



# MONITORING ADMINISTRATIVE JUSTICE

## PROMOTING THE RULE OF LAW IN PUBLIC ADMINISTRATION

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*Proper public administration requires that the public is empowered to effectively challenge administrative acts and to hold public officials accountable for their decision-making through the application of fair administrative procedural rules, administrative appeals processes and judicial review. Trial monitoring has proven to be an important tool to improve administrative justice by ensuring compliance with international and regional fair trial standards and promoting judicial reform, as well as a safeguard of fair administration of justice in individual cases by the presence of an impartial observer in court.*

### FAIR TRIAL STANDARDS

Administrative justice is a core component of democratic governance, and its existence fundamental in a society based on the Rule of Law. The existence of administrative justice signifies a commitment to the principle that the government, and its administration, must act within the scope of legal authority.

Acts and decisions of administrative authorities, the main interfaces between private persons and the state, have an unescapable impact on the conditions of daily life and economic development for individuals. An inherent human right is the right to appeal decisions and to seek legal redress and an effective remedy. This is applicable to administrative decisions just as well as to criminal or civil law proceedings, and it should be obtainable through the initiation of an administrative proceeding in a competent, independent and impartial court or tribunal.

There is a growing trend in many countries of establishing specialized courts, tribunals or chambers within regular courts to deal with judicial review of administrative acts, and of undertaking comprehensive reforms in the administrative justice sector.

However, public awareness about access to administrative justice, and the standards it is subject to, is generally low. The problem is enhanced by the fact that administrative justice places most of the responsibility on the private person to initiate administrative proceedings against the state in a judicial system that can be difficult to understand and navigate, and often without access to free legal aid.

Regardless of whether administrative justice includes a determination of the lawfulness of the decision, or facts of the appeal, a minimum of fair trial standards drawn from different sources of international law – international treaty standards, regional treaty standards, international customary law and international non-treaty standards – should apply.

The standards can be divided in relation to the three stages of administrative justice – bringing of an administrative dispute to a tribunal or court, the procedure when the court or tribunal handles the case, and the decision-making by the court or tribunal.

## › BRINGING THE CASE

- › Equal access to justice, without discrimination of any sort
- › Reasonable time allowed to initiate the procedure
- › Affordable procedure subject to legal aid

## › PROCESSING THE CASE – FAIR HEARING STANDARDS

- › Impartiality and independence of the court or tribunal
- › Public written or oral hearing
- › Equality of arms
- › Reasonable time of the procedure
- › Access to files, documents and evidence
- › Legal representation
- › Interim measures
- › Translation and interpretation

## › DECIDING THE CASE

- › Public judgment notified to the persons concerned within a reasonable time
- › Reasoned judgment
- › Reparations and remedies

## WHY MONITOR ADMINISTRATIVE JUSTICE

With the shared common objective of promoting the Rule of Law in public administration, The Folke Bernadotte Academy (FBA), together with the OSCE Office for Democratic Institutions and Human Rights (ODIHR) has developed the unique *Handbook for Monitoring Administrative Justice* (hereafter “Handbook”). In the Handbook, three key objectives of trial monitoring of administrative justice are of particular importance: improving the quality of justice delivery; supporting new courts and tribunals; and raising awareness and understanding among the public and administrative authorities.

Using the methodology established in the Handbook, dedicated and focused trial monitoring exercises have been initiated in Kosovo and in Georgia. The final reports from these monitoring projects will include a set of recommendations in relation to,

for example, how to improve the administrative justice and to raise public awareness of the possibility to challenge administrative acts and thus effectively access administrative justice.

The initiatives of the FBA and ODIHR has shown that monitoring administrative appeals and judicial review proceedings can provide valuable information on the strengths and weaknesses in the appeal system, as well as information on rule of law issues in the general public administrative system. Monitoring can also serve to generate and disseminate knowledge on the right to appeal and procedural guarantees in the administrative justice field, and thus strengthens individual rights in relation to the public sector. Monitoring can also facilitate capacity-building initiatives for the benefit of executive, judicial, and legislative powers, and has the potential to promote necessary reforms.

In the strive to further enhance the Rule of Law in public administration and administrative justice, the FBA and ODIHR is now in the process of developing a Casebook of Fair Trial Standards of the European Court of Human Rights in Administrative Justice. The Casebook complements the monitoring handbook with an in-depth examination of key fair trial principles in administrative justice.

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