it may also require the court to order provisional security measures in the course of the discussion of the lawsuit. Tort, or civil law, cases require proof that the plaintiff's health, property or other material rights have been affected by the defendant's action.

These are cases where compensation or restoration to the previous state is sought (e.g. where emissions from a facility that exceed the legal limits cause negative health impacts and lead to extra costs for medical care).

2.2 Standing for NGOs

Article 9.2 of the Aarhus Convention grants special standing to NGOs in cases of access to justice regarding public participation. According to this provision, any NGO is recognised as "the public concerned" and as having an interest in the case (regardless of whether or not any direct interests of the NGO itself or its members are affected), providing the following criteria are met:

PRACTICAL TIP

To be entered in the NGO Register, an organisation must file an application with Tirana District Court and submit the following documents:

- **articles of incorporation;**
- **minutes of the founders' assembly; and**
- **the organisation's statutes;**
- **the organisation's programme.**

All documents and the application that is submitted to Tirana District Court need to be certified by a notary.

1. The NGO is recognised in accordance with national legislation (e.g. registered as a non-governmental association or non-governmental foundation). The convention does not require the NGO to be officially registered to have standing and to be recognised as "the public concerned". It does, however, refer to domestic legislation in determining what constitutes an NGO. According to the Law on Non-governmental Organisations of Albania, NGOs must be included in the register maintained by the Tirana District Court. Depending on its legal form (centre, association and foundation), the NGO can be established by one or more natural or legal persons. Once registered, the NGO obtains an official registration document (a court decision registering the NGO with the nongovernmental organisations register maintained by Tirana District Court), tax certificate (issued by the relevant regional tax directorate), seal and stamp, and legal personality.
2. The NGO has environmental protection as one of its goals — for example, environmental protection is fixed as one of the goals in the statutes of the organisation.

The submission of a copy of the statutes and of the record in the Register is sufficient to prove standing in matters of public participation in decision making. However, it can also be argued that, even where environmental protection is not written into the registration documents, regular organisational activity in some area of environmental protection should be sufficient to satisfy these criteria.

3. How to go to court

Rules regarding who can challenge a decision, and how, are generally set out in procedural codes. The Law on Administrative Courts and Adjudication of Administrative Disputes is the first thing to check if you need more information about bringing a case to court.
The present chapter offers practical tips about going to court and outlines some of the procedural steps.

3.1 Suing techniques

Contrary to common belief, bringing a case to court is not necessarily an extremely difficult, drawn-out and hopeless endeavour. Cases based on administrative issues, such as access to information or procedural violations of public participation requirements, are mostly straightforward. Moreover, in many cases it is quite easy to prove a procedural violation.
Once you or your representative have drafted a lawsuit, it can be filed with a court. Besides paying court fees (see 3.4), there are several other requirements for submitting documents. The first thing to check is whether the procedural code or relevant laws regulating a specific process require you first to exhaust administrative remedies (see 1.1).

Putting together a lawsuit

It is always good to involve a professional lawyer to help you put together the necessary documents and evaluate all the supporting circumstances and evidence. Although private attorneys can be very expensive, there are usually pro bono environmental attorneys or advocates that will take your case for free.
The lawsuit document should contain:

- the designation of the court to which the lawsuit is delivered;
- first name, father's name, surname, domicile or residence of the plaintiff and of the defendant and of the persons representing them respectively, if any. If the plaintiff or the defendant is a legal entity, its denomination as it appears in public registers, showing the seat or the headquarters, where the notification shall be served;
- the subject of the dispute;
- requirements in terms of the main and other claims;
- an indication of concrete facts, circumstances, documents and other evidence, grounds on which the lawsuit is based on, as well as the concrete claim of the plaintiff;
- value of the lawsuit, if the subject of the lawsuit is calculable;
- the signature of the plaintiff (in the case of a legal entity such as an NGO, the document must be signed by the competent management authority and sealed); and
- the date of filing.

Keep things clear and simple

If you decide to prepare the document yourself, it is important to remember that the courts are overloaded with cases and that the judges are inundated every day with complaints and lawsuits. A clear list of facts, dates and names, simple references to supporting documents and properly listed attachments can be more helpful to you and the judge than fancy legal language. Keep things clear and simple and try to provide as many references as possible to the legal provisions that support your case.
Judicial practice, legal attitudes and cases before international courts can be of great help to the courts. The judge has only a week or two to decide whether your case is admissible and to set the hearing date. And, of course, the all-important first impression of the case and the parties is formed on the basis of the documents that you submit.

Submit enough copies

In addition to the original set of documents, a copy should be submitted for each defendant in the case.

