

Monitoring of Administrative Trials 2015

At the first instance administrative courts
and Administrative Court of Appeal

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This Report is the first report prepared by the Presence assessing the legal framework and work of the Albanian administrative justice system which has been in operation since 4 November 2013.

The Trial Monitoring Team consisted of one trial observer for each of the administrative courts of first instance and one trial observer for the Administrative Court of Appeal. David Laflamme, Senior Legal Officer at OSCE PiA designed the questionnaire for courtroom observation based on the template presented in Handbook for Monitoring Administrative Justice.¹ The Project Manager, Iris Petrela, and Senior Legal Officer, Emir Kamenica collected the data, analyzed it in line with the applicable national legislation and international norms and standards and drafted the report. Linda Dikolli extracted the statistics from the electronic questionnaires submitted by the court observers. Pietro Sardaro, Head of Rule of Law and Human Rights Department, Catherine Fischl, Senior Judicial Officer, and Joana Karapataqi, National Public Affairs and Reporting Officer also assisted in the preparation of this report.

The Presence carried out its monitoring in accordance with the trial monitoring methodology developed by the OSCE Office for Democratic Institutions and Human Rights (ODIHR).²

1. *Handbook for Monitoring Administrative Justice*, joint publication of the ODIHR and Folke Bernadotte Academy, 2013

2. ODIHR *Trial Monitoring: A Reference Manual for Practitioners*, 2008, revised edition 2012, accessible at:
[http://www.osce.org/odihr/item 11 30849.html](http://www.osce.org/odihr/item%2011%2030849.html)

Finally, the Presence would like to extend its gratitude to the Government of the Federal Republic of Germany for their financial contribution which enabled this monitoring of administrative trials, and the Folke Bernadotte Academy, Sweden, for their financial contribution which allowed the publication of this report.

i. List of acronyms

APC	Administrative Procedural Code
ECHR	European Convention for Human Rights
FBA	Folke Bernadotte Academy
ICCPR	International Covenant for Civil and Political Rights
LAC	Law no.49/2012 "On the organization and functioning of administrative courts and adjudication of administrative disputes in Albania"
LLA	Law no.10039 "On legal Aid", dated 22 December 2008
MoJ	Ministry of Justice
ODIHR	Office for Democratic Institutions and Human Rights Presence Organization for Security and Co-operation in Europe, Presence in Albania
Presidential Decree	Decree of the President of the Republic No. 7818, dated 16 November 2012 "On determining the number of judges in each first level, appellate level and administrative courts, and on determining their respective territorial jurisdiction, as well as the headquarters for the administrative courts"

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iii. Executive Summary

Following the passing of the Law no.49/2012 “On the organization and functioning of administrative courts and adjudication of administrative disputes in Albania” (‘LAC’), Albania’s new administrative justice system, with six specialized first instance courts and one appellate court functioning in line with new procedural rules commenced operating in November 2013. The LAC includes provisions designed to improve the efficiency of proceedings whilst protecting the fair trial rights of the parties. In particular, the Law tries to ensure the equality of arms in proceedings where the State usually has access to greater resources and access to information.

This report is based on an analysis of the data collected during the OSCE Presence in Albania’s monitoring of 159 administrative cases between May 2015 and May 2016. The monitoring was intended to assess whether the new administrative court system was operating in line with international fair trial standards and the LAC. The Presence makes 18 recommendations for the improvement of the administrative justice system.

In relation to the length of trials, the Presence found that the processing of cases at the first instance courts is reasonably swift indicating that the new procedural rules, which aim to accelerate proceedings, are effective. Some unproductive hearings were reported but were normally for reasons outside the relevant judge’s control.

The infrastructure which would enable effective access to the courts was found to be insufficient. With the exception of the Administrative Court of Appeal in Tirana, it was not possible to obtain information on upcoming hearings online and weekly schedules were not standardized. Disabled access to the courtrooms is restricted. A lack of available courtrooms meant that hearings were held in judges’ chambers where audio recording equipment has not

been installed and the public cannot attend, reducing transparency.

20% of litigants went unrepresented, and a very small percentage availed themselves of legal aid, possibly due to a lack of awareness that they may be entitled to this.

Although trials were processed in a timely manner at first instance, this was not the case at the appellate level. Scheduling of hearings and case adjudication in the sole Administrative Court of Appeal tends to be prolonged and violates the 30 day deadline imposed by the LAC for adjudication of appealed cases. Due to these delays, the Presence was only able to monitor very limited appeal hearings and was not able to monitor the execution stage, meaning that relevant findings and recommendations could not be made. Despite this, the report should provide a useful basis for improvement of procedural rules and structure of the administrative court system when legislative changes are considered in future.

iv. Introduction

Administrative law governs the activities of the administrative agencies of government, including civil registration, issuance of business licenses, protection of the environment, expropriation, urban planning, operation of public utilities and access to information. Administrative authorities are the main interface between private persons (natural or legal) and the State and, as such, they effectively determine rights, entitlements, duties and responsibilities.³ Administrative acts have an impact on daily life so it is important that private persons have the right to appeal administrative decisions that affect their rights or interests.⁴

The existence of an administrative justice system is a fundamental element of a society based on the rule of law. It signifies a commitment to the principle that the government, and its administration, must act within the scope of legal authority. It also signifies the right of private persons to seek meaningful remedies through the initiation of administrative proceedings whenever their rights are negatively affected by the public administration's actions.⁵ The court or tribunal should have the power to review the lawfulness and/or appropriateness of an administrative act and to adopt measures which can be executed within a reasonable time. A balance should be struck between the legitimate interests of all parties and efficient and effective public administration.⁶

A new three-tier administrative court system with a new system of procedural rules, regulated by the Law on the Organization and Functioning of Administrative Courts and Adjudication of Administrative Disputes (LAC), was introduced in Albania in late November 2013. The aim was to ensure that administrative acts could be reviewed by a competent and independent court system, through proceedings adhering to internationally recognized

3. *Handbook for Monitoring Administrative Justice*, joint publication of the ODIHR and Folke Bernadotte Academy, 2013, pg.11

4. *Ibid.*

5. OSCE, Copenhagen Document, 1990, 5.10 & 5.11

6. See *supra* note 3

trial standards. It was expected that the introduction of this new system would yield the following positive developments which together should result in increased public trust in the justice system:

- Improved quality of judgments in relation to administrative acts
- Reduced delays in proceedings relating to administrative acts
- Accelerated and more effective execution of court decisions
- Guaranteed right to a fair trial for citizens.⁷

As a follow up to its support in the preparation of the legislation for the creation of the new administrative courts, the Presence supported their initial operation through the delivery of workshops on administrative justice for all newly appointed judges. The Presence also published a manual on administrative justice and continued its support to these courts through capacity building activities for administrative court judges and their legal assistants during 2013-2015.

In early 2014, the Presence started monitoring administrative cases filed with the Tirana Administrative Court of First Instance to assess the implementation of the LAC. The Presence also collected data on the types of decisions appealed to the Administrative Court of Appeal. Following this, between October and December 2014 the Presence undertook a more comprehensive monitoring of all six administrative courts of first instance and of the Administrative Court of Appeal. Once this monitoring was complete, it was agreed that a longer monitoring period was needed to better assess the implementation of the LAC by the newly established administrative courts.

The OSCE Presence in Albania monitored administrative proceedings in all six administrative courts of first instance May 2015 until end of November 2015, and at the Administrative Court of Appeal from May 2015 to May 2016. The current report is the result of this monitoring.

This report is intended to help with the identification of how their performance can be improved and is important for the Presence's future engagement with

7. *Manual për Drejtësinë Administrative* [Manual on Administrative Justice] by Xhaferllari Marsida, published by OSCE Presence in Albania, Tirana, December 2014, pg.13

administrative courts. The monitoring of administrative justice is directly related to a long-standing commitment of the OSCE participating States to ensuring effective judicial review of administrative decisions. Assisting the Albanian authorities with judicial reform,⁸ and supporting the functioning of the new administrative courts have been part of the Presence's mandate over the past decade.

The remainder of this report is structured as follows. The first chapter presents a concise overview of the international standards applicable to administrative proceedings and the Albanian legal framework for the establishment of the administrative courts and adjudication of administrative cases. We then set out the methodology followed when selecting and monitoring administrative cases at first instance, which is based on the Manual for Monitoring Administrative Justice.⁹

The third chapter analyses the data collected by the courtroom observers against the relevant national and international standards and identifies areas of concern.

The final chapter presents the conclusions and makes recommendations to address the areas of concern identified in administrative trials in courts of first instance and in the Administrative Court of Appeal.

8. OSCE Parliamentary Assembly Decision No. 588: Mandate of the OSCE Presence in Albania 2003, available at <http://www.osce.org/albania/19295>, paragraphs 2-3.

9. See *supra* note no.6

CHAPTER

1

International and domestic legal framework

1.1 INTERNATIONAL STANDARDS

The OSCE participating States have made a number of key commitments in relation to fair trial standards, the rule of law, independence of the judiciary, and human rights.¹⁰ The right to a fair trial in administrative justice under international law derives from international and regional conventions on human rights, including the International Covenant for Civil and Political Rights (ICCPR)¹¹ and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The core of the OSCE's commitments relating to administrative justice are enshrined in the 1990 Copenhagen Document, where the participating States declared that **"effective means of redress against administrative decisions"** are **"among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings"**. It further states that administrative decisions should be reasoned and justified, and should make clear what remedies are available.

