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New elements in the organisation and functioning of the Public Administration and Administrative Justice

Questionnaire

Responses from **Supreme Court of Albania**

I. New models of organisation and functioning in the Public Administration

The aim and scope of Part I of this questionnaire is:
(A) To examine collaboration with private individuals (who are not public servants) in the unilateral action taken by the Administration, and more specifically to study the delegation to private individuals of tasks traditionally performed by public servants during the procedure of issuing an administrative act. Participation, in general, of citizens/interested parties in administrative proceedings (e.g. preliminary hearings, participation and all forms of consultation), collaboration with private individuals in the Administration's contractual activity (works, supply and service contracts, concession contracts, public-private partnerships, etc.), privatisation of public-sector bodies and creation of legal entities governed by private law are not covered by this questionnaire. (B) To study the integration of private-sector organisational models into the tools and operating methods of the Public Administration.

A. Delegation of administrative tasks to private individuals

1. General provisions

Does your legal system recognise the following forms of collaboration between private individuals and the Public Administration?

Tasks assigned to private individuals during the procedure of issuing [adopting] an administrative act X

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Recruitment of private individuals who are not civil servants within the Administration's structure, e.g. executive managers, senior managers X

2. Regarding the involvement of private individuals in administrative proceedings

i. If the involvement of private individuals in administrative proceedings (as indicated above) is provided for in your legislation, please mention specific provisions.

Constitutional provision ....

☐

General provision of a legislative nature ....

☐

Specific legislation ....

X

For example, Article 348 of the Civil Code provides as follows:

"The status as heir and the respective shares in the inheritance shall be determined in the certificate of inheritance issued by the notary, upon submission of the death certificate of the deceased, in accordance with the rules set forth in this Code and in the law on notarial activity."

Also, Article 111, "Application for the Issuance of the Certificate of Inheritance," of Law No. 110/2018 "On Notary Activity," provides as follows:
"The notary, upon being officially notified through a written application submitted by the interested persons: …"

Since 2013, the process of issuing the certificate of inheritance is no longer carried out by the courts, but by the notary, to whom this process has been entrusted with the aim of simplifying procedures, improving the quality of services to citizens, and reducing the workload of the courts.
Over the years, the notary, as an institution of public trust, has in certain instances exercised functions traditionally performed by judges, and has also carried out activities that were previously within the competence of the courts.

ii. Does national case-law or legislation define criteria pursuant to which the delegation of administrative tasks to private individuals is authorised?

According to Article 2, of the Act No,.125/2013 "On Concessions and Public -Private partnerships" as amended, its purpose is to regulate competences of contracting authorities to enter into concession/public–private partnership agreements for investments based on concessions/public–private partnerships, the procedures for the award of such contracts, as well as the signing, termination, and amendment of concession/public–private partnership agreements. It further governs matters relating to financial arrangements and support in connection with concessions/public–private partnerships, the policy framework for such concessions and the authority responsible for their implementation, and other issues related to concessions/public–private partnerships.

iii. How are administrative tasks delegated to private individuals? Please provide specific examples.

Directly by law[1] X

By an administrative act[2] X

By contract[3] X

Other .... ☐

iv. Which administrative tasks can be entrusted to private individuals [content of the tasks]? Please provide specific examples from legislation and case-law.

Preparation of the administrative act[4], ... X

[1] See for examples the Act No. 110/2018 "On Notary Activity"

[2] Usually via a Decree of the Council of Ministers, See Decision No. 609, dated 24.8.2011 *"On the designation of the contracting authority for the award by concession of the fuel marking and monitoring service in the Republic of Albania and the approval of the bonus in the competitive selection procedure to be granted to the company"*

[3] For Concessions and Public -Privat Procurement according to the Act No. 125/2013 as amended.

[4] For notaries as mentioned earlier, they can issue the certificate of inheritance which is an official act, that can only be contested in court. However, also the refusal of the notary to issue such certificate is subject to judicial contestation in administrative proceedings. See decision No. 00-2024-1010, of 12.03.2024, paras 17-18.

17. Law No. 110/2018 "On Notary Activity" itself has defined the nature of notarial activity as an independent activity of a public character, including the supervision and control of notarial activity, etc. Specifically, Article 4 of this law provides that: *"The profession of notary in the Republic of Albania is an independent function of a public character, in the service of natural*

Issuance [adoption] of the administrative act [5]............................... X

Implementation of the administrative act[6] X

Other .... ☐

(For example, in construction and infrastructure)

v. What is the extent [range] of administrative tasks that can be entrusted to private individuals? Please provide specific examples from legislation and case-law.

Advisory tasks X

Decision-making tasks[7] X

Control and verification tasks[8]:

Establishment of the facts X

Legal qualification of the facts[9] X

Other .... ☐

<u>and legal persons</u>, which is exercised through the drafting of legal acts and the performance of other notarial activities provided for in this law and in the legislation in force."

***18.** Based on the nature of this activity, the first claim in the lawsuit concerning the invalidity of the notary's decision refusing to issue the testamentary certificate of inheritance is regulated under Article 97 of Law No. 110/2018 "On Notary Activity" (as amended), entitled "Refusal to Draft an Act and to Perform a Notarial Act," which provides that:*

"1. The notary shall refuse to draft an act or to perform any notarial act the content of which is in manifest contradiction with the requirements of the law.

The refusal shall be made by a reasoned decision of the notary and shall be notified to the interested party within five days from the date of submission of the request for the drafting of the act.

Persons whose notarial service has been refused may, within one month from the date of notification of such refusal in writing, lodge a complaint before the Administrative Court of First Instance in whose territorial jurisdiction the notarial office operates.

In addition to the claims provided for in Article 46 of the Code of Civil Procedure, any act or decision of the notary concerning the issuance, refusal to issue, correction of errors, or amendment of the certificate of inheritance may be challenged before the court in accordance with the rules governing the adjudication of administrative disputes."