There is always a second chance

If the documents are incorrect or incomplete, or if the court fee (3.4) has not been paid, the judge can stop the proceedings and inform the plaintiff about the missing elements and reset the deadline by which they must be submitted.

3.2 Which court to go to?

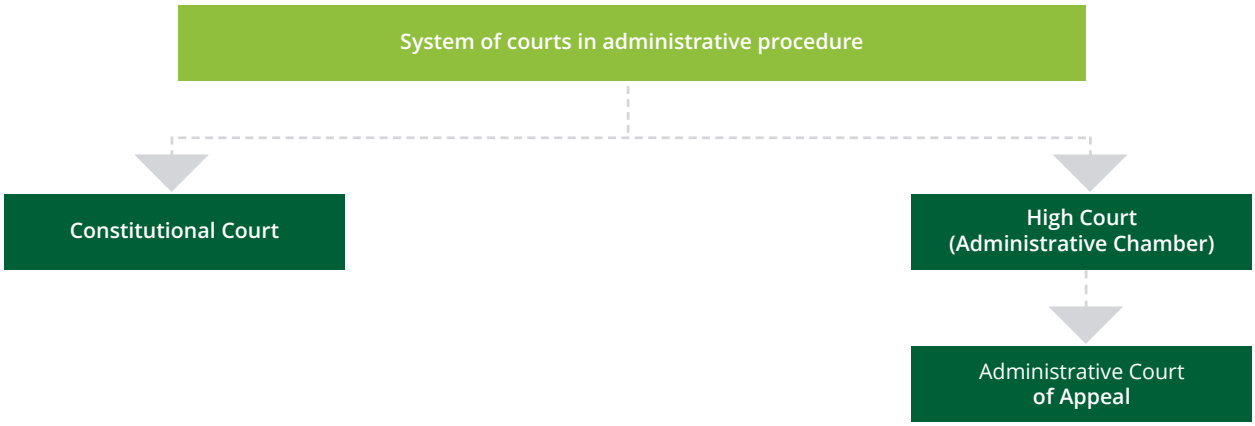
In Albania, administrative lawsuits are brought before the Administrative Courts. As explained above, there are six first level administrative courts and one appeal level administrative court located in Tirana.
Administrative Court procedures are simplified procedures compared to civil procedures, because matters of administrative dispute are typically simpler to decide on and do not require much evidence or lengthy debate between the parties (except in cases where an expert report is required).
The lawsuit must be filed within 45 days of the submission of the administrative act to the party. In our case, the inhabitants of Bënça Village would be able to submit a lawsuit to Tirana Administrative Court if the decision received regarding the administrative complaint in the second instance was not satisfactory, or if it did not receive an answer in time (15 days from the date of filing the appeal).
The courts in the administrative procedure are:

- the first level administrative courts (located in Tirana, Durrës, Gjirokastra, Korça, Shkodra and Vlora);
- Court of Administrative Appeal located in Tirana;
- A specialised administrative chamber within the High Court, which is the highest court in Albania, with the right to decide on cases where a gross violation of material or procedural law has occurred. (A request for the examination of a court decision may be filed against a final decision of an administrative court.)

Finally, there is also the Constitutional Court, before which it is possible to initiate a constitutional complaint about a violation of human rights and freedoms after the exhaustion of regular remedies. According to the Albanian Constitution, the Constitutional Court shall annul or repeal a law if it is not in conformity with the Constitution, or it shall annul or repeal other normative acts that are not in conformity with the Constitution or ratified international agreements. Constitutional Court decisions are final and executive.
The Constitution provides for two different categories: (a) subjects that can challenge any law in the constitutional court (this category includes the President of the Republic, the Prime minister, not less than one fifth of the Members of the Parliament and the Ombudsman) and (b) subjects that can challenge a law only if it directly affects their interests (under this category the following subjects are included: Head of High State Audit; any court; any commissioner established by law for the protection of the fundamental rights and freedoms guaranteed by the Constitution; High Judicial Council and High Prosecutorial Council; Local governance units; Religious communities' forums; Political parties; Organizations and Individuals.)

The request should be appropriately structured, comprehensible, complete in terms of form and content — that is, containing information on the act being challenged, the facts and reasons on which the claim of a violation of constitutional law is based, as well as the clear identification and signature of the person submitting the request.
The court's decision may abrogate or annul laws or other general legal acts. Following a decision to abrogate, the law or other regulation or other general legal act shall cease to apply from the moment of the publication of the decision. On the other hand, following a decision to annul, the Constitutional Court nullifies not only the act, but also all the consequences of its practical application up to the moment of the decision.

