

# *The administrative appeal of tax acts: a fundamental right ensuring fair treatment and transparency in the tax system* \_\_\_\_\_

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## **Abstract**

The right to appeal administrative acts is a fundamental aspect of ensuring justice and accountability in the tax administration. This right is embedded in various constitutional principles and legal frameworks aimed at protecting the rights and freedoms of individuals. Modern tax systems are built on the principles of justice and transparency, providing effective mechanisms for appealing administrative decisions. Procedural justice in the context of administrative appeals is essential for ensuring fairness and transparency in decision-making processes. The principle of equality before the law grants taxpayers the right to be treated equally and to appeal any perceived unfair decision. The appeal process helps protect them from potential inaccuracies, arbitrary actions, or misunderstandings that may arise during tax assessments. *The “Law on Tax Procedures in the Republic of Albania” outlines the procedures and mechanisms for appealing tax acts issued by tax authorities. It lays the foundation for a fair and efficient system of resolving tax disputes in Albania. Additionally, the Administrative Procedures Law sets forth the general principles and rules governing administrative procedures, including those related to tax appeals. It ensures that administrative actions, including tax assessments, are conducted*

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*transparently, impartially, and timely. The jurisprudence of the European Court of Human Rights and the Constitutional Court of Albania plays a significant role in shaping and ensuring the right to appeal administrative acts, offering legal clarity and protection for individuals involved in the administrative process.*

**Keywords:** *administrative appeal, acts, tax system, accountability, obligations, deadlines*

## Introduction

Taxpayers have the fundamental right to appeal to the administration when they believe there has been an error in the assessment of their taxes or any other decision affecting their tax obligations. This right serves as a crucial mechanism to ensure fair treatment and maintain transparency in the tax system.

This paper delves into the intricate framework of Albania's tax legislation, emphasizing the pivotal role of appeal procedures in the tax administration, focusing on the rights and procedures available to taxpayers to challenge administrative decisions related to their tax obligations. Albania's legislative structure, particularly the "Law on Tax Procedures," establishes a comprehensive system for generating, collecting, and enforcing tax obligations, catering to both small business taxpayers and corporate entities.

The analysis begins by exploring the principle of the taxpayer's right to appeal. In any case where the taxpayer disagrees with an administrative act and believes the tax administration has not correctly applied the law, they have the right to appeal to the Tax Appeals Directorate. The study delves into the legal framework governing tax appeals, describing the criteria that must be met for a taxpayer to appeal an administrative decision.

Throughout the paper, various examples of administrative decisions that can be appealed, such as tax assessments, compensation claims, refund requests, and calculation errors, are examined in detail. Moreover, the paper highlights the key actors involved in the tax appeal process, including taxpayers, taxpayer representatives, and tax agents. Additionally, it sheds light on the time frame within which tax complaints must be filed and the documentation requirements for a valid appeal.

The role of the Directorate or the Tax Appeals Commission in reviewing and making decisions on tax appeals is elaborated, emphasizing the importance of providing reasoning for their decisions. The paper describes the procedures and criteria for taxpayers' appeals against administrative tax decisions issued by tax authorities. It covers various aspects of the appeal process, including the types

of administrative acts that can be appealed, the requirements for submitting an appeal, necessary documentation, time limits for filing an appeal, the role of the Tax Appeals Directorate, and the right to further appeal in the judicial system. The paper also addresses the procedure for refunding overpaid taxes, interest, and penalties in case the appeal is successful. Overall, this paper serves as a valuable resource for taxpayers, tax professionals, and tax authorities seeking to understand the intricacies of administrative tax appeal procedures and ensure a fair and transparent process for resolving tax disputes.

## **Methodology**

This study aims to comprehensively analyze the legal framework, tax procedures, administrative procedures, and practical challenges related to appealing acts issued by tax authorities in Albania. The scope extends to exploring legislative advancements, their effectiveness, and their impact on various stakeholders, including taxpayers, third parties, and the Tax Administration. The methodology of this paper is primarily based on the review of legal documents, case studies, and practical applications within the context of tax appeal procedures.

### *Literature and Legal Analysis*

The content discusses the fundamental right of taxpayers to appeal administrative acts within the framework of the tax administration, as well as the principles and framework of the right to appeal. It also explores the concept of procedural justice in the context of administrative appeals, drawing on both European legislation and the jurisprudence of the Albanian Constitutional Court. The methodology used includes:

### *Research Approach*

The research adopts a mixed-methods approach using qualitative and quantitative analysis. This approach facilitates a comprehensive understanding of the procedures for appealing tax administrative acts, the legal intricacies, and the practical ramifications of these mechanisms.