[5] For over eleven years, from 2009 up to 2020, the technical control of motoric vehicles in Albania was granted via a concession contract to a private company (SGS). This company overtook a state monopoly on issuing the permits acknowledging the technical condition of a vehicle, a document without which a vehicle could not circulate freely. The concession contract "On the award of a concession for the provision of the mandatory technical inspection service of motor vehicles and their trailers in the Republic of Albania", No. 4861/2 Prot., dated 3 September 2009, is not public therefore information remains limited.

[6] On the implementation of an administrative act, take part all major infrastructural projects, for which the Government usually

[7] See reference 5.

[8] Same as reference 5. The company had to carry manual technical control of the vehicle, establish if there were any issues that would render the issuing of the permit impossible, and order the owner to remedy the situation and only after such conditions were met, then the owner would be granted the circulation permit.

[9] On the issuing of the certificate of inheritance, the notary must at first establish the facts of the request, do the legal qualifications (if the requesting parties are indeed the heirs, if they are all of the heirs, if there is any legal reserve etc), and later on proceed with issuing the certificate.

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vi. Are there any cases where the involvement of private individuals in administrative proceedings is prohibited?

No ◻

Yes[10] (please specify ………………………………..) X

If yes, which legal instrument provides for the corresponding prohibitions?

Constitution ....… ◻

Legislation[11] ....… X

Other ....… ◻

Please indicate any relevant case-law.

-

[10] In activities which are exclusively reserved by law for public authorities, and therefore are core functions of the public administration. According to the Act No.125/2013 as amended, Article 5 provides for activities that remain prohibited from being granted via concession or public-private procurement as below:
1. This Law shall not apply to concessions/public–private partnerships in the following cases:

a) below the lower monetary threshold;
b) where their implementation must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force, or where this is required for the protection of the essential interests of the State;
c) for the acquisition or lease, by whatever financial means, of immovable property or rights relating thereto. However, financial service contracts concluded at the same time as, before or after, the contract of acquisition or lease, in whatever form, shall be subject to this Law;
ç) for the acquisition, development, production or co-production of programme material or advertising material intended for broadcasting by broadcasters or for publication in the media, and contracts for broadcasting time;
d) for concessions subject to different rules and awarded in accordance with the specific procedural rules of international organisations;
dh) for arbitration and conciliation services;
e) for financial services relating to the issue, sale, purchase or transfer of securities or other financial instruments, in particular transactions by contracting authorities to raise money or capital;
ë) for all services referred to in the procedures for the award of sectoral contracts under the public procurement law;
f) for air transport services;
g) for concessions/public–private partnerships subject to different rules and awarded pursuant to international agreements concluded by the Republic of Albania with one or more other states, signed in compliance with the Treaty on the Functioning of the European Union, and covering works, supplies or services intended for the joint implementation or joint use of projects by the signatory states;
gj) for concessions/public–private partnerships to the extent that this Law conflicts with an obligation of the State arising from, or based on, an agreement with one or more other states or with an international organisation; in such cases, the provisions of that agreement shall prevail. In all other respects, the procedures and principles for the award of concessions/public–private partnerships shall be governed by this Law;
h) for public service concessions awarded by a contracting authority to another contracting authority or to an association of contracting authorities on the basis of an exclusive right enjoyed by them under the legislation in force;
i) for the construction and operation of renewable energy sources, as defined in Law No. 24/2023 "On the Promotion of the Use of Energy from Renewable Sources", except for hydropower plants;
j) Repealed.

2. The cases exempted pursuant to paragraph 1 of this Article shall be governed by other legal or sub-legal provisions.

[11] See reference 10.

3. Qualifications and selection procedure for private individuals

i. What is the procedure provided for in the legislation for the certification of private individuals? Please mention specific examples.

Participation in examinations[12] X
Selection based on criteria[13] X
Other .... ◻

ii. How are selected the private individuals who will be entrusted with a specific administrative task? Please give examples.

Random selection from a list/register .... ◻
Selection from a list/register based on criteria X
Absolute discretionary power of the Administration[14] X
Selection by the citizen [upon a declaration] .... ◻
Other .... ◻

iii. Is there a legal provision and/or other instrument governing the actions of private individuals when performing administrative tasks? Please indicate specific provisions.

No ◻
If yes, X
General normative act (e.g. Code of Administrative Procedure) X
Specific normative acts X
Codes of Conduct, good practices (soft law) X
Other .... ◻

[12] For notaries, The Act No. 110/2018 as amended, provides in Articles 5 the relevant criteria for exercising the profession, while Articles 6-9 provide for the rules of the initial examination, the verification of integrity and professional reliability, initial training and conditions to be notary candidate, as well as the terms of the final examination for being awarded a licence. Following positive results in the final examination the Minister of Justice issues the licence.
[13] For all concessions and public-private procurement contracts- the selection of operators carrying these services is done via the criteria established by the contracting authority. Private participation is enabled through a formal legal/administrative act (concession/administrative contract), reached via a competitive selection procedure (prequalification, tender, evaluation, administrative review, final negotiations, contract signature, possible Council of Ministers approval depending on value). This is authorization via concession award, not certification in the usual regulatory sense such as licensing/accreditation/registration. Depending on the services provided by the tenderer, their certification and licencing is mandatory but not subject of the procurement procedure itself.
[14] Act No. 55/2015 As amended "On strategic investors in the Republic of Albania", provides for a specialized procedure on projects identified by a certain Ministry that could gain a strategic investment or strategic investors status. A selection based on certain criteria's is not always necessary if a project is already suggested by one of the Ministries competent for major infrastructure or economic policies.

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iv. How are the impartiality and integrity of private individuals guaranteed under the law? Please indicate specific provisions.