Figure 2. System of courts in administrative procedure



Territorial jurisdiction

First instance administrative courts have territorial jurisdiction in the following areas:
Tirana First Instance Administrative Court has territorial jurisdiction in the following districts: Bulqizë, Dibër, Krujë, Laç, Mat and Tiranë, and has its seat in Tirana.
Durrës First Instance Administrative Court has territorial jurisdiction in the following districts: Elbasan, Gramsh, Librazhd, Peqin, Durrës and Kavaja, and has its seat in Durrës.
Shkodra First Instance Administrative Court has territorial jurisdiction in the following districts: Lezhë, Mirditë, Kukës, Has, Pukë, Malësi e Madhe, Shkodër and Tropoja, and has its seat in Shkodra.
Vlora First Instance Administrative Court has territorial jurisdiction in the following districts: Berat, Skrapar, Kuçovë, Fier, Mallakastër, Lushnjë and Vlorë, and has its seat in Vlora.
Korça First Instance Administrative Court has territorial jurisdiction in the following districts: Devoll, Kolonjë, Bashkinë Leskovik, Korçë and Pogradec and has its seat in Korça.
Gjirokastra First Instance Administrative Court has territorial jurisdiction in the following districts: Gjirokastër, Tepelenë, Përmet, Delvinë and Sarandë, and has its seat in Gjirokastra.
The Administrative Court of Appeals has its seat in Tirana and has territorial jurisdiction in the whole territory of the Republic of Albania.
The final decision of the Administrative Court of Appeals can be appealed against, using extraordinary means only before the High Court.

3.3 Timing

The deadline is calculated from the date in which the plaintiff was notified by the submission of a decision informing the plaintiff that their appeal was rejected (see example below). The Law on Administrative Courts and Adjudication of Administrative Disputes of Albania provides a 45-day period during which a party may file a lawsuit against an administrative act (see Figure below). However, related civil claims for damages arising out of tort law may be filed to a civil court within three years.

3.4 Court costs

When deciding whether or not to go to court, it is important to come up with an estimate of how much the case might cost. While cost can sometimes be a significant obstacle — where major damages are claimed, for example — most cases that can be brought under the Aarhus Convention will not be too costly.

FOR EXAMPLE

The timing of administrative appeals/lawsuits in practice

The inhabitants of Bënça Village were refused information following a request to the Ministry. The law on freedom of information provides for a 30-day deadline for filing an appeal to the Commissioner which began on the day in which they received the response stating their application had been rejected. However, if an appeal is then filed with a higher-instance (second-instance) authority and his appeal is rejected, he has the right to file a complaint with the Tirana Administrative Court within 45 days.

Table 1. Typical court expenses

Expense	Relevance to cases
Type of costs	Relevant cases
Court fee	All lawsuits
Expert costs	Mainly criminal law
Investigation costs	Determination of guilt; substantive law
Costs for bringing in witnesses	Determination of guilt and other

Calculation of court fees

Cases related to appeals against decisions or failure to act on the part of public authorities (access to information, procedural violations under public participation provisions etc.), and the submission of administrative complaints to a second-instance authority, are free of charge. Albania is in the process of reviewing its court fee following the adoption of a new law on court fees. However, as the case stands, filing an administrative lawsuit for values up to 100.000 lek is 3.000 lek and for values over that amount is 1% of the requested value.

Waiver of fees

The Law on Legal Aid Guaranteed by the State establishes which categories of plaintiffs and which types of disputes are exempt from the payment of fees. The court may exempt a person from payment of the fee if they classify as a special needs category (domestic violence victims, sexually abused victims or victims of trafficking crimes, minors under the responsibility of social care services, persons that are benefiting from social protection schemes etc) or if they do not have enough income or assets.

Reversed payment

The basic rule in a civil procedure is that each party shall bear the costs incurred by its own actions beforehand, and that the party proposing the evidence must, in accordance with the court order, advance the amount necessary to cover the expenses incurred in the presentation of the evidence. A party that loses a lawsuit is obliged to compensate the opposing party and its legal representative.

3.5 Is the case admissible?

The presiding judge, during the preliminary actions, decides if the complaint is incomplete or incomprehensible. In that case the Administrative Court will invite the plaintiff to remedy the shortcomings in the complaint within the deadline, and will indicate the consequences of failure to do so. The plaintiff will thus receive instructions as to what to do and how to act. If the plaintiff does not remedy the defects in the complaint within the given deadline, and the defects are such that they prevent the work of the Administrative Court, the court will dismiss the claim as invalid.