1.2 DOMESTIC LEGAL FRAMEWORK

The Albanian Constitution guarantees the independence of the judiciary.¹² The Constitution also provides that courts of specific jurisdiction can be established by law.¹³ Albania introduced a new judicial branch via Law no.49/2012 "On the organization and functioning of administrative courts and

10. "'Concluding Document of the Vienna meeting 1986 of Representatives of the Participating States of the Conference on Security and Co-operation in Europe", Vienna, 1989, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen 5 to 29 June 1990

11. Article 14(1) ICCPR

12. Article 145 of the Albanian Constitution, Law no.8417, dated 21 October 1998, amended

13. Article 135, point 2 of the Albanian Constitution reads: *"The Assembly may establish by law courts for particular fields, but in no case an extraordinary court."*

adjudication of administrative disputes in Albania” (LAC)¹⁴ which provides for the establishment of administrative courts. These courts started functioning in November 2013.

Under the LAC, the courts designated as competent to examine administrative disputes are the administrative courts of first instance, the Administrative Court of Appeal and the Administrative College of the High Court. The administrative courts of first instance are located in Tirana, Durrës, Shkodra, Vlora, Gjirokastra and Korça, and the sole Administrative Court of Appeal is located in the capital. Seven judges sit at the Administrative Court of Appeal.¹⁵

The establishment of specialized courts for adjudicating administrative disputes following specific procedures is intended to ensure the protection of individuals’ lawful rights and interests through a fair judicial process and within a reasonable time in a broad range of cases which can be classified as administrative.¹⁶ These new courts should improve the behavior of public administration bodies by making them more responsible and careful in fulfilling their legal duties.¹⁷ Increased administrative accountability will also improve the climate for business activity. Under the law, the public administration must prove that actions performed by it are well-grounded in law and in fact.¹⁸ The LAC contains both substantive law and procedural rules. The key innovations are as follows.

Legal assistants

The LAC provides for legal assistants to assist the administrative court judges.¹⁹ These were introduced to facilitate the management of administrative

14. Law no.49/2012, dated 16 May 2012, “On the organization and functioning of administrative courts and adjudication of administrative disputes”, amended by law 100/2014

15. At the time the monitoring activity took place

16. Explanatory report in support of the draft law “On the organization and functioning of Administrative Courts and Adjudication of Administrative Disputes”, pg.1, accessible at http://shtetiweb.org/wp-content/uploads/2013/02/Relacion-gjyk-administrat_.pdf [last accessed on 1 November 2016]

17. *Ibid.*

18. Article 3, point 3 of LAC

19. Article 6 of LAC

proceedings in order to try to ensure that proceedings are conducted within reasonable time frames.

Timeframes for procedural steps and possible sanctions

Depending on the nature of the dispute, the administrative court examines it orally in judicial session or on the basis of written acts in chambers.²⁰

The new procedural rules do not specify a maximum timeframe within which the first instance court must make a determination. Instead, the law sets out specific steps to be followed with maximum time allowed for each step, requiring the judge to actively manage the case. Examples of these steps include a 7 day limit on the amount of time a judge can take to familiarize him or herself with the file, establish that it falls within the jurisdiction of the administrative courts and identify or perform relevant preparatory actions,²¹ and maximum time limits for the rectification of errors in the lawsuit by the complainant and submission of objections and expert and witness requirements by the defendant. These timelines are strict, and the judge is able to impose sanctions for non-compliance in some circumstances. For example, if the complainant fails to rectify the lawsuit within the specified time period, the judge will reject the lawsuit and return the evidence.²²

The parties must submit evidence before the first judicial session in all cases. If the public organ submits a written, reasoned request for an extension of the ten day deadline for submission of evidence, the court should grant this, which should end no later than five days before the date of the judicial session. In case of the failure to submit evidence within the second time period, the case proceeds on the basis of the evidence submitted. In addition, the failure of parties to submit final arguments before the deadline determined by the judge does not constitute a reason to postpone the judicial examination.²³

20. Article 3, point 4 of LAC

21. *Ibid.*

22. Article 25.1(a) of LAC

23. Article 34.6 of LAC

Importantly for trial efficiency, the failure of an appropriately notified party to appear in front of the court does not constitute a reason to dismiss the case.²⁴

Ensuring equality of arms

There is a particular risk of infringement of the principle of equality of arms in administrative proceedings due to the privileged position of the State administration. Complainants may be disadvantaged in litigation due to the respondent authority's intentional concealment of, or refusal to provide access to, relevant information. The LAC provides for the judge to have some inquisitorial powers in administrative cases to ensure that balance is maintained between private parties and the public administration. For example, under Article 26.3 "*if the public organ does not submit evidence up to the date of the judicial session, then the court, evaluating the other evidence and the circumstances of the case, may consider the facts claimed by the other party, for the proving of which that evidence was requested, to be proven.*"

Another provision that aims at ensuring equality between parties is enshrined in Article 35 LAC. This places the burden of proving the legality of the administrative act, contract or other action not issued at the request of the complainant, as well as the facts that it has set out and used as the basis of the action that is the subject of the administrative proceedings. In addition, the judge has the discretion to order the transfer of burden of proof of fact from the individual party to the public organ when there are 'reasonable suspicions, based on written evidence, proving that the public organ is hiding or is wilfully not submitting facts and evidence important for the solution of the dispute.'²⁵

Limitations on appeals

The LAC creates a category of court decisions which cannot be further appealed to higher administrative courts.²⁶ These include those relating

24. Article 25.3 of LAC

25. Article 35.3 of LAC

26. Article 45 of LAC

to administrative penalties amounting to less than 20 times the monthly minimum wage and those relating to administrative refusals to grant a monetary benefit of less than 20 times the monthly minimum wage.

CHAPTER

2

Methodology

The OSCE Presence in Albania monitored administrative proceedings in all six administrative courts of first instance from May 2015 until November 2015. This monitoring aimed to assess the work of the newly established administrative courts and make recommendations for their improvement. The OSCE Presence in Albania started monitoring proceedings at the Administrative Court of Appeal at the same time as the monitoring of the courts of first instance, but continued until the end of May 2016. It was necessary for the monitoring at the appellate court to take place over a longer period because of the 4-8 weeks it takes to transfer the court files to the Administrative Court of Appeal and the time taken to schedule trials and adjudicate appeals under the LAC.²⁷ Despite this extension, the number of cases adjudicated at the appellate level during the monitoring period was fairly limited. The current report is the result of the six month monitoring period of the six administrative courts of first instance and the twelve month monitoring of the Administrative Court of Appeal.

The Presence hired and trained seven trial observers to monitor the six administrative courts of first instance and the Administrative Court of Appeal.²⁸ The Presence also hired two external trainers who, together with the OSCE's own staff, trained the seven court observers. The observers were trained on the monitoring methodology,²⁹ and on how to use the Handbook for Monitoring Administrative Justice³⁰ including the template questionnaire for courtroom observation adapted by the Presence for the Albanian context.

27. Article 48, point 1 of the LAC reads: *1. The court where the appeal has been submitted sends the appeal, together with the acts attached to it, the decision of the judge on acceptance of the appeal, the acts of communication of the appeal as well as the file of the trial to the Administrative Court of Appeal within 15 days from the date the appeal is registered.* While point 2 of the same article provides for a fixed time frame within which the Court of Appeal should reach a decision on a case as follows: *2. The Administrative Court of Appeal examines the case within 30 days from the date the appeal comes from the court where the appeal was submitted.*

28. The court observers had previous experience with civil society organizations in activities that included monitoring either of courts or general and local elections.

29. This training took place in October 2014

30. *Handbook for Monitoring Administrative Justice*, joint publication of the ODIHR and Folke Bernadotte Academy, 2013

It is important to note that the monitors were not asked to evaluate the merits of cases or to review case files, and therefore this report does not contain any opinions as to the fairness or legality of decisions rendered by the administrative courts.

Every month, the observers in the six first instance administrative courts filled in the questionnaire for the cases they had observed which had concluded with a judicial decision. After receiving the completed questionnaires, the project staff communicated relevant information about appealed cases to the court observer working in the Administrative Court of Appeal. This information included case number, decision number and date the appeal had been registered with the respective first instance court. The court observer for the Administrative Court of Appeal then requested details about the scheduling of these cases from the information desk at the Court of Appeal, so that the observer could attend if the Court of Appeal decided to hold open hearings.

During the monitoring period, the Project Manager visited each administrative court of first instance in order to obtain direct feedback from the court observers on their relationships with the relevant court staff and to record any changes they had observed with regard to the administrative proceedings compared to the first phase.³¹ The Project Manager also held meetings with court chairs, court staff (including legal assistants), judges, chancellors and court secretaries to obtain further perspectives on the functioning of administrative justice in the first instance courts.

2.1 CASE SELECTION

Cases for monitoring were selected randomly from the court schedules posted on information boards, or kept at the information/registrar desk at courts where information boards are missing.³² Cases were selected to try to ensure fair coverage of the various types of administrative disputes. The aim was to monitor a variety of disputes (labor, property, social security etc.) with

31. October - December 2014

32. The Administrative Court of First Instance in Tirana was equipped with information boards from the moment it started to function, November 2013. The Administrative Court of First Instance in Vlora also had information board which was not used regularly to post court schedule. The rest of the administrative courts of first instance did not have information boards at the beginning, nor they were equipped during the monitoring activity.

different state institutions as defendants.