### *Legislative Review*

The paper extensively reviews Albanian tax legislation, including the “Law on Tax Procedures” and the “Law on Administrative Procedures,” recent amendments,

and relevant legal provisions. It also examines European legislation such as the European Convention on Human Rights (ECHR) and jurisprudence from the European Court of Human Rights (ECHR) concerning the right to appeal administrative acts.

### *Key Areas of Focus*

The right to appeal, Acts that are subject to appeal, Administrative acts that cannot be appealed; Deadlines for tax appeals and documentation requirements; Justification of decisions by the Tax Appeals Directorate; Refund of tax obligations if the decision of the Tax Appeals Directorate or Commission is in favor of the taxpayer.

### *Judicial Practice Analysis*

The paper aims for a critical review of judicial practice to understand the judicial interpretation and application of tax laws. This includes analyzing decisions that clarify the application of law in practices followed. It explores the jurisprudence of the European Court of Human Rights on the right to appeal administrative acts, referencing key cases such as:

Ferrazzini v. Italy (2001), Jussila v. Finland (2006), Bendenoun v. France (1994), Öneriyıldız v. Turkey (2004), Kapetanios and Others v. Greece (2015).

It also analyzes the jurisprudence of the Albanian Constitutional Court on the right to appeal administrative acts, referencing specific decisions such as:

Decision No. 29/2010, Decision No. 37/2011, Decision No. 15/2014.

### *Administrative Procedures*

The paper provides an in-depth exploration of the processes and strategies used by the Albanian Tax Administration to implement appeal procedures. This includes reviewing official guidelines, procedural manuals, and administrative directives.

### *Analysis*

Collected data are analyzed to identify patterns, trends, and correlations. Legislative analysis and judicial practice provide a legal basis, while administrative review offers practical perspectives. The paper focuses on reviewing and analyzing existing legal literature, including references to authors such as Richard M. Bird, Michael Lang, and Tom R. Tyler concerning European jurisprudence, as well as authors like Zaganjori, Vorpsi, and Sadushi concerning the jurisprudence of the Albanian Constitutional Court.

The methodology used in this paper combines legal research, judicial practice analysis, and exploration of theoretical frameworks related to administrative appeals, aiming to provide a comprehensive understanding of the legal principles and practices related to the right to appeal administrative acts in the context of tax administration.

## **The right of the taxpayer to appeal administrative acts**

The taxpayer's right to appeal administrative acts is a fundamental aspect of ensuring justice and impartiality in the tax administration. This right is incorporated into various constitutional principles and legal frameworks aimed at protecting the rights and freedoms of individuals. Modern tax systems are built on the principles of justice and transparency. According to Richard M. Bird, "a fair tax system must provide effective mechanisms for appealing administrative decisions, offering a balance between the interests of the state and the rights of the individual" (Bird 2014). This process not only helps protect taxpayers' rights but also contributes to the improvement of administrative procedures and enhances the accountability of the tax administration. Michael Lang states, "an effective appeal procedure requires a well-organized system supported by adequate resources, including legal assistance for taxpayers" (Lang 2010).

Due process of law (CoE 2001), as a constitutional principle, guarantees that no person should be deprived of liberty or property without due process of law. This implies that taxpayers must have a fair opportunity to challenge any administrative act affecting their tax obligations. According to the principle of equality before the law, taxpayers have the right to be treated equally. Any administrative decision that a taxpayer considers unfair can be appealed to avoid unequal or discriminatory treatment. In this sense, taxpayers have the fundamental right to appeal to the administration when they believe there has been an error in the assessment of their taxes or any other decision affecting their tax obligations (Instruction No. 6 dated 25.02.2019). This principle serves as a crucial mechanism to ensure fair treatment and maintain transparency in the tax system (EP 2015). By providing taxpayers the opportunity to challenge decisions made by tax authorities, the appeal process helps protect them from potential inaccuracies, arbitrary actions, or misunderstandings that may arise during the tax assessment process. It also promotes accountability within the administration by allowing independent review and oversight of their decisions, ultimately fostering trust in the tax system (Mateli 2016).

