

# **LAW ON GENERAL ADMINISTRATIVE PROCEDURE**

(“Official Gazette of Republic of Montenegro”, No. 60/03 and the “Official Gazette of Montenegro” No. 32/11)

(consolidated text)

## **PART ONE**

### **GENERAL PROVISIONS**

#### **Title I**

#### **BASIC PRINCIPLES**

##### **Application of the Law**

##### **Article 1**

State authorities and local administration authorities shall proceed in compliance with this Law, directly applying the legal regulations, when deciding on administrative matters on rights, obligations or legal interests of a natural person, legal person or other party, as well as when performing other affairs determined by this Law.

##### **Article 2**

Institutions and other legal persons shall also proceed in compliance with this Law when, in exercising public authority, they make decisions and perform other activities from Article 1 of this Law.

##### **Article 3**

The provisions of this Law, which, due to the specific character of administrative matters in particular administrative domains, regulate necessary exceptions to the rules of general administrative procedure, shall be in line with the basic principles determined by this Law.

## **The Principle of Legality**

### **Article 4**

- (1) The authorities of the state and local administration authorities, as well as institutions and other legal persons (hereinafter referred to as “the authorities”) proceeding in administrative matters shall decide in accordance with the law and other regulations.
- (2) In administrative matters where an authority is statutorily authorized to make a discretionary decision, the decision shall stay within the framework of the authorization and shall be in accordance with the objective for which it was given.

## **The Principle of Protection of Civil Rights Public Interest**

### **Article 5**

- (1) When conducting a procedure and deciding in administrative matters, the authorities shall enable parties to as easily as possible protect and realize their rights and legal interests, taking into account that the realization of their rights and legal interests shall not be to the detriment of rights and legal interests of other persons, or opposite to the legally established public interests.
- (2) When an authorized official, with regard to the existing state of affairs, discovers or rates that a party or other participant in the procedure has the grounds for realization of some right or legal interest, they shall be warned about it by the official.
- (3) If by virtue of the law obligations are imposed on the parties and other participants in a procedure, measures determined by legal regulations which are more favourable for them shall apply, provided that such measures are sufficient for the achievement of the objective of the law.

## **The principle of Efficiency**

### **Article 6**

Authorities that conduct procedure and make decisions in administrative matters shall provide for efficient and quality realization and protection of rights and legal interests of natural persons, legal persons or other parties.

## **The Principle of Truth**

## **Article 7**

It is essential that all facts and circumstances of significance to make a lawful decision (decisive facts) are established accurately and wholly in the procedure.

### **The Principle of Hearing the Party**

## **Article 8**

- (1) Prior to passing a decision, the party shall be asked to make a statement on the facts and circumstances of significance for making a lawful decision.
- (2) The decision may be made without prior hearing of the party only in cases when this is permitted by the law.

### **The Principle of Assessment of Evidence**

## **Article 9**

The decision on which facts are to be accepted as established shall be made by the authorised official according to personal conviction, based on conscientious and careful assessment of each piece of evidence individually and all evidence together, as well as on the basis of the results of the entire procedure.

### **The Principle of Independence in Decision Making**

## **Article 10**

- (1) An authority shall conduct the procedure and make a decision independently, in the framework of authorization determined by the law or other regulations.
- (2) An authorized official shall establish facts and circumstances independently and apply regulations to a specific case on the basis of established facts and circumstances.

### **The Obligation of the Party to Speak the Truth**

## **Article 11**

- (1) During a procedure, the parties shall be obliged to speak the truth and honestly use their vested rights in accordance to this or other law, or the regulations of local self-government authorities.
- (2) The competent authority shall prevent any abuse of the rights that a party has in a procedure.

## **The Principle of Two Instances (Right to Appeal)**

### **Article 12**

- (1) The party shall be entitled to appeal against a decision made in the first instance.
- (2) It may only statutorily be prescribed that in certain administrative matters no appeal is allowed but only if the protection of rights and legal interests of the party, that is the protection of legality, is provided in another way.
- (3) An appeal against a decision made in the second instance shall not be permitted.

## **The Principle of Cost-Efficiency of the Procedure**

### **Article 13**

The procedure shall be conducted without delay and at the lowest possible cost for the party and other participants in the procedure, yet in the way that all evidence essential for an accurate and complete establishment of the facts and for making a lawful and correct decision is ensured.

## **The Principle of Assistance to the Party**

### **Article 14**

The competent authority conducting the procedure shall ensure that ignorance and illiteracy of the party and other participants in the procedure shall not be to the detriment of rights they are statutorily entitled to.

## **The Use of Language and Script in the Procedure**

### **Article 15**

- (1) The competent authority shall conduct the procedure using the language constitutionally determined as the official language in the Republic of Montenegro, whereas both the Cyrillic and the Latin script shall be equal. In municipalities, where minorities and minority national communities form the majority or an important part, their respective languages and scripts shall also be in official use, in accordance with the Constitution and special law.
- (2) If the procedure is not conducted in the language of the party or other participants in the procedure who are the citizens of Montenegro, the authority shall provide translation of the procedure into their language by an interpreter, and the summons and other writings shall be delivered in their respective languages and scripts.
- (3) Parties and other participants in the procedure, who are not the citizens of Montenegro, shall be entitled to follow the procedure with assistance of an interpreter, as well as to use their particular language in the procedure in the same way (through an interpreter).

## **Title II**

### **JURISDICTION**

#### **1. Statutory and Territorial Jurisdiction**

### **Article 16**

The statutory jurisdiction for decision-making in an administrative procedure shall be determined by virtue of regulations that govern the concerned administrative field, that is, in accordance with regulations determining the jurisdiction of particular authorities.

### **Article 17**

For decision-making in administrative matters in the first instance, statutory jurisdiction shall have the state authorities determined by the law or other regulations, and local administration authorities determined by local administration authorities regulations.

## **Article 18**

- (1) An authority may not take over a particular administrative matter which falls under the jurisdiction of another authority and decide on it by itself, unless this is provided by law, and under the conditions stipulated by that law.
- (2) If an authority, whose jurisdiction comprises the control over the first instance authority, establishes that the first instance authority normally fails to decide on administrative matters in due time, it shall admonish the head of the authority and set an additional deadline for the first instance authority to decide on such administrative matter.
- (3) If following the expiry of the additional deadline from paragraph 2 of this Article no decision is made, the second instance authority may take over the decision-making in that matter, but only if it considers that otherwise a threat to human life and health, the environment, or property of major value might arise.
- (4) The authority having jurisdiction to make a decision in a specific administrative field may, by virtue of its legal authority delegate its authority of adjudication to another authority.

## **Article 19**

Statutory and territorial jurisdiction may not be changed by agreement of parties, agreement of authorities and parties, or by agreement between authorities, unless otherwise provided by the law.

## **Article 20**

- (1) Territorial jurisdiction shall be determined:
  - 1) in administrative matters relating to real property – according to the location thereof;
  - 2) in administrative matters relating to the affairs within the jurisdiction of a state authority, as well as to administrative matters relating to the activity of a business corporation or other form of performance of economic activity, or of another legal person – according to the location of the registered office of the state authority, business corporation or any other form of performance of economic activity, or other legal person.
  - 3) in administrative matters relating to the activity of a subsidiary of a business corporation or another form of performance of economic activity, or other legal person, when it performs its activity outside its registered office – according to the location of performance of the activity of that subsidiary of the business corporation or another form of performance of economic activity or other legal person;

- 4) in administrative matters relating to the activity of an entrepreneur or another natural person professionally performing an activity but not having the attribute of an entrepreneur – according to the location of the registered office or the location where the activity is performed or should be performed;
  - 5) in other administrative matters – according to the domicile of the party. When there is more than one party, the jurisdiction shall be determined with regard to the party who has signed the request. If the party's domicile is not in Montenegro, the jurisdiction shall be determined with regard to his/her place of residence, and if the party has no place of residence either – according to his/her last domicile, that is, place of residence in Montenegro;
  - 6) if the territorial jurisdiction cannot be determined according to items 1 to 4 of this paragraph, it shall be determined according to the location where the cause for the conducting of the procedure occurred.
- (2) In matters relating to a ship or aircraft, or when the cause for conducting the procedure had occurred on a ship or an aircraft, the territorial jurisdiction shall be determined according to the home port of the ship, that is, home terminal of the aircraft.

#### **Article 21**

- (1) If, according to Article 20 of this Law, two or more authorities possess territorial jurisdiction at the same time, the authority that first started the procedure shall be competent. The authorities having territorial jurisdiction may agree on which one of them shall conduct the procedure.
- (2) Each authority having territorial jurisdiction shall perform those activities of the procedure that tolerate no delay in its respective territory.

#### **Article 22**

An authority that has started a procedure within its territorial jurisdiction shall retain the jurisdiction even when in the course of the procedure some circumstances occur according to which another authority should have the territorial jurisdiction. The authority that had started the procedure may cede the case to the authority which became territorially competent according to the new circumstances, if this would significantly ease the procedure, especially for the party involved.

#### **Article 23**

- (1) An authority shall ex officio control its statutory and territorial jurisdiction during the entire procedure.
- (2) If an authority finds that it is not competent for to make a decision on a certain administrative matter, it shall proceed in the manner stipulated in Article 55, paragraphs 3 and 4 of this Law.
- (3) If a non-competent authority had performed some parts of the procedure, the competent authority to which the administrative matter was ceded, shall decide on whether to repeat the action or not.

## **2. Parties with Diplomatic Immunity**

### **Article 24**

- (1) With respect to jurisdiction of an authority in matters in which the party is a foreigner who enjoys diplomatic immunity, a foreign country or an international organization, the provisions of international law shall apply.
- (2) In the case of a doubt about the existence and scope of diplomatic immunity, the clarification shall be provided by the competent ministry for foreign affairs.
- (3) Official proceedings concerning persons enjoying diplomatic immunity shall be performed through the competent ministry for foreign affairs.

## **3. Territorial Limitation of Jurisdiction**

### **Article 25**

- (1) An authority shall perform official proceedings within its territory.
- (2) If a delay of execution may cause a danger, and if an official activity should be performed outside of the authority's territory, the activity may be performed outside of the authority's territory. Such authority shall forthwith notify the authority in whose territory the activity was performed.
- (3) Official duties in buildings and other facilities used by the Military of Montenegro (hereinafter: the Military) are made by the prior notification of the superior..



- (4) Official proceedings performed in an extraterritorial locality shall be performed through the competent ministry for foreign affairs.

#### **4. Conflict of Jurisdiction**

##### **Article 26**

Paragraph 1 has been deleted.

- (2) The Government of the Republic of Montenegro (hereinafter referred to as “the Government”) shall resolve conflicts of jurisdiction between ministries, administrative authorities, ministries and administrative authorities, and ministries and administrative authorities and authorities performing the activities of state administration.

##### **Article 27**

- (1) When two authorities declare having jurisdiction or not having jurisdiction to decide on the same administrative matter, the proposal for resolution of the conflict of jurisdiction shall be submitted by the authority having last decided on its jurisdiction, while it may be submitted by the party as well.
- (2) The authority deciding on the conflict of jurisdiction shall simultaneously nullify the decision taken in the administrative matter by the non-competent authority, meaning it shall nullify the conclusion by which the competent authority declared itself as not competent and deliver the case to the competent authority.
- (3) The party may file no special appeal or conduct an administrative dispute against the decision determining the conflict of competence.
- (4) Article 21 paragraph 2 of this Law shall apply accordingly in the case of conflict of jurisdiction.

#### **4a. The Single Point of Contact and Coordination**

##### **Article 27a**

- (1) The authority is required to ensure that a natural person, legal entity or other party gets information, advice and other assistance in one place, as well as the prescribed forms regarding the exercise of their rights or legal interests under the jurisdiction of that authority.

(2) If for the exercise of rights or legal interest of natural person, legal entity or other party is necessary to carry out several administrative procedures, the authorities responsible for decision-making in these procedures shall provide to that person to get information, advice and other assistance in one place, as well as the prescribed forms regarding the exercise of their rights or legal interests under the jurisdiction of these authorities, and to submit petition request to the point.

(3) In the case from paragraph 2 of this Article, authorities are obliged to conclude an agreement that will determine the authority in which will be provided a single point of contact and coordination and that will ex officio, without delay, those petition requests submit to the competent authorities.

(4) In case when the agreement, referred to in paragraph 3 of this Article, is not concluded, the Government shall, on the proposal of the ministry in charge of administration, determine a single point of contact and coordination.

(5) Admission of petition requests in the manner specified in Paragraph 2 and 3 of this Article has no impact on the statutory and territorial jurisdiction of the authority on deciding in administrative process.

## **5. Legal Assistance**

### **Article 28**

- (1) For the performance of certain actions in the course of the procedure that need to be undertaken outside of the territory of the competent authority, this authority shall make such a request to the competent authority in whose territory the action is to be undertaken.
- (2) In the case that the rendering of legal assistance between state authorities and local administration authorities requires particular expenses, legal assistance shall be rendered if the necessary expenses are covered by the authority seeking the assistance .
- (3) The authority competent to make a decision in an administrative matter may, for the sake of easier and faster performance of an action, or avoidance of unnecessary expenses, entrust the performance of a certain action in the procedure to another authority authorized to undertake such actions.

### **Article 29**

- (1) The authorities shall be obliged to render legal assistance to each other in the administrative procedure. Such assistance shall be officially requested.
- (2) The requested authority from paragraph 1 of this Article shall act upon the request without a delay, and not later than within 15 days following that of the receipt of an official request.
- (3) Legal assistance for the execution of certain actions in the procedure may be requested from the court in accordance with special regulations. Exceptionally, in order to make a decision in administrative matters, the authority may request the court to deliver the necessary documents for the conducting of the administrative procedure. The court shall obey this request, provided that the court procedure is not thereby obstructed. The court may establish a deadline for the return of documents.
- (4) International agreements shall apply to legal assistance in the relations with international authorities, and if no such agreements exist, the principle of reciprocity shall apply. In the case of a doubt regarding the existence of reciprocity, directions shall be provided by the competent ministry for foreign affairs.
- (5) The authorities shall render legal assistance to international authorities in the manner set forth by the law. An authority shall refuse legal assistance if the performance of an action which is contrary to public order is requested. An action requested by international authority may also be performed in the requested manner provided that such a procedure is not contrary to public order.
- (6) If no possibility of direct communication with international authorities is provided by international agreements, domestic authorities shall communicate with international authorities through the competent ministry for foreign affairs.

## **6. Exemption**

### **Article 30**

An official deciding on administrative matters or performing certain actions in the procedure shall be exempted in the following cases:

- 1) Where the official is at the same time a party, co-proxy, person having a shared obligation, witness, assessor, attorney or legal agent of a party to the concerned case;
- 2) Where the official is related to the party, its representative or proxy in direct blood kinship or side-line kinship up to the fourth degree of kinship, inclusive, or if he or she is

the spouse or out of wedlock partner, or in an in-law relationship up to the second degree of kinship, inclusive, even if the matrimony or out of wedlock relationship has ceased to exist;

- 3) Where the official has a family relationship with the party, its representative or proxy, or is a guardian, adoptive parent, adoptive child or foster parent;
- 4) Where the official participated in the first instance procedure or passing of the first instance decision.

### **Article 31**

An official who is to make a decision on a certain administrative matter, or who is to perform a certain action in the procedure, shall discontinue any further work on the case and notify the authority competent for deciding on exemptions, as soon as the existence of any of the grounds for exemption from Article 30 of this Law is confirmed. Where the official believes that there are other circumstances justifying his/her exemption, he or she shall inform the same authority accordingly, without interrupting the work.

### **Article 32**

- (1) A party may demand the exemption of an official on the grounds set forth in Article 30 of this Law, and also in case of other circumstances due to which his/her impartiality may be doubted. The circumstances constituting the grounds for an exemption shall be specified in the party's request for exemption.
- (2) An official whose exemption was requested by the party for any of the reasons set forth in Article 30 of this Law may not perform any actions in the procedure, except for those that must not be delayed, until a decision on the request is taken.

### **Article 33**

- (1) The exemption of an official shall be decided on by the minister or the head of an authority, institution or other legal person.
- (2) The exemption of a minister or the head of an administrative authority shall be decided by the Government.
- (3) The exemption of a head of the local administration authority shall be decided by the mayor.

- (4) The exemption of a head of an institution or another legal person exercising public authority shall be decided by its supervising authority.
- (5) An exemption shall be adjudicated by a decision.

#### **Article 34**

- (1) The decision on exemption shall include the appointment of another official who shall decide on the administrative matter, i.e. perform particular actions in the procedure relating to the case to which the exemption applies.
- (2) No special appeal against the decision on exemption shall be permitted.

#### **Article 35**

- (1) The provisions of this Law regulating exemption shall apply accordingly to the members of deliberative authorities.
- (2) The decision to exempt a member of a deliberative authority shall be made by that authority.

#### **Article 36**

- (1) The provisions of this Law governing exemption shall apply accordingly to record clerks as well.
- (2) The decision to exempt a record clerk shall be made by the official conducting the procedure.

### **Title III**

#### **THE PARTY TO THE PROCEDURE AND ITS REPRESENTATION**

##### **1. The Party to the Procedure**

#### **Article 37**

A party is a person who initiated a procedure, against whom a procedure was initiated, or who is entitled to participate in the procedure for the protection of his/her rights or legal interests.

#### **Article 38**

- (1) A party to the procedure may be any natural or legal person.
- (2) A state authority, organization, settlement, group of persons and others who do not have the attribute of a legal person may be parties if they are entitled to be holders of rights and obligations or legal interests to be decided on in the course of the procedure.

#### **Article 39**

- (1) Any person who declares a legal interest shall have the right to participate in a procedure. A legal interest is considered declared when a person claims to be joining the procedure for the protection of his/her rights or legal interest (interested person).
- (2) The legal interest is an immediate personal interest based on law or other regulation.
- (3) A person from paragraph 1 of this Article shall have equal rights and obligations in the procedure as the involved parties, unless otherwise provided by the law.
- (4) A person requesting to participate in the procedure shall precisely state the nature of his/her legal interest in the petition.

#### **Article 40**

- (1) The State Prosecutor and other state authorities, being legally empowered to represent the public interest in a procedure, shall have the rights and obligations of a party, within the framework of their vested powers.
- (2) The authorities from paragraph 1 of this Article may not have broader powers than the parties, unless they are vested with such powers by law.

## **2. Procedural Capacity and Legal Representative**

#### **Article 41**

- (1) The party who is completely legally capable to do so, may perform the actions in a procedure in person (procedural capacity).
- (2) On behalf of a person lacking procedural capacity, actions in the procedure shall be performed by his/her legal representative. Legal representative shall be appointed in accordance with the law or following a decision of the competent state authority.
- (3) Legal person shall perform actions in the procedure through its legal representative, i.e. a proxy appointed by virtue of a general act of that legal person, unless appointed under an act of the competent state authority.
- (4) A state authority shall perform actions in the procedure through a statutorily authorized representative; an organization that has no capacity of a legal person – through a person determined according to a general act of the organization, while a settlement, group of persons and others who have no capacity of a legal person – through their authorized representative, unless otherwise stipulated by a special regulation.
- (5) When an authority conducting a procedure ascertains that the legal representative of a person under custodianship fails to demonstrate due attention in the procuration, it shall notify the custody authority thereof.

#### **Article 42**

- (1) During the entire procedure, the authority shall ex officio confirm whether the person appearing as a party can be a party to the procedure and whether the party is represented by its legal representative, i.e. an authorized representative.
- (2) If a party deceases during the procedure, or if the status of a legal person is terminated, the procedure may be cancelled or continued, depending on the character of the administrative matter that is the object of the procedure. If, due to the character of affairs, the procedure cannot be continued, the authority shall terminate the procedure by a conclusion, against which a special appeal may be filed.

### **3. Temporary Representative**

#### **Article 43**

- (1) If a party lacking procedural capacity has no legal representative, or if it is required to undertake a proceeding against a person whose domicile, i.e. place of residence is unknown, and who has no proxy, the authority conducting the procedure shall assign a

temporary representative to that party, if so required due to the urgency of the cause, and where the procedure must be conducted. This authority shall forthwith notify the custody authority, and if the temporary representative was assigned to a person whose domicile, i.e. place of residence is unknown, it shall publish its conclusion on the notice board of the authority, or in the official journal.

- (2) If a legal person, organization, settlement, group of persons and others who have no capacity of a legal person, have no legal representative i.e. authorized representative or proxy, the authority conducting the procedure shall, under the stipulations of paragraph 1 of this Article, assign a temporary representative to that party who shall immediately be informed accordingly. A designated temporary representative of a legal person is as a rule selected among the officials of that legal person.
- (3) Temporary representative shall also be assigned in the manner set out in paragraphs 1 and 2 of this Article when an urgent action needs to be performed, and when it is not possible to summon the party, its legal representative, authorized representative or proxy in a timely manner. The party, legal representative, authorized representative or proxy shall forthwith be notified thereof.
- (4) A person that is assigned as a temporary representative shall be liable to assume the procuration, while such procuration may be refused only for the reasons stipulated by special regulations. The temporary representative shall participate only in the procedure that he or she was explicitly assigned for, and only until the legal representative, authorized representative, the party itself or its proxy appear.