The ODIHR's Handbook for Monitoring Administrative Justice, and in particular the template questionnaires adapted by the Presence for the Albanian context, served as tools for monitoring administrative cases.

2.2 MONITORING FORMS

After each hearing, the court observers filled out in a courtroom monitoring form and submitted it to the project staff. The form is based on the model provided in the ODIHR/FBA Handbook, adapted for the Albanian context by making it shorter and simplified. The online form used by the court observers is presented as text format in the Annex to this report.

2.3 NUMBER AND TYPE OF CASES MONITORED

Over the six month period 159 cases were monitored across the six administrative courts of first instance.

The table below shows that the cases most frequently before the administrative courts are labor disputes, followed by property restitution or compensation disputes, taxes, customs duties and related fines, licensing for commercial purposes and pension benefits.

In 98% of cases observed, lawsuits were brought by citizens or private businesses. In only three cases (2%), lawsuits were brought by State bodies.

TABLE NO. 1 TYPES OF CASES MONITORED IN THE ADMINISTRATIVE COURTS OF FIRST INSTANCE

COURT	Durrës	Gjrokastra	Korça	Shkodra	Tirana	Vlora	TOTAL 159
Type of administrative disputes							
Labour relations	4	5	5	16	11	4	44
Pension benefits	4	6	2	6	3	2	23
Property rights	8	9	3	7	4	8	39
Customs duties / taxes / fines	3	4	3	10	4	2	26
Licences	1	0	2	2	0	1	6
Complaints on execution orders	1	2	1	0	2	1	7
Compensation for unfair imprisonment	1	0	2	0	0	0	3
Correction of civil status information	0	4	2	0	0	0	6
Compensation for either contractual or non-contractual damage	0	2	0	2	0	1	5

CHAPTER

3

Findings and identified shortcomings

This chapter is divided into three main topics: access to courts, length of proceedings and equality of arms. Each of these topics is divided into sub-topics. The data extracted from the monitoring forms is presented in the form of tables or charts and is followed by interpretation and analysis. Observations and suggestions for remedies in cases of identified inadequacies are set out at the end of each section.

As a general note, all court observers reported that the administrative courts have a considerable workload which results in full schedules for judges. In addition, all court observers reported that their monitoring activity was generally accepted by the court chairs, judges, chancellors and court staff.

3.1 ACCESS TO COURTS

3.1.1 General remarks

The right of access to court is not explicitly protected in international instruments. Nonetheless, the ECtHR has found that access to a court is an integral part of the right to a fair trial, Article 6 of the ECHR.³³ The hearing must take place in a location which allows the parties to effectively participate in the trial. Facilities should allow access by disabled people, although case law on this subject has been hesitant.³⁴ Where there is insufficient information about the time and place of the hearing the parties' right to access the court

33. *Golder v. UK*, ECtHR, 21 February 1975, paragraph 34; *Steele and Morris v UK*, ECtHR, 15 February 2005, paragraph 59, where the court held that "it is central to the concept of a fair trial, in civil as in criminal proceedings, that a litigant is not denied the opportunity to present his or her case effectively before the court (ibid.) and that he or she is able to enjoy equality of arms with the opposing side [...]". Extracted from *Toward Justice*, pg.98, *op.cited*

34. Articles 5(3) and 9 of the International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities obligate States parties to make a "reasonable accommodation" to allow persons with disabilities to access facilities and services available to others, requiring necessary and appropriate modifications and adjustments that do not impose a disproportionate or undue burden on the State. Cited in Legal Digest of International Fair Trial Standards, OSCE/ODIHR publication 2012, pg. 46, accessible at <http://www.osce.org/odihr/94214> [last accessed on 31 October 2016]

effectively may be violated. The right of access also requires the State to take reasonable steps to serve documents and decisions on the parties to proceedings.³⁵ Parties in a civil case and their legal representatives should be granted access to all relevant information, including evidence and other documents that might help them to adequately prepare their case or exonerate them from responsibility. Such access should be provided at the earliest appropriate time.³⁶

During the trial monitoring process all court observers reported that their communication with the information desk, court secretaries and the respective court chairs was constructive. Whenever court observers approached these people, they were provided with the information and clarification they asked for. In many cases, judges volunteered to provide clarification and/or further information to court observers about the cases they had chosen to monitor.

3.1.2 Location of the Courts

Although there are six courts located across the country, it is noted that each court covers a fairly broad geographical area and that the poor infrastructure in many parts of the country means that litigants may have to travel for many hours to attend a hearing.

RECOMMENDATION 1: The geographical coverage of each court of first instance should be reviewed and the institution of branch or travelling courts considered for for remote areas.

3.1.3 Hearing schedules

From the start of its operation, the Administrative Court of First Instance of Tirana had several information boards placed inside the main hall, at the entrance to the court. During the monitoring period Vlora, Shkodra, Durrës and Gjirokastra first instance courts did not use information boards. The Administrative Court of Appeal has a website providing accurate information

35. *Ziliberberg v Moldova*, ECtHR, 1 February 2005, paragraph 40.

36. *Bogonos v. Russia*, ECtHR, 5 February 2004 (decision on admissibility) and *Hennings v. Germany*, ECtHR, 23 November 1992.

on registered appeals and trial schedule but none of the first instance courts have this facility.

The monitor at the Administrative Court of First Instance of Tirana noted that the hearing schedules were printed and attached to the walls of the court's waiting hall. These lists of upcoming hearings, were organized firstly by judge, then by day, and then by hearing time. There is no uniform template for the lists of hearings: some lists start with the time of the hearing, others with the number of the case, and yet others with the name of the plaintiff. The information included in the list also differs depending on the judge: some lists include the number of the case, the type of the hearing (preparatory, judicial, delivery of judgment, etc.) or the subject matter of the case, whilst others do not. This divergence between the hearing lists of different judges could create confusion and makes it more difficult to obtain information about a specific hearing. In addition, the court is quite far from the city centre, so people have to travel to view the week's hearings.

The situation in other administrative courts of first instance differs from that of Tirana. The administrative courts in Gjirokastra, Korça, Shkodra and Vlora share premises with other courts because they are located in the existing buildings of first instance courts of ordinary jurisdiction in the respective cities, while the Administrative Court of First Instance of Durrës shares premises (on the same floor) with the Bailiff Service Offices. It can be confusing for the public when two institutions are located in the same floor, as in Durrës, and there is a risk of noise distracting judges and parties while in court sessions. The court observer in Durrës has reported that occasionally a copy of court schedule was left on a seat in the court hall to provide information about the week's hearings to the public. This procedure is inadequate as it was unlikely that interested parties would see the schedule.

The first instance administrative courts in Gjirokastra, Korça and Vlora have designated separate entrances. However, even in these courts; information boards do not exist or are not used to display the weekly court schedule, as in the case of the Administrative Court of First Instance of Vlora where an empty information board was on the wall next to the registration counter. All court observers regularly reported that they were able to obtain the court schedule every week either from court chancellors or court secretaries, but

this is insufficient as the court schedule should be publicly available. This indicates court transparency and is a key element of fair trial requirements.

At the court of first instance in Tirana, the hearing schedule published on the walls does not include the location of the hearing. Therefore, all the parties and their representatives wait in the waiting hall for the court secretary to arrive and announce the start of the hearing. Typically the court secretary arrives in the waiting hall, announces the hearing to the microphone, and then accompanies the parties to the place of their hearing. The waiting hall is divided into three separate but connected spaces, only one of which contains a speaker. This, together with the noise created by a large number of people waiting in the hall, makes it difficult for those waiting in the other parts of the hall to hear the announcement. For this reason, the secretary often has to go to all of the waiting areas and shout the names of the parties, to make sure that they are aware that their hearing is about to begin. Since the schedule of the hearings is tight (they are scheduled every 15-30 minutes) and there are regular delays, people often crowd in the section of the waiting area with the speaker to make sure that they do not miss their announcement. This contributes to the overall chaos in the waiting hall, which could be avoided if the location of each hearing was planned in advance and announced in the hearing schedule on the wall.

At other administrative courts of first instance parties frequently wait in the court hall for the court secretaries to announce a hearing.

RECOMMENDATION 2: All administrative courts should observe the same level of transparency and facilitate public access to courts by posting a standardised version of the hearing schedule (including the venue for the hearing where possible) on information boards and the court website (if available), on a weekly basis. An internal regulation should be made to ensure that all administrative courts use a standardised weekly schedule.

RECOMMENDATION 3: All administrative courts should have their own website or a common one, where updated and accessible information including the weekly court schedule should be provided.

3.1.4 Information counters

There is a registration/information counter in the waiting hall in the courts of first instance of Tirana, Korça, Vlora, and Shkodra. Even though two or three court employees are usually behind it, there is only one service window, so only one person can be served at a time. This not only slows access to information about the court, but also results in several people crowding at the counter at the same time, increasing the noise and disorder in the waiting hall. In the first instance courts of Durrës and Gjirokastra there are no information counters because the relevant space has been used to create office space for judges, at least one courtroom, an archive office (which soon will not suffice as the number of lawsuits and court files increases), and, in one case, an isolated space for IT equipment.³⁷ With the appointment of legal assistants to administrative judges in all courts, and the appointment of additional support staff in some, the lack of space has become a matter of concern.

RECOMMENDATION 4: All administrative courts should designate space for information counters. Such counters should be designed to ensure that all available staff can give advice.