The appeal process typically involves submitting a formal request for review along with supporting documentation to the relevant tax authority or administrative body. Taxpayers have the right to a clear and impartial review of their case, where

they can present their arguments, provide evidence, and address any concerns they may have regarding the initial decision. The administration is then responsible for conducting a thorough and objective review of the complaint, considering all relevant information, and issuing a reasoned decision based on the merits of the case. This process not only empowers taxpayers to challenge erroneous decisions but also helps improve the overall quality and consistency of the tax administration by identifying and correcting errors, clarifying regulations, and promoting a fairer implementation of tax laws for all individuals and businesses.

### *Procedural justice in the context of administrative appeals*

In the field of administrative law, the theory of legal rights (OSCE 2015) plays a crucial role in ensuring justice, accountability, and the exercise of governmental power. According to this theory, legal rights in administrative appeals emphasize the importance of due process (Vorpsi 2011), procedural justice, and the rule of law in protecting the rights and freedoms of individuals within the administrative framework. Legal rights provide a framework for balancing the interests of the state with the rights of individuals, ensuring that administrative actions are conducted in accordance with the law and established procedures. Through the theory of legal rights, administrative appeal mechanisms function as essential safeguards against abuse of power and as a means to promote the rule of law within the administrative state (OSCE 2015).

Procedural justice in the context of administrative appeals is a fundamental concept that ensures fairness and transparency in the decision-making process. It revolves around the idea that individuals involved in an administrative appeal have the right to be heard, to be treated with respect, and to have their case examined impartially (OSCE 2015). Central to procedural justice is the notion that the process itself must be fair, regardless of the outcome (Solum 2015). This means that individuals should have access to relevant information, the opportunity to present their case, and be given reasons for the decisions made. Upholding the principles of procedural justice in administrative appeals strengthens confidence in the fairness and legitimacy of the administrative system, fostering trust between the government and its citizens.

Moreover, procedural justice serves as a safeguard against arbitrary or biased decision-making in administrative appeals (CoE 2001). By adhering to the principles of procedural justice, administrative bodies can ensure that decisions are made based on relevant evidence, legal standards, and established procedures. This helps prevent misunderstandings, reduces the likelihood of errors, and enhances the perceived legitimacy of the administrative process. When individuals feel that they have been treated fairly and their concerns addressed through a transparent

and impartial process, they are more likely to accept the outcome even if it is not in their favor. Ultimately, implementing procedural justice in administrative appeals promotes accountability, trust, and a sense of fairness, which are essential for maintaining the rule of law and public confidence in the administrative system.

According to Tom R. Tyler, “procedural justice is important not only for the fair outcome of individual cases but also for the legitimacy of the entire administrative system” (Tyler 2006). In many countries, including Albania, efforts have been made to improve procedural justice in the context of administrative appeals. Law No. 44/2015 “On the Code of Administrative Procedures” in Albania clearly defines the procedures to be followed and guarantees the rights of parties involved in the administrative process. According to Martin Shapiro, “to improve procedural justice, it is important to simplify bureaucracy and increase awareness of procedural rights among citizens” (Shapiro 1986). Administrative appeals are a key mechanism for ensuring justice and transparency in the relationships between citizens and the public administration. This process is fundamental to protecting individual rights and ensuring fair and effective governance. According to Jerry L. Mashaw, “administrative appeals are a necessary mechanism for protecting citizens’ rights and improving administrative procedures” (Mashaw 1983). The tax system must provide effective mechanisms to challenge administrative decisions. According to Richard M. Bird, “a fair and reliable tax system should include equal opportunities for all taxpayers to appeal and challenge administrative decisions” (Bird 2014).

In conclusion, the right to appeal administrative acts is a critical component of a fair tax system, supported by constitutional principles, procedural law, and specific legal provisions such as those found in Law 9920 on tax procedures. These mechanisms collectively ensure that taxpayers can challenge administrative decisions they consider unfair, thereby protecting their rights and freedoms.

### *The right to appeal administrative acts according to European legislation*

The right to appeal administrative acts is a fundamental element of the rule of law and the protection of individual rights against public administration. European legislation has established a clear framework to guarantee this right, including various means and mechanisms to ensure a fair and equal process. The European legal framework for the right to appeal administrative acts is primarily based on the European Convention on Human Rights (ECHR) and the jurisprudence of the European Court of Human Rights (ECtHR). Article 6 of the ECHR guarantees the right to a fair trial, while Article 13 guarantees the right to an effective remedy. One of the most important aspects of the right to appeal is the assurance of procedural rights. According to European legislation, individuals must have the opportunity

to present their appeals before an independent and impartial body (Craig and De Búrca 2020). This body must have the authority to review and decide on the legality of the administrative act. The guarantee of an independent and impartial trial is another essential aspect.