#### **4. Common Representative or Proxy**

##### **Article 44**

- (1) Two or more parties may, unless otherwise provided by a special regulation, jointly come forward in the same case. In that case they shall indicate which one of them shall act as their common representative, or appoint a common proxy.
- (2) The authority conducting the procedure may, unless prohibited by a special regulation, decide for the parties participating in the procedure, who share the same claims, to determine which one of them shall act as their common representative, or to appoint a common proxy. If the parties fail to follow this decision, a legal representative, authorized representative or proxy may be assigned by the authority conducting the procedure, in which case this common representative, i.e. common proxy shall retain this capacity until the appointment of another proxy by the parties. The parties are entitled to file a special appeal against such a decision, which shall not defer the execution thereof.
- (3) Even when a common representative or proxy is appointed, each party shall retain the



right to act as a party to the procedure, give statements, independently file an appeal and apply other legal remedies.

## **5. Proxy**

### **Article 45**

- (1) The party, or its legal representative, may appoint a proxy to represent the party in the procedure, except in case of the proceedings requiring that the statements are given by the party in person.
- (2) Actions undertaken by the proxy in the procedure, pursuant to the power of attorney, shall have the same legal effect as if undertaken by the party in person, i.e. its legal representative.
- (3) Notwithstanding the empowered proxy, the party may give statements in person, and may also be directly requested to give statements in person.
- (4) A party that is present when its attorney gives a verbal statement, may immediately after it is given change or revoke the statement of its proxy. If an incongruity between the statements given by the party and its proxy respectively is contained in a written or verbal statement relating to the facts of the case, the authority conducting the procedure shall consider both statements in the sense of Article 9 of this Law.

### **Article 46**

- (1) The proxy may be any person with a full legal capacity, except for the persons engaged in quasi notary.
- (2) If the proxy is a person engaged in quasi notary, the authority shall exclude such person from further procuration and forthwith notify the party and the competent state prosecutor thereof.
- (3) A special appeal against the decision to terminate the procuration may be filed, yet it shall not defer the execution thereof.

### **Article 47**

- (1) The power of attorney may be given in writing or read on the record. If during the procedure no records are taken, the verbal authorization shall be recorded in the documents of the case.

- (2) A party that is illiterate or not capable to sign documents shall put a finger print on the written authorization in place of a signature. If the power of attorney is issued to a person that is not an attorney, it shall be certified by the competent authority.
- (3) Exceptionally, the authorised official conducting the proceedings or performing specific actions in the proceedings may allow a family member of the party or a member of his/her household or his/her employee, as the representative of the party, to perform a particular action without submitting a power of attorney, if the existence and scope of the power of attorney is beyond doubt. If such a person makes a claim for the commencement of a procedure or gives a statement opposite to the party's earlier statement, he or she shall be subsequently requested to submit the power of attorney within the specified time limit.

#### **Article 48**

- (1) The power of attorney may be given in the form of a private document.
- (2) If the power of attorney was given in form of a private document, and it occurs that there are doubts in its authenticity, the submission of a certified power of attorney may be ordered.
- (3) The authenticity of a power of attorney shall be examined ex officio, while any deficiencies of a written power of attorney shall be eliminated according to Article 57 of this Law, whereas the official conducting the procedure may allow the proxy having a deficient power of attorney to perform urgent actions in the procedure.

#### **Article 49**

- (1) The scope of the power of attorney shall correlate to the contents of the power of attorney. The power of attorney may be issued for the entire procedure or only for single actions, and it may be time limited.
- (2) The power of attorney shall not be terminated following the death of the party, loss of his/her procedural capacity or the replacement of his/her legal representative; however, the previous power of attorney may be revoked by the legal successor of the party, i.e. his/her new legal representative .
- (3) Issues relating to power of attorney which are not regulated by the provisions of this Law shall be regulated accordingly by the provisions regulating the litigation procedure.

## **Article 50**

- (1) If the proxy is an attorney, and where the power of attorney was issued for the entire procedure, the proxy may perform all actions in the procedure, except for the filing of extraordinary legal remedies for which a specific power of attorney is required.
- (2) If the party represented by an attorney passes away in the course of the procedure, and the party's legal successors join the procedure, the attorney shall obtain a confirmation of the power of attorney by all legal successors.
- (3) If a party to the procedure is represented by a person that is not an attorney, while a general power of attorney was issued, such a proxy may perform all actions in the procedure, except that he or she may not withdraw a claim, negotiate a settlement, transfer the given power of attorney to a third person, or file extraordinary legal remedies.

## **Article 51**

The provisions of this Law relating to the parties shall apply accordingly to their respective legal representatives, authorized representatives, proxies, temporary representatives, common representatives and common proxies.

## **Article 52**

- (1) In administrative matters where a proficient knowledge of issues related to the subject of the procedure is required, the party shall be allowed to bring in an expert counsellor and advisor (expert aide). This person shall not represent the party.
- (2) The party may not bring in as expert aide a person lacking legal capacity or one that is engaged in quasi notary.

## **Title IV**

### **COMMUNICATION BETWEEN AUTHORITIES AND PARTIES**

#### **1. Petition Requests**

## **Article 53**

- (1) Petition requests are claims, motions, reports, petitions, appeals, objections and other

notifications by means of which the parties refer to the authorities.

- (2) Petition requests shall generally be submitted directly or sent by post, in writing or in electronic form, or they shall be put on the record, while they may, if not otherwise determined, be declared by telegraph, or fax.
- (3) The manner and procedure of submission of an electronic petition request or a petition request that is submitted by e-mail, electronic delivery, shall be regulated by the competent Ministry for the state administration.

#### **Article 54**

A petition request shall be submitted to the authority competent for the reception of petition requests in a sufficient number of copies, and it may be submitted on every working day during the working hours.

#### **Article 55**

- (1) The authority competent for the receipt of petition requests shall accept the submitted petition request, that is, take a petition request which is verbally communicated on the record.
- (2) An officer who receives a petition request shall, upon a verbal request of the submitter, confirm the receipt of the petition request. No fee shall be charged for such a confirmation.
- (3) If an authority is not competent to receive a petition request, the officer within that authority shall notify the submitter thereof and refer him or her to the competent authority. If the submitter nevertheless insists that his/her petition request be accepted, the officer shall accept such a petition request. If the authority finds itself not competent to act upon such a petition request, it shall issue a decision whereby such petition request shall be refused on account of non-competence.
- (4) When an authority receives a petition request that is outside of its area of responsibility by regular mail, and there is no doubt about which authority is competent for the receipt thereof, it shall send the petition request forthwith to the competent authority, that is, to the court, and notify the party thereof. In the case that the authority which receives a petition request cannot determine which authority is competent to act thereon, it shall forthwith pass a decision whereby the petition request shall be refused on account of non-competence and deliver this decision immediately to the party.
- (5) A special appeal may be filed against the decision passed according to paragraphs 3 and 4 of this Article.

- (6) If an appeal to initiate an administrative dispute is sent to an authority by regular mail, it shall forthwith be delivered to the competent court and the plaintiff shall be notified accordingly.

#### **Article 56**

- (1) The petition request shall be properly explained and so that it can be processed adequately, it needs to include in particular the following: the designation of the authority it is addressed to; the case it refers to; the request, i.e. motion; name of the representative, proxy or attorney, if applicable; the first name, family name and domicile or place of residence and address, or registered office of the company of the submitter, authorized representative, proxy or attorney.
- (2) The applicant shall personally sign the petition request. Exceptionally, the petition request may be signed on behalf of the submitter by his/her spouse, one of his/her parents, the son or daughter, or the attorney who drew up the petition request following the party's authorization. The person who signed the petition request shall put his/her name and address on it.
- (3) An electronic petition request shall be considered accurate if it bears a duly certified electronic signature.
- (4) A petition request submitted by electronic delivery or by telegraph shall not be required to satisfy all the requirements from paragraph 1 of this Article, unless otherwise decided.
- (5) If the submitter is illiterate or not able to sign the request, it shall be signed by a literate person who shall also undersign his/her name and indicate his/her address.

#### Article 57

- (1) If the petition request contains a formal deficiency that impedes acting upon the petition request, or if it is unintelligible or incomplete, the authority which received such a petition request, i.e. authority competent to deal with the administrative procedure shall immediately, and no later than three days following the day of the receipt of petition request, request the submitter to eliminate the deficiencies and determine a deadline for the submitter to do so. This can be communicated to the submitter by telephone or verbally, if the submitter happens to be at premises of the authority issuing a notification regarding the deficiencies contained in the petition request. The authority shall record on the document that the notification was given.
- (2) If the submitter eliminates the deficiencies within the specified time limit, the petition request shall be regarded as duly submitted from the beginning. If the submitter fails to

eliminate the deficiencies within the specified time limit, so that consequently it cannot be acted upon, the authority shall adopt a decision rejecting such a petition request. The submitter shall specifically be admonished of this consequence when invited to correct the petition request. A special appeal may be filed against this decision.

- (3) When the petition request is filed by telegraph, fax or in electronic form, and there is a doubt that the petition request may not have been submitted by the person whose name is indicated on the telegraphed, faxed or electronic petition request, the authority shall initiate the procedure to confirm such facts, and if the facts are not established, or if the deficiencies are not eliminated, it shall proceed in the manner laid down in paragraph 2 of this Article. An official note shall be made on this. A special appeal may be filed against the decision of the authority whereby the petition request was rejected.

### **Article 58**

If a petition request contains a number of claims that have to be addressed separately, the authority which received the petition request shall take into consideration the claims within its competence and proceed with the remaining claims in the sense of Article 55 paragraph 4 of this Law.

## **2. Issuing of a Summons**

### **Article 59**

- (1) The authority conducting a procedure shall be authorized to issue a summons to a person whose presence in the procedure is necessary, and who resides in its territory. As a rule, no summons shall be issued for the purpose of delivery of a written decision or announcement that may be sent by regular mail or in another way which is more convenient for the person who the notice needs to be delivered to.
- (2) Summons for an oral hearing may be issued to a person residing outside of the territory of the authority conducting the procedure if the procedure is thereby accelerated or facilitated, and where such an arrival incurs no major expenses or waste of time for the summoned person.
- (3) The summons shall be issued in writing, unless otherwise stipulated under special regulations.

### **Article 60**

- (1) The written summons shall include the following: name of the issuing authority; name,

surname and address of the person summoned; place, date, and where possible, the hour when the summoned person is due to appear; the object case because of which the summons was issued and the capacity of the summoned person (as a party, witness, expert, etc.); ancillary resources and evidence that the summoned persons needs to obtain or submit. The summons shall state whether the summoned person is to appear in person or whether he or she may send a proxy who will act on his/her behalf; it shall include a warning that the authority which issued the summons must be notified if the summoned person is not able to act on the summons. The summoned person shall also be warned about the consequences in case of a failure to act on the summons or advise the authority if not able to appear.

- (2) In the summons to an oral hearing the party may be requested to submit written and other evidence, and may also be advised to bring the witnesses who he or she intends to summon.
- (3) When the character of affairs allows so, it may be left at the discretion of the summoned person to deliver the required written statement within a specified time limit, instead of appearing in person.

#### **Article 61**

- (1) When issuing the summons, the authority shall pay attention that the person whose presence is required is summoned to appear at the time interfering the least with the performance of his/her regular work.
- (2) No person shall be summoned to appear during the night, except in the case of urgent and emergency measures.

#### **Article 62**

- (1) The summoned person shall act according to the summons.
- (2) If the summoned person is prevented from appearing due to illness or another justifiable reason, he or she shall immediately following the receipt of the summons notify the authority that issued the summons accordingly, and if the cause of absence occurred thereafter – immediately upon the discovery of the cause.
- (3) If the person who the summons is personally delivered to fails to act thereon and provides no justification for the absence, he or she may be brought in and fined not more than 50.00 Euros per instance. These measures shall be applied only if indicated so in the summons. If due to a failure of the summoned person to appear when summoned some expenses in the procedure are incurred, it may be decided that such expenses shall be borne by the defaulting party. The decision on apprehension, pronouncement of a fine, and payment of expenses shall be passed by the official conducting the

procedure, in agreement with the officer authorized for deciding on the administrative matter, and at the petitioned authority – in agreement with the head of that authority, that is, the officer authorized to decide in similar administrative matters. A special appeal against this decision may be filed..

- (4) If a member of the military or the police fails to appear when summoned, the authority shall address the competent headquarters, that is, the competent authority, with a request for such a person to be brought in; he or she may also be fined according to paragraph 3 of this Article, or requested to bear the expenses caused by the default.

### **3. Record**

#### **Article 63**

- (1) A record shall be drawn up on the oral hearing or another major action in the procedure, as well as on significant verbal statements of the parties or third persons in the procedure.
- (2) A record shall generally not be drawn up on less significant actions and statements of parties and third persons that have no major impact on the decision making in the administrative matter, on the conduct of the procedure, on announcements, official remarks, verbal instructions and findings, and also circumstances relating only to interior operations of the authority conducting the procedure; however, a remark shall be entered into the document and ratified by the official who made the remark, along with indicating the date. It is not necessary either to draw up a record on verbal requests of a party which are decided on in a summary procedure and which are granted, yet such requests may be noted in an appropriate manner.

#### **Article 64**

- (1) The following shall be entered into the record: name of the authority performing an action; date and time when the action is performed; the case within which it is performed; names of the officials in charge, present parties and their agents, proxies or representatives.
- (2) The record shall contain, precisely and briefly, the course and content of actions performed in the course of the procedure, and also statements given. Thereby, the record shall be restricted to what relates to the very administrative matter which is the object of the procedure. All documents that were used for whichever purpose in the oral hearing shall be entered into the record. These documents shall, if necessary, be enclosed with the record.
- (3) Statements of parties, witnesses, experts and other persons participating in the procedure, which are of significance for the decision making in the administrative matter,



shall be entered into the record as accurately as possible and, if necessary, in their own words. All conclusions brought during the execution of the proceedings shall also be entered into the record.

- (4) If the hearing is performed by the agency of an interpreter, the language in which the interrogated person spoke and who the interpreter was shall be indicated.
- (5) A record shall be taken during the performance of an official action. If the action cannot be completed on the same day, parts of the action accomplished on each particular day shall be entered into the record and duly signed.
- (6) If the action entered into a record could not be performed without an interruption, the record shall reflect the existence of interruptions.
- (7) If plans, outlines, drawings, photographs and alike were prepared or obtained during the action, taken, those shall be verified and attached to the record.
- (8) In certain matters a record may be made in the form of a book or other record instrument.
- (9) A record made in the form of a book shall be delivered to the party for commenting on the record not later than within three days following than of its delivery. If it fails to comment on the record within the given time limit, the party shall be considered to have no comments.
- (10) The record may be dictated to an electronic voice recorder, while a written version of the record shall be drawn up within three days and delivered to the parties to comment on the record not later than within three days. If the parties fail to comment on the record within the specified time limit, they shall be considered to have no comments.

#### **Article 65**

- (1) The record shall be taken accurately and nothing shall be deleted from it. Passages that had been struck through before the record was concluded shall remain legible and verified by the signature of the authorised official.
- (2) A signed record shall not be amended or revised. Amendments to the concluded record shall be entered as an annex to the record.

#### **Article 66**

- (1) Prior to its conclusion, the record shall be read to the parties and other persons participating in the procedure. These persons shall have the right to examine the record in person and provide comments. At the end of the record it shall be stated that it was read and that no objections were made or in an opposite case, the record shall include a brief description of the objections. Thereafter, the record shall be signed by the person who participated in such an action, and finally it shall be verified by the authorised official and a record clerk, if applicable.
- (2) If the record contains the statements of several persons, each of them shall put their signatures under their statements respectively.
- (3) If any persons were brought face to face, the related part of the record shall be signed by such persons.
- (4) If the record consists of a number of pages, those shall be marked with ordinal numbers. The bottom of each page shall be verified by the signature of the authorised official and of the person whose statement was entered at the end of the page.
- (5) Amendments to an already concluded record shall be signed and verified again.
- (6) If a person that is to sign the record is illiterate or incapacitated to write, the record shall be signed by a literate person. This may neither be the official in charge of the action in the procedure nor the record clerk.
- (7) If a person refuses to sign the record or departs before the conclusion thereof, this shall be entered into the record along with the specification of the reason for which the signature was deprived.

#### **Article 67**

- (1) A record drawn up in accordance with the provisions of Article 64 of this Law is a public document. The record shall serve as evidence on the course and the content of an action in a procedure and of the statements given, except for those parts of the record the accuracy of which was objected by the interrogated person.
- (2) Inaccuracy of the record may be substantiated..

#### **Article 68**

- (1) In case the procedure is decided on by a collegiate authority, a special record shall be drawn up on the deliberation and voting. When in a procedure on an appeal a unanimous decision is reached that it is not necessary to draw up a record on the deliberation and the voting, this may be noted on the document.
- (2) In addition to the data on personal composition of the collegiate authority, the record on the deliberation and voting shall contain the designation of the concerned case and a brief summary of the decision reached, and also singled out opinions, if applicable. This record shall be signed by the chairperson and the record clerk.

#### **4. Review of Documents and Notification on the Course of the Procedure**

##### **Article 69**

- (1) The parties shall be entitled to review the documents of the case and to transcribe or photocopy necessary documents at their own expense respectively. Any reviewing, transcription or photocopying of documents shall be supervised by an authorized official.
- (2) Any person shall be entitled to review, transcribe or photocopy specific documents at his/her own expense provided his/her legal interest is proven plausible.
- (3) The request to review, transcribe or photocopy the documents may also be submitted verbally. The authority may request the person from paragraph 2 of this Article to justify, in writing or verbally on the record, the existence of his/her legal interest. The authority shall decide on the request within 3 days following that of its submission.
- (4) The following documents may not be viewed, transcribed, or photocopied: the record on the deliberation and voting, official reports and draft administrative acts, and also documents filed as confidential, if the purpose of the procedure might thereby be thwarted, or if it is contrary to public interest or justified interests of one of the parties or a third person.
- (5) A party and any third person who can prove his/her legal interest in the procedure, same as the interested state authorities, shall have the right to be notified on the course of the procedure.
- (6) A special appeal against the decision to refuse the request from paragraphs 1 to 5 of this Article shall be permitted even when such decision was not issued in writing. The appeal may be declared immediately after the notification and not later than 24 hours following the delivery of notification. A decision on the appeal shall be made not later than within 48 hours following its filing.

#### **Title V**

## **DELIVERY**

### **1. Manner of Delivery**

#### **Article 70**

- (1) The delivery of legal documents (summons, administrative acts, decisions and other official documents) shall generally be carried out so that those are delivered in writing to the concerned person.
- (2) The delivery shall be carried out by post, fax or electronically, by the authority through an authorised official or a person registered for the physical or electronic deliveries. The addressee may be summoned to receive a delivery in person only exceptionally, when so required due to the character or significance of the document to be served.
- (3) The manner of document delivery shall be decided by the delivering authority.

#### **Article 71**

- (1) The delivery shall be made on working days, from 07:00 – 20:00 hours.
- (2) The authority whose document is to be delivered may, for particularly important reasons, request the delivery to be made also on a Sunday or holiday, or even at night, if urgent.
- (3) The delivery by regular mail may as well be made on Sundays and holidays.

#### **Article 72**

- (1) The delivery shall generally be carried out at the apartment, office or workplace of the addressee, or to an attorney's office.
- (2) A delivery may also be carried out outside of the premises mentioned in paragraph 1 of this Article, if the addressee accepts to receive the document in such a manner, and if there are no such premises, this delivery to the concerned person may be made wherever he or she is found.

### **2. Indirect Delivery**

### **Article 73**

- (1) In case the addressee is not found in his/her apartment, the delivery shall be made by handing the document to some adult member of his/her household.
- (2) If the delivery is made at the workplace of the addressee, and this person is not found there, the delivery shall be made to a person employed at the same place, if he or she agrees to accept the document. The delivery to an attorney may as well be made by handing the document to a person employed at the attorney's office.
- (3) The delivery according to paragraphs 1 and 2 of this Article may not be made to a person that is involved in the same procedure with an opposite interest.

### **Article 74**

- (1) If ascertained that the addressee is absent and that the persons mentioned in Article 73 of this Law cannot deliver the document to him or her on time, the document shall be returned to the issuing authority annotating the location of the absent addressee.
- (2) If it is not possible to determine the domicile, that is, the place of residence of an addressee, the authority which issued the document shall assign a temporary representative to the addressee in accordance with Article 43 of this Law and deliver the document to that person.

### **Article 75**

- (1) If it is not possible to carry out the delivery in the manner specified in Article 73 of this Law, and it was not ascertained that the addressee was absent, the messenger shall deliver the document to the relevant authority in whose territory the domicile, that is, the place of residence of the addressee is located, or to the post office in his/her domicile, if the delivery is carried out by regular mail. The messenger shall attach a written notification on where the document can be found to the door of the apartment, office or workplace of the addressee and the delivery shall thereby be considered as carried out. On the notification and on the very document that was to be delivered the messenger shall note the reason for such delivery, put the date when the notification was attached to the door, and sign it.
- (2) The authority that ordered the delivery shall be notified about the performed delivery in the manner specified in paragraph 1 of this Article.