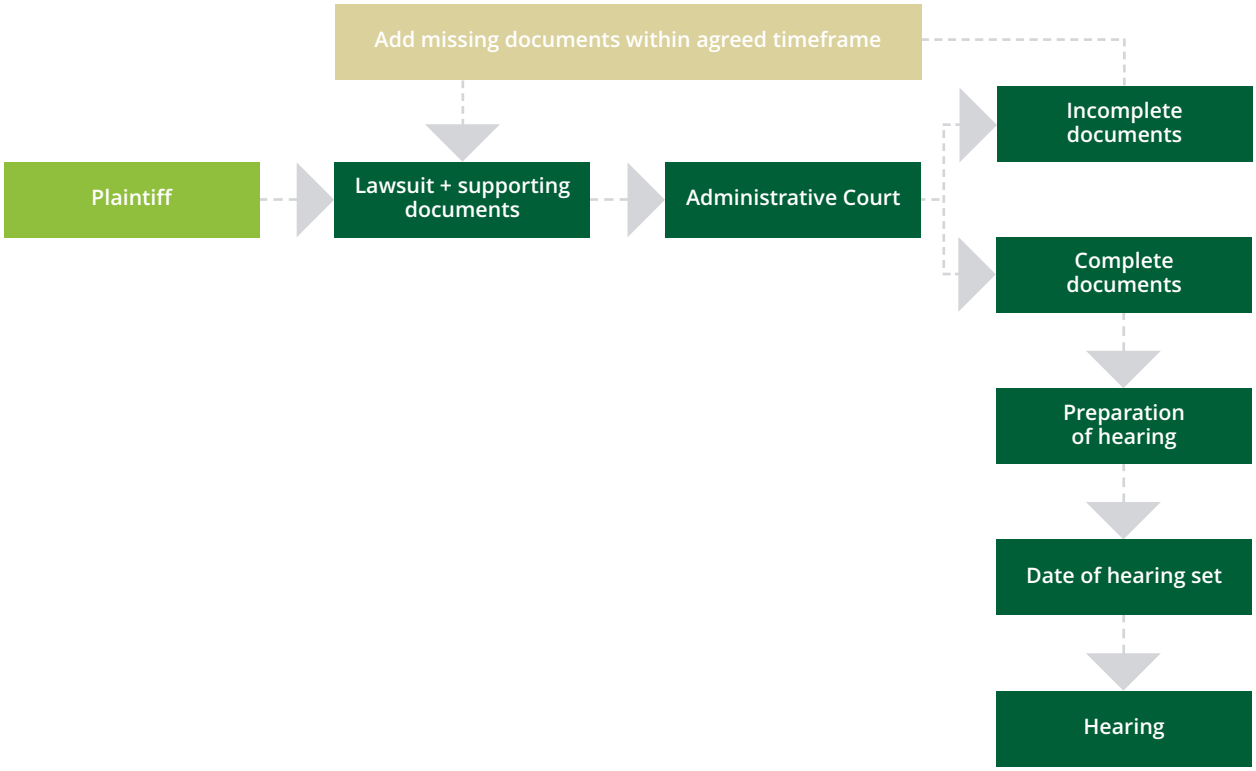
3.6 Preparation of the case to be heard

As explained above, in first instance administrative courts cases are adjudicated on the basis of an oral hearing. Initially, within 7 days of the lawsuit being filed, the presiding judge undertakes a number of preparatory actions including the following: notifies the defendant of the lawsuit and the acts accompanying it; sets a time period of up to ten days for the defended to submit his objections in paper, the list of persons that the defendant seeks to be called to the trial in the quality of witness or expert, and their addresses, as well as full written acts, on which the performance of the administrative act and the examination of the administrative appeal were based. In cases where expert knowledge is required, the judge takes a decision to appoint an expert and deliver an expert opinion.

After all preparatory actions have been performed, the presiding judge issues an order determining the date and time of the judicial hearing. The time limit for holding the judicial hearing may not be longer than 15 days.

The oral hearing begins with the judge stating his name and the court that adjudicates the case, and asks the parties whether they have any preliminary requests (requests relating to competence and jurisdiction of the court, disqualification of the judge etc) and thereafter it invites the plaintiff to explain the complaint. The representative of the respondent public authority and the interested parties, if any, are then invited to speak. The judge decides on the case based on the facts established at the oral hearing and the evidence provided by the parties.