Authors such as Harlow and Rawlings (2014) emphasize the importance of the independence of judicial and administrative bodies from political and administrative influences. Courts must be equipped with the necessary means to ensure a fair and transparent process. Access to justice is another key component. European legislation requires that appeal procedures be accessible to all individuals regardless of their economic or social status (Flogaitis 2003). This includes providing legal aid for those who cannot afford to protect their rights. Transparency and accountability are important elements to ensure public trust in the administrative and judicial systems. Bovens (2007) emphasizes the importance of transparency in administrative decision-making and the need to hold the administration accountable for its actions. Article 13 of the ECHR guarantees the right to an effective remedy before a national authority for violations of rights and freedoms recognized by the convention. Janse (2017) highlights that this article is fundamental to ensuring effective protection of individual rights against public administration. The European Court of Human Rights has played a significant role in developing the right to appeal administrative acts. The Court has broadly interpreted the right to a fair trial and the right to an effective remedy, expanding the protection of individuals against administrative actions (Brems 2005).

### *Jurisprudence of the European Court of Human Rights on the right to administrative appeal*

The right to appeal administrative acts is an essential aspect of protecting individual rights against public administration. The European Court of Human Rights (ECtHR) has developed rich jurisprudence in this field, setting high standards to ensure a fair and effective process. This chapter examines some of the most important ECtHR decisions related to the right to administrative appeal and mentions contributions from key authors. The ECtHR has addressed a considerable number of cases related to the appeal of tax acts. These decisions have shaped the standards for the right to a fair trial and for effective remedies, ensuring that member states respect the fundamental rights of individuals in the context of tax issues.

#### *Summary of ECtHR Decisions on the Appeal of Tax Acts*

*Ferrazzini v. Italy (2001)*: An important case related to the right to a fair trial under Article 6 of the ECHR. The ECtHR ruled that tax matters do not fall under “civil



rights” and therefore are not subject to the protection of Article 6. The Court argued that tax procedures are part of the state’s administrative relations with citizens and not a civil matter.

*Jussila v. Finland (2006)*: In this decision, the ECtHR acknowledged that Article 6 of the ECHR applies to administrative tax procedures, especially when they have a punitive nature. The Court emphasized that guarantees for a fair trial must be respected even in the context of administrative tax procedures.

*Bendenoun v. France (1994)*: The ECtHR ruled that a heavy fine for tax violations constituted a criminal charge, and consequently, the individual had the right to a fair trial under Article 6 of the ECHR. This decision highlighted the importance of protecting procedural rights in cases of high tax penalties.

*Öneryıldız v. Turkey (2004)*: While this case does not directly relate to taxes, it addresses the right to a healthy environment and the state’s responsibility to protect citizens from pollution and other risks. This decision has significant implications for tax issues, emphasizing that states must ensure fair and effective administrative procedures to protect citizens’ rights.

*Kapetanios and Others v. Greece (2015)*: The ECtHR found violations of Articles 6 and 13 of the ECHR due to administrative tax penalties imposed without a fair judicial process. The Court emphasized that any administrative penalty with serious consequences must be treated with the guarantees of a fair trial.

These decisions have shaped the standards for the right to a fair trial and for effective remedies, ensuring that member states respect the fundamental rights of individuals in the context of tax issues.

### *The object of tax administrative appeal*

According to Article 106 of the Tax Procedures Law, a taxpayer can appeal against any administrative act of the tax administration that concerns the taxpayer and affects their tax obligation. All three of these requirements must be met (Law 9920, 2008). Administrative acts are considered to include all acts (not just written ones) issued by the tax administration bodies that cause legal effects for each taxpayer individually (Sadushi, 2013). Administrative decisions that can be appealed concerning the taxpayer and their tax obligation include any tax assessment notice issued after a tax audit (Article 84/5, Law 9920, 2008), any other administrative act affecting the taxpayer’s tax obligation, including compensation requests, refund requests, requests for tax relief, errors in calculating interest rates (Article 76/4, Law 9920, 2008), imposition or errors in calculating the amounts and types of penalties, as well as notifications for the taxpayer’s registration under a tax liability.

Administrative acts that do not concern the taxpayer or do not affect their tax obligation cannot be the object of an appeal (Article 41, UMF No. 24, 2008).