### **3. Obligatory Personal Delivery**

#### **Article 76**

- (1) A document shall be personally delivered to the concerned person when it is a decision, conclusion or other document where the time limit following the delivery cannot be extended, when such a delivery is stipulated by another regulation, or when particularly so determined by the authority that requested the delivery. It shall be considered that personal delivery was carried out when delivered to the attorney or handed to a person employed in the attorney's office.
- (2) In case the person who needs to be delivered a document in person is not found in his/her apartment, at the office or workplace, or no employee is found in the attorney's office, while no information indicated that the addressee was absent, the messenger shall return the document to the post office or the issuing authority, in case the document is not delivered by regular mail; a written notification shall be left in the mailbox or attached to the door of the apartment, office or workroom of the addressee, or at another suitable place, indicating where the document is and that it has to be collected not later than within fifteen days.
- (3) The messenger shall sign the notification from paragraph 2 of this Article, and indicate on the document which is returned to the post office or the authority where the notification was left.
- (4) The delivery shall be considered as carried out on the day the document is collected by the concerned addressee. If the addressee fails to collect the document within 15 days following that of the notification, the delivery shall be considered as carried out upon the expiry of the fifteenth day following that of the notification.
- (5) In case it is ascertained that the person from paragraph 2 is absent, the messenger shall return the document to the issuing authority which shall decide on a subsequent delivery, when notified that the addressee came back, and not later than within 30 days. Upon the expiry of this time limit, the document shall be delivered to the designated proxy.
- (6) Any person that will be absent for more than 30 days shall notify the authority conducting the procedure regarding the name, family name and address of his/her designated proxy authorized to receive the documents (Article 79).
- (7) If the proxy from the paragraph 6 of this Article has not been designated, the delivery shall be carried out again in the manner set forth in paragraphs 2 and 4 of this Article.

- (8) The addressee to whom the delivery is made in the manner set forth in this Article may substantiate an absence longer than 30 days by stating a justifiable reason due to which the documents could not be received or a proxy could not be designated to receive the documents. Provided that a justifiable absence is proven, the addressee shall be entitled to restitution of the previous position.

### **Article 77**

- (1) An electronic delivery shall be carried out by way of the information system of the state authority, or by the legal or natural person performing electronic deliveries of documents as a business activity, if duly licensed by the competent ministry for state administration.
- (2) Through the information system from paragraph 1 of this Article, an electronic notification shall be automatically send to the addressee stating that there is a document in the information system and setting the time limit of 15 days for its collection.
- (3) The addressee may collect the document from the information system from paragraph 1 of this Article following a qualified confirmation of his/her electronic signature and use this signature to sign an electronic delivery receipt.
- (4) The delivery specified in paragraph 2 of this Article shall be considered as carried out on the day the addressee collects the document from the information system. In case the addressee fails to collect the document within 15 days from the day of transmission of an electronic notification, the delivery shall be regarded as executed upon the expiry of the fifteenth day following that of its transmission. Upon the expiry of the fifteenth day, the information system shall delete the document and notify the addressee accordingly by sending an electronic notification stating that the document was deleted from the information system and may be collected from the issuing authority.
- (5) The information system for the delivery and notification shall notify the issuing authority about the performed delivery by means of an electronic delivery receipt.

## **4. Specific Cases of Delivery**

### **1) Delivery to Legal Representative and Proxy**

### **Article 78**

- (1) The delivery to a legal representative or proxy, if applicable, shall be carried out in the manner set forth in Articles 70 to 76 of this Law.

- (2) In case that several parties have a common legal representative or proxy on the same case, a delivery for all of them shall be made to this legal representative or proxy. If a party has several proxies, the delivery to only one of them shall be sufficient.

## **2) Delivery to a Designated Proxy for the Reception of Documents**

### **Article 79**

- (1) The party may empower a certain person who shall receive all deliveries on his/her behalf. When the authority conducting the procedure is notified accordingly by the party, all deliveries shall be made to that proxy (proxy for the reception of documents) by the authority.
- (2) The proxy for the reception of documents shall forward every document to the party without any delay.
- (3) In case that a direct delivery to the party, legal representative or proxy may significantly delay the procedure, the authorized official may request the party, for a specific case and within a specific time limit, to designate a proxy for the reception of documents at the seat of the authority. If the party fails to act upon this request, the authority may proceed according to Article 43 of this Law.
- (4) If the party or his/her legal representative are abroad, and there is no proxy in Montenegro, on the occasion of delivery of the first document they shall be called upon to designate within a specified period of time an attorney or proxy for the reception of documents, and they shall be warned that in case of a failure to do so within the specified period of time, a proxy for the reception of documents, that is, a temporary representative, shall be assigned to them ex officio..
- (5) A document delivered to the proxy for the reception of documents is equally regarded as delivered to the concerned party.

### **Article 80**

- (1) In case that several parties jointly participating in the procedure with the same claims have no common attorney, they shall, on the occasion of the first action in the procedure, report to the authority their common proxy for the reception of documents, if possible one residing at the seat of the authority. Until a common proxy for the reception of documents is identified, the party whose name was first signed or indicated on the common petition request which was filed first shall be considered as the common proxy. If it is not possible to identify a proxy in this way, the authorized official conducting the procedure may appoint any of the parties as the proxy. If the parties are too many, or if they come from different places, the parties may designate, and the authorized official may also appoint several proxies of the kind and specify which party shall be



represented by which proxy respectively.

- (2) The common proxy for the reception of documents shall forthwith notify all parties of the document received on their behalf and give them the opportunity to examine, transcribe and verify the document which, generally, needs to be kept by the proxy.
- (3) The delivery shall specify the names of all persons who the document is delivered for to the proxy for the reception of documents.

### **3) Delivery to State Authorities, Institutions and other Legal Persons**

#### **Article 81**

- (1) The delivery to state authorities, institutions and other legal persons shall be carried out by handing the document to the authorized official or the person assigned for the reception of documents, unless otherwise stipulated for individual cases.
- (2) In case the procedure is participated by an organization, settlement, group of persons or others who do not have the attribute of a legal person (Article 38 paragraph 2), the delivery shall be carried out by handing the document to the authorized and designated person (Article 41 paragraph 4).
- (3) If the messenger fails to find the person designated to receive documents during the working hours, the delivery may be made to any employee of the state authority, institution, or other legal person mentioned in paragraph 1 of this Article, who is found present in their premises.

### **4) Delivery to other Persons**

#### **Article 82**

- (1) The delivery to persons abroad, or those in the country enjoying diplomatic immunity, shall be carried out by the assistance of the ministry competent for foreign affairs, unless otherwise stipulated by an international agreement.
- (2) The delivery of registry documents, certificates, testimonials and other documents, issued after the request of a party may be carried out directly to citizens abroad,. The delivery of decisions and conclusions shall be carried out through the state's diplomatic and consular representative offices abroad.

- (3) Deliveries to the members of Military of Montenegro or police forces and to persons employed in overland, river, maritime and aerial traffic shall be carried out through the relevant headquarters, authority, institution or other legal person that they work for.

### **Article 83**

The delivery to an imprisoned person shall be carried out through the administration of the institution where such a person is situated.

## **5) Delivery by Means of Public Announcement**

### **Article 84**

In case that there is a number of persons who are not known to the authority, or who cannot be identified, the delivery shall be carried out by means of public announcement at the notice board of the authority having issued the document. The delivery shall be considered as carried out after the expiration of 15 days following that of the posting of the announcement on the notice board, unless a longer period is specified by the authority that issued the document. In addition to the announcement on the notice board, the announcement shall also be published in daily press or other means of public notification or in another customary manner.

## **6) Refusal of Acceptance**

### **Article 85**

- (1) In case that the addressee or an adult member of his/her household refuses to accept a document without any legal grounds, or if this is done by an employee of the state authority, enterprise or another legal person, or at an attorney's office, or if this is done by the person assigned to receive documents by an organization, settlement, group of persons or others who do not have the attribute of a legal person (Article 38 paragraph 2), the messenger shall leave the document in the apartment or the premises where the concerned person is employed, or attach the document to the door of the apartment or premises.
- (2) When the delivery is carried out in the manner specified in paragraph 1 of this Article, the messenger shall record in the delivery receipt the day, time and reason for the refusal of acceptance, as well as the place where the document was left, and the delivery shall be considered as carried out.

## **7) Change of Domicile, Residence or Registered Office**

## **Article 86**

- (1) In case that the party or his/her legal representative change their respective domicile, place of residence or seat in the course of a procedure, , they shall forthwith notify thereof the authority conducting the procedure.
- (2) If they fail to do so, and the messenger cannot find out where they moved, the authority shall determine that all further deliveries in the procedure for that party be carried out by posting the documents on the notice board of the authority conducting the procedure.
- (3) The delivery shall be considered as carried out upon the expiration of eight days following that of the posting on the notice board of the authority conducting the procedure.
- (4) In case the proxy, or the proxy for the reception of documents changes his/her domicile or place of residence in the course of the procedure, and fails to notify thereof the authority conducting the procedure, the delivery shall be carried out as if no proxy were designated.

## **5. Delivery Receipt**

### **Article 87**

- (1) The receipt confirming the delivery (delivery receipt) shall be signed by the recipient and the messenger. The recipient shall personally note the date of delivery on the delivery receipt.
- (2) Where the recipient is illiterate or incapacitated to sign, the messenger shall note the recipient's name and the day of delivery on the delivery receipt, and write down the reason why it was not signed by the recipient.
- (3) If the recipient refuses to sign a delivery receipt, the messenger shall note this on the delivery receipt and put the day of delivery of the document in writing, whereby the delivery shall be considered as carried out properly.
- (4) If the delivery was made to a persons mentioned in Article 73 of this Law, the messenger shall note down on the delivery receipt the name of the person who received the document, and the relation of this person to the person who the document should have been delivered to.

- (5) If the delivery was carried out according to Article 75 of this Law, the following shall be noted on the delivery receipt: the day of announcement; the day of delivery of the document to the competent authority in whose territory the domicile or the place of residence of the addressee is located; or to the post office in his/her domicile or place of residence.
- (6) The Ministry competent for state administration shall stipulate the form and manner of electronic delivery.

## **6. Errors in Delivery**

### **Article 88**

- (1) If an error occurs on the occasion of a delivery, it shall be considered that the delivery was carried out on the day it was ascertained that the addressee actually received the document.
- (2) If the delivery receipt disappears, the delivery may be proven by other means.

## **Title VI**

### **DEADLINES**

#### **Article 89**

- (1) Deadlines may be determined for the undertaking of specific actions in the procedure.
- (2) If the deadlines are not determined by the law or other regulation, those shall be determined depending on the circumstances of the case, by the authorized official.
- (3) The deadline determined by the authorized official conducting the procedure or according to regulations, where the possibility of an extension is provided for, may be extended after the request of the interested person submitted before the expiration of the deadline, if there are justifiable reasons for the extension.

#### **Article 90**

- (1) Deadlines shall be set in days, months and years, or counted in hours.
- (2) When a deadline is determined in days, the day when the delivery or announcement was carried out, that is the day on which the event falls following which the deadline is counted shall not be included into the deadline. The deadline shall start running from the first subsequent day. A deadline that is specified in months or years shall expire at the end of the anticipated day, month or year corresponding in number with the day of actual delivery or announcement, that is with the event when the deadline started running. If the actual month does not have the same number of days, the deadline shall expire on the last day of the concerned month.
- (3) The expiration of a deadline may as well be indicated as a specific calendar day.

#### **Article 91**

- (1) A deadline may start and keep running on Sundays or holidays.
- (2) If a deadline expires on a Sunday or during the holidays, or on another day when the office of the authority before which the action is to be undertaken is closed, the deadline shall formally expire at the end of the first subsequent working day.

#### **Article 92**

- (1) A petition request shall be submitted on time, if it is filed and received by the concerned authority before the expiration of the deadline.
- (2) When a petition request is filed by registered mail, telegraph or fax, the day of delivery to the post office or by fax shall be considered as the day of submission to the authority it is addressed to.
- (3) If a petition request is filed electronically, it shall be considered well-timed if received by the information system for delivery and notification prior to the expiration of the deadline.
- (4) For persons on duty in the armed forces, the day of delivery of the petition request to the military unit, military institution or headquarters shall be considered as the day of submission to the authority it is addressed to.
- (5) For an imprisoned person, the day of delivery of the petition request to the administration of the institution where this person is placed shall be considered as the day of submission to the authority it is addressed to.

- (6) If an authority schedules the day for deliberation on a petition request that the party is obliged to submit, where the party is called to submit the petition request until a specified day, the authority shall consider the received petition request before the beginning of the deliberation.

## **Title VII**

### **RESTITUTIO IN INTEGRUM**

#### **Article 93**

- (1) Where a party fails to perform an action in the course of a procedure within the specified deadline for justifiable reasons, and as a consequence becomes deprived of the right to perform such action, restitution shall be granted following a petition submitted by the party.
- (2) Restitution shall also be granted after the request of a party who failed to submit a petition request within the given time limit when the petition request, due to ignorance or erroneously, was submitted by regular mail or to a non-competent authority in a timely manner.
- (3) Restitution shall also be granted where the deadline is exceeded by the party due to an obvious mistake, and the petition request is yet received by the competent authority three days after the expiration of the deadline at the latest, in case such delay would cause the party to be deprived of an entitlement.

#### **Article 94**

- (1) In its request for restitution, the party shall present the circumstances due to which it was prevented from performing the omitted action and make such circumstances surely

probable.

- (2) The request for restitution may not be based on any circumstances that were previously assessed by the authority and found insufficient for the extension of a deadline or the postponement of a hearing.
- (3) If restitution is requested because of an omission to submit a petition request, this petition request shall be enclosed with the request as well.

#### **Article 95**

- (1) A request for restitution shall be filed within eight days from the day following that when the reason that caused the omission ceased to exist, and if the party discovered the omission only later – from the day when it was discovered.
- (2) No restitution may be requested after the expiration of three months following the day of omission.
- (3) Where the deadline to request restitution is missed, it shall not be possible to request restitution on the grounds of the omission of such a deadline.

#### **Article 96**

- (1) The request for restitution shall be filed to the competent authority before which the omitted action was to be performed.
- (2) A decision on the request for restitution shall be passed by the authority before which the omitted action should have been performed.
- (3) An untimely filed request for restitution shall be rejected without further procedure.
- (4) Where the facts supporting a request for restitution are conspicuous, the authority may decide on this request without considering the statement of an opponent party.

#### **Article 97**

- (1) No Appeal against a decision whereby the restitution is granted shall be permitted, unless the restitution was granted upon an untimely filed or illegitimate request (Article

95 paragraph 3).

- (2) Special appeal may be filed against a decision rejecting a request for restitution, unless this decision is passed by an authority of the second instance.
- (3) No appeal shall be permitted against a decision on a request for restitution that was passed by the authority competent for decision-making in the second instance on the principle matter.

#### **Article 98**

- (1) No request for restitution shall defer the course of a procedure, yet the competent decision making authority may temporarily interrupt the procedure pending the finality of the conclusion on the request.
- (2) When the restitution is granted, the procedure shall be restored to its original condition before the omission, and all decisions and conclusions passed in relation to the omission shall be nullified.

#### **Title VIII**

#### **MAINTENANCE OF ORDER**

#### **Article 99**

- (1) The authorized official conducting a procedure shall maintain order in the course of the procedure.
- (2) The authorized official shall warn the persons disturbing the work of the authority and undertake other necessary measures to maintain the order.
- (3) Persons attending an administrative procedure shall not carry arms or dangerous weapons. Where such persons are in possession of any arms or dangerous weapons, those shall be delivered to the authorized official. Otherwise, such persons shall not be allowed to attend the procedure. Upon the completion of an action of the procedure, arms or dangerous weapons shall be returned to the persons who handed them over to an authorized official.

#### **Article 100**



(1) A person who, although reprimand, continues to disturb the order or who behaves indecently in the course of the procedure may be removed. A person who participates in an action of an administrative procedure can be removed solely upon a prior reprimand that he or she shall be removed and upon presenting the legal consequences of such a measure. A removal due to disturbing of the order or due to indecency in behaviour shall be ordered by the authorized official.

(2) Where, pursuant to paragraph 1 of this Article, a party that has no proxy, is removed or where its proxy is removed while the represented party is not present, the authorized official shall invite the person to be removed to appoint his/her proxy. Where the invited person fails to do so, the authorized official may adjourn the procedure at the expense of the person who rejected to appoint a proxy, or the authorized official may appoint a proxy for that person, if necessary. Such a proxy may represent the party solely during the action in the procedure from which the party was removed.

### **Article 101**

(1) Anyone who in the course of the procedure seriously disturbs the order and work of the authority shall be deemed to insult the competent authority or authorized official, or the person whose behaviour is indecent, in addition to being removed from the procedure may be fined not more than 50 Euros per instance for violating the procedural discipline .

(2) The fine referred to in paragraph 1 of this Article shall not exclude criminal, tort or disciplinary liability.

(3) A person filing a petition request that seriously violates the reputation of the competent authority or authorized official conducting the procedure may be fined as referred to in paragraph 1 of this Article.

### **Article 102**

(1) The fine for actions referred to in Article 101 paragraph 1 of this Law shall be decided by the authorized official conducting the procedure, and for the actions foreseen by Article 101 paragraph 3 – by the competent authority conducting the procedure.

(2) Special appeal may be filed against the decision on a fine. The execution of the fine shall not be deferred by an appeal against such decision resulting from the disturbance of order.

### **Title IX**

## **COSTS OF THE PROCEDURE**

### **1. Costs of the Authorities and Parties**

#### **Article 103**

(1) Special costs of the authority conducting the procedure, such as travel costs for authorized officials, expenses for witnesses, experts, interpreters, costs of inquiry on the spot, announcements and other costs resulting from the conduct of administrative procedure, shall be, as a rule, covered by the party who initiated the entire action.

(2) The expenses for particular actions in the course of an administrative procedure caused by a participating person due to personal fault or unruliness shall be covered by that person.

(3) When an administrative procedure initiated ex officio is completed in favour of a party, the procedural costs shall be borne by the authority that instituted the procedure.

#### **Article 104**

(1) Each party to an administrative procedure shall, as a rule, bear its own costs originating from the procedure, such as travel costs, costs relating to waste of time, fees, legal representation and expert assistance.

(2) When two or more parties having opposite interests participate in an administrative procedure, the party that caused the procedure and to the detriment of which the procedure was completed shall compensate the opposing party for all reasonable costs incurred in the course of the procedure. Where the request of one party is found only partly justifiable, that party shall compensate the opposing party for the incurred costs in a manner which is proportionate to the part of its request that is not found as justified. The party that made the other party incur costs in the procedure as a prank, shall recompense it for such costs.

(3) The claim for compensation of costs pursuant to paragraphs 1 and 2 of this Article shall be filed in a timely manner, in order to enable the authority conducting the procedure to include it into its decision. Otherwise, the right of the party to receive compensation shall be forfeited. The authorized official conducting the procedure shall notify the party thereof.

(4) The parties to a procedure shall bear their respective costs of the procedure resolved by settlement, unless otherwise provided by the settlement.

(5) The costs of a party and of a third person to the procedure incurred by the procedure initiated ex officio, in line of duty or in public interest, which were not caused by the party or a third person to the procedure, shall be borne by the concerned authority.

#### **Article 105**

Procedural costs relating to the execution shall be borne by the party that is obliged to execute the resolution. In the event that the costs cannot be collected from that party, those shall be settled by the party who initiated the execution.

#### **Article 106**

Where an administrative procedure is initiated following the request of a party, while it can be determined with certainty that special expenses in cash shall be incurred (relating to the investigation, expert fees, travel costs of witnesses, etc.), the authority conducting the procedure may request the party to make an advance deposit in the amount of such costs. In the event that the party fails to make the said deposit within a specified period of time, the authority may abandon the presentation of such evidence or halt the administrative procedure, unless it is in the public interest to continue the procedure.

#### **Article 107**

(1) In a final decision, the issuing authority shall specify who shall bear the procedural costs, as well as the amount of such costs, the authorities to which the payment shall be made and the related time limit.

(2) It shall be specifically stated in the decision whether the party bearing the costs is obliged to compensate the other party or not (paragraphs 2 and 3 of Article 104).

(3) Where the costs of procedure are borne by several persons, those shall be distributed proportionally, that is divided into equal parts among the parties.

(4) Where no decision on the costs is included into the decision of the competent authority, this decision shall read that a special decision regarding the procedural costs shall be issued.

#### **Article 108**

(1) Witnesses, experts, interpreters and persons acting in an official capacity shall be entitled to reimbursement of travel costs and expenses incurred by their stay in a particular place. If they are entitled to a salary during that time, they shall also have the right to the applicable compensation for any reduction in salary. In addition to the applicable compensation, experts and interpreters shall also be entitled to a special reward for the performed work of expert investigation and interpreting according to regulations.

(2) Compensation claims or a reward claims shall be submitted by the witnesses, experts and interpreters at the hearing, when giving an expert opinion or interpreting. In an opposite case, their right to do so shall be forfeited. The authorized official conducting the procedure shall warn the witnesses, expert or interpreter accordingly.

(3) An amount of the compensation or reward shall be specified under a special decision of the authorized authority specifying who the payment shall be made by and when. A special appeal may be filed against this decision. This decision shall represent the basis for an execution (enforceable document).

## **Article 109**

(1) The compensation of costs in an administrative procedure shall be regulated by the Government. .

(2) Regarding the compensation of official persons, the applicable regulations shall apply

## **2. Exemption from Payment of Procedural Costs**

### **Article 11**

(1) The authority conducting the procedure may exempt a party from its obligation to pay the costs as a whole or in part, if it finds that such costs cannot be borne by the party without affecting the necessary maintenance of the party or his/her family. The authority shall pass the related decision following the request of the party to the procedure, on the basis of an official certificate on his/her financial condition issued by the competent authority.