Figure 3. Steps following the submission of an administrative lawsuit



The Administrative Court passes a written judgment. The judgment or decision is delivered to the parties in a certified copy.
As a rule, every court decision should be available online, in an anonymised form in the website www.gjykata.gov.al. However, the website is not updated regularly, and sometimes verdicts are not available online. Good examples of transparency are the websites of Tirana District Court (http://www.gjykatatirana.gov.al/), Tirana Appeal Court (http://www.gjykataeapelittirane.al/), Court of Administrative Appeal (http://www.gjykataadministrativeeapelit.al/) and the High Court (http://www.gjykataelarte.gov.al/) where verdicts decisions are regularly published online.
A verdict of first level administrative courts can be appealed in the Administrative Court of Appeals located in Tirana. However, it should be noted that not every decision can be appealed. Administrative acts/administrative infractions with a value less than twenty times the minimum pay are not reviewed by the Administrative Court of Appeals.
As a rule the Administrative Court of Appeals decides in chambers, without the parties being present. However, an oral hearing with the presence of the parties can be held in the following cases:

- New facts should be verified and new evidence received to find the factual situation in a full and accurate manner;
- The decision against which the appeal was submitted was based on serious procedural violations, or on a wrongly found factual situation or in an incomplete manner;
- For correctly finding the factual situation, it should repeat the gathering of some or all the evidence received from the court of first instance

Recourse against a final administrative court decision and a request for the reopening of the proceedings may be filed against the final decision of the Administrative Court. The High Court of Albania decides on the recourse, and the First Level Administrative Court decides on the reopening of proceedings.
There is a possibility for the Constitutional Court of Albania to initiate a constitutional complaint for the violation of human rights and freedoms after the exhaustion of regular legal remedies.

3.7. Other useful techniques

Class action

A case may be far stronger if the plaintiff is not an affected individual or organisation, but rather a group of citizens that are affected by the decision and ready to join the lawsuit.
For example, a lawsuit against the construction of a hydropower plant was filed by 37 inhabitants of Kute Village, in Mallakastra, one local NGO and two international NGOs. The lawsuit was related to information and participation rights of the inhabitant during the procedure of conducting the environmental impact assessment of the power plant. The lawsuit was successful and the court decided to annul and declare invalid the environmental declaration that was issued following the environmental impact assessment and all the subsequent acts that were based on that declaration, including the concession contract.

Using precedent

When making its decisions, the court relies on material facts and, where the need arises, on logic. Nowadays, greater attention is given to the earlier decisions of other courts, especially those hierarchically superior to the decision-making court. The High Court of Albania takes a principled legal position on controversial legal issues arising in court practice in order to ensure the uniform application of laws by the courts. The Court adopts these decisions in joint chambers (with the participation of all the judges of the High Court). These judgments are binding on the lower courts in future cases and represent reference points for lower-court judges, who consult them when deciding on cases.
The main task of the Constitutional Court is to interpret the legal provisions and determine whether certain laws and regulations are contrary to the Constitution. These interpretations are then used by other courts.
It is important to compare cases: mentioning precedents will make your lawsuit far stronger. Cases in the higher courts may be helpful, but will not be officially mentioned by a judge in decisions. The decisions and interpretations of the High Court and the Constitutional Court can provide official reference points for lower-court decisions.

3.8 Ceasing activity while a decision is made (temporary injunctive relief)

Administrative-judicial protection implies the possibility for the Administrative Courts, in an administrative dispute, to impose a provisional measure to regulate the situation until a court decision is made. Temporary injunctive relief is very important in environmental cases, especially when challenging a permit to operate a plant. A judge grants temporary injunctive relief at the request of a plaintiff. In the context of environmental litigation, it is usually a temporary measure prohibiting an action to ensure that a future court decision will be enforceable.

3.9 How to get help (public interest advocacy)

According to the Law on Free Legal Aid Guaranteed by the State, an individual who fulfils the prescribed conditions has the right to obtain free legal aid from a lawyer appointed by the local chamber of advocates, on a rotation basis. Free legal aid means the provision of the necessary funds to cover, in full or in part, the costs of legal counsel, the drafting of letters, representation in proceedings before the court, the State Prosecutor's Office and the Constitutional Court of Albania and in procedures for the out-of-court settlement of disputes, and exemption from the costs of court proceedings. Funds for free legal aid are provided from the budget of Albania.

The conditions for free legal aid are set out in Articles 10, 11 and 12 of the Law on Free Legal Aid. In environmental cases, only the paragraph about persons with poor financial standing (Article 12) applies.

Exercising the right to free legal aid in accordance with this law does not limit the provision of legal assistance from services, NGOs or other organisations in accordance with the law.

3.10 Involving experts

Cases that are based on substantive claims (a violation of substantive rights, including the right to a healthy environment, property rights, compensation for damage, and other rights) often require proof and expert opinions. Even a case in which you challenge a decision due to dissatisfaction with how your comments have been considered may sometimes require an expert opinion.

The Code of Administrative Procedure and the Law on Administrative Courts and Adjudication of Administrative Disputes in Albania recognises the concept of expert assistance. In an administrative procedure that requires professional knowledge of procedural issues, a party can bring in an expert to provide explanations and advice. The person providing expert assistance does not represent the party and should be clearly distinguished from a proxy. The expert has only a factual status and does not have the right to take legal action in the name of the party, as a lawyer does.