3.1.5 Court size

For the administrative courts of first instance in Durrës, Korça and Shkodra there is only one floor available for both the office space for administrative court judges and the courtroom. So hearings either take place at the sole courtroom for each of these courts or in the judge's office. In Korça and Shkodra only two out of four judges foreseen by the LAC have been appointed, and they coordinate with each other to agree on the use of the courtroom in specific days of the week or hours of the day. The Administrative

37. First Instance Administrative Court of Gjirokastra

Court of First Instance of Vlora has two courtrooms for three judges out of four foreseen for this court by the LAC³⁸, and, again, they have to coordinate among themselves for the scheduling of hearings. They mostly hold preliminary hearings in their own offices (which has implications for audio recording of, and public attendance at, hearings). There is only one courtroom at the Administrative Court of First Instance of Gjirokastra and two judges appointed out of four foreseen in the Presidential Decree³⁹ for this court. The two administrative judges in Gjirokastra (out of four in total foreseen in the Presidential decree for this court) have their own offices. However, they are very small to accommodate a court secretary, the opposing parties in the trial, including legal representation for the non-State party, and, where necessary, a court expert.

RECOMMENDATION 5: Consideration should be given to providing more designated courtrooms in each of the courts of first instance.

3.1.6 Physical access to the court and amenities for disabled persons

The First Instance Administrative Court of Tirana is located in a four floor newly renovated building far from the Tirana District Court.⁴⁰ There is no elevator in the building. There are two separate main entrances divided by a fence and walls; one for the public (parties) and another one for judges and other court staff.

Each judge has his own office which he or she shares with the assigned court secretary. With the appointment of eight legal assistants to this court (two judges are assisted by one legal assistant) some court spaces were adapted to create offices for the newcomers.

The court is not physically accessible for wheelchair bound visitors. The ramp at the entrance of the court building only allows access to the waiting hall. This part of waiting hall is separated by several steps from the part of the waiting hall in which the locations of the hearings are announced and where

38. Article 4. 4 of LAC

39. Decree of the President of the Republic No. 7818, dated 16.11.2012 "On determining the number of judges in each first level, appellate level and administrative courts, and on determining their respective territorial jurisdiction, as well as the headquarters for the administrative courts"

40. Approximately 3 km from First Instance District Court of Tirana

the bathrooms and one of the courtrooms are located. All courtrooms are on the first to third floors.

Other first instance administrative courts have similar obstacles to physical access to court premises. To enter the administrative courts of first instance in Durrës, Shkodra, Vlora and Gjirokastra access is only by stairs – there are no elevators or ramps available. The situation is better in Korça as the premises of the Administrative Court of First Instance are on the ground floor and the only courtroom available for this court is located close to the main entrance, on the ground floor. This courtroom is spacious and can accommodate people with special needs.

RECOMMENDATION 6: Improvements to disabled access should be made in all courtrooms where this is currently an issue. If consideration is being given to changing the location of courts or expanding the current administrative court system, disabled access should be prioritised when planning.

3.1.7 Recording of hearings

Between June and July 2015 audio recording equipment was installed in all six administrative courts of first instance, following which the courts started to move to recording via DAR. Before this time all court sessions were recorded in written transcripts by court secretaries.⁴¹

After July 2015 all hearings held in courtrooms were audio recorded. However, many hearings continued not to be audio recorded because, as the court observers reported, hearings took place in judges' chambers which do not have audio recording equipment installed.

RECOMMENDATION 7: Efforts should be made to ensure that as many hearings as possible take place in courtrooms.

41. For further details see Legal Digest of International Fair Trial Rights, OSCE/ODHIR publication, 2012, Chapter IV Right to a Public Hearing, pages 77-88

3.2 LENGTH OF HEARINGS

3.2.1 General remarks

The right to a trial within a reasonable time is an important guarantee protecting all parties against excessive procedural delays that might jeopardize both the effectiveness and the credibility of courts and tribunals. Article 6(1) of ECHR states that *“in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time...”* Although there are no definite criteria in international standards applicable to all cases to define what constitutes reasonable time, the case-law of ECtHR has established several criteria that have to be taken into account when assessing whether the delays in a particular case were reasonable, including: (i) the complexity of the case; (ii) the conduct of the respondent state; (iii) the conduct of the applicant; (iv) and the importance of the matter for the applicant.⁴²

3.2.2 Duration of trials, average number of hearings and observed delays before the first instance courts

The LAC guarantees the principle of trial within reasonable time by stipulating that *“the court in an administrative adjudication assures, through a due judicial process and within rapid and reasonable time periods, the legal protection of the constitutional⁴³ and legal interests, rights and freedoms of subjects which might be violated as a consequence of the exercise or not of public functions by organs of the public administration.”⁴⁴*

The trial monitors observed compliance with article 34.2 of LAC by the first instance courts. The judges regularly continued with the hearings in cases when parties who had been properly notified had failed to appear. Such practice resulted in a reduction, both in the duration of trials and in the average number of hearings required to adjudicate cases.

42. Frydlender v France (application no. 30979/96), para 43; Atanasovic v The Former Yugoslav Republic of Macedonia (application no. 13886/02), judgment of 22 December 2005, para 33; Parizov v The former Yugoslav Republic of Macedonia (application no. 14258/03), judgment of 7 February 2008, para 55

43. Article 42 of the Constitution of the Republic of Albania, Article 3 of LAC

44. Article 3 point 1 of LAC

The court monitors observed that the first instance courts took on average 2.6 hearings to conclude a case, including the initial hearing and the hearing for announcing the judgment. The LAC provides detailed steps to be followed by an administrative court judge in order to hold a preparatory hearing, a main hearing and, if necessary, a final hearing where parties state their final requests and the court delivers a first instance decision.⁴⁵ Taking into account the new procedural rules and the active role expected by administrative court judges, administrative trials are expected to conclude within a reasonable time at the first instance administrative courts. In several cases, the monitors observed that judges of first instance courts were able to issue a first instance decision by holding only one court hearing to consider documents presented by either party or both. At the other end of the spectrum, the highest number of court hearings was observed in Durrës where there were up to eight hearings per case, followed by Tirana where there were some instances where cases took seven hearings to conclude. All cases presented in the following table were concluded with a court decision within six months.

TABLE NO.2 AVERAGE HEARINGS FOR CASES CONCLUDED WITH A COURT DECISION

No.of cases concluded with court decision	Durrës	Gjirokastra	Korça	Shkodra	Tirana	Vlora	Total
No.of Cases	21	28	17	33	20	19	138
No. of hearings	84	58	49	64	56	49	360
Average of hearings per case	4	2.1	2.9	1.9	2.8	2.6	2.7

3.2.3 Productive vs non-productive hearings in the first instance courts

Non-productive hearings cause delays in proceedings, increasing the potential for infringements of the right to a trial within reasonable time. Of 387 hearings monitored, 42 (or 10.8%) were not productive, i.e. nothing substantial happened with regard to solving the dispute. In the non-productive hearings, no argument was put forward, no document or written pleading circulated, no evidence taken and no procedural request made.

45. Articles 25, 27 and 34 of LAC

TABLE NO.3 PRODUCTIVE VERSUS NON-PRODUCTIVE HEARINGS

	Durrës	Gjirokastra	Korça	Shkodra	Tirana	Vlora	TOTAL
No. of hearings	89	62	52	74	61	49	387
No. of non-productive hearings	14	6	6	9	6	1	42
Percentage (%)	15,7%	9,7%	11,5%	12,16%	9,83%	2%	10,8%

The Administrative Court of First Instance of Vlora had the lowest incidence of non-productive hearings. The Administrative Court of First Instance of Durrës had the highest number of non-productive hearings.

One of the reasons for the postponement of court hearings in all first instance courts was the failure of judges or court secretaries to appear at the hearing, without informing the parties in an adequate and timely manner. On some occasions the parties, either individually or jointly, requested that the court postpone the hearings because they had failed to prepare themselves for the hearing. The break-down of reasons is presented in the following table.

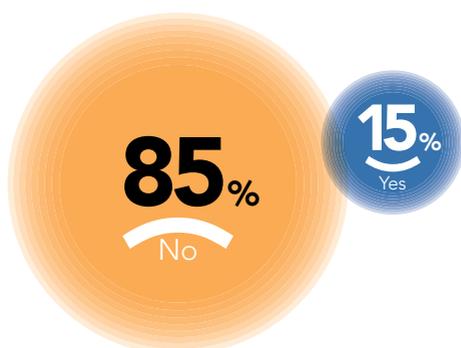
TABLE NO.4 REASONS FOR POSTPONEMENT OF COURT HEARINGS

Reasons for postponement	Durrës	Gjirokastra	Korça	Shkodra	Tirana	Vlora
Judge absence or at training	6	1	5	1	2	0
Court secretary absence	0	0	0	0	1	0
Non constitution of court panel	0	0	1	0	0	0
Non-notification of parties	0	1	0	1	1	1
Report from expert not submitted	3	1	0	2	1	0
Judge did not study the file	0	0	0	1	0	0
Request from advocate for more time to present conclusory remarks	2	1	0	0	0	0
State party did not submit requested docs.	0	0	0	1	1	0
Advocate absence	3	2	0	3	0	0

Under the LAC the court is responsible for ensuring that experts deliver their opinions in a timely manner⁴⁶, allowing not more than 20 days for the production of a report.⁴⁷ The monitors found that there were delays in some cases where an expert's report had not been submitted to the court in due time. In 85% of cases when experts were asked to present their opinions, they submitted their reports after the deadline.