(2) An exemption from payment of procedural costs shall mean an exemption from fees and expenses of the authority in charge of the administrative procedure, such as travel costs of official persons, expenses for witnesses, experts and interpreters, investigation, announcements and other, including an exemption from making a deposit payment.

(3) Foreign citizens shall be exempted from the payment of costs when so prescribed by the international treaty or, if there is no such treaty, according to the principle of reciprocity. In the case of any doubt in respect to the existence of such reciprocity, a relevant explanation shall be obtained from the ministry competent for foreign affairs.

#### **Article 111**

The authority conducting the procedure may cancel the decision to exempt a party from the payment of procedural costs if confirmed that the original reasons for such an exemption ceased to exist.

#### **Article 112**

A special appeal may be filed against the decision refusing a request to be exempt from the payment of costs, and the decision referred to in Article 111 of this Law.

### **PART TWO**

#### **FIRST- INSTANCE PROCEDURE**

##### **Title X**

#### **INSTITUTION OF A PROCEDURE AND CLAIMS BY THE PARTIES TO A PROCEDURE**

##### **1. Institution of a Procedure**

#### **Article 113**

Administrative procedure shall be instituted by the competent authority ex officio or following the request of a party.

#### **Article 114**

(1) The competent authority shall institute the procedure ex officio if so stipulated by the law or other regulation and when it ascertains or comes to the knowledge that, taking into consideration the existing state of facts, the procedure needs to be initiated to protect the public interest.

(2) On the occasion of institution of administrative procedure ex officio, the competent authority shall take into consideration any likely requests of citizens and organizations as well as admonition given by the competent authorities.

### **Article 115**

Administrative procedure initiated ex officio shall be deemed instituted as soon as any action relating to the procedure is executed by the authorized authority.

### **Article 116**

(1) The procedure following the request of a party shall be deemed instituted on the day of filing of the request.

(2) The request of a party shall be refused by the decision of the competent authority where:

- 1) The subject matter of the procedure is not an administrative matter;
- 2) The claimant is not the holder of the right or legal interest, or cannot be a party to the administrative procedure pursuant to this law;
- 3) The claim was not filed within the anticipated time limit;
- 4) Another proceedings or court proceedings were previously instituted relating to the same administrative matter, or the related decision already came into effect recognizing the right of the party to the procedure or establishing its obligation. The competent authority shall also proceed in the same manner when in the same administrative matter a decision rejecting the party's claim was issued, while no subsequent change to the legal and factual situation occurred.

(3) A claim may be rejected by the authority at any stage of the procedure if the existence of the reasons from paragraph 2 of this Article is confirmed.

(4) An appeal may be lodged against the decision rejecting the claim of a party.

### **Article 117**

Administrative matters which, according to the law or by nature of things, may be initiated only following a request of the party shall be initiated and administered by the competent authority solely upon the confirmation of such a request.

## **2. Consolidation of Actions**

### **Article 118**

(1) Where the rights or obligations of parties to the procedure are grounded upon the same or similar factual state and upon the same legal basis, and where the authority conducting the procedure has jurisdiction *ratione materiae* (statutory competence) in respect to all matters, only one administrative procedure may be instituted and administered, even when the rights and obligations of several parties are involved.

(2) It is under the same conditions that one or more parties to the procedure may exercise several different claims within the same procedure.

(3) The competent authority shall make a special decision to administer a consolidated procedure in the cases referred to in paragraphs 1 and 2 of this Article. An appeal may be lodged against such a decision, unless the decision was passed by an authority of the second instance.

### **Article 119**

The authority may issue a public announcement instituting an administrative procedure relating to several persons not known to the authority or who cannot be identified, but who can have the position of parties to the procedure, and where the claim that applies all of them is essentially the same.

### **Article 120**

(1) When, in the sense of Article 118 of this law, one procedure is administered or when one procedure is instituted by public announcement in the sense of Article 119 of this Law, each of the parties shall participate independently in the procedure.

(2) In the decisions whereby, following the procedure referred to in paragraph 1 of this Article, some measures are undertaken against the parties, it shall be specifically stated which measures relate to the parties respectively, unless the procedure is jointly participated by the parties having identical claims or unless otherwise stipulated by law.

## **3. Amendments to the Claims**

### **Article 121**

(1) Where the procedure has been instituted, a party to the procedure may, until a decision is passed in the first instance, extend its previously filed claim or substitute it for another claim regardless of whether the legal basis of the extended or amended claim remain the same or not, provided that it is based on essentially the same factual situation.

(2) Where the authorized authority refuses to allow an extension of or amendment to a claim, it shall adopt the related decision. An appeal against such a decision may be filed.

#### **4. Abandonment of Action**

##### **Article 122**

(1) A party may abandon its claim throughout the course of the procedure

(2) Where the procedure involves an opposing party, the party who filed the claim may abandon it before the opposing party starts discussing the subject matter in an oral hearing. Where the opposing party already entered the hearing on the subject matter, the party who filed the claim may abandon it solely after a prior consent of the other party, which can be given immediately or within eight days. Where the opposing party remains silent until the expiration of this time limit, its silence shall be deemed as its consent to abandon the action.

(3) Where a procedure had been initiated by the party who subsequently abandoned its claim, the authority conducting the procedure shall issue a decision to halt the procedure. The opposing party, if applicable, shall be notified accordingly.

(4) Where the procedure needs to continue in the public interest or following the request of the opposing party, the authority shall continue to administer the procedure.

(5) The procedure which was instituted ex officio may be halted by the authority. Where the procedure relating to the same administrative matter could also have been initiated after the request of a party, the procedure shall be continued if so requested by the party.

(6) A special appeal may be filed against the decision terminating an administrative procedure.

##### **Article 123**



(1) A party may abandon its claim by making a statement in front of the authorized authority. The party may cancel its abandonment of action until a decision to terminate the procedure is issued by the authorized authority and presented to the party.

(2) Particular action or failure to act by a party can be deemed its abandonment of the claim solely if so specified by the law.

(3) Where a party abandons its claim following the first-instance decision and before the expiration of the time limit for filing an appeal, the decision on the termination of the procedure shall invalidate the first-instance decision if the claim of the party was resolved positively by this decision, either completely or in part. Where the party abandons its claim after lodging an appeal and before a decision on its appeal is delivered, the decision on the termination of the procedure shall invalidate the first-instance decision whereby the claim of the party was approved, either completely or in part, where the party completely abandoned its claim.

#### **Article 124**

The party that abandoned its claim shall cover all costs originating from the termination of the procedure, unless otherwise stipulated by other regulations.

### **5. Settlement**

#### **Article 125**

(1) Where two or more parties with opposite claims are involved in the administrative procedure, the person acting in an official capacity shall make every effort in the course of the procedure to reconcile the parties, either completely or at least in terms of some specific disputable issues.

(2) A settlement shall always be clear and precisely specified and shall not be to the detriment of the public interest, public moral or legal interest of third persons. The official conducting the procedure shall pay attention to this *ex officio*. Where determined that a settlement may be to the detriment of the public interest, public moral or legal interest of third persons, the authority conducting the procedure shall refuse to approve the settlement and issue a special decision in that respect.

(3) The settlement shall be included into the record. A settlement shall be deemed as concluded when the parties, having read the record on the settlement, affix their respective signatures to it. A certified transcript of the record shall be delivered to the parties, upon request.

(4) The settlement shall have the power of an enforceable decision issued in the course of a procedure (enforceable document).

(5) The authority in front of which the settlement was concluded shall issue a decision whereby the procedure shall be terminated completely or in part, as needed.

(6) Where the decision to either terminate or continue the procedure is contrary to the concluded settlement, a special appeal may be filed against the decision.

## **Title XI**

### **THE PROCEDURE PRECEDING A DECISION**

#### **A. General Principles**

##### **1. Common Provisions**

#### **Article 126**

(1) All decisive facts and circumstances of relevance for making a decision shall be ascertained prior to its adoption, while the parties shall be enabled to exercise and protect their rights and legal interests.

(2) Facts and circumstances referred to in paragraph 1 of this Article shall be ascertained and rights and legal interests referred to in the same paragraphs shall be exercised and protected within a summarized procedure (Article 133) or within a special investigative procedure (Articles 134 and 135).

(3) Confidential official or personal information may be released to an official of the authority conducting the procedure solely if allowed under special law, or following a written consent of the party or other concerned person.

#### **Article 127**

(1) The authorized official conducting the procedure may keep completing the factual situation and presenting evidence throughout the procedure in order to ascertain also the facts that failed to be presented or established during the procedure.

(2) The authorized official conducting the procedure shall order *ex officio* the presentation of each piece of evidence if it is found necessary to clarify the situation.

(3) The authorized official conducting the procedure shall collect *ex officio* pertinent information relating to the facts on official record of the authority in charge of deciding on the administrative matter. The authorized official shall proceed in the same manner in respect to the facts on official record maintained by another authority.

(4) Official record according to this law shall be deemed to mean the record established by law or another regulation used for organized registration or recording of data or facts intended for specific purpose or needs of specific users.

#### **Article 128**

(1) The party shall present the factual situation upon which its claim is based accurately, completely and precisely.

(2) Where the facts are not common knowledge, the party shall propose and if possible present evidence in support of its claim. Where the party fails to do so, it shall be requested to proceed accordingly by the authorized official. The party shall not be required to collect or present evidence that can be collected more easily and efficiently by the authority conducting the procedure, or to present certificates and other documents that the authorities are not obliged to issue pursuant to Articles 165 and 166 of this Law.

(3) Where the party fails to propose or, if possible, present evidence within the subsequently specified time limit, the authority shall issue a decision whereby the claim shall be reject as not filed in a regular manner (paragraph 2 of Article 57). A special appeal against this decision may be filed.

#### **Article 129**

(1) A party shall, as a rule, make an oral statement.

(2) When a complex administrative matter is concerned or when a more extensive expert explanation is required, the authorized official conducting the procedure may order the

party to make a written statement within the specified time limit. In this case, the party shall also be entitled to request to be permitted to make a written statement.

(3) Where a party is ordered or permitted to make a written statement, the party shall not be deprived of its right to make an oral statement as well.

### **Article 130**

(1) Where in the course of the procedure a person who has not previously taken part in the procedure as a party comes forward,, and if that person requests to participate in the procedure as a party, the authorized official conducting the procedure may, at a special oral hearing, consider his/her right to be a party to the procedure and adopt the related decision.

(2) An appeal against the decision whereby the right from paragraph 1 of this Article is recognized or not may be filed.

(3) The procedure shall be continued after the decision has entered into effect.

### **Article 131**

(1) The authorized official conducting the procedure shall, , as needed, read to the party its rights in the procedure and indicate the legal consequences of its actions or failure to act in the course of the procedure.

(2) The authority conducting the procedure shall, prior to the commencement of preliminary investigative procedure, summon up all persons who are deemed to be able to state their legal interest to participate in the procedure. Where the authority disposes of no information regarding the names of persons who may state their respective legal interests to participate in the procedure, they can be invited ro do so by means of public notification or in another applicable manner.

(3) If the persons invited in the manner specified in paragraph 2 make respective written statements, they need not be invited to attend the procedure in person.

(4) Persons who were invited in the manner referred to in Paragraph 2 of this Article and informed about the procedure, but who failed to respond to the invitation, shall not be entitled to file an appeal against the decision issued in the procedure.

(5) Persons who claim that they were not given an opportunity to participate in the procedure, although they were entitled to do so, may request to be issued the related

decision within the time limit specified for the filing of an appeal by the party who was issued that decision.

## **2. Preparatory Procedure**

### **Article 132**

(1) The preparatory procedure shall be specified by the authority conducting the procedure if an oral hearing or investigation is conducted.

(2) The authority conducting the procedure shall, at least seven days before the preparatory procedure is conducted, summon up the parties and other persons if it deems that their presence shall be necessary. The authority shall, enclosed with the summons to appear, deliver to the party a petition based on which the preparatory procedure shall be defined, and the summons shall also include the date, place and time of the preparatory procedure.

(3) Where the procedure was initiated *ex officio* by the authority, the summons shall contain information on the procedural actions to be conducted as a part of the preparatory procedure.

(4) The authority shall warn the invited persons about the legal consequences of an unjustifiable failure to appear.

(5) The preparatory procedure shall, as a rule, be conducted at the seat of the authority conducting the procedure.

(6) The authority may also designate another place to conduct the preparatory procedure, if more cost-efficient.

(7) No appeal shall be filed against the decision from paragraph 6 of this Article.

(8) The authority may adjourn the preparatory procedure upon its own initiative or following the request of a party to the procedure, for justifiable reasons.

(9) No appeal shall be filed against the decision permitting or prohibiting an adjournment of the preparatory procedure.

## **3. Summary Procedure**

### **Article 133**

The authority may decide on an administrative matter directly, applying the summary procedure, in the following cases:

- 1) Where a party stated in its claim the facts or presented evidence based on which the state of affairs can be determined or such state of affairs can be ascertained on the basis of facts of common knowledge or facts known to the authority;
- 2) Where the state of affairs can be ascertained by an immediate insight or on the basis of official data available to the authority, and no special examination of the party is needed for the purpose of protection of its rights or legal interests;
- 3) Where it is envisaged by legal regulations that an administrative matter can be decided on the basis of facts or circumstances that are not determined completely or that are only indirectly ascertained by evidence, thus having made the facts or circumstances probable, whereas all the circumstances indicate that the party's claim should be satisfied;
- 4) Where urgent measures are to be undertaken in the public interest that cannot be postponed, while the facts upon which the decision is to be grounded are ascertained or at least made probable. Urgent measures shall exist if human life and health are endangered, as well as the public order and peace, public security or property of a great value.

#### **4. Special Investigation Procedure**

##### **Article 134**

(1) A special investigation procedure shall be conducted when so needed for the purpose of ascertainment of decisive facts and circumstances of relevance for the explanation of administrative matters or for the purpose of enabling the parties to exercise and protect their respective rights and legal interests.

(2) The course of the investigation procedure shall be determined, according to the circumstances of each particular case, by the official conducting the procedure, pursuant to this Law and other legal regulations relating to the concerned administrative matter.

(3) Within the scope of duty referred to in paragraphs 1 and 2 of this Article, the authorized official conducting the procedure shall specifically do the following: ascertain the actions within the procedure that need to be executed and order their execution; ascertain the sequence in which the specific actions shall be conducted and set the time limits for their respective execution, unless otherwise stipulated by law; schedule an oral

hearing and examination, including all necessary actions for its holding; decide on evidence to be presented, and also proposals and statements given in the course of the procedure.

(4) The authorized official conducting the procedure shall decide whether the hearing and presentation of evidences shall be conducted separately for each particular disputable issue, or uniformly as a single case.

### **Article 135**

(1) A party shall have the right to participate in the investigation procedure and provide necessary information, for the purpose of accomplishing the objective of the procedure and to defend its rights and interests guaranteed by the law.

(2) A party shall have the right to present the facts that may be of relevance for the resolution of an administrative matter, propose evidence for the purpose of ascertainment of these facts and deny the accuracy of statements that disagree with its statements. It shall have the right to supplement and explain its statements before a decision is issued, and if it does so after an oral hearing, it shall have to justify why it failed to do so at the hearing.

(3) The authorized official conducting the procedure shall enable a party to do the following: declare itself on all circumstances and facts presented in the course of the investigation procedure, and also on the proposals and presented evidence; , participate in the presentation of evidence and question other parties, witnesses and experts through an authorized official administrating the procedure, or directly with his/her permission; to be acquainted with the results of presentation of evidence and comment on those. The authority shall not pass a decision before the party is given an opportunity to state its opinion regarding the facts and circumstances that the decision needs to be based on, and where such an opportunity was denied to the party, unless the hearing of the party is disallowed either under this or a special act.

### **Precedent Issue**

### **Article 136**

(1) Where the authority conducting the procedure encounters an issue which is decisive for the resolution of the administrative matter, whereas such an issue represents an independent legal entirety within the competence of another court or authority (precedent issue), it may, under the conditions stipulated by this law, settle the issue alone, or adjourn the procedure until that issue is resolved by the competent authority. A decision on the adjournment shall be issued, against which a special appeal may be filed, unless it was issued by an authority of the second instance.

(2) Where the authority conducting the procedure resolved the precedent issue alone, the decision on such an issue shall be legally valid solely in the administrative matter in the course of which it was issued.

(3) Concerning the existence of an offence and criminal liability of an offender, the authority conducting the procedure shall respect the court sentence that went into effect whereby the defendant was found guilty.

### **Article 137**

(1) The authority conducting the procedure must halt the procedure when the precedent issue refers to the existence of a criminal offence, existence of a marriage, confirmation of paternity, or when so stipulated by law.

(2) When the precedent issue relates to a criminal offence that is prosecuted *ex officio*, while there is no possibility for criminal prosecution, such an issue shall be also discussed by the authority conducting the procedure.

### **Article 138**

Where for the reason of a precedent issue the administrative procedure does not have to be halted, the authority conducting the procedure may take the precedent issue into consideration and discuss it alone, as a constituent part of the administrative matter, and resolve the administrative matter on those grounds.

### **Article 139**

(1) Where the authority conducting the procedure does not take the precedent issue into consideration in the sense of Article 138 of this Law, whereas the procedure that can be administered solely *ex officio* has not yet been initiated before the competent authority, the former authority shall request the latter one to institute a procedure regarding that issue.

(2) In the administrative matter where the procedure to resolve a precedent issue is initiated after the request of a party, the authority conducting the procedure may issue a decision ordering one of the parties to request the competent authority to institute the proceedings for the purpose of resolution of the precedent issue, and specify a time limit for the party to do so, and confirm its action by the presentation of relevant evidence. The authority conducting the procedure shall, on that occasion, warn the party in question about the consequences of its failure to do so. The time limit set for the



institution of the proceedings for the purpose of resolution of the precedent issue shall start running from the day when the decision becomes enforceable.

(3) Where the party whose request caused the initiation of a procedure fails to present evidence confirming that it requested the competent authority to institute the proceedings on the precedent issue within the specified time limit, it shall be deemed that the party in question abandoned its request, whereas the procedure shall be halted by the authority conducting the procedure. Where the opposing party has not done so, the authority shall continue the procedure and discuss the precedent issue by itself.

(4) An appeal against the decision from paragraph 2 of this Article may be filed.

#### **Article 140**

The procedure initiated for the purpose of resolution of the precedent issue before the competent authority shall be continued following a final decision on that issue.

### **6. Adjournment of Procedure**

#### **Article 141**

(1) The procedure may be adjourned in the following cases:

1. Where a party to the procedure deceases, while the rights and obligations, meaning the legal interest that was the object of the administrative procedure may be transferred to its legal successors. In this case, the authority shall notify potential legal successors about the possibility to join the procedure and provides them with a decision to adjourn the procedure,
2. Where a party is deprived of its civil capacity, while it has no proxy in the procedure or the authority failed to appoint its temporary representative. In that case the authority shall present the decision to adjourn the procedure to the centre for social work;
3. Where a legal successor of the party deceases or is deprived of his/her civil capacity, while the party has no proxy or legal representative, or where no temporary representative has been appointed. In that case the authority shall deliver the decision to adjourn the procedure to the centre for social work; in case a legal person is concerned, the decision shall be presented to the authority entitled to appoint a legal representative;

4. Where the authority conducting the procedure decides to take no decision on the precedent issue alone, that is where it is not authorized to decide upon a precedent issues alone according to the law;
5. Where the party is faced with legal consequences of an insolvency procedure, in which case the decision shall be delivered to the insolvency administrator;
6. Where a person filed an appeal against the decision whereby his/her status of a party or interested person was not recognized.

(2) The procedure shall be adjourned for as long as the grounds from paragraph 1 of this Article exist, for the reasons referred to in:

- 1) Item 1 – until the procedure is joined by a legal successor;
- 2) Items 2 and 3 – until a legal representative is appointed by the party;
- 3) Item 4 – until a decision on the precedent issue enters into effect and become enforceable;
- 4) Item 5 – until the procedure is joined by the insolvency administrator;
- 5) Item 6 - until an enforceable decision on the appeal against the decision is issued.

(3) Following an adjournment of the procedure, all time limits set for the procedural actions shall be annulled. During the period of adjournment of the procedure, no time limit set for the passing a decision referred to in paragraph 1 of Article 212 and paragraph1 of Article 242 of this law shall be in effect.

(4) An appeal against the decision to adjourn a procedure may be filed, whereas the execution of the decision shall not be deferred.

## **7. Oral Hearing**

### **Article 142**

(1) An authorized official conducting the procedure shall schedule, at personal discretion or after the request of a party, an oral hearing whenever it is deemed useful to clarify an administrative matter, while a hearing shall be scheduled in the following cases:

- 1) In administrative matters involving two or more parties having opposite interests;  
or

2) When an investigation has to be conducted or a witness or expert interrogated.

(2) An oral hearing may be scheduled by the authorized official conducting the procedure when deciding on the request from paragraph 1 of Article 39 of this Law;

(3) Provided that the appropriate technical means are available, an authorized official may schedule a video hearing, following the proposal of a party;

(4) In the case of a video hearing, provisions of this law relating to an oral hearing shall apply accordingly.

### **Article 143**

(1) An oral hearing shall be open to public.