Where to find an expert

How to go about finding the right expert depends on the field of expertise? Many technical experts are engaged in environmental movements and can be contacted, or even engaged, via their NGO. Many of these experts will support your case pro bono, or for a nominal fee.

Another place to look would be local universities and research institutes, which have both expertise and technical capacities. Finally, you might also think of engaging a private expert.

It is important that your experts have good credentials. This is sometimes more important than the expert opinions they give.

Other tips

While going to court will often lead to the final resolution of a problem, it is sometimes faster and cheaper to appeal to the higher authorities.

At the same time, although administrative appeals are faster, resolving your case in court will put the issue behind you, and the court decision can establish a precedent.

It is important always to keep a record of what you communicate with the relevant authorities and stakeholders. When you submit comments or request information, make sure you have proof of your communication (proof of posting, recordings, official emails etc.). Avoid unofficial and oral communications. Proper records will support your claim and serve as proof in any legal procedure.

4. Strategic lawsuits against public participation (SLAPPs)

While the public, individuals and NGOs can sue public authorities and private and state companies for violations of participation rights and violations of environmental law, private entities or authorities can sometimes use the courts to prevent active participation.
An example of a SLAPP is the case of Ms. C.B., a US citizen living in Valbona Valley in Tropoja, who publicly opposed the construction of hydropower plants in the Valley of Valbona. (The Valley of Valbona is a national park with high potential for tourism activities). She organised and participated in protests and other events in Valbona and Tirana to gather support from local communities. The company constructing the powerplants sued Ms. C.B. for defamation and claimed 20 million lek in damages in a lawsuit. The purpose of such lawsuits is typically not so much to obtain compensation as to:

a) burden the participating member of the public with lengthy and complicated judicial procedures to draw their attention away from any decision making in which they are attempting to participate; or
b) create an atmosphere in which others willing to participate in this or any future process will think twice about their involvement for fear of being sued for speaking up or questioning a decision or proposal.

5. Barries to going to court

While going to court is not as frightening or difficult as many think, there are certain things that can complicate the judicial process and obstruct access to justice.
Two main problems are lack of judicial independence, and lack of trust in the justice system. The two are related. The first should be dealt with at institutional level, and while it is an existing problem it is also sometimes overemphasised. The second problem is more dangerous. If you compare the number of goodwill judges with the number of citizens that go to court with an open mind, the former may in fact be larger.
The only effective way to face up to both problems is to bring cases to court, thereby educating judges in the environmental field and also creating precedents.
Several other obstacles, detailed below, exist at a more practical level.

5.1 Counter-lawsuits

As the saying goes, attack is often the best form of defence. It is not surprising that counter-suits do occur in the context of environmental cases. A counter-suit is both a big obstacle and a useful technique. Its greatest relevance to public participation litigation lies in the area of SLAPPs, as discussed above.

5.2 Costs

To some extent, court costs represent a barrier to access to justice in environmental matters. Such cases typically require expensive evaluations, expert findings and professional institutions. Despite the existence of the Law on Free Legal Aid, and the possibility of individual exemptions from the costs of proceedings as provided in that law, the administration and procedures involved, the documents that the individual has to submit to the court, as well as the claiming of rights represent a significant disincentive.
The law on Free Legal Aid provides that legal aid can be granted to Albanian citizens or foreign citizens residing in Albania that (a) irrespective of their income, fall within one of the categories provided in article 11 of the Law on Free Legal Aid, namely, are victims of domestic violence, are minors living under state care, or are generally under state protection schemes etc. or (b) have poor financial standing.

Therefore, on environmental matters with the aim of providing access to justice, legal aid, in the form of legal counselling, legal representation or exemption from payment of court costs can be granted only to claimants with poor financial standing as provided in article 12 of the law.
The law on free legal aid does not provide the possibility of being granted legal aid to legal entities. Therefore, NGOs do not have the possibility to be granted legal counselling, legal representation or exemption from the payment of court costs. Hence, court costs might represent a barrier to access to justice for environmental NGOs going to courts for Aarhus convention related cases.

5.3 NGO standing

The Aarhus Convention gives environmental NGOs standing in court (i.e. the right to bring a case). To challenge public participation procedures in the decision-making process, an NGO does not need to be directly affected by the decision in the same way as an individual. It is usually enough for the NGO to be concerned with environmental protection. This can easily be proved by reference to environmental protection in the by-laws of the organisation or by providing proof of continuous activity in the field. Problems might arise from the convention's reference to national legislation.