CHART NO. 1 TIMELINESS OF PRODUCTION OF EXPERT REPORTS DURING TRIALS

Did the expert present their report before the deadline?



RECOMMENDATION 8: Coordination with the School of Magistrates should be improved to ensure that hearings are not scheduled for days when the judges are attending training.

RECOMMENDATION 9: Judges should open dialogue with the local bar association to encourage attendance at hearings.

46. WohlmeierBau GmbH v Austria (application no. 20077/02), judgment of 8 July 2004, para 52; Capuano v Italy (application no. 9381/81), judgment of 19 May 1987, para 32; Peryt v Poland (application no. 42042/98), judgment of 2 December 2003, para 57

47. Article 25 of LAC

3.2.4 Processing of cases before the Administrative Court of Appeal

The Administrative Court of Appeal regularly adjudicates appeals in camera, relying on the content of court files transferred from the first instance administrative courts in accordance with the relevant LAC provision.⁴⁸This is only possible when the Administrative Court of Appeal considers that the court file transferred from the first instance administrative court contains sufficient information to enable the determination of the points on appeal. If this is not the case, the Administrative Court of Appeal summons parties to a hearing which is open to the public and conducted in a similar way to a first instance court hearing.

Whilst the first instance courts use a manual lot system, the Administrative Court of Appeal uses an electronic system for assigning cases to judges (ICMIS). From June 2015 audio recording equipment in the courts was operational. The following table presents data on appeals from all six administrative courts of first instance.

TABLE NO.5 APPEALS OF MONITORED CASES

	Tirana	Durrës	Gjirokastra	Korça	Shkodra	Vlora	TOTAL
Cases monitored	23	22	32	20	43	19	159
Cases concluded with decision at first instance ⁴⁹	20	21	28	17	33	19	138
Cases appealed ⁵⁰	8	14	23	9	19	12	85
Cases adjudicated at Court of Appeal	1 ⁵¹	0	0	1 ⁵²	0	1 ⁵³	3 ⁵⁴

In contrast with the relative efficiency in processing cases before the first

48. Article 49, point 1 of the LAC reads: *1.The appeal in the Court of Appeal as a rule is examined on the basis of documents in chambers.*

49. Referring to all cases monitored during 1 May 2015 – 30 November 2015

50. Based on the monthly reports from the court observers at the Administrative Courts of First Instance in Durrës, Korça, Gjirokastra, Vlora, Shkodra and Tirana

51. The Administrative Court of Appeal partially upheld the decision issued by the Administrative Court of First Instance of Tirana.

52. The Administrative Court of Appeal upheld the decision issued by the Administrative Court of First Instance of Korça.

53. The Administrative Court of Appeal upheld the decision issued by the Administrative Court of First Instance of Vlora. The date of the decision is 2 March 2016, which is three month beyond the monitoring period foreseen in the project.

54. Referring to figures received in 2016 while the monitoring period foreseen in the project was from May 2015 until November 2015.

instance courts, significant shortcomings were observed in the process by which cases are reviewed at the appellate level. In total 85 out of 138 final decisions of first instance administrative courts were appealed.⁵⁵ However, the Court of Appeal only adjudicated three of these cases within the monitoring period. The court observer at the Administrative Court of Appeal observed a lack of compliance with the 30 day deadline for case processing. This violates Article 48.2 of the LAC which stipulates that *'the Administrative Court of Appeal examines the case within 30 days from the date the appeal comes from the court where the appeal was submitted.'*

In order to determine the reasons behind the delays in processing the cases the observer met on several occasions with the Chair of the Court of Appeal, judges and court clerks. Key reasons given during those meetings for the case backlog and non-compliance with prescribed deadlines for case processing, were the excessive workload and inadequate number of judges and legal assistants. Seven judges sat at this court during the monitoring period and the legal assistants to the administrative court judges at first instance and appellate level started work in June 2015. Ten legal assistants were assigned to the Administrative Court of Appeal.

At the beginning of 2015, the High Council of Justice approved an assessment report on the workload of the Administrative Court of Appeal for the period January –September 2014. The report contains information on the number of cases assigned to judges in the appellate courts of the civil and administrative systems.⁵⁶ According to the report, a judge in the civil court of appeal adjudicated an average of 125 cases in nine months from an average of 440 cases assigned. For the same period, a judge in the Administrative Court of Appeal adjudicated an average of 513 cases out of an average of 1650 assigned. Therefore, on average, an administrative court appeal judge was assigned, and adjudicated, around four times more cases than a judge in the civil court of appeal.

According to the Annual Report of the Administrative Court of Appeal for

55. It should be noted that only 138 first instance cases resulted in a final decision during the monitoring period and that 21 of the 159 cases monitored did not conclude during that time.

56. Studim vlerësues mbi ngarkesën e punës në Gjykatën Administrative të Apelit [Assessment study on the workload of the Administrative Court of Appeal], pg. 37, accessible at <http://kld.al/korniza-ligjore/akte-nenligjore/studimi-mbi-ngarkesen-ne-gjykatën-administrative-te-apelit>, [last accessed on 18 October 2016].

2015, covering the period January – December 2015, the annual average number of cases adjudicated by a judge at the Administrative Court of Appeal was 431⁵⁷, with the actual numbers ranging from 315 to 1268 per judge.⁵⁸ Although the work involved in adjudicating a civil appeal and an administrative appeal can be very different, these statistics demonstrate the relative speed with which administrative claims can be adjudicated and the large numbers of cases which administrative judges are assigned. Therefore, the issue appears not to be the speed of adjudication, but the workload of each judge.

Because of the limited number of appeals determined by the Administrative Court of Appeal compared with the number of appealed decisions amongst the cases monitored, it is not possible to draw a credible conclusion about the quality of decisions issued by first instance administrative courts.

Apart from shortcomings identified in relation to number of judges, another concern relates to the existing procedures/mechanism and the limited financial and human resources available in the first instance courts for transferring cases from the first instance courts to the Administrative Court of Appeal in Tirana. Currently the case files are being transferred physically, which causes additional delays, mainly due to remoteness of some of the first instance courts. The Gjirokastra and Korça courts are particularly far from Tirana.

A lack of financial and human resources is not a justifiable reason for delays in resolving cases under international law. The state has a positive obligation to ensure compliance with international standards including undertaking appropriate legislative measures as well as allocating sufficient financial and human resources to allow efficient adjudication of cases. An unpredictable caseload and limited numbers of judges and supporting court staff can justify a delay only if such circumstances are exceptional, temporary, and not caused by institutional shortcomings. In such cases, measures – such as the appointment of additional judges or administrative staff – must be taken promptly to address the problem. Delays resulting from a long-term

57. Analysis of the performance of the Administrative Court of Appeal for the year 2015, pg.1, accessible at http://www.gjykataadministrativeapelit.al/?page_id=436, [last accessed on 20 September 2016].

58. See *supra* note, pg.5

backlog of work in the court system, coupled with the failure of the State to take remedial measures, have been considered as breaches of the ECHR.⁵⁹

RECOMMENDATION 10: If the Administrative Court of Appeal is to continue as the sole administrative court at appellate level for the entire country, the Presence recommends that court personnel, including judges, legal assistants and support staff, should be increased. Alternatively, and preferable from the Presence's perspective, the Albanian legislative and executive could consider increasing the number of administrative courts of appeal in the country. As the Justice Reform is in progress at the time of drafting, this is a good time to consider how to best resolve this issue.

RECOMMENDATION 11: The introduction of an electronic file transfer system should be considered. Alternatively, the operation of the manual system should be reviewed to try to increase its efficiency.

3.3 EQUALITY OF ARMS, SUBMISSION OF EVIDENCE AND LEGAL REPRESENTATION

3.3.1 General remarks

Equality of arms is an integral component of the right to a fair trial as enshrined in Article 6 ECHR. This principle guarantees that everyone who is a party to proceedings should have a reasonable opportunity to present his case to the court under conditions which do not place him/her at a substantial disadvantage vis-à-vis his/her opponent.⁶⁰

Procedural fairness requires that each party has a fair opportunity to present its case to the tribunal and to rebut its opponent's case at a meaningful time and in a meaningful manner.

To determine whether the principle of equality of arms had been respected

59. OSCE Presence in Albania, *Towards Justice Analysis of Civil Proceedings in the district courts*, pg. 25, Tirana, OSCE, 2012, accessible at [http://www.osce.org/resources/publications?filters=im_taxonomy_vid_1:\(6\)](http://www.osce.org/resources/publications?filters=im_taxonomy_vid_1:(6)) [last accessed on 27 September 2016]

60. *Werner v Austria* [1997] ECHR 92, para 63; *Coëme and Others v Belgium* [2000] ECHR 250, para 102; *G.B. v France* ECHR 564, para 58, cited in Legal Digest of International Fair Trial Rights, publication of OSCE/ ODIHR, 2012

in the proceedings, monitors focused on the actual opportunity of parties to exercise procedural rights, including whether they were able to submit motions and evidence, whether the respondent party was notified and given sufficient time to make comments, the availability of and access to documents and information relevant to the case for all parties, the use of procedure to ensure balance between parties, and the availability of legal aid to facilitate the effective participation of private persons in administrative proceedings.