Incompatibilities .... ◻
Impediments X
Criminal or disciplinary liability X
Other .... ◻

v. What are the legal consequences in the event of an error, offence or failure on the part of the private individual?

Withdrawal of the certification ◻
Disbarment from the professional association X
Imposition of a fine or other penalty X
Personal liability of the private individual (civil, criminal, disciplinary) X
Revocation of the administrative act in the issuance of which the private individual collaborated X
Civil liability of the State X
Other ◻

4. Administrative checks [controls]

i. Does the Administration carry out checks on private individuals when they perform administrative tasks?

Yes ◻
No X

ii. If yes, at what stage are the checks carried out?

A priori ◻
A posteriori X
At any time ◻

iii. How are checks activated?

Following a complaint/administrative appeal X
Ex officio ◻

iv. How extensive are the checks?

Checks based on sampling □
Mandatory checks for all actions X

v. What is the nature of the checks?
Of legality □
Of the substance, of appropriateness X

vi. What is the type of checks?
On persons □
On actions X

vii. Are the conclusions of private individuals binding on the Administration?
Yes X
No □

5. Judicial review

i. Can the actions of private individuals be subject to judicial review? Please indicate specific provisions or the relevant case-law.
No □
Yes X
If yes, what is the scope of the judicial review?
The review directly targets the action of the private individual (per se) X
The review indirectly targets the action of the private individual (appeal lodged against the final act of the Administration, whether explicit or implicit, e.g. appeal lodged against the tacit acceptance of the actions of private individuals by the Administration) ....… X

ii. What types of disputes arise when challenging the actions of private individuals?
administrative disputes X
private disputes X

iii. Please mention typical cases from national case-law concerning the delegation of administrative tasks to private individuals.

The contestation of a notaries "inheritance certificate"- is quite a common conflict for administrative cases, with judgments often addressing issues of absolute or partial nullity of the administrative act[15].

Concession contracts or public-private procurement contracts are often addressed in Arbitration Proceedings due to the high value of the projects/contracts. However, any disputes and conflicts between the concession company and the institutions exercising activities in the field of taxation and customs shall be resolved before the competent court of the Republic of Albania[16].

In this specific case for example, the court notes that the Albanian State has entered into an agreement approved by a special law (Law No. 8761, dated 2 April 2001). Article 1 of this law provides for the approval of a concession agreement in the "BOT" (Build–Operate–Transfer) form concluded between the Ministry of Public Economy and Privatization and a company incorporated under Turkish law. Within this agreement, the term "change of law" is defined as follows: "Any legal act adopted by the competent authorities of the Republic of Albania which has entered into force after the signing of this Concession Agreement." Article 7 of the agreement sets out the obligations undertaken by the State authority, acting in its capacity as representative of the State, within the framework of the concession agreement. Inter alia, it provides that:

"The State Authority (OSHA) undertakes the following obligations: … To ensure to the Concessionaire, also in its capacity as representative of the State owner in the mining industry, that the legislation pursuant to which this Agreement has been concluded shall apply throughout the entire concession period. Amendments to such legislation, including the entry into force of new laws, shall not be applicable, except where such legislative amendments or new laws in force are more favorable to the Concessionaire."

The explicit purpose of the legislature in adopting this provision is to guarantee the legal certainty of the concessionaire by ensuring that, for the thirty-year duration of the concession contract, the private party shall not be adversely affected by legislative changes relating to the scope of the concession agreement.

Such clauses are characteristic of public–private partnerships and are intended to attract investment in priority public sectors, in the exercise of the policy discretion vested in the competent State authorities. It is not without purpose that the legislature expressly provides that the concessionaire shall not be affected by disadvantageous legislative amendments.

[15] See Supreme Court decision no. 31003-00118-2024 of 12.04.2024

[16] See Supreme Court decision no. 31003-472-2017 of 17.03.2022

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This contractual provision, approved by special law, reflects the requirements of Article 155 of the Constitution, pursuant to which tax relief or exemptions may only be granted by law.

B. Integration of private-sector methods and organisational models into the functioning of the Administration

1. Recruitment of senior managers outside the hierarchy of the civil service

i. What are the objectives of recruiting private individuals as senior managers within the Administration?

Mainly bringing relevant experience to innovative sectors or to foster exceptional leadership.

ii. In which sectors of the Public Administration is it permissible to recruit senior managers who do not belong to the hierarchy of the civil service, and in which sectors is it prohibited?

There is no specific prohibition. Exceptions always apply.

iii. What criteria does the Administration use to select external senior managers?

Article 29 and 30 of the Act 152/2013 stipulate the admission to the Civil Service of the Senior Civil Service Corps (or TND)[17]

Admission to the Senior Civil Service Corps (TND) is, as a rule, carried out through a national competitive procedure organized by the Department of Public Administration (DoPA), in accordance with the principles set out in the civil service legislation. This competition is open directly to civil servants of the middle management category who meet the specific conditions and requirements for admission to the TND.

[17] See Act No. 152/2013 " On Civil Service" as amended.

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By way of exception, the Council of Ministers may decide that the admission procedure be opened to other categories of candidates, provided that they meet the legally and sub-legally prescribed criteria.

The assessment of candidates is conducted by the National Selection Commission. Candidates who achieve the minimum threshold of 70% of the total evaluation score are ranked accordingly and, within the number of positions approved in the annual admission plan, are appointed by the Department of Public Administration as senior civil servants and members of the TND.

The conditions, specific eligibility requirements, and the detailed procedure for admission to the TND are approved by decision of the Council of Ministers.

iv. What is the nature of the duties of external senior managers?