(2) An authorized official conducting the procedure may close the oral hearing to the public, as a whole or in part, when:

1) This is required by reason of moral or public security;

2) There is a serious and immediate danger that the oral hearing may be disturbed;

3) The oral hearing concerns family relations;

4) The oral hearing concerns the circumstances that represent a secret from the domain of state, military, official, business, professional, scientific or art affairs.

(3) A proposal to exclude the public may also be made by an interested person.

(4) A decision to exclude the public shall be issued enclosed with the supporting rationale and published by means of information system for the delivery of communications and notifications.

(5) When a decision is issued following the completion of a procedure, the public may not be excluded.

#### **Article 144**

(1) No exclusion of the public shall apply to the parties, their respective representatives, proxies, authorized representatives and expert assistants.

(2) An authorized official conducting the procedure may allow an oral hearing which is closed to the public to be attended by particular authorized officials, research fellows and public personalities if this is in the interest of their respective offices or research work. An authorized official conducting the procedure shall warn such persons that any information released at the hearing shall be confidential.

#### **Article 145**

(1) The authority conducting the procedure shall undertake all necessary actions to conduct an oral hearing without any delay and, if possible, without an interruption or adjournment.

(2) Persons summoned up to the hearing shall be left reasonable time to prepare for and to arrive at the hearing in due time and without any extraordinary costs. The persons shall be summoned to a hearing, as a rule, eight days following that of the delivery of summons.

#### **Article 146**

When it is necessary for the purpose of consideration of an administrative matter at an oral hearing to be acquainted with the plans, documents or other matters, these matters need be placed at the disposal of the persons summoned to the hearing at the same time when the summons for the oral hearing are delivered, while the summons for the oral hearing shall contain the date and time when such matters shall be available for review by the interested parties.

#### **Article 147**

(1) The authority conducting the procedure shall publicly announce the holding of an oral hearing when suspected that individual summons may not be delivered on time, or that more persons who have not yet appeared as the parties to the procedure may possibly be interested to appeared, or when so required by other comparable reasons.

(2) Public announcement of an oral hearing needs to contain all information that must be indicated in individual summons, and also an invitation to everyone who believes that the

related administrative matter concerns his/her personal legal interests. This announcement shall be communicated in the manner stipulated in Article 84 of this Law.

#### **Article 148**

An oral hearing shall be held, as a rule, at the seat of the authority conducting the procedure. Where an investigation is required outside of the seat of this authority, an oral hearing may be held at the place of investigation. The authority conducting the procedure may schedule an oral hearing at a different location when so required for the purpose of reduction of costs and a more thorough, efficient or practicable conduct of the administrative matter.

#### **Article 149**

(1) An authorized official conducting the procedure shall confirm the presence of the summoned persons at the very beginning of the oral hearing, and also whether the summons were properly delivered to the absentees.

(2) Where any of the parties still not interrogated fails to appear at the oral hearing, while it is not confirmed whether the summons were properly delivered or not, the authorized official conducting the procedure shall adjourn the oral hearing, unless it was publicly announced in due time.

(3) Where the party after whose request the administrative procedure was initiated fails to appear at the oral hearing, although regularly summoned, whereas on the basis of an overall state of affairs it may be assumed that its request was withdrawn, the procedure shall be closed by the authority conducting the procedure. A special appeal against this decision may be filed. Where it may not be assumed that the party in question withdrew its request or if the procedure must be continued *ex officio* in the public interest, the authorized official shall, depending on the circumstances of the case, conduct the hearing without the person in question or it shall adjourn the hearing.

(4) Where the party against which the procedure was instituted fails to appear with no justification, although duly summoned, the authorized official conducting the procedure may conduct an oral hearing without the party in question, while the oral hearing may also be adjourned at the party's cost if so required for the purpose of regular resolution of the matter.

#### **Article 150**

(1) Where the present party, although warned about the consequences, fails to object to the actions undertaken at the oral hearing in the course of the oral hearing, it shall be

deemed as if the party in question has no objections in that respect. In case the party subsequently objects to the actions previously undertaken at the oral hearing, the authority deciding on the administrative matter shall take these objections into consideration if assessed that those may have an impact on the resolution of the matter in question regardless of the fact that those were not made after the oral hearing not to slow down the procedure.

(2) Where the party summoned by means of public announcement fails to appear at the oral hearing, while it objects to the actions undertaken at the oral hearing after the oral hearing, these objections shall be taken into consideration under the conditions referred to in paragraph 1 of this Article.

### **Article 151**

(1) Any relevant object of a special investigation procedure also needs to be considered and confirmed at an oral hearing.

(2) Where the object of a special investigation procedure cannot be considered during one oral hearing, the authorized official conducting the procedure shall adjourn the oral hearing and schedule its continuation as soon as possible. The authorized official shall undertake all requisite measures stipulated for the continuation of an oral hearing, while the present persons may be orally advised about such measures, and also informed about the time and place of continuation of the hearing. On the occasion of continuation of the oral hearing, the authorized official shall present in general the course of the oral hearing conducted that far.

(3) In the case of presentation of subsequently submitted evidence in a written form, no scheduling of an oral hearing shall be required, although the party shall be enabled to comment on the produced evidence.

## **B. Presentation of Evidence**

### **1. Common Provisions**

#### **Article 152**

(1) The facts on the basis of which a decision is to be issued (decisive facts) shall be ascertained by evidence.

(2) All the applicable sources to ascertain the state of affairs in a specific case may be used as evidence, such as documents, statements by witnesses, statements by parties, findings and opinions of experts and findings of an investigation.

### **Article 153**

(1) The authorized official conducting the procedure shall decide whether a certain fact needs to be ascertained or not, depending on whether the fact in question may have an impact on the resolution of the administrative matter or not. Evidence is, as a rule, presented after the matter that is factually disputable or needs to be proven is identified.

(2) No facts of common knowledge need to be proven.

(3) No facts the existence of which is assumed by law need to be proven, although non-existence of such facts may be proven, unless otherwise stipulated by law.

### **Article 154**

Where it is impossible to present evidence before the authority conducting the procedure, or where it is associated with too high costs or unreasonable loss of time, presentation of evidence or of specific pieces of evidence may be presented before an alternative authority.

### **Article 155**

When it is provided by a relevant regulation that an administrative matter may be resolved on the basis of facts or circumstances that are not completely ascertained or are ascertained only indirectly by evidence (facts and circumstances made probable), presentation of evidence to that end shall not be related to the provisions of this Law regarding the presentation of evidence.

### **Article 156**

(1) Where the authority deciding on the administrative matter has no adequate knowledge of the applicable law in a foreign country, it may obtain such information from the competent ministry for foreign affairs.

(2) The authority deciding on the administrative matter may request the party to present a public document issued by the competent foreign authority confirming the applicable law in the country whose authority issued the document. It is permitted to prove that a

foreign law is different than shown at the public hearing, unless otherwise stipulated by an international treaty.

## **2. Documents**

### **Article 157**

(1) A document issued in the form according to regulations by the competent state authority, an institution or another legal person on the basis of valid legal authorization (official document) shall constitute the proof of what is verified or ascertained by that document. That document may be adjusted for electronic data processing.

(2) Factual situation is also ascertained on the basis of data from electronic registers or records which are kept according to the law, unless the authority that decides on administrative matter has no ability to access the information system which contains these data. The data from such computerized records shall be considered to constitute an integral part of the document although not actually included into the document. The location of and the manner of access to such data shall be recorded in the minutes or an official record.

(3) In the process of presentation of evidence, a microfilm or electronic copy of an official document or a copy of such a copy shall have the same validity as the document referred to in paragraph 1 of this Article when this microfilm copy or a copy of that copy was issued by the competent authority legally empowered to do so.

(4) It shall be permitted to prove that the facts contained in the document, that is a microfilm or an electronic copy of the document or a copy of that copy, are untruly verified or that the very official document, that is a microfilm copy of that document or a copy of that copy, was drawn up irregularly.

(5) It shall be permitted to prove that a microfilm, that is an electronic copy of an official document or a copy of that copy, does not represent a true copy of the original.

### **Article 158**

An official document shall have an argumentative power unlimited by time if the legal facts (legal affairs) contained in the document shall be subject to no subsequent change. Where a subsequent change in legal or factual actions may affect the contents of an official document, such an official document shall have the argumentative power for a limited period of time. An authorized official may investigate whether the facts stated in an official document having the argumentative power for a limited period of time are still true.



### **Article 159**

Where an official document contains crossed out, scraped, deleted or inserted words, or any other external deficiencies, the authorized official conducting the procedure shall assess, taking into consideration all the circumstances, whether the argumentative power of the official document in question is thereby impaired and if so to what extent, or whether the argumentative power of the official document is completely gone, for the purpose of deciding on the administrative matter which is the subject of the administrative procedure.

### **Article 160**

(1) Documents serving as evidence shall be submitted by the parties or collected by the authority conducting the procedure. The party shall submit evidence in original form, as a microfilm or electronic copy of the document in question, as a copy of the copy or as a certified transcript, although it may also be submitted as an ordinary uncertified transcript.

When a party presents an official document as a certified transcript, the authorized official conducting the procedure may request the party to show the original document, and when a party presents an ordinary transcript of a document, the authorized official shall ascertain whether it is a true copy of its original. A microfilm or electronic copy of an official document or a copy of that copy duly issued by the competent authority shall have the argumentative value of an original document in the procedure, within the meaning of Article 157 paragraph 3 of this Law, for the purpose of deciding on the administrative matter which is the subject of the administrative procedure.

(2) Information delivered to the competent authority shall be treated as the submission of an official document where such information indicates the location of a relevant record in the computerized data base or records, provided that it is contained in official records or other records which are available to the authority.

(3) Where certain facts or circumstances were already established by the competent authority or at a public hearing (identity card, excerpts from the vital records etc.), the authority conducting the procedure shall take such facts and circumstances already established. Concerning the acquisition or forfeiture of rights, in the case of probability that such facts and circumstances subsequently changed, or when those need to be reconfirmed according to special regulations, the authorized official shall request the parties in question to submit special evidence regarding such facts and circumstances, or those shall be collected by the authority itself.

### **Article 161**

(1) An authorized official conducting the procedure may request the summoned party quoting a specific official document to bring such document to the hearing, provided that it is available or accessible.

(2) Where such a document is in possession of the opposing party, and where this party refuses to submit or present the document voluntarily, the authorized official conducting the procedure shall invite that party to submit or present the document at the hearing in order to enable the other party to declare itself in that respect.

(3) Where the party who was requested to submit or show an official document fails to proceed according to the summons, the authority conducting the procedure shall, taking into account all the circumstances of the case, assess possible impacts of this action on the resolution of the administrative matter in question. In that case, the authority may fine the concerned party not more than 50 euros per instance, which may be repeated until the party agrees to submit or present the document. The party may file an appeal against the decision on the fine, whereby the execution of the decision shall not be deferred.

#### **Article 162**

Where an official document to be used as evidence in the procedure is kept by an official authority, while the party who quoted that document was not able to obtain it, the authority conducting the procedure shall obtain the concerned document ex officio.

#### **Article 163**

(1) Where an official document is in the possession of a third person who refuses to present it voluntarily, the authority conducting the procedure shall issue a decision ordering that person to present the concerned official document at the hearing, so that the parties may declare themselves on the document.

(2) A third person may refuse to present an official documents for the same reasons for which a witness may refuse to testify.

(3) The third person who refuses to present an official document with no justifiable reason shall be subject to the same procedure as a witness who refuses to testify.

(4) The third person shall be entitled to file an appeal against a decision whereby it is ordered to present an official document, and also against a decision whereby it is fined due to the failure to present the document; the execution of the decision shall be deferred by the appeal.

(5) The party quoting an official document in the possession of a third party shall compensate the person in question for the incurred costs relating to the presentation of the official document.

#### **Article 164**

Documents issued by foreign authorities and having the validity of official documents in the country of issuance shall, under the conditions of reciprocity, have an equal argumentative power as domestic official documents, if translated and duly certified.

#### **Article 165**

(1) The competent authorities shall issue certificates and other documents (certificates, letters of confirmation, etc.) on the facts from the official records maintained by those authorities.

(2) Certificates and other documents on the facts that are kept on official records shall be issued in conformity with the data on the official records. Such certificates or other documents shall have validity of an official document.

(3) Certificates and other documents on facts kept on official records shall be issued following an oral request of the party, as a rule on the same day when the party requested issuance of a certificate or another document, and not later than within 8 days following that of the submission of the request, unless otherwise stipulated by the regulation establishing the official record.

(4) Where the authority refuses the request to issue a certificate or another document containing the facts on its officially maintained records, such authority shall issue the related special decision. Where the authority fails to issue the certificate or another document containing the facts from its officially maintained records or issue a special decision refusing the request and deliver it to the party within 8 days following that of the submission of the request, the party may file a complaint as if the request were rejected.

(5) Where the party, on the basis of evidence in its possession, believes that the data in the certificate or another document containing the facts maintained on the official records do not match the actual data kept on the record, the party may request this data to be corrected or a new certificate or another document to be issued. The authority shall issue a special decision, in case the party's request for the correction of data or issuance of a new certificate or document is refused. Where no action is taken within 8 days following that of the submission of the request for the correction of data or issuing of a new certificate, the party in question may file an appeal as if its request were rejected.

### **Article 166**

(1) Competent authorities shall also issue certificates or other documents regarding the facts that are not on their respective records, where so provided by law or other regulations. In that case, facts shall be established following the procedure set forth under this Title.

(2) A certificate or another documents issued in the manner provided by paragraph 1 of this Article shall not be binding for the authority to which it was submitted as evidence and which is to decide on an administrative matter. That authority may re-establish the facts stated in the certificate or another document.

(3) A certificate or another document shall be issued to a party, or a decision whereby the request is refused, not later than within 15 days of submission of the request; in an opposite case, the party in question may file an appeal as if its request were refused.

## **3. Witnesses**

### **Article 167**

(1) A witness may be any person who is capable to notice the fact to be confirmed by his/her testimony and who is able to communicate such an observation.

(2) A person who participates in the administrative procedure in the capacity of an authorized official shall not be admitted as a witness.

### **Article 168**

Any person who is summoned as a witness shall respond to the summons and testify, unless otherwise provided by this Law.

### **Article 169**

A person who by making a statement may violate his/her duty to keep a state, military or official secret shall not be interrogated as a witness until released from such duty by the competent authority.

### **Article 170**

(1) A witness may refuse to testify:

- 1) Where an answer to a particular question may result in an exposure to serious infamy, considerable material damage or criminal prosecution, either of the witness, his/her direct relative by blood, and in the collateral line to the third degree of kin conclusive, his/her marital or extramarital partner or relatives by marriage to the second degree of kin conclusive, even when the marriage or extramarital union ceased to exist, and also his/her guardian or protégé, adoptive parent or adoptive child;
- 2) Where an answer to a particular question may result in a violation of any obligation or the right to keep a secret from the domain of business, professional, scientific or art affairs;
- 3) About any matter confided to the witness by the party, as its proxy;
- 4) About any matter shared by the party or another person with the witness as a religious confessor.

(2) A witness may also be released from the duty to testify about other facts and circumstances, when supported by justifiable reasons. If required, the witness needs to make such reasons acceptable.

(3) A witness shall not refuse to testify on the grounds of danger of material damage in the following cases: legal transactions that he or she witnessed in person, as a clerk, registrar or agent; actions undertaken by the witness in person, as a legal predecessor or representative of one of the parties to the procedure, relating to a disputed relationship; and also any other action where it is his/her duty according to special regulations to submit a report or make a statement.

### **Article 171**

(1) Witnesses shall be interrogated individually, with no presence of other witnesses who shall be interrogated subsequently.

(2) An interrogated witness shall not leave the site, unless permitted to do so by the official conducting the procedure.

(3) The interrogated witness may be interrogate once again by the official conducting the procedure, while the witnesses whose statements do not mach may be brought face to face.

(4) A person who is not able to respond to the summons due to illness or bodily incapability shall be interrogated at his/her apartment or other place of residence.

### **Article 172**

(1) A witness shall be previously warned about his/her duty to speak the truth and keep nothing unsaid, that his/her statement may be made under oath, and also about the consequences of making a false statement.

(2) Personal particulars of the witnesses shall be taken in the following sequence: first and family name, profession, permanent residence or temporary residence, place of birth, age, marital status. Where required, a witness may also be interrogated about any circumstances relating to his/her trustworthiness as a witness in the subject matter, and especially relating to his/her relations with the parties to the procedure.

(3) The official conducting the procedure shall advise the witnesses about the questions that may not be answered as a part of the testimony. After that, the official shall ask the witness a question relating to the case and request a response, as much as the witness knows.

(4) A question posed to the witness shall not be formulated so as to indicate a response.

(5) A witness shall always be asked about the source of testimony.

### **Article 173**

(1) Where a witness does not speak the language of the procedure, the interrogation shall be conducted through an interpreter.

(2) Where a witness is deaf, questions shall be put in writing, while a mute witness shall be asked to write down the answers. Where it is not possible to conduct an interrogation in this manner, a person who is able to communicate with the witness shall be invited to appear as an interpreter.

### **Article 174**

(1) After hearing a witness, an official conducting the procedure may decide for the witness to make a statement under oath. An underage witness or someone unable to understand well enough the significance of an oath shall not be asked to take an oath.

(2) The oath shall be taken orally by pronouncing the following words: “I do hereby swear that I have told the truth about everything I have been asked here and that I have not concealed anything in that respect”.

(3) Mute witnesses who are able to read and write shall swear by affixing their signatures to the wording of the oath, while deaf witnesses shall read the wording of the oath. Where mute or deaf witnesses are unable to read and write, they shall take oaths through their interpreters respectively.

#### **Article 175**

(1) Where a witness who was duly summoned to appear fails to do so without justifying such action, or where the witness leaves the place of interrogation without permission or justified reason, the authority conducting the procedure may order for the witness to be brought in by force and bear the costs of such appearance, and the witness may also be fined not more than 50 euros per instance for the violation of procedural discipline.

(2) Where a witness appears but refuses to testify for no justifiable reason, although warned about the consequences of such a refusal, the witness may be fined for the violation referred to in paragraph 1 of this Article not more than 50.00 euros per instance. A decision on the fine shall be issued by the authorized official conducting the procedure, in agreement with the authorized official responsible for the administrative matter, and where another authority is asked to proceed in that matter – in agreement with the head of that authority or an official person who is in charge of deciding on similar matters.

(3) Where non-appearance of a witness is subsequently justified, the authorized official, shall make void the decision on the fine and pertaining costs. Where a witness subsequently agrees to testify, the authorized official may make void the decision on fine.

(4) An authorized official conducting the procedure may decide for the witness to cover the costs incurred by non-appearance or refusal to testify.

(5) A special complaint may be filed against the decision issued pursuant to this Article, relating to the payment of costs or a fine.

#### **4. Statement of the Party**

#### **Article 176**

(1) Where there is no immediate proof to establish a specific fact or where this fact may not be established on the basis of other evidence, an orally given statement by a party to the procedure may be taken as evidence to establish such fact. Statement given by a party may also be admitted as evidence in administrative matters of minor significance should a specific fact be ascertained by hearing a witness living far away from the head office of the competent authority, or if the collection of other evidence would interfere with the exercise of rights of a party to the procedure.

(2) Credibility of the statement given by a party shall be assessed according to the principle of interrogation of the party set forth in Article 8 of this Law.

(3) Prior to taking a statement from a party to the procedure, the authorized official conducting the procedure shall warn the party about the criminal and substantial responsibility of a party for making a false statement.

## **5. Experts**

### **Article 177**

Where some expert knowledge is necessary to establish or assess a fact of relevance in the process of deciding on an administrative matter, and where the authorized official conducting the procedure is in possession of no such knowledge, the evidence shall be presented by expert investigation.

### **Article 178**

(1) Where the presentation of evidence by expert investigation would be unreasonably costly compared to the significance or value of the case, such administrative matter shall be resolved on the basis of other evidence.

(2) In the case referred to in paragraph 1 of this Article, expert investigation shall be conducted if so requested by a party to the procedure and if the party agrees to bear the costs of such an expert investigation, provided that a prolongation of the procedure would incur no damage to the public interest and the interests of other persons.

### **Article 179**

(1) An authorized official may, for the purpose of presentation of evidence by expert investigation and ex officio or after the proposal of a party to the procedure, appoint an



expert, and where assessed that an expert investigation is complex, two or more experts may be appointed.

(2) Experts shall be persons with expert knowledge and particularly those persons who are authorized to give opinion on issues from a specific domain.

(3) The party shall, as a rule, be previously interrogated about the expert's personality.

(4) A person who cannot be a witness shall not be appointed an expert.

### **Article 180**

(1) Any person with adequate qualifications shall accept to exercise duty of an expert, unless released from this duty by the authorized official conducting the procedure due to justified reasons such as lack of time due to engagement in other cases requiring expert opinion, other activities, and similar.

(2) Head of a state authority, executive of an institution or manager of a legal person, entrepreneur or other natural person who the expert works for may also request the expert to be released from the duty of expert investigation.

### **Article 181**

(1) An expert may refuse to provide an expert opinion for the same reasons due to which a witness may refuse to testify.

(2) An employed person shall be freed from the duty of expert investigation when released from such duty under special regulations.

### **Article 182**

(1) Regulations on disqualification of persons acting in an official capacity shall apply accordingly also to the disqualification of experts.