3.3.2 Obligation of the Court to impose sanctions for failure of public organ to submit evidence

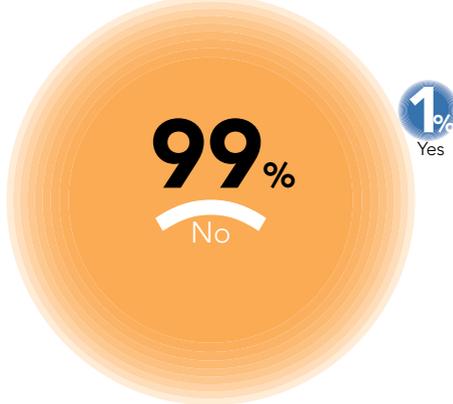
Article 26 of LAC requires that parties submit the evidence before the first judicial session. If a public body fails to submit evidence to another party without adequate justification, the same article stipulates that the Court may impose fines on the head of the particular public body.⁶¹The purpose of this provision is to strengthen the vulnerable position of the individuals in front of the State institutions, which in general have more human resources and material capacities. However, the monitoring team observed that the courts did not impose sanctions against the party or trial participants in almost 99 % of monitored cases. If the courts sanctioned parties who failed to provide the requested evidence in due time, it is likely that the number of unproductive hearings related to the non-action of parties would be reduced.⁶²

61. Article 26.2 of LAC stipulates that an unjustified violation of the obligation to submit evidence by the public organ even within the second time period set constitutes a reason for the court, at the request of the party, or on its own initiative, to impose a fine on the head of the public organ. The amount of the fine is equal to 20% of the minimum pay on the national level, for every day of lateness.

62. See pg.24

CHART NO. 2 APPLICATION OF SANCTIONS IF PARTIES DID NOT COMPLY WITH COURT'S ORDER FOR PROVIDING EVIDENCE

Did the court impose any sanctions on a trial participant who failed to perform the tasks required of them?



RECOMMENDATION 12: Judges should make trial participants aware that they will impose sanctions on those who fail to perform tasks required within the specified time if allowed to do so under LAC.

3.3.3 Testimony of parties and witnesses

According to the LAC, administrative proceedings are based on written evidence, although parties can request to provide oral explanations.⁶³ Testimony is among the evidence that the court might consider to reach a decision in a case.⁶⁴

The monitoring results show that the administrative proceedings are mainly based on written evidence. The court observers reported that parties testified in only 18% of cases, and witnesses testified in only 1% of cases.⁶⁵

63. Article 34, point 3 of LAC

64. Articles 21, 25 and 27 of LAC

65. The testimony of witnesses has been observed in limited cases (one per court) at the Administrative Court of First Instance of Durrës, Gjirokastra and Korça

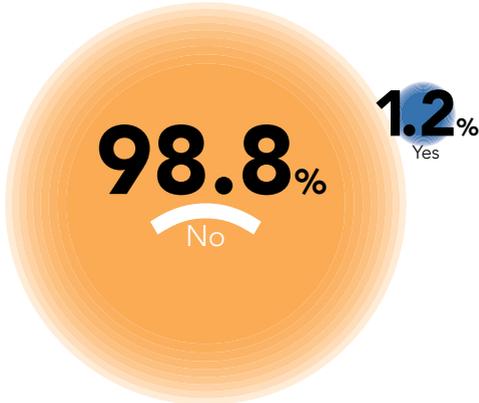
CHART NO. 3 TESTIMONIES IN ADMINISTRATIVE PROCEEDINGS

Did any party testify during the hearing?



CHART NO. 4 TESTIMONY OF WITNESSES IN ADMINISTRATIVE TRIALS

Did any witness testify during the hearing?



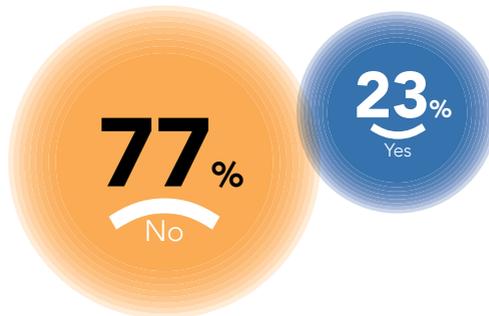
3.3.4 Role of judges to inform parties of procedural history, legal representation and their right to free legal aid

The monitoring team observed that in majority of hearings (44%), judges informed the parties of the key elements of the dispute and in 14% of cases about its procedural history.

The chart below shows the percentage of hearings (not including preliminary hearings) where the judge commenced with a summary of the procedural history.

CHART NO.5 EXPLANATION OF THE PROCEDURAL HISTORY OF THE CASE BY JUDGES AT THE OPENING OF THE SESSION

Did the judge give details about procedural history of the case



Although there is no legal obligation for an administrative court judge to present a summary of the previous court session, this assists the parties and should increase efficiency, especially where they have failed to attend previous sessions.

RECOMMENDATION 13: Judges should briefly review the procedural history at the beginning of each hearing which is not a preliminary hearing.

3.3.4.1 Legal representation of parties and free legal aid

The LAC does not oblige parties to have legal representation during administrative proceedings. Parties independently decide whether they will seek legal assistance and the LAC does not assume legal representation.

CHART NO.6 LEGAL REPRESENTATION



The possibility of legal aid is provided for in the Law on Free Legal Aid (LLA) which regulates beneficiaries, conditions and procedures for award of free legal aid.⁶⁶ The LAC does not currently refer to this possibility.

The missing reference to the LLA in the LAC has a detrimental effect on the right to be represented in front of administrative courts.

RECOMMENDATION 14: The LAC should be amended to make reference to the LLA, and to require judges to inform parties that they may be eligible for free legal representation.

66. Article 13 of Law on Legal Aid, no.10039, dated 22 December 2008, amended by Law no.77/2014

3.4 CASE ASSIGNMENT

The case assignment procedure is stipulated by High Council of Justice Decision⁶⁷ which provides that cases should be assigned to judges following an electronic lot procedure. The administrative courts of first instance follow the manual lot procedure for case assignment. This procedure requires that judges, court chancellor and a court secretary be all present together and cases with the corresponding registration number are manually drawn from a container by the chancellor and then matched with a judge by drawing names of judges from another container. The court secretary registers the results of the manual lot and each judge can start the administrative proceeding from this date. The possibilities of corruption are greater with the manual system and it is less efficient than the electronic system.

RECOMMENDATION 15: The administrative courts of first instance should be provided with the appropriate equipment to enable electronic case assignment.

67. Decision no.238/1/a of the High Council of Justice, 2008 "On lot procedure of cases' assignment" amended

CHAPTER

4

Conclusions and recommendations

As expanded upon earlier in this report, the new LAC has established not only the new administrative court system, but has also introduced procedural novelties aimed at increasing the efficiency of proceedings and protecting the fair trial rights of the parties, particularly those of individual citizens.

The observers noted good practice before first instance courts which generally processed cases without delay. Judges used the provisions of the LAC to correct the imbalance in arms between the State and the individual litigants and to ensure that cases proceeded without unnecessary adjournments. However, judges rarely sanctioned parties. Through raising litigant awareness of the possibility of sanctions and by imposing them when litigants fail to carry out their duties, judges could increase the efficiency of proceedings still further. In addition, better coordination with trial participants and other justice stakeholders, including lawyers and the School of Magistrates, could reduce adjournments caused by non-attendance.

The shortcomings which caused delays in adjudicating cases before the Administrative Court of Appeal are a significant concern. A large backlog of cases, which was said to result from the lack of judges and other court staff, is not a justified reason for non-compliance with international fair trial standards in relation to the adjudication of administrative cases within reasonable time. Several recommendations have been made as to how this should be addressed.

Insufficient material and human resources and poor infrastructure were issues in all courts, causing issues with access to justice. The Presence's recommendations address the limited disabled access, the lack of available courtrooms, poorly designed information counters, online information provision and the lack of an electronic lot system for case assignment.

Although most litigants were represented, the Presence notes the very small proportion of litigants who instructed a legal aid lawyer and recommends measures to increase public awareness of this possibility.

Finally, the execution of a judgment given by any court is an integral

component of fair trial. Unfortunately, due to the very limited number of appeal cases adjudicated during the monitoring period, it was not possible to monitor the execution of any administrative court decisions. The Presence recommends that both the administration of appeals and the execution of judgments should be the focus of future monitoring.

RECOMMENDATIONS:

RECOMMENDATION 1: The geographical coverage of each court of first instance should be reviewed and the institution of branch or travelling courts considered for remote areas.

RECOMMENDATION 2: All administrative courts should observe the same level of transparency and facilitate public access to courts by posting a standardised version of the hearing schedule (including the venue for the hearing where possible) on information boards and the court website (if available), on a weekly basis. An internal regulation should be made to ensure that all administrative courts use a standardised weekly schedule.

RECOMMENDATION 3: All administrative courts should have their own website or a common one, where updated and accessible information including the weekly court schedule should be provided.

RECOMMENDATION 4: All administrative courts should have a designated space for information counters. Such counters should be designed to ensure that all available staff can give advice.

RECOMMENDATION 5: Consideration should be given to providing more designated courtrooms in each of the courts of first instance.

RECOMMENDATION 6: Improvements to disabled access should be made in all courtrooms where this is currently an issue. If consideration is being given

to changing the location of courts or expanding the current administrative court system, disabled access should be prioritised when planning.

RECOMMENDATION 7: Efforts should be made to ensure that as many hearings as possible take place in courtrooms so that they can be audio recorded. Audio recording improves both transparency and efficiency of proceedings.