Decision-making	X
Advisory	◻
Other	◻

v. Does error on the part of a senior manager give rise to:

Civil liability of the State	X
Personal liability of the manager (civil, criminal, disciplinary)	X

2. Organisational models

i. Does your country use New Public Management, Public Value Management, Digital Era Governance, or New Public Governance policies in the organisation of its Public Administration, for example, to digitise procedures, achieve objectives, ensure accountability, evaluate efficiency, promote the rational use and distribution of resources, control expenditure and ensure compliance with budget restrictions, codify legislation, promote career progression, train staff, etc.? Please provide specific examples.

Yes, in 2022 Albania adopted the Cross-sectional strategy "Albania's Digital Agenda" and Action Plan for 2022-2026. **The Digital Agenda Albania 2022–2026** aims to promote investments in key areas of advanced information technologies and data processing, artificial intelligence (AI), cybersecurity, and the advanced digital skills required to develop these fields. It has the potential to connect businesses, public administration, and citizens with the latest technologies and resources, and to support global competitiveness and strategic autonomy by developing and steering society toward Digital Transformation. The purpose

of this document is to establish objectives for the coming years by adopting modern data platforms and digital technologies in order to identify citizens' needs, overcome resource constraints, and adapt to new models of remote work, while further advancing the digitalization of government services and the development of cybersecurity capabilities. Its success will also be measured through Global and European Indices (for example, the United Nations E-Government Survey, OECD indices, etc.).

ii. Is there a specific provision for the organisation of the Administration based on the abovementioned models (Constitution, legal provision, etc.)?

Not necessarily. As this is a cross sectoral strategy, most of its undertakings remain under common goals that the Government indents to take via various activities.

iii. In which public services and agencies is this type of organisation used?

The Administration stricto sensu	X
Public enterprises	X
Other public entities	☐

iv. Are the policies for achieving the objectives designed:

At national level	X
At regional level	☐
By subject-matter	X
By taking into account specific public entities	☐
Other	☐

v. Have specific objectives been set out for the action of the Administration? Please provide examples.

Yes, several. The strategy provides that the fundamental strategic directions guiding digital actions within the public administration must be defined. The first relates to the registration, simplification, and standardization of processes, while the second concerns the use of technological applications and innovations with the aim of improving the services provided to citizens and businesses.

The specific objectives through which the public administration will evolve into a modern, citizen- and business-friendly administration relate to improving timelines and reducing

costly and bureaucratic processes through the adoption of new technologies and the effective use of human resources.

Digitalization is now an irreversible process for every Albanian institution. Since 2020, a new process has been introduced for public services, namely the provision of applications for public services to citizens and businesses exclusively online. Citizens and businesses submit applications solely through the e-Albania platform, while public administration employees collect all required state-issued documents related to the services. All state data and documents are now used and reused, thereby relieving citizens of the burden of physically collecting paper documents at government service counters.

The e-Albania platform is connected to the Government Interoperability Platform, which constitutes the core architecture enabling interaction with the electronic systems of public institutions. This represents a necessary step toward simplifying the services offered by the Albanian state to citizens, businesses, and the public administration, by reducing the number of documents required from citizens or businesses in order to obtain public services. The Interoperability Platform is connected, through the government network GovNet, to currently 55 electronic systems of the public administration.

Some of the expected results under the Objective 1 – Digital Government:

1. The provision of every administrative document through the government portal, bearing a digital seal or electronic signature, by 2022.
2. The adaptation of the e-Albania government platform and official websites to ensure accessibility for persons with disabilities, by 2025.
3. The productive use of public administration data through the establishment of a High-Performance Computing Center by 2026.
4. The transformation of all government institutions into "paperless" units, with the objective of increasing productivity and improving internal operational and decision-making processes, by 2023.

If yes, is their accomplishment:

- Optional ◻
- Mandatory X

Does failure to meet these objectives lead to:

- Personal consequences for the senior managers ◻
- Legal consequences for the assessed organisation ◻
- Financial consequences for the assessed organisation ◻

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Are incentives of any kind provided for civil servants (e.g. remuneration) or public entities to ensure that these objectives are achieved? X

vi. Are there any indicators for evaluating the action of the Administration in relation to the following factors:

Compliance with the regulatory framework X
Effectiveness X

Efficiency X
Economy X
Achievement of strategic objectives X
Other ◻

II. Alternative methods for resolving administrative disputes

1. General provisions

i. Does your legislation provide for alternative dispute resolution (ADR) in cases involving public law/administrative law?

Arbitration X
Mediation X
Other …………………………………...
◻

ii. Are there categories of administrative disputes that are excluded from ADR by law or according to case-law?

* *Please elaborate on your answer, citing any relevant legislation and/or case-law*

According to the Act No.10385/2011 "*For mediation and alternative dispute resolution*" as amended, administrative disputes can be addressed via mediation. Article 2 of the Act describes that Mediation may be used, based on the free will of the parties or upon notification and guidance by the court or other competent state authorities, for the resolution of disputes in the civil, commercial, labor, family, and criminal fields (where expressly per-

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mitted by law), as well as disputes between public administration bodies and private entities, regardless of whether the dispute has been submitted for judicial review. It applies in particular to cases involving the interests of minors, family reconciliation, property-related, contractual and non-contractual disputes, and where the parties have agreed in writing that mediation shall be the primary means of dispute resolution prior to court proceedings.

Article 24 on the other side stipulates that Mediation is invalid where it is conducted by unlicensed mediators, concerns disputes that must be resolved exclusively by the courts, is not made in writing despite involving monetary obligations, imposes obligations on non-participating parties, involves simulation or other grounds of invalidity, or where the resulting agreement violates public order in the Republic of Albania.

2. Settlement and Mediation

** Please elaborate on your answers, citing any relevant legislation and/or case-law.*

i. In administrative disputes, is it permissible for the Administration and private individuals/legal entities to sign a settlement agreement or other similar document (without prior mediation)?