(2) A party may request disqualification of an expert if the circumstances on the basis of which the professional knowledge of an expert is doubted are proven reasonable.

(3) An authorized official conducting the procedure shall decide about disqualification of an expert by issuing a decision.

### **Article 183**

(1) Prior to the commencement of an expert investigation, the expert shall be warned about his/her duty to consider the subject matter of expert investigation carefully and state precisely all observations made and findings established in his expert report, and also to present an opinion supported by an explanation in an impartial manner and according to the applicable rules of science and expertise.

(2) An authorized official conducting the procedure shall advise the expert regarding the facts that need to be investigated and reported on.

(3) Following the presentation of expert findings and opinion, an authorized official conducting the procedure and the parties to the procedure may interrogate the expert and request explanations relating to the presented findings and opinion.

(4) Provisions of Article 172 of this Law shall apply accordingly to the hearing of experts.

(5) No expert shall take oath.

### **Article 184**

(1) An expert may also be ordered to conduct expert investigation out of the place of oral hearing. In that case, the expert may be requested to explain the obtained written findings and opinion at an oral hearing.

(2) Where more experts are appointed, they may jointly present their respective findings and opinions.

### **Article 185**

(1) Where the expert findings and opinion are not clear or complete, where the findings and opinions of experts are essentially different, where an opinions is not sufficiently explained, where a doubt in the accuracy of the provided opinion is well grounded, and where it is not possible to remedy such deficiencies by rehearing the experts, an expert investigation shall be repeated involving the same or other experts, whereas an expert investigation conducted by a scientific or a professional organization may also be requested.

(2) An expert investigation by a scientific or a professional organization may also be requested when, due to the complexity of a case or the need to conduct an analysis, it may be reasonably anticipated that more accurate findings and opinions shall be obtained in such a manner.

### **Article 186**

(1) Where an expert who was duly summoned fails to appear without justified reasons, or appears but refuses to provide an expert opinion, or when an expert report is not submitted within the specified time limit, the expert may be fined not more than 50 euros per instance for violating the procedural discipline. In case of any costs incurred in the course of the procedure due to an unjustified non-appearance of the expert, and a refusal to give an expert opinion or present written findings and opinion, such costs may be decided to be borne by the expert.

(2) A decision on the fine or payment of costs shall be issued by the authorized official conducting the procedure, in agreement with an authorized official responsible for deciding on the administrative matter, and when another authority is requested to proceed in that matter – in agreement with the official of that authority or a person acting in an official capacity in charge of deciding on similar matters.

(3) Where non-appearance of an expert or a failure to submit an expert report in a timely manner is subsequently justified, an authorized official conducting the procedure shall cancel the decision on the fine or payment of costs, and where an expert subsequently accepts to conduct an expert investigation, the authorized official may cancel the decision on fine.

(4) A special complaint may be filed against the decision on payment of costs or fine pursuant to paragraph 1 or 2 of this Article.

## **6. Interpreters**

### **Article 187**

Provisions of this law related to experts shall apply accordingly to interpreters.

## **7. Investigation**

### **Article 188**

An investigation shall be conducted when the official conducting the procedure needs to have an immediate insight for the purpose of establishment of particular facts or clarification of significant circumstances.

#### **Article 189**

(1) The parties shall be entitled to participate in the investigation. An authorized official conducting the procedure shall determine who, in addition to the parties to the procedure, shall attend the investigation.

(2) Investigation may also be participated by experts.

#### **Article 190**

Investigation relating to an item that may be easily brought to the place of the procedure shall be conducted at the place of procedure, and in an opposite case the investigation shall be conducted where the related item is located.

#### **Article 191**

(1) The owner or holder of items, premises or land to be examined, of the property where the objects containing items subject to investigation are located or of the property that needs to be entered shall allow carrying out of an investigation.

(2) Where the owner or holder of property rights fails to allow an investigation to be carried out, the provisions of this Law regulating refusal of testimony shall be applied accordingly.

(3) The applicable measures against a witness who refuses to testify (paragraphs 2 and 4 of Article 175), shall be applied accordingly against an owner or holder of property rights who unreasonably prevents the conduct of an investigation. A special appeal may be filed against the decision whereby such measures are pronounced.

(4) Damage incurred while conducting an investigation shall be included into the costs of the procedure, while the owner or holder of property rights shall be compensated accordingly. The applicable decision shall be issued by the authority conducting the procedure. A special appeal may be filed against this decision. No administrative procedure may be instituted against the decision following an appeal, while the dissatisfied party may file a claim for damage compensation before the competent court.

## **Article 192**

The authorized official conducting an investigation shall ensure that no abuse of the investigation occurs and that no business, professional, scientific or art confidential information is violated.

## **8. Collection of Evidence**

### **Article 193**

(1) In case of reasonable fear that it shall not be possible or that it shall be difficult to collect particular evidence afterwards, such evidence may be collected at any stage of the procedure, even before the procedure is instituted.

(2) The collection of evidence shall be conducted ex officio, or after the proposal of a party to the procedure, that is of a holder of legal interest.

### **Article 194**

(1) The authority conducting the procedure shall be responsible for the collection of evidence.

(2) The authority in whose territory the items to be examined or persons to be interrogated are located shall be responsible for the collection of evidence..

### **Article 195**

(1) A special decision on the collection of evidence shall be issued.

(2) A special appeal may be filed against the decision whereby a proposal for the collection of evidence is refused. The administrative procedure shall not be halted by such an appeal .

## **Title XII**

## **DECISION**

## **1. Issuing Authority**

### **Article 196**

- (1) On the basis of decisive facts established in the course of the procedure, the competent decision-making authority shall issue a decision on the administrative matter which is the object of the procedure.
- (2) Where a decision on the administrative matter is made by a collective authority, such authority shall issue a decision only in the presence of the majority of its members and by majority vote, unless a qualified majority is stipulated by law or other regulations.

### **Article 197**

When it is stipulated by law or other regulations that a decision on a particular matter shall be issued by two or more authorities, they shall decide on that matter respectively. The authorities shall mutually agree on which one of them shall issue the decision, while such decision shall contain a reference to the acts issued by the other authority.

### **Article 198**

- (1) Where it is stipulated by law or other regulations that a decision may be issued by one authority with prior consent of another authority, the decision shall be issued following an approval of the latter authority. The authority responsible for the issuing of a decision shall include in its decision a reference to the document granting the consent of the other authority.
- (2) The provision from paragraph 2 of this Article shall be valid also when stipulated by law or other regulations that a decision shall be issued by one authority following an official confirmation or approval of another authority. .
- (5) The authority whose consent or opinion is required in order to issue a decision shall deliver its consent or opinion within one month following the day of the request, unless otherwise stipulated by special regulations. In case this authority fails to give or deny its consent to the authority responsible for issuing the decision within the given deadline, such consent shall be deemed given and if it fails to provide an opinion, the competent authority may issue the decision without obtaining such opinion, unless otherwise stipulated by special regulations.

### **Article 199**

Where the person authorized to conduct the procedure is not authorized to issue a decision, this person shall submit a draft decision to the authority responsible for the issuing of a decision. The draft decision shall be initialed by such authorized person..

## **2. Form and Components of a Decision**

### **Article 200**

- (1) Each decision shall have a reference number as such. Exceptionally, it may be stipulated by special regulations that a decision may be renamed.
- (2) A decision shall be issued in writing. Exceptionally, in cases stipulated by this Law, a decision may be orally declared.
- (3) A written decision shall consist the following parts: an introduction; disposition (statement); exposition; instructions on legal remedy; title of the issuing authority; number; date of issue; signature of the authorized person; and stamp of the issuing authority. If the decision is issued in electronic form it shall have an encrypted electronic signature. In particular cases stipulated by law or other regulations, a decision may not contain some of those parts. If the decision is processed mechanically, it may contain a facsimile instead of a signature and a stamp.
- (4) Where a decision is announced verbally, it shall also be issued in writing unless otherwise stipulated by law or other regulations. Such written decision shall correspond in all aspects to the previously pronounced verbal decision.
- (5) Original decision or a certified copy of the decision shall be delivered to the party.
- (6) Written decision is considered issued when delivered to the party (in case of several parties, when it is delivered to the last one in a line of parties), whereas a verbal decision is considered pronounced when pronounced to the party in the language it can understand.

### **Article 201**

- (1) The introduction of a decision shall contain the following: the title of the issuing authority; regulation on the competence of the authority; name of the party and its legal representative or proxy, if applicable; and a brief description of the subject matter of the procedure.
- (2) Where a decision is issued by two or more authorities, or where it is issued following the consent of two or more authorities, this shall be indicated in the introduction; where a decision is issued by a collective authority, the introduction shall include the date of its meeting where the subject matter was resolved.

### **Article 202**

- (1) The disposition shall include decisions on the matter of procedure as well as on all requests of interested parties that have not been separately resolved in the course of procedure.
- (2) The disposition may specify a condition that needs to be fulfilled before the rights granted by the decision are implemented.
- (3) Where the execution of a particular action is requested by the decision, a time limit for the execution of such action shall be specified in the disposition.
- (4) Where no an appeal may delay the execution of a decision, this shall be indicated in the disposition.
- (5) Disposition may also include a decision on the settlement of legal costs, if applicable, specifying the amount, the party responsible to cover such costs, who shall receive the payment and within which time limit. If no decision on the costs is provided under the disposition, it shall state that a separate decision regarding this matter shall be issued.
- (6) Disposition shall be brief and specific, and if necessary it may be presented in separate points.

### **Article 203**

- (1) In simple administrative matters where only one party is involved as well as in simple administrative matters where two or more parties are involved but none of them objects to the request made and such request is accepted, exposition of the decision may contain only a brief description of the party's request and a reference to material regulations based on which the administrative matter is resolved. In such cases the decision may be issued on the applicable form.
- (2) In other administrative matters, exposition of decision shall contain the following: a brief statement of the parties' requests; established facts and, if the established facts are based on data from the electronic register or records, note about it, and if necessary reasons that were decisive for an assessment of evidence,; reasons why particular requests of the parties were not considered; material regulations and reason which, considering the factual situation, lead to the decision as presented in the disposition. Where the execution of a decision may not be deferred by an appeal, a reference to the related regulation shall be contained in the exposition. Decisions against which no special appeal may be filed shall be also justified in the exposition of a decision.
- (3) In cases where the competent authority is authorized to decide upon an administrative matter at its discretion, the exposition shall, in addition to data listed in paragraph 2 of this Article, refer to the applicable regulation and explain the reasons that guided the decision. The authority shall also state in the exposition the extent to which it used



discretionary power and the intended objective.

#### **Article 204**

- (1) In the instructions on legal remedy the party shall be advised if an appeal may be filed against the decision or an administrative or other procedure instituted in front of the court.
- (2) Where an appeal may be filed against the decision, the instruction shall state the authority to which such appeal may be submitted, the time limit for filing an appeal, number of copies and fees payable for submission, and it shall also state that the appeal may also be filed against the record.
- (3) In cases where an administrative or other legal procedure may be instituted against the decision, the instruction shall state the court to which such a complaint should be submitted as well as the number of copies and deadline for submission.
- (4) In cases where the decision contains incorrect instructions, the party may act in accordance with relevant regulations or in accordance with the instructions. The party that acts in accordance with incorrect instructions may suffer no negative consequences of such action.
- (5) Where the decision contains no instructions or contains incomplete instructions, the party may act in accordance with relevant regulations and it may also request the authority to amend the decision whereas the deadline for such request shall be eight days following the date of delivery of the decision.
- (6) Where an appeal may be filed against the decision but the party is incorrectly instructed that no appeal may be filed against such decision or that no administrative procedure may be instituted against the decision, the deadline for filing an appeal shall start from the date of delivery of the court decision refusing such appeal as illegitimate, unless the party previously filed an appeal to the competent authority.
- (7) Where no appeal may be filed against the decision, while the party was incorrectly instructed that an appeal could be filed, and therefore filed an appeal, whereby it missed the deadline for instituting an administrative procedure, the deadline for instituting administrative procedure shall start from the date of delivery of the decision refusing the appeal, unless the party has already requested the institution of an administrative procedure.
- (8) Instructions on legal remedy, as a separate integral part of the decision, shall follow the exposition, on the left hand side.

### **Article 205**

- (1) The decision shall be signed by the authorized official who issued the decision.
- (2) Decision issued by a collective authority shall be signed by the chairperson unless otherwise stipulated by law or other regulations.
- (3) Where a collective authority issues a complete decision, a certified copy of the decision shall be issued to all parties respectively, and in cases where an administrative matter was resolved in the form of a conclusion, the decision shall be drafted in accordance with such conclusion. A certified copy of the decision shall be delivered to all parties respectively.

### **Article 206**

- (1) Where an administrative matter involves a number of persons, all of whom are known to the authority, a single decision may be issued for all persons whereas the names of all those persons shall be stated in the disposition, while the reasons relating to each one of them shall be stated in the exposition. Such decision shall be delivered to each person except in the cases defined in Article 80 of this Law.
- (2) If an administrative matter involves a number of persons not known to the authority, a single decision may be issued for all persons; this decision shall contain information clearly identifying the persons that the decision relates to (for example: residents or owners of real estate in a particular street and similar).

### **Article 207**

- (1) In administrative matters of lesser importance where the party's request is granted and the public interest or third party's interest remain unaffected by that, the decision may contain only a disposition in the form of a record in the documents of the case provided that reasons for such action are evident and that there are no other relevant regulations.
- (2) Decision referred to in paragraph 1 of this Article, as a rule, shall be verbally pronounced and a written decision shall be issued following the party's request.
- (3) The decision referred to in paragraph 1 of this Article, as a rule, shall contain no exposition unless so required by nature of the matter. Such decision may be issued on an official form.

### **Article 208**

- (1) Where extremely urgent measures are undertaken for the maintenance of public order, peace and safety, or in order to eliminate a direct threat to human lives and property, the authority may issue a verbal decision.
- (2) Authority that issues the verbal decision referred to in paragraph 1 of this Article may order execution of such decision without any delay.
- (3) Authority that issues verbal decision shall issue such decision in written form after the party's request and not later than within 8 days following that of the submission of such request. Such request may be submitted within two months as of the date of issuing of the verbal decision.

### **3. Partial, Supplementary and Temporary Decision**

#### **Article 209**

- (1) In cases where an administrative matter involves deciding on a number of issues whereas only some of them are ready to be considered for decision making and when issuing a separate decision regarding these issues is proven to serve the purpose, the authority may issue a decision related to those issues only (partial decision).
- (2) Partial decision shall be considered independent in terms of legal remedies and execution.

#### **Article 210**

- (1) Where the authority fails to issue a decision relating to all issues covered by the procedure, the authority may, after the party's proposal or ex officio, issue a separate decision (supplementary decision) relating to the issues still pending after the previous decision. If the party's proposal for issuing a supplementary decision is rejected, a special appeal against such decision may be filed.
- (2) Where it is considered that a matter has been sufficiently addressed, a supplementary decision may be issued without re-conducting a separate examination procedure
- (3) Supplementary decision shall be considered independent in terms of legal remedies and execution.

## **Article 211**

- (1) Where indicated by the circumstances that there is a need to issue a decision for the purpose of temporary settlement of disputable relations or matters prior to the completion of a procedure, such decision shall be issued based on information available at the moment of its issuing. It shall be clearly indicated in the decision that it is considered to be a temporary decision.
- (2) As a condition for issuing a temporary decision based on the proposal of a party, the authority may request provision of guaranties for damages that may be caused to the opposite party by execution of such decision in case that the primary request of the party proposing a temporary decision is not granted in the end.
- (3) Decision on principle matter issued upon completion of the procedure shall nullify the temporary decision issued in the course of the procedure.
- (4) Temporary decision is considered independent in terms of legal remedies and execution

## **4. Deadline for Issuing a Decision**

### **Article 212**

- (1) Where the procedure is instituted after the request of a party or ex officio, if that proves to be in the interest of the party, and where there is no need to conduct a separate examining procedure and there are no reasons whatsoever that prevent issuing of a decision without delay (deciding on prior issue or other), the authority shall issue a decision and deliver it to the party as soon as possible and not later than 20 days after the submission of proper request, that is one month from the date of commencement of the procedure ex officio, unless a shorter deadline is stipulated by law. In other cases where the procedure is instituted after the request of a party, or when it is instituted ex officio if that proves to be in the party's interest, the competent authority shall issue a decision and deliver it to the party not later than one month, unless a shorter deadline is stipulated by law.
- (2) Where the authority whose decision is subject to an appeal fails to issue a decision and deliver it to the party within the anticipated deadline, the party shall have the right to lodge an appeal on the presumption that its request was refused. In case that no appeal is allowed, the party may institute an administrative dispute before the competent court, in accordance with the law regulating administrative disputes.

### **Article 212a**

(1) In certain administrative areas related to performing economic of service activities, when it is required by law, party's request shall be considered adopted if an authority, in proceedings initiated by the accurate request of the party for which decision-making it has jurisdiction, does not make a decision within the prescribed period.

(2) Economic, i.e. service activities, as defined in paragraph 1 of this Article, are activities that are prescribed as economic i.e. service activities by the regulations on classification of activities.

(3) The party referred to in paragraph 1 of this Article shall be entitled to require from the authority to issue a decision stating that the request of the party is adopted. The authority is obliged to issue a decision within eight days from the date of lodging the request.

(4) The decision referred to in paragraph 3 of this Article can not be passed if its passing is contrary to public interest laid down by the law.

(5) If the authority fails to pass decision referred to in paragraph 3 of this section within the prescribed period and does not submit it to the party, the party has the right to appeal or to initiate administrative dispute in accordance with Article 212 paragraph 2 of this Law.

## **5. Correction of Mistakes in Decision**

### **Article 213**

- (1) The authority that issued a decision, that is the official who signed or issued a decision, may at any time correct the mistakes in names or figures, text or calculations, as well as other obvious incorrect items in the decision or its certified copies. In cases where the decision is to the benefit of the party, correction of mistakes shall have legal effect from the same date as the decision containing the correction. In case that the decision is not to the benefit of the party, correction of mistakes shall have legal power from the date of issuance and delivery of conclusion of correction.
- (2) A separate conclusion concerning the correction shall be issued. A notice of correction shall be recorded on the original decision and, when possible, on all certified copies delivered to parties. The notice shall be signed by the same authorized person that signed the conclusion of correction.
- (3) A special appeal may be filed against the conclusion correcting a previously issued decision or whereby the request for correction is refused.

## **6. Final Character and Entrance into Effect of Decision**

#### **Article 214**

- (1) Decision is considered to be final when it cannot be disputed by an appeal. When the decision becomes final and enters into effect, the party may claim its rights unless otherwise stipulated by law.

#### **Article 215**

- (1) Legally binding decision is a decision that cannot be disputed through an administrative procedure or any other legal procedure and as such grants particular rights or legal interests to the party or imposes certain obligations on the party.
- (2) In cases where an appeal, i.e. complaint is lodged against particular parts of disposition in a decision in order to dispute such parts, the remaining parts of disposition that are not subject to an appeal or complaint and are not dependable on the other parts of disposition shall become legally binding upon fulfilment of the conditions referred to in paragraph 1 of this Article.
- (3) Where a decision is disputed through administrative dispute or other court procedure but is not nullified or overruled by a court decision, such decision shall become legally binding when the court decision on legality of the decision becomes legally binding.
- (4) Legally binding decision may be annulled, overruled or amended only by virtue of extraordinary legal remedies defined by law.
- (5) Where a decision is a matter of public interest, a certificate of finality, that is legal enforceability of such decision shall be issued by the authority conducting the procedure, after the request of the party or public authority.
- (6) In accordance with this law it is allowed to correct a certificate of finality or legal enforceability if it has been issued in an incorrect manner.

#### **Title XIII**

#### **CONCLUSION**

#### **Article 216**

- (1) The conclusion shall define issues relating to the procedure.

- (2) The conclusion shall also define issues that arise as side questions related to conduction of the procedure and are not covered by the decision.

#### **Article 217**

- (1) The conclusion shall be issued by an authorized official competent for conducting a particular action of the procedure in the course of which that particular issue arises, unless otherwise stipulated by this or another law.
- (2) Where the conclusion orders performance of a particular action, deadline for such action shall be determined.
- (3) The conclusion shall be verbally communicated to interested parties and it shall be issued in writing after the request of the party having the right to file a special appeal against the conclusion as well as in cases where there is a possibility of immediate execution of the conclusion.

#### **Article 218**

- (1) A special appeal may be filed against the conclusion only in cases clearly defined by law. Such a conclusion shall be justified and shall contain instructions on appeals.
- (2) An appeal against a conclusion is lodged within the same deadline, in the same manner and to the same authority as the appeal against a decision.
- (3) Conclusion against which no separate appeal is allowed may be nullified by an appeal against the decision lodged by interested parties and other persons having legal interest except in cases where appeal against conclusion is not permitted by this Law.
- (4) No appeal shall delay the execution of a conclusion, unless otherwise stipulated by law or the conclusion itself.

### **PART THREE**

#### **LEGAL REMEDIES**

#### **Title XIV**

## **APPEAL**

### **1. Right to Lodge an Appeal**

#### **Article 219**

- (1) A party may lodge an appeal against the first instance decision.
- (2) An appeal may also be lodged by a person who was not given the opportunity to participate in the procedure of first instance provided that the decision affects his or her rights and legal interests (interested person). If such person requests that the decision be delivered to him or her within the deadline approved for filing an appeal by a party, such person has the right to file an appeal within the deadline for issuing a decision on party's appeal.
- (3) State prosecutor and other state authorities, provided that they are authorized by law, may lodge an appeal against a decision if it represents violation of law and is to the benefit of natural or legal person at the expense of public interest.