RECOMMENDATION 8: Coordination with the School of Magistrates should be improved to ensure that hearings are not scheduled for days when the judges are attending training.

RECOMMENDATION 9: Judges should open dialogue with the local bar association to encourage attendance at hearings.

RECOMMENDATION 10: If the Administrative Court of Appeal is to continue as the sole administrative court at appellate level for the entire country, the Presence recommends that court personnel, including judges, legal assistants and support staff, should be increased. Alternatively, and preferable from the Presence's perspective, the Albanian legislative and executive could consider increasing the number of administrative courts of appeal in the country. As the Justice Reform is in progress at the time of drafting, this is a good time to consider how to best resolve this issue.

RECOMMENDATION 11: The introduction of an electronic file transfer system should be considered. Alternatively, the operation of the manual system should be reviewed to try to increase its efficiency.

RECOMMENDATION 12: Where there is a case backlog, measures, such as the appointment of additional judges or administrative staff, must be taken promptly to address the problem.

RECOMMENDATION 13: Judges should make trial participants aware that they will impose sanctions on those who fail to perform tasks required within

the specified time if allowed to do so under LAC. In particular, they should emphasize to experts that if they do not file their expert opinion by the deadline they may be fined.

RECOMMENDATION 14: Judges should briefly review the procedural history at the beginning of each hearing which is not a preliminary hearing.

RECOMMENDATION 15: The LAC should be amended to make reference to the LLA, and to require judges to inform parties that they may be eligible for free legal representation.

RECOMMENDATION 16: The administrative courts of first instance should be provided with the appropriate equipment to enable electronic case assignment.

RECOMMENDATION 17: While preparing budget proposals for the upcoming calendar year, administrative courts should ensure that sufficient financial resources are requested to address any issues causing delays, such as a lack of personnel or equipment.

RECOMMENDATION 18: As the Presence was only able to monitor 3 appeal hearings, monitoring of the appeal and execution stages should be carried out in 2017 to assess their efficiency and make relevant recommendations.

Annex – Trial Observation Form (word version of the online form developed by the Presence)

1. ADMINISTRATIVE INFORMATION	
Full name of court observer:	
Date of observation:	
Start time of observation:	
End time of observation:	

2. GENERAL INFORMATION ABOUT THE CASE	
2.1 IDENTIFICATION OF THE CASE	
Court name:	<input type="radio"/> Tirana <input type="radio"/> Court of Appeal (Tirana) <input type="radio"/> Korca <input type="radio"/> Durres <input type="radio"/> Vlora <input type="radio"/> Shkodra <input type="radio"/> Gjirokastra
Case number:	
Case name:	
Initial filing date⁶⁹:	
Status of the case and previous monitoring of the case⁷⁰:	<p>Was this case completed in only one hearing? <input type="radio"/> Yes (▶ <i>Proceed to section 2.2</i>) <input type="radio"/> No</p> <p>Was this the first hearing in this case? <input type="radio"/> Yes (▶ <i>Proceed to section 2.2</i>) <input type="radio"/> No</p> <p>If this was not the first hearing, have you previously monitored one or more hearings in this case? <input type="radio"/> Yes <input type="radio"/> No</p> <p>If this was the last and final hearing in this case, have you monitored all the hearings in this specific case? <input type="radio"/> Yes <input type="radio"/> No</p>
2.2 DETAILS OF THE DISPUTE	
By whom was the case brought forward?	<input type="radio"/> By a citizen (physical person) <input type="radio"/> By a non-State legal body (business, organization, union, etc.) <input type="radio"/> By the administration

⁶⁹ In the case of appellate proceedings, please indicate the date at which the recourse was filed at the appeals level.

⁷⁰ It is important the observer makes sure that the information collected in this section is correct. This information will allow the Project Manager to group the hearings by case and to collect statistics about the number of hearings required to complete a case. If one or more hearing(s) have already occurred in this court case (monitored or not), please mention the dates of those previous hearings in the field “Basic procedural history” below.

Nature of the dispute:	<input type="radio"/> Employment in the public administration. <input type="radio"/> Permits and licences <input type="radio"/> Pension-related dispute <input type="radio"/> Other, please specify: <input type="radio"/> Taxes or customs' fees <input type="radio"/> (Non)registration of property
Details on the employment dispute <i>This section must be completed only if the dispute is related to employment in the public administration.</i>	Nature of the employment dispute: <input type="radio"/> Unpaid wages (amount in dispute: _____) <input type="radio"/> Unpaid sum of another nature ↳ Nature of claimed sum: Amount: <input type="radio"/> Downgrading <input type="radio"/> Dismissal <input type="radio"/> Transfer without consent <input type="radio"/> Other, please specify: Type of public employer: <input type="radio"/> Central administration <input type="radio"/> Local administration <input type="radio"/> Independent institution Category of employment: <input type="radio"/> Civil servant <input type="radio"/> Non civil servant What is/was the title of the position of the employee?: Is the employee still working within the institution? <input type="radio"/> Yes <input type="radio"/> No
Specific cause of action (law and article)⁷¹:	
Basic facts / summary of the claim:	
Administrative process before the filing of the claim: If applicable, indicate what happened at the administrative level before the claim was filed.	
Basic procedural history at the judicial level: Please provide a summary of the procedural history of that case.	
2.3 JUDGE / PANEL INFORMATION	
Judge(s), name, surname and gender:	Full name: _____ Gender: <input type="radio"/> M <input type="radio"/> F
	Full name: _____ Gender: <input type="radio"/> M <input type="radio"/> F
	Full name: _____ Gender: <input type="radio"/> M <input type="radio"/> F
Changes in judge/panel:	Has the judge or the composition of the panel changed since the last

⁷¹ If possible, please indicate on the basis of what law and which article the claim is founded.

	hearing? <input type="radio"/> Yes <input type="radio"/> No ↳ Please provide specifics (who, when, why?):
2.4 PARTIES' INFORMATION	
Non-State party: (citizen or legal person) If the party is a natural person, please indicate gender and whether the party is a minor.	Full name: Gender: <input type="radio"/> M <input type="radio"/> F Is he/she a minor? <input type="radio"/> Yes (age: ___) <input type="radio"/> No Is the party represented? <input type="radio"/> Yes <input type="radio"/> No ↳ Representative's name: Representative's gender: <input type="radio"/> M <input type="radio"/> F Representative is a lawyer? <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> ? ↳ Legal aid lawyer? <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> ?
Administration:	Full name of institution (including department/division): Representative's name: Representative's gender: <input type="radio"/> M <input type="radio"/> F Representative is a lawyer? <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> ?
Other party (if applicable):	Full name: Gender: <input type="radio"/> M <input type="radio"/> F Minor party?: <input type="radio"/> Yes (age: ___) <input type="radio"/> No Is the party represented? <input type="radio"/> Yes <input type="radio"/> No ↳ Representative's name: Representative's gender: <input type="radio"/> M <input type="radio"/> F Representative is a lawyer? <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> ? ↳ Legal aid lawyer? <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> ?
Changes in parties or their representative:	Has there been a change of parties or of legal representatives during the case / between different hearings? <input type="radio"/> Yes <input type="radio"/> No ↳ Please provide specifics (who, when, why?):
If additional parties are involved or if you wish to add additional information on the above-described parties, please use this field:	
3. HEARING INFORMATION⁷²	
Hearing date:	

⁷²This section must be completed for each observed hearing. In contrast with the previous section concerning general information about the case, this section is intended to collect data about what happened during a particular hearing within a case.

Type of hearing:	<input type="radio"/> Preparatory hearing <input type="radio"/> Unknown <input type="radio"/> Regular hearing <input type="radio"/> Other, please specify: <input type="radio"/> Hearing for the sole purpose of announcing a judgement
Session secretary:	Full name: Gender: <input type="radio"/> M <input type="radio"/> F
3.1 PARTIES AND REPRESENTATION	
Were all the parties present at this hearing? ⁷³	<input type="radio"/> Yes <input type="radio"/> No.
Did any party have a representative that was absent and not replaced?	<input type="radio"/> Yes <input type="radio"/> No. ↳ Please indicate who was absent, and why:
Did a party want a representative/lawyer but did not have one?	<input type="radio"/> Yes <input type="radio"/> No. ↳ Please explain the underlying circumstances:
Did the judge provide information to an unrepresented party about legal aid?	<input type="radio"/> Not applicable. <input type="radio"/> Yes <input type="radio"/> No.
Comments regarding the conduct and performance of the lawyer (if applicable):	
3.2 PUBLIC HEARING AND ACCESS TO THE COURT	
Where was the hearing conducted?	<input type="radio"/> In a courtroom. ↳ Courtroom capacity: <input type="radio"/> In the judge's office. ↳ Reason for holding the hearing in an office: <input type="radio"/> No courtroom was available. <input type="radio"/> Other. Specify: <input type="radio"/> Other, please specify:
Public trial and exclusion from the hearing:	Was anyone (public, press, etc.) excluded from the hearing? <input type="radio"/> Yes <input type="radio"/> No ↳ What was the primary reason for exclusion? <input type="radio"/> Lack of space <input type="radio"/> The nature of the case required confidentiality (ie, family case, national security, etc). <i>Please provide specifics:</i> <input type="radio"/> Other reason. <i>Please provide specifics:</i>
Interpretation:	Was interpretation needed? <input type="radio"/> Yes <input type="radio"/> No. ↳ Was it provided? <input type="radio"/> Yes <input type="radio"/> No. Why?