Yes	X
No	☐

ia. If yes,
Is this option expressly provided for in a legislative text (Constitution, law) or does it derive from a general principle of law?

Although mediation is provided by law in Albania, it's not widely used by parties of any disputes, therefore specific examples particularly in administrative disputes remain limited. According to Article 12, which stipulates the Mediation Procedure:

1. The mediation procedure shall commence on the date on which an invitation to mediate is submitted by at least one of the parties to the dispute to the other party, in accordance with this Law, or on the date on which the case is referred for mediation by the court, the prosecution office, or other competent authorities.
2. Where one party to a dispute request another party to follow mediation procedures pursuant to this Law and the latter does not respond to such request within 30 days

from the date on which the invitation was sent, or within the time limit specified in the invitation, the requesting party may consider this as a refusal to accept the invitation to resolve the dispute through mediation. The submission of an invitation to mediate by a party to the dispute shall not automatically prevent that party from initiating judicial or arbitration proceedings in relation to the same dispute due to the expiration of time limits for filing a claim.

Does this option only apply to the settlement of administrative disputes that are already under way, or can it also be used to prevent administrative disputes from arising in the first place?

As mediation requires an agreement between the two or more parties under a particular dispute it may not prevent new disputes from arising as the parties would need to choice mediation as there way of resolving the case instead of going to court.

Do the law or case-law distinguish between application for annulment (judicial review limited to the legality) and appeal on the merits (full judicial review of both legality and substance)?

No. However the nature of cases which may be addressed via mediation require a review of both legality and substance.

Is there a special procedure for initiating and conducting this alternative dispute resolution method, or are all matters left to the discretion of the parties involved?

Yes. The Act establishes a specific procedural framework for initiating and conducting mediation, while preserving party autonomy over its conduct. Mediation is initiated either by a written invitation from at least one party or by referral from a court or other competent authority; non-response within 30 days may be treated as refusal, without precluding access to court or arbitration. In civil and criminal proceedings, courts may invite the parties to mediate and suspend the proceedings for a limited period, with either party retaining the right to resume litigation at any time. Within this framework, the parties, together with the mediator, are free to determine the rules and manner of mediation and to voluntarily appoint one or more licensed mediators from the official register.

After signing a settlement agreement (or other similar document), is ratification by a court required?

Yes	□
No	X

If yes, by which court?

Court ratification is not required as a general rule. Under Article 22(1), a mediation settlement signed by the parties and the mediator is binding and enforceable, having the same legal force as an arbitral award. Furthermore, pursuant to Article 23(3), where the settlement complies with Article 22, it constitutes an enforceable title.

If no, can the legality of the settlement agreement (or other similar document) be examined by the judge on an incidental basis? Under what circumstances could the settlement be considered null and void and without legal effect?

Where the dispute has been referred to mediation by a court or the prosecution, the judicial authority may examine the settlement incidentally. Under Article 23(2), the court or prosecution authority approves the settlement (civil matters) or orders termination/non-initiation of proceedings (criminal matters), unless it concludes that invalidity exists.

A mediation settlement may be considered null and void where invalidity is found, as expressly acknowledged in Article 23(2), read in conjunction with Article 22. In particular, invalidity may arise if the settlement does not comply with the mandatory requirements set out in Article 22(1)–(3), including the requirement that it be duly concluded, properly formulated, and contain clear and precisely defined obligations, or where the competent judicial authority identifies invalidity during its review following court- or prosecution-referred mediation under Article 23(2).

After being signed and/or validated, as applicable, does the settlement agreement have the force of res judicata? Can the enforcement of this document be pursued?

Yes, the settlement agreement afterwards becomes an executive title and the enforcement services are bound to its enforcement.

Which court has jurisdiction over disputes concerning such enforcement?

First instance Courts depending on the nature of the dispute.

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ib. If the signing of a settlement agreement or other similar document between the Administration and private individuals/legal entities is not permitted in your country, this prohibition results from:

a legislative provision ◻

a general principle of law ◻

There is no clear provision on this.

ii. Does your country provide for a mediation procedure between the Administration and private individuals/legal entities for administrative disputes?

** The term 'mediation' is used here to refer to a procedure conducted by an independent and impartial third party, and not to administrative appeal procedures addressed to the Administration or to a body that is hierarchically dependent on the Administration.*

Yes X

No ◻

iia. If yes,

Is it expressly provided for in a legislative text (Constitution, law) or does it derive from a general principle of law?

See the same provisions under the Act No.10385/2011 "For mediation and alternative dispute resolution".

Is it mandatory or optional?

Optional.

If it is optional, does it require:

The mutual agreement of the parties X

Only the intention of the Administration ◻

Only the intention of the private individual/legal entity ◻

Specifically with regard to the State as a party to the dispute, is mediation initiated:

After approval by a special committee ☐

By the administrative authority involved in the dispute ☐

Other X

There are no specific provisions on this.

At what stage can a case be referred for mediation?

Necessarily before the introduction of legal proceedings ☐

At any stage of the litigation proceedings X

Is there a specific piece of legislation governing the mediation process?

Yes X

No ☐

If yes, please specify:

Mediation, pursuant to Article 2 of the Act No.10385/2011 "For mediation and alternative dispute resolution" applies to the resolution of disputes provided for in paragraphs 2 and 3 of this Article <u>at any time when the parties to the dispute, of their own free will, request and accept mediation as an alternative means of resolving the dispute, regardless of whether the dispute has been submitted to the authority designated by law for its resolution.</u> The provisions of this Act also apply in cases where the court or the competent state authority, after proceedings for the resolution of the dispute have been initiated, notifies and directs the parties toward mediation, in accordance with paragraphs 4 and 5 of this Article.

Which principles of trial apply to the mediation process (hearing of the parties, adversarial principle, equality of arms, publicity, representation by a lawyer?