Such cases will be considered administrative acts for initiating the audit of a tax declaration, administrative acts rejecting the taxpayer's request for an audit, administrative acts related to the collection of obligations, and administrative acts blocking the taxpayer's activity (Article 41, Law 9920, 2008). A tax obligation or an act or omission of the tax administration for which the Tax Appeals Directorate or the Tax Appeals Commission (Decision No. 11, 2017) has previously decided cannot be subject to an administrative appeal again, regardless of whether it is reflected in a new administrative act (Article 603.3, UMF No. 24, 2008). The acts of the Tax Appeals Directorate or the commission resulting from the appeal procedure cannot be the object of an administrative appeal. These decisions can only be appealed in court (Article 106, Law 9920, 2008).

An appeal can only be made by the taxpayer (Article 605.5, UMF No. 24, 2008), by the taxpayer's representative, and the tax agent. The taxpayer has the right to appoint a representative with a power of attorney who represents them in relation to the tax administration. The taxpayer remains personally responsible for fulfilling the tax obligations even when appointing a representative with a power of attorney. An appeal can also be made against an omission by the tax administration that affects the taxpayer's tax obligation. Such a case would constitute an act not approved within the period specified by law, regardless of whether the taxpayer has made a request regarding it (Article 606.6, UMF No. 24, 2008). If the tax administration has issued several administrative decisions related to the same taxpayer, each can be appealed separately. The taxpayer can appeal two decisions or acts in the same appeal when they meet the requirements for an appeal, and the Tax Appeals Directorate or the commission has the right to group several appeals together, provided that this reduces the cost and increases the effectiveness of the appeal procedure (Article 606.7, UMF No. 24, 2008).

## **Measures for the forced collection of tax obligations**

Taxes are essential for the existence of states. In democratic societies, taxes are paid to build and maintain a modern social system and society, ensuring public services related to health, education, protection, order, infrastructure, and protection from natural disasters (Mateli, 2017). Article 88 of Law No. 9920, dated 19.5.2008, "On Tax Procedures in the Republic of Albania," as amended, states: "The tax administration has the authority to forcibly collect unpaid tax obligations when it finds that the taxpayer has not paid their tax obligations on time." In this sense, tax authorities must engage in an effective process to ensure that tax debts are collected as quickly and cost-effectively as possible. Consequently, measures for the forced collection of tax obligations are not subject to administrative appeal to

the Tax Appeals Directorate (Article 606.8, UMF No. 24, 2008), except for appeals exercised by the taxpayer in accordance with the provisions of Article 92 of the Tax Procedures Law concerning the “Appeal of the Security Measure of the Tax Obligation.” Appeals are made only in cases where the decision to execute the security measures has not been executed properly. Article 92 initially provides for an appeal to the Director of the Regional Directorate, and then, if the taxpayer does not accept their decision, allows for an appeal to the Tax Appeals Directorate or the commission.

The law provides the following acts of forced collection measures for tax obligations: blocking orders of bank accounts and requests for the payment of unpaid tax obligations (Article 90), notification to a third party according to Article 97 of the Law (Transfer of the Tax Obligation to a Third Party), or notification to a third party according to Article 98 of the Law (Right to Claim Obligations from the Third Party), etc. In such cases, the act or decision cannot be the object of an administrative appeal because these decisions relate to the best method of collecting tax obligations as provided in Chapter XI (Articles 88 to 104). Additionally, the administrative act of confiscation held under Article 122, paragraph 4 of the law, which allows the confiscation of goods for breaking the blocking signs, is not subject to appeal to the tax appeal structures in the Ministry of Finance. In accordance with the Code of Administrative Procedure, appeals are made administratively to the structures of the General Directorate of Taxes (UMF No. 24, 2008).

## **Submission of tax administrative appeals**

Appeals are submitted to the Tax Appeals Directorate or commission and can be delivered in person or sent by registered mail. The date of receipt of the appeal by the Tax Appeals Directorate or commission is considered the date of its registration at the Ministry of Finance for appeals submitted in person (Article 606.2, UMF No. 24, 2008). For appeals sent by registered mail, the date of submission by the taxpayer is considered the date of mailing. In cases where the appeal is submitted to an incompetent body, such as a regional tax office or the General Directorate of Taxes, the appeal period is considered respected if the request is submitted on time to the incompetent body (Article 606.2, UMF No. 24, 2008). Appeals must be in writing and signed by the appellant. Non-material spelling errors or omissions that do not affect the validity or substance of the appeal and do not hinder its effective consideration do not constitute grounds for refusing to consider the appeal (Article 606.2, UMF No. 24, 2008). The requirement for submitting a written appeal is met if the appeal is sent by fax but not if it is sent by email (Article