Article 5 point 12 of the law on the protection of the environment, which refers to Article 2.5 of the Aarhus convention, defines NGOs that can be recognised as the public concerned. These are "non-governmental organisations promoting environmental protection and meeting any requirements under national law". This reference to national law may lead to a situation where only registered NGOs can use the rights granted by the convention, including the right of access to justice and standing in a court. Where registration of civil associations is a pure formality, such requirements under national legislation are rarely an obstacle.

However, a serious challenge to public access to justice is presented in countries where the registration of civil associations is a complicated procedure. In fact, one might argue that if registering an NGO takes an unreasonably long time, is expensive, or is conditional on unreasonable requests, these facts in themselves make a party to the convention non-compliant.

The registration of NGOs is usually conditioned by the following: depending on the form of organisation it must have one or more founding members, a memorandum of incorporation, statutes that set the goals and objectives of the organisation in accordance with the Constitution; and a non-profit status.

In Albania, the registration process sometimes can be classified as costly and lengthy. The registration procedure is administered by Tirana District Court, which requires copies of the document to be notarised (increased cost of the process) and follows procedures as provided in the Civil Code Procedure in reviewing and deciding on the requests. The Law on NGOs regulates the establishment, registration and termination, status, authorities, financing and other significant issues related to the work and activity of NGOs. When it comes to operations and finances, provisions of Tax Procedure Law and the Law on Accounting are applicable to NGOs. This creates substantial burdens for the day-to-day operations of NGOs in the country, in terms of both human capacity and financial cost.

6. International appeal process

Where domestic access to justice processes fail citizens, other options are available to ensure that governments comply with the Aarhus Convention requirements. There are several possibilities for appeal at international scale in the event of violations of the convention. Both judicial and non-judicial options are available, and, as with the domestic options, each has its pros and cons.

There is, however, one common precondition for both, which is the exhaustion of domestic remedies. Before going to an international court or committee, a person must have tried all means of recourse available domestically. What this means in practice is that if the inhabitants of Bënça Village are still refused access to information by an environmental agency, they should appeal to a higher authority and/or to the court system, all the way to the final instance court. If they lose in court, they can then submit their complaint to the Compliance Committee.

Another example would be if the inhabitants appealed to the domestic courts and their case, although well grounded, was not admitted. Likewise, if a hearing is so unreasonably delayed and prolonged as to render the decision meaningless, they can bring their case to the European Court of Human Rights. In this stage, however, they are no longer able to challenge the refusal to provide information, since the European Court hears only cases stemming from the European Convention on Human Rights. They can instead obtain standing in the court regarding their right to due process — that is, a fair and equitable hearing and meaningful access to justice.

These options are described in more detail below.

6.1 The Compliance Mechanism and implementation review

Article 15 of the Aarhus Convention provides that the Meeting of the Parties to the convention establish a Compliance Mechanism to help assess the compliance of individual parties. The Aarhus Convention Compliance Mechanism was developed and adopted at the first Meeting of the Parties in 2002. The mechanism is progressive and innovative, partly due to the specific character of the convention itself.

By ratifying the convention, parties accept obligations vis-à-vis with their public, rather than each other. A mechanism to evaluate how they are performing domestically was thus called for. The existing mechanism has two main parts: a review of implementation, and the Compliance Mechanism.

Reporting on implementation

The report contains a list of criteria, based on which each party must evaluate its own capacities. This evaluation report is then presented at each Meeting of the Parties and disseminated to all the parties, the public, and anyone else who is interested.

Public involvement

The most useful and effective approach for the governing authorities (usually through an Aarhus focal point in the Ministry of Environment) is to consult the public while working on the report. In the process of compiling the report, this can be done by:

a. providing a draft of the official report to the public;
b. organising a public discussion on the report; and
c. accepting comments on the draft report.

Effect of visibility

Regular reporting on implementation and the publication of the reports are intended to encourage the parties to improve the domestic implementation of the convention in terms of both the necessary legislation and practical implementation.

Compliance Committee

In addition to hearing regular implementation reports on compliance from the parties, the Meeting of the Parties has also established a Compliance Committee.

The committee is made up of eight individual experts nominated by the parties, as well as environmental NGOs. Members are selected from a list of proposed candidates at the ordinary Meeting of the Parties, and four members rotate every four years. A list of current members can be found on the UNECE website:

https://www.unece.org/environmental-policy/conventions/public-participation/aarhus-convention/tfwg/envppcc/aarhuscc-members.html.

How to nominate a member of the Compliance Committee

Who can nominate?

- A government or an environmental NGO (meeting the requirements of Article 2 of the convention). Most countries require registration for eligibility to be nominated.

PRACTICAL TIP

When preparing documentation, it is advisable to turn to legal experts for help. The committee operates in English.

Although the official languages of the convention secretariat are English, Russian and French, the review will be considerably accelerated if it is requested in English.