Article 3 of the Act, stipulates that Mediation is based on the principles of equality of the parties, confidentiality of information, and respect for the flexibility and transparency of procedures, as well as the free will of the parties in the process. In the exercise of his or her functions, the mediator shall ensure that the process for resolving the dispute is conducted efficiently, fairly, and impartially, and in a professional manner, without prejudice toward the parties or the matter subject to mediation.

How is the impartiality of the mediator ensured?

Article 11 of the Act stipulates measures to ensure impartiality and to avoid conflict of interest as below.

1. The mediator shall ensure that no conflict of interest exists between himself or herself and the parties to a mediation procedure. Where there are doubts as to the mediator's independence and impartiality, the mediator shall withdraw from the mediation proceedings.
2. A conflict of interest shall be deemed to exist where:
   a) the mediator has a personal interest, directly connected to himself or herself or to his or her relatives, in the matter for which mediation is sought;
   b) the mediator is the guardian or representative of one of the parties;
   c) the mediator himself or herself, the spouse, or relatives up to the second degree are involved in judicial proceedings, or are in a creditor–debtor or loan relationship with one of the parties;
   d) there exists a serious and sufficient reason indicating a situation of conflict of interest.

3. When a person is offered the opportunity to be appointed as a mediator, he or she shall declare and disclose to the parties any circumstance that may impair or give rise to doubts as to his or her impartiality and independence in relation to the case to be mediated.
4. From the time of appointment and throughout the mediation procedure, the mediator shall promptly disclose to the parties any circumstance that may constitute a breach of, or give rise to doubts about, his or her impartiality and independence.

Is there any interim relief (stay of execution, etc.) during the mediation process? If yes, who is competent to hear the case?

No. If mediation is initiated via a court order, the said court stay the proceedings before it so that they may be addressed via mediation. However, each of the parties may request within 30 days of the said court order to resume proceedings before the court.

At the end of the mediation process,
If an agreement is concluded:

A document is drawn up

Other possibility (please specify)

Article 22, stipulates drawing up an agreement once mediation proves successful.

1. Where the parties reach agreement on an acceptable resolution of their dispute, they, together with the mediator(s), shall sign the relevant settlement agreement, in accordance with and in implementation of the conditions, cases, and procedures provided for in this Law. Such agreement shall be binding and enforceable to the same extent as arbitral awards.
2. The settlement agreement shall specify:
   a) the parties;
   b) a description of the dispute;
   c) the obligations and conditions imposed by the parties on one another, as well as the manner and time limit for their performance;
   d) the signatures of the parties and of the mediator.

The time limit for the performance of the obligations set out in the agreement shall be determined by the parties by mutual consent. The settlement agreement shall contain clear and precisely defined obligations.

3. The settlement agreement shall be concluded in writing, except where the mediator and the parties consider that, given the nature of the dispute, it may be concluded orally, provided that such form is not prohibited by law.
4. The settlement agreement shall be drawn up in three copies: one for each party and one copy to be deposited with the mediation entity, which shall be obliged to administer every settlement agreement and related documentation in accordance with the rules established by the National Chamber of Mediators.

If an agreement is not concluded:

Is a time limit set for bringing the matter before the competent court?

Are the litigation proceedings already under way (if applicable) continued?

Each of the parties may request at any time to resume proceedings before the court.

In the event that a document is drawn up following mediation, do the rules concerning the settlement procedure (see above) apply, or are there differences? If yes, please specify.

No. According to Article 22, (para 2 and 3), the settlement agreement shall be concluded in writing, except where the mediator and the parties consider that, given the nature of the dispute, it may be concluded orally, provided that such form is not prohibited by law.

The settlement agreement shall be drawn up in three copies: one for each party and one copy to be deposited with the mediation entity, which shall be obliged to administer every settlement agreement and related documentation in accordance with the rules established by the National Chamber of Mediators.

iib. If no mediation process is provided for, is this exclusion provided for in:

a legislative provision X

a general principle of law ◻

Article 2 (para 6 stipulates that disputes for which resolution through judicial proceedings is mandatory may not be resolved through mediation.

3. Arbitration

** Please elaborate on your answers, citing any relevant legislation and/or case-law.*

i. In administrative disputes, is arbitration between the Administration and private individuals/legal entities permitted in your country?

Yes X

No ◻

ia. If yes,

Is this option expressly provided for in a legislative text (Constitution, law) or does it derive from a general principle of law?

While not explicitly mentioned it derives from the provisions of the Act no. 52/2023 "On Arbitration in the Republic of Albania".

Does it concern both application for annulment (judicial review limited to the legality) and appeal on the merits (full judicial review of both legality and substance)? Are there any exceptions provided for by law or established by case-law?

No. Under Albanian arbitration law, judicial review of an arbitral award is limited exclusively to an application for annulment, and no appeal on the merits is permitted.

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Pursuant to Article 44(1), "the sole remedy against an arbitral award is an application for annulment", which may be filed before the competent Court of Appeal only on the exhaustively listed grounds set out in that provision, all of which concern legality, jurisdiction, due process, arbitrability, and public policy, and do not allow a review of the substance of the dispute or the merits of the arbitral decision.
The law does not provide for any appeal involving full judicial review of both legality and substance, nor does it establish any statutory exceptions allowing such a review.
Even where annulment is granted, the Court of Appeal may only refer the case back to the arbitral tribunal for rehearing or order measures to remove the grounds for annulment (Article 44(3)), without substituting its own assessment on the merits.
Accordingly, Albanian law excludes merits-based appeals of arbitral awards, and no exceptions are provided by the statute; any broader review would require a basis in case-law external to the law, which is not reflected in Article 44.

Is it mandatory or optional?