606.2, UMF No. 24, 2008). The written appeal and accompanying documentation must include the taxpayer's name and address, the taxpayer's registration number, the administrative act issued or not issued by the tax authority that is the subject of the appeal, including the relevant tax period and the amount of the tax obligation, proof of payment of the contested tax obligation or a bank guarantee, reasons for the appeal, supporting information (such as the audit act, minutes, any other document the appellant deems important), and the appellant's signature (Article 606.4, UMF No. 24, 2008).

If any of the requirements mentioned above are not met, the Tax Appeals Directorate or commission will request the taxpayer to resubmit the appeal correctly with the required information within 15 calendar days (Article 606.6, UMF No. 24, 2008). If the taxpayer does not comply with the requirements and procedures, the Tax Appeals Directorate or commission has the right to refuse the appeal (Article 606.6, UMF No. 24, 2008).

### *Timeframe for tax appeals*

Appeals must be submitted within 30 calendar days from the date the administrative act is received or is deemed to be received. The deadline is extended to the next working day if the last day of the period falls on a non-working day or public holiday. The tax administration considers that the taxpayer receives the notice sent to them within ten calendar days after the day of mailing. The date of mailing is considered the date the document is received by the postal service (Article 23.3, Law 9920, 2008). If the taxpayer did not receive the assessment notice due to an error in the notice by the tax administration, the 30-day appeal period begins on the day the recipient proves through relevant documentation that they became aware of the notice (Article 606.3, UMF No. 24, 2008). If the administrative act lacks the notification informing the taxpayer of their right to appeal the administrative act, including the timeframe and the appeal channel, contrary to the law, the taxpayer may appeal within three months from the date the administrative act is received or is deemed to be received (Article 603.2, UMF No. 24, 2008). In the event of inaction by the tax administration (refusal to issue an act), the appeal procedure begins three months after the initial request for the issuance of the administrative act. The appeal must be submitted no earlier than 7 days and no later than 45 days from the end of the three-month period, which is considered the deadline for completing the administrative procedure (Article 603.3, UMF No. 24, 2008).

If the appeal to the Tax Appeals Directorate or commission is not submitted within the specified period, it is considered inadmissible and rejected, except in cases where the period is extended in accordance with Article 109 (paragraph 4) of the Tax Procedures Law. The reinstatement of the period referred to in Article

109 of the Law is determined by Articles 54 and 55 of the Code of Administrative Procedures. The request for reinstatement of the appeal period must be made within 15 days of receiving the assessment notice, simultaneously submitting the appeal and paying or providing a bank guarantee for the contested tax obligation (Article 109, Law 9920, 2008). The request for reinstatement of the period must contain reasonable grounds and supporting documentation for not submitting the appeal within the appeal period. If the address to which the tax administration sent the contested act matches the address declared by the taxpayer and one of the reasonable grounds mentioned above is not proven, the failure to receive the notice within the 10-day period specified in Article 23 of the law is the taxpayer's responsibility (Article 606.3.4, UMF No. 24, 2008).

### *Submission of appeal documentation*

The taxpayer submits the appeal to the Tax Appeals Directorate or commission, which must register the appeal request with the relevant data in the tax system (Article 106.4, Law 9920, 2008). A taxpayer who wishes to appeal (Article 106.1, Law 9920, 2008) must, along with the appeal, pay the full amount of the tax obligation or provide at least a six-month bank guarantee for the full amount of the tax obligation specified in the tax administration's assessment notice. The amount provided as a bank guarantee excludes penalties included in the contested tax assessment and calculated interest. The appeal is considered only when the taxpayer has paid the tax obligation that is the subject of the appeal or has presented the bank document confirming the provision of the guarantee (Article 107.1, Law 9920, 2008).