#### **Article 220**

- (1) An appeal may be lodged against a first instance decision issued by a ministry only in cases defined by the law and in cases of matters for which no administrative dispute may be instituted.
- (2) An appeal may be lodged against a first instance decision issued by an administrative authority, local administration authority, institution or other legal persons holding public authority.
- (3) No appeal may be lodged against a decision issued by the Government.

### **2. Competence of Authorities in Decision-Making on Appeals**

#### **Article 221**

- (1) In cases where it is permitted to lodge an appeal against ministry's and administrative authority's first instance decision issued by an organizational unit established for the performance of certain administrative tasks, such appeal shall be decided on by the respective ministry or another administrative authority.
- (2) In case of an appeal against first instance decision issued by administrative



## **Article 222**

- (1) An appeal against a decision issued in accordance with Article 197 or Article 198 of this law shall be decided on by an authority competent for decision-making on appeals against decisions of the authority that decided on (Article 197) or issued (Article 198) the decision in dispute, unless special regulations stipulate that a different authority is competent to decide on the appeal.
- (2) In cases defined in paragraph 1 of this Article a second instance authority may only nullify the decision in dispute but is not permitted to amend such decision.
- (3) In case that the authority competent to decide on the appeal in accordance with paragraph 1 of this Article consents, approves or certifies the first instance decision, the appeal shall be decided by an authority defined by law and, if such authority is not defined, the first instance decision shall be considered final.

## **Article 223**

In cases of appeals against decisions issued by institutions or other legal person having public authority where no competent second instance authority or supervisory authority is defined, the appeal shall be decided on by the authority competent for the respective administrative area.

### **3. Deadline for Appeal**

## **Article 224**

An appeal shall be lodged within 15 days from the date of delivery of the decision, unless otherwise stipulated by law.

## **Article 225**

- (1) The decision shall not be executed during the deadline for lodging an appeal. In cases where the appeal is lodged in a proper manner, the decision shall not be executed until the decision on appeal has been delivered to the party.

- (2) Under special circumstances, provided that it is permitted by law, the decision may be executed during the deadline for lodging an appeal as well as after the submission of an appeal in cases of need for urgent measures (Article 133 paragraph 1 point 4) or in cases where delay of execution might cause irremediable damages to a party. In the latter case, it is permitted to request adequate guarantees from the party having interest in the execution and make provision of such guarantees a condition for execution.

#### **4. Reasons for Disputing Decisions by Appeal**

##### **Article 226**

(1) A decision may be disputed by an appeal in case of:

- 1) Violation of rules of procedure,
- 2) Incomplete or incorrect establishment of facts,
- 3) Incorrect application of material law.

(2) Major violations of rules for administrative procedure exist where the:

- 1) Decision is issued by a truly incompetent authority
- 2) Person who was supposed to participate as a party or interested person, was not given the opportunity to participate in the procedure;
- 3) Party or interested person was not given the opportunity to make a declaration on all facts and circumstances essential to issuing a decision;
- 4) Party was not represented by a legal representative, that is if the authorized representative did not hold a power of attorney;
- 5) Provisions of this law related to the language were violated;
- 6) Person who, by this law, should have been exempted from participating in this procedure or decision-making process or a person that does not meet requirements for conducting a procedure or issuing decision did take part in the process;
- 7) Disposition of a decision is contradictory to its exposition, thus making it impossible to determine legality in the procedure of appeal.

#### **5. Contents of Appeal**

##### **Article 227**

- (1) An appeal shall state the decision against which it is lodged and cite the title of the authority that issued the decision as well as the number and the date of the decision. It is sufficient that the appellant states the reasons for lodging an appeal that is in which way he or she is unsatisfied with the decision; an appellant is not required to explain the appeal in detail.

- (2) The appeal may present new facts and new evidence, but the appellant is required to justify the reasons for not being able to present such facts and evidence during the first instance procedure.
- (3) In case where the appeal presents new facts and evidence and the procedure involves two or more parties that have opposed interests, the appeal shall be submitted in a number of copies corresponding to the number of all parties involved. In that case the authority shall deliver a copy to each party respectively and identify a deadline for all parties to declare new facts and evidence. This deadline shall be not less than 8 and not more than 15 days from the date of delivery.

## **6. Submission of Appeal**

### **Article 228**

- (1) An appeal shall be submitted by hand or mail to the authority that issued the first instance decision.
- (2) In case that an appeal is submitted or sent directly to the second instance authority, the second instance authority shall immediately forward it to first instance authority.
- (3) The appeal submitted or sent directly to the second instance authority shall be considered as submitted to the first instance authority in terms of deadline.

## **7. Action of the First Instance Authority on Appeal**

### **Article 229**

- (1) First instance authority shall examine the appeal to determine that it is allowed and that it is lodged in a timely manner and by an authorized person.
- (2) The appeal that is not permitted and is lodged untimely and by an authorized person shall be rejected by the first instance authority by a conclusion.
- (3) In case that the appeal is delivered or sent directly to a second instance authority, the first instance authority shall decide whether it is submitted in a timely manner based on the date of delivery or sending to the second instance authority.

- (4) A special appeal may be lodged against the conclusion rejecting an appeal in accordance with paragraph 2 of this Article. In case that the authority competent for deciding on the appeal finds that this special appeal is legitimate, it shall also decide on the previously rejected appeal at the same time.

#### **Article 230**

- (1) where the authority, which has issued the first instance decision finds that there are grounds for an appeal, and it is not necessary to execute new examining procedure; it may solve the matter differently and issue a new decision that nullifies the previous one.
- (2) The party has the right of appeal against the decision from paragraph 1 of this Article.

#### **Article 231**

- (1) In case that the authority which issued the first instance decision finds when contesting the appeal that the executed procedure was incomplete and that this could have had an influence on deciding on the administrative matter, it may amend the procedure in compliance with the provisions of this Law.
- (2) The authority which has issued the first instance decision shall also amend the procedure if the appellant presents facts and evidence in the appeal which could have influenced a different resolution of an administrative matter provided that the appellant should have been given the opportunity to participate in the procedure prior to issuing the decision and such possibility was not granted to him or her or it was granted but he or she failed to use it which was justified in his or her appeal.
- (3) According to the result of the additional procedure, the authority that issued first instance decision may, within the limits of a party's demand, decide on the administrative matter differently and replace it by new decision which nullifies the previous one.
- (4) A party has the right of appeal against the decision from paragraph 3 of this Article.

#### **Article 232**

When the decision is issued without prior special examining procedure in case where it was compulsory, or when the decision is issued pursuant to points 1, 2 and 3 of paragraph 1 of Article 133 of this Law and the party was not granted a possibility to declare itself on the facts and circumstances important for issuing the decision, the party may request execution of a special examining procedure in its appeal, that is it may request to be given a possibility to declare itself on those facts and circumstances in

which case such procedure shall be executed by the first instance authority. Upon executing the procedure, the first instance authority may acknowledge the request from the appeal and issue a new decision.

### **Article 233**

- (1) When an authority which issued the first instance decision finds that the submitted appeal is permitted and that it is lodged in a timely manner and by an authorized person, but it fails to replace the decision against which the appeal was lodged with a new decision, it shall, without any delay and not later than 8 days from the day the appeal is submitted, forward the appeal to the authority competent for deciding on appeals.
- (2) The first instance authority shall enclose all documents relating to the matter of appeal pursuant to paragraph 1 of this Article.
- (3) Where the first instance authority fails to submit the documents related to the matter to the second instance authority within the period defined in paragraph 1 of this Article, the second instance authority shall request the first instance authority to submit all related documents and shall set a deadline respectively. The second instance authority may decide on the administrative matter even without the related documents.

## **8. Second Instance Authority Competent for Deciding on Appeals**

### **Article 234**

- (1) If an appeal is not permitted, untimely or lodged by an unauthorized person, and the first instance authority fails to reject it based on those grounds, it shall be rejected by the authority competent for deciding on the appeals.
- (2) If the second instance authority does not reject an appeal, it shall proceed with issuing a decision on the matter.
- (3) The second instance authority may overrule an appeal, nullify the decision as a whole or in part, or amend it.

### **Article 235**

- (1) The second instance authority shall refuse an appeal when it determines that the procedure prior to the decision was executed correctly and in accordance with the law whereas the appeal is devoid of merit.

- (2) The second instance authority shall also refuse an appeal when it finds that there were shortcomings in the first instance procedures but that such shortcomings could not have had influence on issuing a decision on the administrative matter, and that they represented no serious violation of the rules of procedure from Article 226 of this Law.
- (3) When the second instance authority finds that first instance decision is based on the provisions of the law but for reasons other than the ones stated in the decision, it shall state such reasons in its decision, and refuse the appeal.

### **Article 236**

- (1) If a second instance authority determines that there were irregularities in the first instance procedure that made the decision null and void, it shall declare such a decision null and void, as well as the part of the procedure conducted after the irregularity was determined.
- (2) If the second instance authority determines that the first instance decision was issued by a truly incompetent authority, it shall nullify that decision ex officio and forward the matter to the competent authority.
- (3) If the second instance authority determines that there were serious violations of rules of procedure from Article 226 paragraph 2 of this Law, it shall nullify that decision based on the appeal, that is ex officio, and return the matter to the first instance authority for retrial, except in the case defined by Article 226 paragraph 2 point 3 in which it shall decide on the matter by itself and do so by removing all serious violations of the rules of procedure.

### **Article 237**

- (1) When the second instance authority finds that the first instance procedure did not follow the rules of procedure that applied on issuing of a decision on the matter but that there were no serious violations of rules of procedure from Article 226 of this Law, it shall amend the procedure and remove the stated shortcomings by itself or through the first instance authority or another authority requested to intervene. If the second instance authority finds that, based on the facts stated in the amended procedure, there is a need to issue a decision on the administrative matter different from the one issued by the first instance authority, the second instance authority shall nullify the first instance decision by its own decision and resolve the administrative matter by itself.
- (2) If the second instance authority finds that the first instance authority can remove the shortcomings of the first instance procedure in a faster and more economical manner, it shall nullify the first instance decision and return the case to the first instance authority

### **Article 238**

- (1) If the second instance authority finds that the first instance decision erroneously assessed the evidence, that it drew wrong conclusions out of the facts in establishing the facts related to the subject matter, that the legal regulations for issuing a decision on the administrative matter have been incorrectly applied, or if it finds that based on the free assessment a different decision should have been made, it shall nullify the first instance decision and replace it with its decision thus resolving the matter by itself.
- (2) If the second instance authority finds that the decision was issued in a correct manner with respect to the established facts and also with respect to the provisions of the law, but that the same goal can be achieved by other means favourable for the party, it shall amend the first instance decision in that sense.

### **Article 239**

- (1) When deciding on an appeal, the second instance authority may change the first instance decision in favour of the appellant not based on the request made in the appeal but within the requests set forth in the first instance procedure provided that this does not violate the right of a third person.
- (2) The second instance authority may change the first instance decision to the appellant's disadvantage but only for reasons defined in Article 257, 259 and 260 of this Law.

### **Article 240**

- (1) Provisions of this law that relate to the first instance decision shall also apply accordingly to the decisions issued on an appeal.
- (2) The exposition of the second instance decision shall address all allegations presented in the appeal.

## **9. Appeal when No First Instance Decision was Issued**

## **Article 241**

- (1) If an appeal is lodged by a party because the first instance authority has not issued a decision within the prescribed period of time (Article 212 paragraph 2), the second instance authority shall request the first instance authority to state the reasons for which it failed to issue a decision in the prescribed period. If the second instance authority finds that the decision was not issued due to justified reasons, or due to a party's failure to act, it shall set a deadline of not more than 20 days for issuance of a decision by the first instance authority. If the reasons for not issuing the decision within the prescribed time limit are not justified, the second instance authority shall request the first instance authority to submit to it all documents relevant to the subject matter.
  
- (2) If the second instance authority can decide on the administrative matter according to the relevant documents, it shall issue its decision, and if it cannot do so, it shall conduct the procedure by itself and issue its own decision on the administrative matter. In exceptional circumstances, if the second instance authority finds that a first instance authority would conduct the procedure in a faster and more economical manner, it shall order the first instance authority to conduct the procedure and submit all the acquired data to the second instance authority within the given deadline, after which the second instance authority shall resolve the administrative matter by itself. Such decision shall be considered final.

## **10. Period for Issuing Decision on Appeal**

### **Article 242**

- (1) A decision on an appeal shall be issued and submitted to the party as soon as possible and at the latest 30 days from the day it was lodged, unless a shorter deadline is stipulated by special law.
  
- (2) If a party abandons an appeal, the procedure is stopped with a conclusion against which no appeal shall be permitted. An administrative dispute against such conclusion may immediately be initiated before the competent court.

## **11. Submission of Second Instance Decision**

### **Article 243**

The authority that issued the second instance decision, as a rule, shall forward the decision with all supporting documents to the first instance authority, which shall deliver it to the parties within 8 days from the day of the receipt of documents.



## **Title XV**

### **RETRIAL OF THE PROCEDURE**

#### **1. Instituting Retrial**

##### **Article 244**

A procedure concluded by a decision against which there is no regular legal remedy in the procedure (final decision) shall be retried:

- (1) If there is new evidence or if there is a possibility to use new evidence which, by itself or in connection to already stated and used evidence, could have lead to issuance of a different decision had such facts, that is, evidence been stated or used in the earlier procedure;
- (2) If a decision was issued based on a false personal identification document or false statement of a witness or a court expert, or if it came as a result of an action sanctioned by the Criminal Procedure Law;
- (3) If a decision is based on administrative act on criminal or commercial offence procedure, and such act is validly cancelled;
- (4) If a decision favourable for a party was based on untruthful statements of the party which misled the authority that conducted the procedure;
- (5) If a decision of the authority who run the procedure was based on some previous issue, and a competent authority resolved that issue much differently;
- (6) If an authorized official, who had to be exempt in accordance with the law, was involved in issuing the decision;
- (7) If the decision was issued by an authorized official not authorized to issue the decision;
- (8) If a collective authority that issued the decision did not consider it in full composition pursuant to the existing regulations or if the prescribed majority did not vote for the decision;

- (9) If a person who was supposed to take part as a party, that is, an interested party was not given a possibility to participate in the procedure, provided that it is not one of the defined cases from Article 219 paragraph 2 of this Law;
- (10) If a party was not represented by a legal representative, although it should have been represented according to the law;

#### **Article 245**

- (1) Retrial may be requested by the party as well as instituted, ex officio, by the authority that issued the decision ending the procedure.
- (2) Due to the circumstances defined in Article 244 points 1,6,7,8 and 10 of this Law, a party may request retrial only if, due to no fault of its own, in earlier procedure the party was not in the position to state the circumstances due to which a retrial is requested;
- (3) A party cannot request a retrial for reasons defined in Article 244 point 6 to 11 of this law if such a reason was unsuccessfully stated in the earlier procedure.
- (4) The State Prosecutor may request retrial under the same conditions that apply to the party.

#### **Article 246**

If a decision, according to which a retrial is requested, was a subject of an administrative dispute, retrial may be permitted only due to the facts that had been established by the authority in the earlier procedure, and not because of those established by the court in its procedure.

#### **Article 247**

- (1) A party may request a retrial within one month period, in line with the following:
  - 1) Pursuant to Article 244 point 1: from the day when new facts could be stated, that is new evidence could be used;
  - 2) Pursuant to Article 244 points 2 and 3: from the day when it learned about valid court decision on the criminal or commercial offence procedure, and if the procedure

- 3) Pursuant to Article 244 point 5: from the day it was possible to use new regulation (decision, ruling);
  - 4) Pursuant to Article 244 points 4,6,7 and 8: from the day the reason for retrial was found out;
  - 5) Pursuant to Article 244 points 9 and 10: from the day when the decision was submitted to a party.
- (2) If the deadline prescribed in paragraph 1 of this Article starts running before the decision become final, that period shall start from the day when the decision becomes final, that is from the day of submission of the final decision issued by the competent authority.
  - (3) Deadline defined in paragraph 1 of this Article shall also be binding for an authority that initiates a retrial ex officio.
  - (4) After the expiration of the period of five years from the date the decision was delivered to a party, that is, to an interested person, no retrial or administrative procedure may be requested or instituted ex officio.
  - (5) A retrial can be exceptionally requested, that is instituted even after the period of five years only for reasons defined in points 2, 3 and 5 of Article 244 of this Law.

#### **Article 248**

- (1) The procedure can be repeated for reasons defined in Article 244 point 2 even in cases that a criminal procedure cannot be instituted and that there are circumstances that prevent institution of a procedure.
- (2) Before the decision of retrial is made based on reasons stated in Article 244 point 2 of this Law, an authorized person shall request the authority competent for criminal prosecution to provide information on whether the criminal procedure was terminated, that is whether there are circumstances because of which that procedure cannot be instituted. The authorized person does not have to request such explanation if the criminal prosecution became out of date, if the person held responsible in the request for retrial is deceased or if the authorized person is the only person capable to determine with certainty the circumstances due to which the criminal procedure cannot be instituted.

### **Article 249**

A party shall be responsible to prove the probability of circumstances that the request for retrial is based on, as well as the probability of circumstances that the request is made within the legal period.

## **2. Deciding on Retrial**

### **Article 250**

- (1) A party shall submit by hand or by mail its request for retrial to the authority competent to decide on the matter in the first instance, or to the authority that issued a final decision.
- (2) The authority that issued a final decision shall consider the request for retrial.
- (3) When the retrial is requested for the second instance decision, the first instance authority that accepts the request for retrial shall attach the supporting documents to the request and submit complete documentation to the authority that issued the decision in the second instance.

### **Article 251**

- (1) When the authority competent for considering the request for retrial receives the request, it shall examine whether such request was submitted in a timely manner and by an authorized person and whether the circumstances that the request is based on are proven probable.
- (2) If the conditions defined in paragraph 1 of this Article are not fulfilled, the authority shall issue a conclusion rejecting the request for retrial.
- (3) If the conditions defined in paragraph 1 of this Article are fulfilled, the authority shall examine whether the circumstances, that is, the evidence that is stated as a reason for retrial are such that they could lead to a different decision, and if the authority determines that they could not, it shall refuse the request by issuing a decision.

### **Article 252**

- (1) If an authority fails to reject or refuse the request for retrial in line with the Article 251 of this Law, it shall make a conclusion to permit the retrial and it shall determine to what extent the procedure will be retried. When retrial is conducted ex officio, the authority shall pass a conclusion that permits the retrial provided that legal conditions for retrial have been previously met. Earlier actions in the procedure that are not affected by the reasons for retrial shall not be repeated.
- (2) If the circumstances of the matter permit, and if it is in the best interest of expeditiousness of the matter, a competent authority may, as soon as it determines the existence of the conditions for retrial, move to those procedure actions that need to be repeated, without issuing a special conclusion that permits the retrial.
- (3) When the second instance authority decides on the request for retrial, it shall execute all necessary actions in the retrial by itself, and in exceptional cases, if it finds that those actions will be done more quickly and economically by the first instance authority, it shall order that authority to do so and to return the material within a given deadline.

#### **Article 253**

Based on the acquired information on the earlier and retried procedure, an authority shall issue a decision on an administrative matter which was the subject of the procedure, and the decision which was the subject of the retrial procedure may be declared still valid or replaced with the new one. In case that, considering all facts and circumstances, the decision is replaced by a new one, the authority reserves the right to nullify or cancel the former decision.

#### **Article 254**

- (1) An appeal may be lodged against the decision, that is, the decision, which rejects or refuses the request for retrial, as well as against the decision issued in the retried procedure; the appeal can be lodged only if such conclusion or decision was issued by the first instance authority. In case that the conclusion or decision was issued by the second instance authority, an administrative dispute may be instituted immediately.

No appeal may be lodged against the decision that permits the retrial.

#### **Article 255**

- (1) The request for retrial, as a rule, shall not postpone the execution of decision because of which a retrial is requested but the authority competent for deciding on the request for retrial, provided that there are sufficient grounds for presuming acceptance of

- (2) The conclusion that permits retrial shall delay the execution of the decision against which the retrial was granted.

## **Title XVI**

### **EXCEPTIONAL CASES OF ANNULLMENT, CANCELLATION AND AMENDMENTS TO THE DECISION**

#### **1. Amendment and Cancellation of Decision Related to Administrative Dispute**

##### **Article 256**

An authority against whose decision an administrative dispute is timely instituted may nullify or change its own decision prior to settlement of the dispute and provided that it accepts all the requests of the appeal, for the same reasons for which the court may annul such decision, if this does not violate the right of the party regarding the administrative procedure or the rights of a third person.

#### **2. Annulment and Cancellation Based on Official Supervision**

##### **Article 257**

- (1) A competent authority, based on the official supervision, shall nullify the decision that has been issued and submitted if:
- 1) It was issued by a truly incompetent, and it is not one of the cases defined in Article 206 item 1 of this Law;
  - 2) A different legally valid decision has been previously issued on the same administrative matter resolving it in a different manner;
  - 3) It was issued by an authority without consent, confirmation, approval or opinion of another authority in cases where this is obligatory according to the law or other regulations;
  - 4) It was issued by territorially incompetent authority;

5) It was issued as a result of coercion, extortion, blackmail, pressure or other illegal act.