Optional, but also depending on the previous agreements between the parties, if arbitration has been provided as the first means of conflict resolution.

ib. If arbitration is not permitted, is this prohibition due to

A legislative provision □
A general principle of law □

Having arbitration as an alternative dispute resolution usually relies on the will of the parties of an agreement, therefore depending on the contract it is up to the parties.

ic. If arbitration is optional, does it require:
The mutual agreement of the parties X
The sole intention of the Administration □
The sole intention of the private individual/legal entity □

On the part of the State, is arbitration initiated:
After approval by a special committee □

By the administrative authority involved in the dispute X

Other

Depending on the contract, every contracting authority (administrative authority) may initiate arbitration proceedings. Prior approval by the State Advocate for ADR is granted before signing the agreement, hence afterwards all actions are carried independently before the forum chosen.

ii. For disputes arising from contracts between private individuals/legal entities and the State, do the common provisions relating to commercial arbitration (domestic or international) apply, or is there a special regime?
If there is a special regime, please briefly mention the elements that differentiate it from the commercial arbitration regime.

Common provisions apply as incorporated in the Act no. 52/2023 "On Arbitration in the Republic of Albania".

iii. Is arbitration provided for in contracts falling within the scope of Directives 2014/24/EU and 2014/25/EU?
If yes, have any issues been raised regarding the application of the rules governing the performance of these contracts? How have the courts addressed such issues in the relevant case-law?

While no specific provisions lie with regard to arbitration, the Act No. 162/2020 "On public procurement" as amended, is partly approximated with Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, as amended. CELEX No. 32014L0024, *Official Journal of the European Union*, Series L, No. 94, 28.3.2014, pp. 65–242. Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC, as amended. CELEX No. 32014L0025, *Official Journal of the European Union*, Series L, No. 94, 28.3.2014, pp. 243–374.

iv. How are the independence and impartiality of the arbitrator ensured?

The impartiality and independence of the arbitrator are ensured through a combined system of statutory requirements, declarations, exclusion mechanisms, and procedural safeguards, expressly provided by law, as follows:

1. Fundamental requirements for the arbitrator
   The arbitrator must be independent and impartial (Article 13(2)) and must satisfy the qualification criteria or eligibility requirements established by the parties or by the rules of the permanent arbitration institution (Article 13(3) and (4)).
2. Declaration of independence and impartiality
   Acceptance of the mandate by the arbitrator is affected only through a written declaration, in which the arbitrator states that no circumstances exist that may give rise to reasonable doubts as to his or her independence or impartiality (Article 16(2)).
3. Duty of disclosure and self-exclusion
   The arbitrator is obliged to inform the parties or to withdraw from the examination and resolution of the dispute where any of the statutory grounds for exclusion exist (Article 18(1)), and must notify the parties within five days of becoming aware of any circumstance that may give rise to reasonable doubts as to his or her independence or impartiality (Article 18(2) and (3)).
4. Right of the parties to challenge and request exclusion
   The parties are entitled to challenge the appointment of, or request the exclusion of, an arbitrator where any of the legally prescribed grounds for exclusion exist (Article 18(4)).
5. Role of the court in the appointment of the arbitrator
   Where the arbitrator is appointed by the court, the court takes into account the professional qualities and qualifications of the arbitrator and any other circumstance that ensures the appointment of an independent and impartial arbitrator (Article 15(7)).

Accordingly, the impartiality of the arbitrator is safeguarded at every stage of the arbitration proceedings from appointment and acceptance of the mandate, through the conduct of the proceedings, to the parties' right of challenge and exclusion in full compliance with the above-cited statutory provisions.

v. Is there any interim relief when an administrative dispute has been submitted to arbitration? If yes, which body is competent to hear the case?

Article 23 of the Act provides for interim measures as below:

1. Unless the parties agree otherwise, the arbitral tribunal, upon the request of one of the parties, may order interim measures if the requesting party submits written

evidence demonstrating that there is a risk of serious and irreparable harm during the examination of the dispute should such a measure not be granted. The arbitral tribunal may require the parties to provide security, in the amount and form determined by the arbitral tribunal, to cover any damage that may result from the adoption of the interim measure.

2. The district court of the place of arbitration, upon the request of a party, may order the enforcement of the interim measure ordered by the arbitral tribunal, except where a request for a similar interim measure has previously been submitted to the court pursuant to Article 11 of this Act. The court, notwithstanding that a request has previously been submitted to it under Article 11 of this Act, may, where it deems enforcement of the interim measure ordered by the arbitral tribunal necessary, order its enforcement.
3. The court, upon the request of the parties, may revoke or amend the decision ordering the enforcement of the interim measure.
4. The court decision ordering the enforcement of the interim measure ordered by the arbitral tribunal, as well as the decision revoking or amending the decision ordering such enforcement, shall be enforced directly by the bailiff service upon notification of the decision.
5. Where it is proven that the interim measure ordered by the arbitral tribunal pursuant to paragraph 1 of this Article was unjustified, the party that requested the interim measure shall be obliged to compensate for the damage resulting from its enforcement. The arbitral tribunal shall have jurisdiction to examine the request regarding the justification of the interim measure and the compensation of damage in cases where the interim measure is proven to be unjustified.

On the other side Article 45 provides for the review by the Court of Appeal:

1. The Court of Appeal shall examine the application for annulment of the award in accordance with the rules set forth in the Code of Civil Procedure governing appellate review.
2. The Court of Appeal shall examine the appeal within thirty (30) days from the date of its filing with the court.
3. The filing of an application for annulment of the award shall not suspend the enforcement of the arbitral tribunal's award. By way of exception, the court may, upon the request of a party, suspend enforcement where it considers that there is a risk that the party may suffer serious and irreparable harm.
4. No appeal on points of law may be filed with the Supreme Court against the decision of the Court of Appeal.

vi. In arbitration concerning administrative disputes:

yes / no

Is there an obligation to make publicly available the basic information and documents relating to the proceedings?[18]
◻ X

Is the participation of third parties permitted?[19] ◻ ◻

Is legal representation mandatory[20]? ◻ ◻

If yes, is legal aid available[21]? ◻
◻

Is the hearing public?[22] ◻ X

Is the arbitral tribunal obliged to give reasons for its award[23]? ◻ ◻

Is the arbitral award made publicly available[24]?
◻ ◻

vii. During the proceedings, the applicable system is:

the adversarial system X

the inquisitorial system ◻

viii. What powers does the arbitral tribunal have?