The taxpayer cannot appeal an administrative act in court if it is the subject of an appeal at the Tax Appeals Directorate without having a decision from this directorate (Article 16, Law No. 49/2012). The Tax Appeals Directorate or commission reviews and makes independent decisions on appeals submitted by taxpayers. It bases its decisions on the evidence and arguments presented by the taxpayer and the tax administration. The Tax Appeals Directorate or commission may request additional information, such as other documents from the taxpayer, the tax administration, and third parties, and may request or conduct verifications that help in the fair review and resolution of the case. In such cases, the appeal review period is extended by 30 days (Article 108.3.1, UMF No. 24, 2008). The directorate or commission may take other measures to clarify facts, such as meeting with the appellant. The directorate or commission limits the review to the issues raised during the appeal. If new facts are discovered during the procedure proving that the determined tax obligation is insufficient, the Tax Appeals Directorate or commission cannot itself increase the tax obligation. Instead, it

informs the administrative body that issued the contested decision about the new circumstances (Article 108.3.2, UMF No. 24, 2008).

### *Decision on tax administrative appeal*

The Tax Appeals Directorate or the Tax Appeals Commission reviews the tax appeal and makes a decision based on the evidence and arguments presented by the taxpayer and the tax administration. The decision of the Tax Appeals Directorate must be signed and stamped by the director of the Tax Appeals Directorate or the acting official in accordance with the law on the organization and functioning of the state administration (Law No. 90/2012). The decision of the Tax Appeals Commission must be signed by all members in accordance with the provisions of the Council of Ministers' decision "On the procedures of the functioning of the Tax Appeals Commission" (Decision No. 11, 2017). The decision must include a written explanation of its basis, including the reasoning. The reasoning of the decision must be clear as provided in Article 108 of the Law on Administrative Procedures. After reviewing the case, the Tax Appeals Directorate or commission may decide to reject the appeal as inadmissible, dismiss the appeal, cancel the contested administrative act by accepting the appeal, or accept the appeal (partially or fully) and amend the contested administrative act (Decision No. 11, 2017).

If the Tax Appeals Directorate or commission finds that, considering the proven facts during the procedure, the tax administration's decision should be changed, the directorate or commission cancels the administrative act and decides on the case itself or requests the tax administration to resolve it. The tax administration must accept and implement this decision (Article 108.3.6, UMF No. 24, 2008). The decision contains a provision informing the taxpayer and the tax administration of their right to appeal

the decision in court, and it is sent to the taxpayer and the administrative body that made the assessment or issued the contested decision. Decisions of the Tax Appeals Directorate or commission can only be appealed in court (Article 16, Law No. 49/2012). If the Tax Appeals Directorate or commission does not issue a decision within 60 days of receiving the properly completed appeal, the taxpayer may initiate a judicial appeal even in the absence of a decision from the Tax Appeals Directorate or commission (Article 109.2, UMF No. 24, 2008). A judicial appeal by the appellant is accepted only if the appellant was partially or fully unsuccessful in their administrative appeal according to the decision of the Tax Appeals Directorate. For an administrative act that is the subject of an appeal, the administrative appeal phase cannot be bypassed to appeal directly to the court (Article 16, Law No. 49/2012).

## *Refund of tax obligation, interest and penalties*

If the decision of the Tax Appeals Directorate or Commission is in favor of the taxpayer, the overpaid tax obligation and interest on the overpaid taxes, calculated from the date of payment of the tax obligation until the date of the refund, will be refunded to the taxpayer within 30 calendar days from the date the decision of the tax appeals directorate or commission is received or is deemed to be received (Article 110.1, UMF No. 24, 2008). If the taxpayer has provided a guarantee for the payment of the obligation, it will be released entirely or partially according to the decision of the relevant tax appeals structure within 30 calendar days from the date the decision is received or deemed to be received (Article 110.2, UMF No. 24, 2008). If the tax appeals directorate or the Tax Appeals Commission upholds the tax administration's decision and the taxpayer accepts the decision, any tax obligation, including tax not paid but guaranteed, interest, and any calculated penalties, must be paid by the taxpayer within 30 calendar days from the date the decision on the administrative appeal is received or is deemed to be received.

## *Jurisprudence of the Albanian Constitutional Court on the right to administrative appeal*

The Constitutional Court of Albania plays a crucial role in protecting and promoting human rights, including the right to administrative appeal. This right is fundamental to ensuring transparency and accountability in public administration. This chapter will review key decisions of the Constitutional Court of Albania and analyze contributions from several Albanian and international authors in this field. Contributions from Albanian and international authors are essential for deeply understanding the impact and significance of the jurisprudence of the Constitutional Court of Albania and international courts.