(2) The final decision may be canceled under official supervision if it clearly violated the material law. In administrative matters in which two or more parties with opposing interests are involved, the decision may be canceled only with the consent of interested parties.

(3) The final decision of the local administration authorities issued in the exercise of the delegated i.e. entrusted affairs, shall be canceled by the ministry responsible for specific administrative area, if it clearly violated the material law.

(4) If a state authority or organization is competent for issuing the decision and such decision was issued by the Government, such decision cannot be nullified based on point 1 of paragraph 1 of this Article.

### **Article 258**

(1) A decision may be nullified or cancelled based on official supervision of the second instance authority. If there is no second instance authority, the decision can be nullified or cancelled by an authority competent to supervise the work of an authority that has issued the decision.

(2) A competent authority shall issue a decision on annulment ex officio, at the request of a party or at the request of the State Prosecutor whereas the decision on cancellation is issued ex officio or at the request of the State Prosecutor.

(3) The decision on annulment based on Article 257 paragraph 1 points 1 to 3 of this Law may be issued within five years, and decision on annulment based on point 4 of paragraph 1 of the same Article may be issued within one year from the day the decision became final. The decision on annulment based on Article 257 par. 2 and 3 of this Law may be issued within one year from the day the decision became final.

(4) The decision on annulment based on this Article 257 paragraph 1 point 5 of this Law may be issued regardless of the periods prescribed in paragraph 3 of this Article.

(5) An appeal against a decision issued in line with the Article 257 of this Law is not permitted but an administrative dispute may be instituted against it.

## **3. Exceptional Cancellation**

### **Article 259**

- (1) Enforceable decision may be cancelled if it is necessary to remove serious and immediate life-threatening danger to human health, public safety, order or public moral, or to remove dangers to irregularities in the economy, provided that this cannot be successfully provided by other means without impinging upon acquired rights. The decision can also be cancelled only partially, to the extent necessary to remove the danger or to protect the above-mentioned public interests.
- (2) If the first instance authority issues a decision pursuant to paragraph 1 of this Article, such a decision may be cancelled by that authority, but also by the second instance authority. If there is no second instance authority, the decision may be cancelled by an authority competent to perform supervision of the work of the authority that issued the decision.
- (3) An appeal against the decision by which a former decision is cancelled may be lodged only if such decision was issued by the first instance authority. If the decision is issued by a second instance authority or the authority that performs supervision, an administrative procedure may immediately be instituted against that decision.
- (4) A party that suffers real damage due to the cancellation of the decision reserves the right to request compensation of damage, except for the compensation of lost profit. The request for the compensation for the damage shall be decided on through a civil procedure conducted by a competent court.

#### **4. Declaring Decision Null**

##### **Article 260**

A decision shall be declared null when:

- (1) It was issued in the administrative procedure whereas it is in court jurisdiction or if it concerns the matter that cannot be resolved in an administrative procedure under any circumstances;
- (2) Enforcement of such decision may result in a criminal act which can be prosecuted according to the Criminal Law;
- (3) Execution of such decision is not possible;
- (4) It is issued by an authority without a prior request by a party (Article 177), and the party has not specifically agreed to it or remained silent about it;
- (5) If a party reached a favourable decision which is in collision with Article 11 of this Law;
- (6) It contains an irregularity defined by a specific regulation as a reason for declaring



### **Article 261**

- (1) A decision can be declared null and void ex officio or at the request of a party or the State Prosecutor at any time.
- (2) A decision can be declared null as a whole or partially.
- (3) An appeal is permitted against the decision that declares other decision null as well as against a request of a party or State Prosecutor for declaring the decision null. If there is no authority competent to issue a decision on the appeal, a direct administrative procedure can be instituted against such decision.

## **5. Legal Consequences of Annulment and Cancellation**

### **Article 262**

- (1) By annulment of decision, legal consequences caused by such decision are annulled.
- (2) By cancellation of decision, legal consequences that have already been caused by such decision are not annulled but those legal consequences that may be caused in future shall be disabled.
- (3) Declaring a decision null shall produce consequences defined in paragraph 1 of this Article, whereas a party can, in a civil procedure, also request compensation for damage caused by the annulled decision.

## **6. Duties to Inform Competent Authority on Existence of Reasons for Retrial, Annulment, Cancellation and Changes to the Decision**

### **Article 263**

An authority that finds out that the law has been violated by a decision whereas such violation can justify retrial, annulment, cancellation and changes of the decision, shall inform, without any delay, the authority competent for instituting procedure and issuing the decision, that is the State Prosecutor of this matter

## **PART FOUR**

## **EXECUTION**

### **Title XVII**

#### **1. General Provisions**

##### **Article 264**

(1) A decision adopted in the procedure shall be executed with a view to fulfilling monetary and non-monetary obligations.

(2) A decision shall be executed when it becomes effective.

(3) The first instance decision shall become effective upon:

- 1) Expiry of the term for appeals, if no appeal has been made;
- 2) Delivery to the party to the procedure, if no appeal was permitted;
- 3) Delivery to the party to the procedure, if the execution is not deferred by an appeal ;
- 4) Delivery to the party to the procedure of a decision rejecting or refusing the appeal.

(4) A decision of the second instance changing the first instance decision shall take effect on delivery to the party to the procedure.

(5) If the decision specifies that the action that is the subject of execution may be performed within the specified period of time, the decision shall take effect on expiry of such period. If the decision does not specify the term for the performance of the action, the decision shall take effect within 15 days as of the delivery date. The term permitted for execution under the decision, that is the prescribed period of 15 days, shall start running as of the date when the decision referred to in paragraphs 3 and 4 of this Article takes effect.

(6) An execution can also be performed on the basis of a settlement, but only against a person taking part in the settlement.

(7) If the execution of a decision is deferred by an appeal, and the decision refers to two parties to the procedure or more parties that take part in the procedure with identical requests, an appeal of any of the parties shall make the decision ineffective.

## **Article 265**

(1) The conclusion made in the administrative procedure shall be executed when it takes effect.

(2) The conclusion that may be subject to special appeal and the conclusion that may be subject to appeal through a separate appeal that does not prevent its execution shall take effect on notification, and where no prior notification occurred, on delivery to the party to the procedure.

(3) When the law or the conclusion itself specifies that the appeal shall not prevent the execution of the decision, the decision shall take effect as of the expiry date for appeals if the appeal has not been made, and if it has been made – on delivery to the party to the procedure of the decision with which the appeal has been rejected or refused.

(4) In other cases, the conclusion shall take effect under the conditions governing the enforceability of the decision as prescribed in Article 264 paragraphs 4, 5 and 7 of this Law.

(5) The provisions of this Law on the execution of a decision shall also apply to the execution of a conclusion.

## **Article 266**

(1) When there are several options open for the execution in terms of both methods and mechanisms of execution, the execution shall be administered by such mechanisms and methods as to result in the desired effect but also those that are most favourable to the subject of execution.

(2) Execution measures may be taken on a Sunday, during state holidays and at night only if there is danger of prolongation of procedure and if the authority in charge of execution has issued a separate written order on that.

## **Article 267**

(1) Execution shall be administered against persons that are obligated to perform an obligation (subject of execution).

(2) Execution shall be administered either *ex officio* or following the request of the party to the procedure.

(3) The execution shall be administered *ex officio* in cases when it is in the public interest. The execution that is in the interest of the subject of execution shall be administered following the request of the party to the procedure (execution petitioner).

#### **Article 268**

The execution of a decision shall be administered through an administrative procedure (administrative execution) and, in cases as envisaged by this law, through a judicial procedure (judicial execution).

#### **Article 269**

(1) The execution for the fulfilment of monetary and non-monetary obligations of subjects of execution shall be administered through an administrative procedure.

(2) The execution of deeds on property and shares in a company or other form of business organization shall be administered through a judicial procedure under the law governing the execution procedure.

#### **Article 270**

(1) The administrative execution shall be administered by the authority in charge of the first instance procedure, unless otherwise prescribed by other regulation.

(2) Public office holders may enforce their respective decisions provided that they obtain the permission from the minister competent for state administration, or the mayor.

(3) If it is prescribed that an administrative execution cannot be administered by the authority that was in charge of that administrative case in the first instance, and the special regulation does not specify which authority is responsible, the execution shall be administered by the state authority competent for the territory of permanent residence, or temporary residence or the headquarters of the object of execution, unless otherwise specified by the law.

(4) The authority competent for internal affairs shall be obligated to provide the authority responsible for execution, at its request, with assistance in the execution procedure.

#### **Article 271**

(1) The authorized authority shall adopt, either ex officio or following the request of the execution petitioner, the conclusion authorizing the execution. Such conclusion shall state that the decision to be executed has become effective and define the method and mechanisms of execution. An appeal may be lodged against such a conclusion to the relevant second instance authority.

(2) If it is the decision referred to in Article 133 item 4 of this Law, the conclusion authorizing the execution, method, term and mechanisms of execution shall be included in the decision so that no separate conclusion approving the execution shall be issued.

(3) The conclusion authorizing the execution of the decision that was adopted in the administrative procedure ex officio shall be promptly adopted by the authority in charge of execution of decisions when such a decision takes effect, not later than within 15 days of the date the decision takes effect, unless otherwise prescribed by another regulation. Failure to adopt the conclusion within that deadline shall not eliminate the obligation to adopt it.

(4) When a decision is not executed by the authority that adopted it in the first instance, the petitioner of execution shall submit the proposal for the approval of execution to the authority that adopted the decision to be executed. If the decision has become effective, that authority shall issue a document to confirm that the decision has become effective (notification of effect) and submit it for execution to the authority in charge of execution, while at the same time proposing the method and mechanisms of execution. The authority in charge of execution shall issue a conclusion authorizing the execution.

(5) When the decision issued by the authority that is not in charge of execution must be administered ex officio, that authority shall submit an approval proposal for execution to the authority in charge of execution after the procedure prescribed in paragraph 3 of this Article has been completed.

## **Article 272**

(1) The administrative execution that is administered by the authority that was in charge of the procedure in the first instance shall be administered under the decision that took effect and the conclusion authorizing the execution.

(2) The administrative execution that is not administered by the authority that was in charge of the procedure in the first instance shall be administered under the decision that includes the approval of enforceability and the conclusion authorizing execution.

## **Article 273**

(1) During the administrative execution procedure, an appeal may be lodged only against the execution, and shall not be used to dispute the regularity of decision that is being executed.

(2) The appeal shall be lodged to the competent second instance authority. The appeal shall not prevent the execution. The appeal deadline and authority in charge of appeals procedure shall be subject to the provisions of Articles 221 to 225 of this Law.

#### **Article 274**

(1) The administrative execution shall be suspended ex officio and the steps already made annulled if it is established that the obligation has not been performed in its entirety, that the execution has not been authorized, that it has been administered against a person not having such an obligation, and if the petitioner of execution drops the petition or if the execution document has been annulled or cancelled.

(2) The administrative execution shall be prolonged if it is established that there is a clause allowing for delayed performance of obligation, or that instead of the temporary decision that is administered, another decision has been made relating to the major subject that is different from that in the temporary decision. The prolongation of execution shall be authorized by the authority that has issued the conclusion authorizing the execution.

#### **Article 275**

(1) Decisions on monetary obligations, that is fines pronounced under this law or regulations on special administrative procedure, shall be executed by the administrative authority in charge of public revenues.

(2) The fine shall be collected to the benefit of the budget financing operations and the authority that has pronounced the fine.

#### **Article 276**

(1) When judicial execution of a decision made in the administrative procedure needs to be administered, the authority whose decision is to be executed shall issue a confirmation authorizing the execution (Article 271 paragraph 3) and submit it for execution to the court having jurisdiction over its execution.

(2) The decision made in the procedure that includes the execution authorization shall be the basis for the judicial execution. This execution shall be administered under the

provisions of the law regulating the execution procedure and provisions of other laws applied to judicial execution.

## **2. Execution of Non-Financial Obligations**

### **Article 277**

The execution for fulfilment of non-financial obligations of subjects of execution shall be administered through other persons, or by coercion.

#### **a) Execution through other Persons**

### **Article 278**

(1) If the obligation of the subject of execution includes the performance of an action that can also be performed by another person, and the subject of execution does not perform it at all or does not perform it in its entirety, that action shall be executed through another person, at the expense of the subject of execution. Such subject of execution must be notified of this in advance.

(2) In the case referred to in paragraph 1 of this Article, the authority in charge of execution may issue a conclusion ordering the party that is the subject of execution to put up the amount required to settle expenses of execution, with the accounts being settled subsequently. The conclusion on putting up such an amount shall be effective.

#### **b) Execution by Coercion**

### **Article 279**

(1) If the subject of execution is obligated to permit or suffer something, and it acts contrary to such an obligation, or if the execution is the action of subject of execution that cannot be performed by another person, the authority in charge of execution shall force the subject of execution to fulfil its obligation by a coercive measure, that is by a fine.

(2) The authority in charge of execution shall first threaten the subject of execution by the use of coercive mechanism, should he or she not perform his/her obligation in the prescribed term. If the subject of execution within such period takes an action contrary to his or her obligation or if the period expires without such performance, the threatened

coercive mechanism shall take effect immediately, and the new term shall be set for the execution, and a new, stricter coercive measure threatened.

(3) A fine that pursuant to paragraph 1 of this Article is imposed for the first time on a legal person shall range from 500 to 5,000 Euros, and when imposed on a natural person, it shall range from 50 to 500 Euros per instance. A fine can be repeatedly imposed as long as the obligation has been fulfilled.

(4) The collected fine shall not be refunded.

### **Article 280**

If the execution of a non-financial obligation in due time or generally cannot be performed through implementation of mechanisms referred to in Articles 278 and 270 of this Law, depending on the nature of obligation, the execution can also be administered through direct coercion, unless otherwise prescribed by the regulation.

### **Article 281**

(1) When a decision is followed by execution, and the decision is later annulled or changed, the subject of execution shall have the right to request the refund of what has been taken away from him or her, or that the matter shall be returned to the condition arising from the later decision.

(2) The request of the subject of execution shall be decided on by the authority that has issued the conclusion authorizing the execution.

## **Title XVIII**

### **SAFEGUARD EXECUTION AND TEMPORARY DECISION**

#### **1. Safeguard Execution**

### **Article 282**

(1) So as to ensure execution, the conclusion may permit the execution of the decision even before it takes effect, if the execution would otherwise be threatened or made considerably more difficult after the decision takes effect.



(2) If these are obligations that are executed by coercion only following the request of the party, such a party must prove the threat, and the authority may order the execution referred to in paragraph 1 of this Article conditional on the provision of guarantee in accordance with Article 211 paragraph 2 of this Law.

(3) Special appeal may be lodged against the conclusion issued on the proposal of the party for safeguard execution, as well as against the conclusion issued ex officio. The appeal against the conclusion prescribing the safeguard execution shall not prevent the execution.

### **Article 283**

(1) Safeguard execution can be administered through either administrative or judicial procedures, and the safeguard execution over property or shares in companies or other forms of business organization shall be administered through a judicial procedure under the provisions of the Law on Execution Procedure.

(2) When the safeguard execution is administered through a judicial procedure, the court shall act in accordance to the law regulating the execution procedure and the provisions of other laws applicable to judicial execution.

### **Article 284**

The execution of a temporary decision can be administered only to the extent and in those cases when such safeguard execution is permitted.

## **2. Temporary Safeguard Conclusion**

### **Article 285**

(1) If there is an obligation of the party or if it has at least been made possible, and there is danger that the party under obligation will somehow threaten or make considerably more difficult the performance of obligation, the authority in charge of issuing the decision specifying the obligation of the party may issue a temporary conclusion so as to guarantee the execution of obligation before the decision specifying that obligation is made. When issuing a temporary conclusion on the obligation, the authority in charge must take into consideration the provision contained in Article 266 paragraph 1 of this Law and support the conclusion with appropriate explanation.

(2) The issuing of a temporary conclusion may be made conditional on provision of guarantee envisaged by Article 211 paragraph 2 of this Law.

(3) The temporary conclusion issued under paragraph 1 of this Article shall be subject to the provisions of Article 282 paragraph 3 and Article 283 of this Law.

#### **Article 286**

(1) If the final decision specifies that in legal terms there is no obligation on the part of the party that is the subject of temporary conclusion to guarantee execution or if it is established in some other way that the request for the issuing of temporary conclusion has been unfounded, the party submitting such a request and to whose benefit the temporary conclusion has been issued, shall be obligated to pay damage compensation to the other party for the damage caused by the issued conclusion.

(2) The damage compensation referred to in paragraph 1 of this Article shall be decided on by the authority that has issued the temporary conclusion if the requesting party agrees to pay such damage compensation. If the requesting party does not agree to pay a damage compensation, the adverse party may lodge its damage compensation claims to the competent court in civil proceedings.

### **PART FIVE**

## **IMPLEMENTATION OF THE LAW, INSPECTION CONTROL AND TRANSITIONAL AND FINAL PROVISIONS**

### **Title XIX**

#### **IMPLEMENTATION OF THE LAW**

#### **Article 287**

(1) Decisions adopted in administrative procedures shall be subject to official record keeping.

(2) The records referred to in paragraph 1 of this Article shall include the following data: number of lodged requests; number of procedures initiated ex officio; method and terms allowed for administrative procedures at the first instance and second instance levels; number of nullified, or cancelled administrative acts, as well as number of rejected requests, and the number of terminated procedures.

(3) Data referred to in paragraph 2 of this Article shall be kept and represented by the authorities by respective areas of administrative affairs. The said authorities shall report the same to the ministry responsible for monitoring of their work twice a year.

#### **Article 288**

The sums collected from the pronounced fines by the authorities in charge of the procedure shall be paid into the state budget, or the budget of a local self-government unit.

#### **Article 289**

(1) Summons, delivery notes, orders to bring in parties, records and other documents used in the procedure shall be made in the prescribed forms.

(2) Forms referred to in paragraph 1 of this Article shall be determined by the administrative authority competent for state administration.

### **INSPECTION CONTROL**

#### **Article 290**

(1) Inspection control over the implementation of provisions of the law and other regulations on administrative procedure governing the efficiency and timeliness in administrative matters, procedure in accordance with rules of procedures, legal aid and cost of administrative procedure, implementation of regulations in office work and record keeping, shall be done by the administrative authority competent for state administration.

(2) The authority referred to in paragraph 1 of this Article shall also perform inspection control over implementation of the law and other regulations in the area of state administration system, with regard to the organization of administration, transparency of work, equality in the use of language and script, and the qualifications of staff involved in state administration affairs.

(3) The inspection control referred to in paragraphs 1 and 2 of this Article shall be performed in state administration authorities, courts, local administration authorities, services within republican and municipal authorities, but also in companies, institutions, and other legal persons holding public authority.

#### **Article 291**

The inspection control over implementation of the law and other regulations referred to in Article 290 shall be performed by administrative inspectors in accordance with the Law on Inspection Control.

### **Article 292**

(1) In cases of non-performance, unconscientiously, untimely or negligent performance of official obligations, abuse of office or exceeding the authority relating to the implementation of administrative procedure rules, decision making, official records keeping, office work, rejection of or provision with false data of the administrative inspector, all of which are necessary for his function, the administrative inspector shall have the authority to impose the following administrative measures:

1) Fine of up to 30% of the civil servant's salary for the preceding month;

2) Ban on the civil servant from doing the work related to administrative affairs, record keeping and office work.

(2) In the case when on accurate request of a party official person does not issue a decision within the prescribed period, the administrative inspector shall impose measures referred to in paragraph 1 of this Article.

(3) In cases referred to in paragraph 1 item 2 of this Article, the inspector shall submit a request within eight days for a disciplinary procedure to be initiated.

(4) The measures referred to in item 2 of paragraph 1 of this Article shall last until the completion of the disciplinary procedure.

### **Article 293**

When an administrative inspector finds that a civil servant working on administrative matters, official records or office work fails to meet the prescribed requirements, the latter one shall be removed from office.

### **Title XX**

## **TRANSITIONAL AND FINAL PROVISIONS**

### **Article 294**

Administrative procedures that have been initiated before this law comes into effect shall be subject to the provisions of this law, unless the procedure has resulted in a final decision, if that is more favourable for the party.

#### **Article 294a**

Procedures that have been initiated before this law comes into effect shall be finalized in accordance with the law that was in force at the time of initiation of procedures.

#### **Article 294b**

Authorities responsible for the making decisions in administrative proceedings are obliged to, within 30 days from the date of entry into force of this law, provide the single point of contact and coordination referred to in Article 27a of this law.

#### **Article 295**

(1) Secondary legislation based on this law shall be enacted within six months of the date this law comes into effect.

(2) Until regulations referred to in paragraph 1 of this Article are adopted, secondary legislation enacted on the basis of the Law on General Administrative Procedure (Official Gazette of the Federal Republic of Yugoslavia No 33/97) shall apply.

#### **Article 296**

As of the date this Law comes into effect, the provisions of Article 26 and Title "IV Administrative Inspection" and Articles 29-32 of the Law on Inspection Control (Official Gazette of the Republic of Montenegro No 50/92) shall become invalid.

#### **Article 297**

This law shall enter into force on the eight day following that of its publication in the Official Gazette of the Republic of Montenegro.