Reviews the legality of administrative acts of a non-pecuniary nature ◻

Reviews the legality of an administrative act of a pecuniary nature (fine, etc.) X

Annuls/amends an administrative act of a non-pecuniary nature ◻

Annuls/amends an administrative act of a pecuniary nature ◻

Addresses only recommendations to the Administration ◻

Restricts itself to awarding compensation for damages X

Does the arbitral award have effect:

Erga omnes (with regard to all) ◻

Inter partes (between the parties) X

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[18] Only with the parties permission. Article 39, para.5.
[19] Depending on the forum.
[20] No specific provisions on the Act.
[21] The Act No. 111/2017 "For Free Legal Aid guaranteed by the state" does not have any provisions on free legal aid in arbitration procedures.
[22] As in open for the parties or in camera, but not open for the public. Article 30, para 1.
[23] Article 39 of the Act provides that the Arbitral Tribunals written decision must include a summary of the reasoning.
[24] Only with the parties permission. Article 39, para.5.

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Is it considered 'case-law' for other cases? ☐

If the answer to the last question is yes, please explain.

-

Can the validity of the arbitral award be challenged in court?

Yes X

No ☐

If yes, is the validity of the arbitral award reviewed directly or incidentally?

Article 44 provides for the Annulment of the Arbitral Tribunal's Award as below:

1. The sole remedy against an arbitral tribunal's award shall be an application for annulment of the award. The application for annulment shall be submitted to the Court of Appeal with general jurisdiction within whose jurisdiction the place of arbitration is located, on the following grounds:

a) one of the parties to the arbitration agreement lacked legal capacity to act in accordance with the special law governing the acquisition of legal capacity and the organization and functioning of such entities; or

b) the arbitration agreement is invalid under the provisions of the applicable legislation chosen by the parties or by the arbitral tribunal, or, where the parties have not determined the applicable law, under the legislation of the Republic of Albania; or

c) the parties were not properly notified of the appointment of an arbitrator or of the commencement of the arbitration proceedings, or, for any other reason, were unable to present their defense; or

d) the award resolved a dispute that was not examined by the arbitral tribunal, or resolved a dispute that was not covered by the arbitration agreement, or one or more disputes resolved by the arbitral tribunal were outside its jurisdiction. In such case, where it is possible to separate the part of the award relating to disputes within the jurisdiction of the arbitral tribunal from the part relating to disputes outside its jurisdiction, the court shall annul only the part of the arbitral award that resolved disputes not within its jurisdiction; or

e) the composition of the arbitral tribunal or the arbitration procedure was not in accordance with the provisions of this Law or with the arbitration agreement, provided

that such violation affected the manner in which the dispute was resolved by the arbitral tribunal; or

f) the award resolved a dispute that is prohibited by law from being resolved through arbitration; or

g) the enforcement of the award would be contrary to public order.

2. Unless the parties have agreed otherwise, the application for annulment of the arbitral tribunal's award shall be filed within ninety (90) days from the date of notification of the arbitral award. Where a party has requested the correction of errors, interpretation, or supplementation of the award pursuant to Article 43 of this Law, the time limit shall be calculated from the date of notification of the arbitral tribunal's decision accepting or rejecting such request.

3. Where the Court of Appeal decides to annul the award, it may, where it deems reasonable, also order the referral of the case for rehearing before the arbitral tribunal or order the taking of any other action that removes the grounds for annulment of the award.

Is it possible to waive the right to judicial review?

While the Act does specifically provide for a total waiver from judicial review, Article 36 provides for the Waiver of the Right to Object as below:

A party that is aware of a violation of a provision of this Law or of the other party's failure to comply with an obligation arising from the arbitration agreement, and nevertheless continues the arbitration proceedings without raising an immediate objection and, in any event, no later than five (5) days from the date it became aware of the relevant violation, shall be deemed to have waived its right to object.

Which courts have jurisdiction?

General Court of Appeal.

What is the scope of the judge's review according to case-law?

Mainly issues of fair hearing. See Article 44.

In arbitration, is the concept of public policy different, according to case-law, in cases where the State (or a legal person governed by public law) is a party to the arbitration? If yes, what are the differences compared with the concept of public policy in arbitral proceedings between private individuals?

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In arbitration, in addition to the rules of European competition and consumer protection law (see C-126/97, Eco Swiss China Time Ltd v Benetton International NV and C-168/05 Mostaza Claro v Centro Móvil Milenium SL, respectively), has case-law recognised other rules of EU law as rules of international public policy? If yes, please mention the relevant cases.

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Which body has jurisdiction to hear disputes arising during the enforcement of an arbitral award? Has case-law dealt with special cases where enforcement has been contested on the grounds of the administrative nature of the dispute?

Under the Law on Arbitration, an arbitral award constitutes a final and binding decision and is enforceable once issued (Article 39(4)). Issues related to annulment of the award fall within the jurisdiction of the Court of Appeal of the place of arbitration (Article 44(1)), while enforcement itself follows the general enforcement mechanism under Albanian procedural law. Where court intervention is required in relation to enforcement (e.g. suspension pending annulment), this is exercised by the Court of Appeal (Article 45(3)), and enforcement decisions are executed through the competent enforcement authorities in accordance with procedural law.

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