In his works, Zaganjori often refers to the international standards set by the European Court of Human Rights (ECHR). One of Zaganjori's main contributions is the analysis of the right to a fair trial, which includes access to an independent and impartial judiciary and the right to a public trial within a reasonable time. He argues that an efficient administrative appeal system is vital for protecting individual rights and strengthening trust in the judiciary system (Zaganjori X., 2011).

Vorpsi, through her detailed analyses and studies on judicial and legal practices in Albania, has emphasized that an efficient and prompt process is essential for protecting individual rights in administrative procedures. She argues that unnecessary delays can constitute violations of individual rights (Vorpsi A., 2011),

which is in line with international practices and standards described by Janis, Kay, and Bradley.

Sadushi highlights the importance of the independence and impartiality of administrative courts to ensure a fair and unbiased process. He emphasizes the importance of access to documents and information during administrative procedures. He argues that to ensure a fair process, individuals must have access to all relevant documents and information (Sadushi S., 2005), citing studies by international authors such as Laurence Helfer and Loucaides.

### *Summary of Decisions of the Albanian Constitutional Court on Administrative Appeals*

*Decision No. 29/2010:* This decision addresses the right to a fair and effective trial in the context of administrative procedures. The Constitutional Court ruled that every individual has the right to a fair and effective process, including access to effective means to appeal administrative decisions.

*Decision No. 37/2011:* This decision focuses on the independence and impartiality of administrative bodies handling appeals. The Constitutional Court ruled that the independence of these bodies is essential to ensure a fair and transparent process.

*Decision No. 15/2014:* This decision addresses the right to access documents and information during the administrative appeal process. The Court ruled that the lack of access to important documents constitutes a violation of the right to a fair process.

The decisions of the Constitutional Court are a cornerstone in Albania's legal jurisprudence concerning the right to administrative appeal. These decisions emphasize the importance of the independence and impartiality of administrative bodies and the provision of effective judicial review to ensure that administrative decisions comply with the law and individual rights.

## **Conclusions and recommendations**

The right of the taxpayer to appeal administrative acts is a fundamental aspect of a fair and transparent tax system. Ensuring a fair and effective process for appealing administrative decisions increases public trust in the tax system and contributes to the overall improvement of administrative procedures. By addressing existing challenges and leveraging opportunities for improvement, we can ensure that this right is accessible and effective for all taxpayers.



European legislation and jurisprudence have established high standards for ensuring a fair, impartial, and transparent process. The European Court of Human Rights has a significant impact on protecting and promoting human rights in Europe. Its decisions have helped set high standards for protecting individual rights and have influenced the development of national legislation. Contributions from key authors in this field are essential for deeply understanding the impact and significance of the ECtHR's jurisprudence.

The ECtHR's decisions on the appeal of tax acts have set important standards for the right to a fair trial and effective legal remedies. These decisions emphasize the importance of the independence and impartiality of administrative bodies and ensuring fair procedures for individuals challenging administrative tax decisions.

The Constitutional Court of Albania plays a crucial role in protecting human rights and ensuring a fair and transparent process in the context of administrative appeals. Its decisions have helped set high standards for protecting individual rights and have influenced the development of national legislation. Contributions from Albanian and international authors are essential for deeply understanding the impact and significance of the jurisprudence of the Constitutional Court of Albania and international courts.

The right to appeal tax acts is a fundamental aspect of ensuring justice and transparency in the tax administration system. The legislative framework in Albania provides a comprehensive system for appealing tax acts with specific procedures and criteria to be followed. Administrative Appeals of Tax Acts play a crucial role in protecting the rights of taxpayers and promoting accountability within the tax administration.

Tax authorities must ensure clear communication with taxpayers regarding their appeal rights, procedural deadlines, and criteria for successful appeals to maintain transparency and fairness in the process. Mechanisms should exist to address any delays in the appeal process and provide guidance on how to proceed in such situations to prevent unnecessary difficulties for taxpayers.

It is advisable for taxpayers to seek professional assistance or legal advice during the tax administrative appeal process to ensure that their appeals are well-structured and effectively presented. Taxpayers should keep detailed records and documentation to support their appeals, including relevant tax assessments, payment receipts, and any communication with the tax administration.

Continuous monitoring and evaluation of the tax administrative appeal process are essential to identify any obstacles, inefficiencies, or areas for improvement to increase the effectiveness and efficiency of the appeal system. Exploring the possibility of digitizing the appeal process to improve and expedite the resolution of tax disputes.

These conclusions and recommendations aim to facilitate a smoother and more transparent tax appeal process for taxpayers and tax authorities.

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