⁷³ According to the *Law on Administrative Courts*, hearings can be held by the court regardless of the absence of a party.

<p>Describe any other problems related to infrastructure or physical access to the hearing (e.g.: no access to disabled persons, etc.)</p>	
<p>3.3 ADJOURNMENTS AND POSTPONEMENTS</p>	
<p>Was the case finished at this hearing, or it will continue at another date?</p>	<p><input type="radio"/> The case was finished at this hearing (▶ <i>proceed to section 3.3</i>)</p> <p><input type="radio"/> The case will continue at another date.</p> <p>↳ Did the judge set a date for the next hearing?</p> <p><input type="radio"/> Yes <input type="radio"/> No</p> <p>↳ Date:</p> <p style="padding-left: 40px;">Did the judge consult the parties when choosing this date? <input type="radio"/> Yes <input type="radio"/> No</p>
<p>Has anything of substance happened during the hearing?⁷⁴ (Productive vs. non-productive hearing)</p>	<p><input type="radio"/> Yes, a hearing was held and something of substance happened, but the case will be continued at a later date (adjournment). Please indicate why:</p> <ul style="list-style-type: none"> <input type="radio"/> Time was insufficient to complete the hearing. <input type="radio"/> Obtaining additional evidence <input type="radio"/> Time granted for drafting final submissions. <input type="radio"/> Transition between trial phases (end of preliminary or main hearing) <input type="radio"/> Procedural steps concerning experts (drafting of expert’s report, parties readings or expert answering questions about the report) <input type="radio"/> Notification of a third party <input type="radio"/> Parties given time for reconciliation <input type="radio"/> Awaiting a High Court decision <input type="radio"/> Other or unknown (▶ Please use the “additional information” section below to provide specifics) <p><input type="radio"/> No, a hearing was set to a later date without anything of substance happening at this hearing (postponement). Please indicate why:</p> <ul style="list-style-type: none"> <input type="radio"/> Judge absent (for health reasons, family reasons, trainings) <input type="radio"/> Obtaining additional evidence <input type="radio"/> Lawyer absent (for health reasons, family reasons, trainings) <input type="radio"/> Plaintiff or defendant absent although duly summoned. <input type="radio"/> Time granted for drafting final submissions. <input type="radio"/> Plaintiff or defendant absent because not duly summoned. <input type="radio"/> Transition between trial phases (end of preliminary or main

⁷⁴This question aims to identify the main reasons for postponement and adjournments, and to keep track of hearings that are completely **non-productive**. In a non-productive hearing, no argument is put forward, no document or written pleading is circulated, no evidence is taken and no procedural request is made. If, on the contrary, some progress was made in the case, documents or positions were exchanged (i.e. something of substance happened during the hearing) the hearing can be qualified as **productive**.

	<p>hearing)</p> <ul style="list-style-type: none"> <input type="radio"/> Procedural steps concerning experts (drafting of expert's report, parties readings or expert answering questions about the report) <input type="radio"/> Notification of experts or witnesses. <input type="radio"/> Completion of complaint document. <input type="radio"/> Notification of a third party <input type="radio"/> Parties given time for reconciliation <input type="radio"/> Awaiting a High Court decision <input type="radio"/> Other or unknown (▶Please use the "additional information" section below to provide specifics)
Additional information about the postponement / adjournment ⁷⁵	
3.4 WRITTEN PROCEEDINGS ⁷⁶	
If applicable, please explain the nature and date of the proceedings which have been taken in written form prior to this hearing.	
3.4.1 JUDICIAL CONDUCT AND DECORUM	
Courtroom decorum	<p>Was the session conducted with the proper decorum?</p> <p><input type="radio"/> Yes <input type="radio"/> No</p> <p>If not, what were the problems observed:</p> <ul style="list-style-type: none"> <input type="radio"/> Poor judicial control <input type="radio"/> Interruptions <input type="radio"/> Telephone calls <input type="radio"/> Judge rude or abusive <input type="radio"/> Contempt of court <input type="radio"/> Courtroom space <input type="radio"/> Security issues <input type="radio"/> Other (please describe):
Recording of the hearing:	<p>How was the hearing recorded? (select all applicable)</p> <ul style="list-style-type: none"> <input type="radio"/> Audio recording <input type="radio"/> Written transcript
Requests for recusal:	<p>Did any party request the recusal of a judge?</p> <p><input type="radio"/> Yes <input type="radio"/> No</p> <p>↳ Please provide specifics:</p>
Other comments: Please add any observation related to the conduct of the judge, including observations concerning the independence of the judge.	

⁷⁵Please indicate the detailed reason for the postponement or adjournment. For example, if the judge has imposed sanctions on a party related to the adjournment or postponement, please indicate it here, along with any other relevant information related to the productivity/non-productivity of the hearing.

⁷⁶The *Law on Administrative Courts* allows for the possibility of holding proceedings in written form only. Insofar as practicable, the observer should endeavour to obtain access to these proceedings to provide a summary of them.

3.5 HEARING SUBSTANCE	
Was the court competent to hear the case?	<input type="radio"/> Yes <input type="radio"/> No. (Please explain why below).
If applicable, describe any difficulties about obtaining the administrative file:	
Explanations from the judges	<p>Did the judge explain the essence of the dispute?</p> <input type="radio"/> Yes <input type="radio"/> No, the judge gave no explanation whatsoever about the essence of the case. <p>Did the judge give details about the procedural history of the case?</p> <input type="radio"/> Yes <input type="radio"/> No, the judge gave no explanation whatsoever about the procedural history of the case.
Was any evidence taken during the hearing?	<input type="radio"/> Yes <input type="radio"/> No
Did any <u>party</u> testify during the hearing?	<input type="radio"/> Yes <input type="radio"/> No
Did any <u>witness</u> testify during the hearing?	<input type="radio"/> Yes <input type="radio"/> No
Was an expertise presented?	<input type="radio"/> Yes <input type="radio"/> No
Did the court impose any sanctions on a party or trial participant?	<input type="radio"/> Yes <input type="radio"/> No ↳ Please provide specifics:
What happened during the hearing? <i>Please describe what happened of substance during the hearings. If the hearing was a preparatory hearing, please indicate what preliminary steps were taken during the hearing. Use a separate sheet if space is insufficient.</i>	
3.6 INTERIM OR PROVISIONAL (NON-FINAL) DECISIONS	
Was an interim or provisional (non-final) decision taken during this hearing? ⁷⁷	<input type="radio"/> Yes <input type="radio"/> No (↳ please proceed to Section 3.7)
In what form was the decision rendered?	<input type="radio"/> Verbally only. <input type="radio"/> In written form.
Summary of the decision:	
3.7 IMPACT OF OBSERVER'S PRESENCE	
Did the judge initiate conversation/contact with the observer?	<input type="radio"/> Yes <input type="radio"/> No. ↳ Please provide specifics:
Did the parties or their	<input type="radio"/> Yes <input type="radio"/> No.

⁷⁷ If a party formulated a request for an interim or provisional measure that was rejected by the court, please provide specifics as to the nature of the request and the reason for its rejection.

representative initiate conversation/contact with the observer?	↳ Please provide specifics:
Additional comments related to the observer's presence:	

4. FINAL RESOLUTION OF THE CASE⁷⁸

How did the case end?	<input type="radio"/> Final decision by the court <input type="radio"/> Settlement between the parties (▶please provide specifics below if available, and skip to Section 5): <input type="radio"/> Claimant discontinued his claim (▶please provide specifics below if available, and skip to Section 5): <input type="radio"/> Other (▶please provide specifics below if available, and skip to Section 5):
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4.1 FINAL DECISION BY THE COURT

Deliberations:	Did the judge adjourn for deliberations? <input type="radio"/> Yes <input type="radio"/> No How long did the deliberations last?
Form of final judgement:	<input type="radio"/> Written decision. <input type="radio"/> Oral judgement only.
Public judgement:	Did the court issue a public judgement in this case? <input type="radio"/> Yes <input type="radio"/> No Did the only pronounce the <u>outcome</u> of the case? <input type="radio"/> Yes <input type="radio"/> No ↳ Will the full judgement later be made available? <input type="radio"/> Yes. Date: <input type="text"/> <input type="radio"/> No
Reasoning:	Was the judgement sufficiently reasoned? <input type="radio"/> Yes <input type="radio"/> No Please explain why:
Did the observer obtain a copy of the decision? ⁷⁹	<input type="radio"/> Yes <input type="radio"/> No (if not, explain why):
Summary of the judgement:	
<i>For appellate proceedings only:</i> Outcome of the appellate case:	<input type="radio"/> The first instance decision was maintained . <input type="radio"/> The first instance decision was reversed . <input type="radio"/> The case was sent for re-trial . <input type="radio"/> Other. Please specify:

5. ADDITIONAL COMMENTS

Please provide any other relevant information related to this case or to this hearing (use a separate sheet if required):

⁷⁸This section must be completed only if the court renders a final decision at the hearing. If a non-final decision is rendered, please use the section above on “interim and provisional decisions”.

⁷⁹ If possible, please provide a copy of the final decision to the Programme manage when submitting this form.

Monitoring of Administrative Trials 2015

At the first instance administrative courts
and Administrative Court of Appeal

“The Organization for Security and Co-operation in Europe (OSCE) works for stability, prosperity and democracy in 57 participating states through political dialogue about shared values and through practical work that makes a lasting difference.”



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