Who can be nominated?

- A national of the state that has signed, ratified, approved or acceded to the convention (a signatory or a party state).
- The nominee is expected to be highly regarded in a field related to the convention.
- It is preferable, although not necessary, for the nominee to have legal experience.

How to nominate

Each nomination must be accompanied by the candidate's CV (not exceeding 600 words) and any supporting materials considered useful. The nomination must be submitted to the secretariat of the convention at least three months prior to the ordinary Meeting of the Parties.

Functions of the Compliance Committee

- The committee examines and considers submissions from:
  — parties;
  — individuals or NGOs; and
  — the secretariat of the convention.
- As a non-judiciary body, it makes recommendations regarding compliance by a particular party in a particular case, or as a result of non-compliance with the convention in general.
- The committee comprises individual experts. Although nominated by the parties and NGOs, the members are normally respected and well-known legal professionals who do not represent their governments and who act in an individual capacity.

Communication from the public

One or more members of the public can communicate via the secretariat in writing (in hard copy or electronic form) to the committee regarding compliance by one of the parties. The communication should be accompanied by corroborating documentation (proof of alleged failure to comply) — in other words, it is similar to filing a lawsuit with a court. Detailed information on communications can be found on the UNECE website: http://www.unece.org/env/pp/cc/com.html

Direct communication from the public

Communication from the public:

- must be made in a form other than writing;
- may be anonymous (individuals making a communication may request the Compliance Committee to keep their identity confidential if they fear persecution or harassment);
- must not constitute an abuse of the right to make such communications;
- must not be manifestly unreasonable;
- must follow the requirements related to form and subject matter set out in the parties' decision on the Compliance Mechanism; and
- must be compatible with the Aarhus Convention.

Exception

A party may notify the depository that it is unable to accept a compliance review by the committee for up to four years. This so-called opt-out provision was made to allow parties to bring their legislation and practice into compliance with the convention. The party in question is given a fixed period of time in which to do this. However, this is an exceptional provision and is, of course, a de facto acknowledgement that the state is not in compliance with the treaty. The temporary opt-out notification should be submitted, in writing, to the UN Treaty Office in New York (the same office where ratification, acceptance or approval documents are usually submitted). The party may withdraw the opt-out at any time.

Process

- The Compliance Committee notifies the party that is alleged to be non-compliant.
- The party has up to five months to provide explanations.
- Following the expiry of the five-month term, the Compliance Committee, as soon as practicable (most likely at its next regularly scheduled session), considers both the communication and the explanation.
- The committee may hold hearings (similar to court hearings).

PRACTICAL TIP

When preparing documentation, it is advisable to turn to legal experts for help.

The committee operates in English. Although the official languages of the convention secretariat are English, Russian and French, the review will be considerably accelerated if it is requested in English.

What can a Meeting of the Parties accomplish?

Based on the report and/or recommendations of the Compliance Committee, the Meeting of the parties may take the following measures regarding the party in question:

- provide advice, recommendations or assistance;
- request that the party concerned submit its strategy to the Compliance Committee, including a timeline of how it plans to achieve compliance;
- recommend particular measures to be taken;
- declare the party to be in non-compliance;
- caution the party; and
- suspend a party's privileges under the convention (this is more of a standard provision and does not greatly affect the party). However, this provision can informally be extended to technical assistance provided to the party in connection with the convention, such as project funding.

While all these measures are non-judicial and non-confrontational in nature, non-compliance is a serious matter and should be taken seriously by the states. The Compliance Mechanism is therefore a good tool through which to address compliance under the convention.

7. European Court of Human Rights

The European Convention on Human Rights does not deal directly with environmental or participation rights. It has, however, taken several decisions that have established precedent, and has also interpreted some of the convention's provisions related to environmental rights, as well as the right to privacy, the right of access to justice, and the right to due process.

Taking a case before the Strasbourg court is difficult and usually takes years, but it is the ultimate resort and has the most impact in terms of individual cases, national court practices and international interpretation.

The procedures of the European Court of Human Rights are very specific, and the exhaustion of all available domestic remedies is an absolute precondition for initiating a procedure with this court.

Useful links

UNECE Environmental Policy page
http://www.unece.org/env/pp/introduction.html

EC International Cooperation and Development: European Instrument for Democracy and Human Rights
https://ec.europa.eu/europeaid/european-instrument-democracy-and-human-rights_en

Ministry of Tourism and Environment

http://mjedisi.gov.al/

Environmental Protection Agency
www.akm.gov.al/

The Courts of Albania

http://gjykata.gov.al/

Commissioner for the Protection of Personal Data and Access to Information

http://www.idp.al/

Ombudsman

http://www.avokatipopullit.gov.al/