

LAW ON ADMINISTRATIVE PROCEDURE

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Pursuant to Article 82 item 2 of the Constitution of Montenegro and Amendment IV paragraph 1 to the Constitution of Montenegro, the Parliament of Montenegro of the 25th convocation, at the Fourth Sitting of the Second Ordinary (Autumn) Session in 2014, on 16 December 2014, passed the:

LAW ON ADMINISTRATIVE PROCEDURE

I. GENERAL PROVISIONS

Subject Matter

Article 1

This Law shall govern the rules to be observed, with a view to protecting the rights and legal interests of natural persons, legal persons and other parties, as well as the public interest, by state authorities, state administration authorities, local self-government authorities, local administration authorities, institutions and other entities exercising public powers (hereinafter referred to as: the public authority) when, by directly applying regulations, they decide and undertake other administrative activities in administrative matters.

Administrative Matter

Article 2

An administrative matter shall mean any specific situation in which a public authority renders an administrative act to decide or in which it performs another administrative activity to determine or otherwise affect the rights, obligations or legal interests of a natural person, legal entity or other party, within the meaning of this Law, as well as any other legal situation that is prescribed by Law as an administrative matter.

Administrative Activities

Article 3

Administrative activities shall include the adoption of administrative acts, conclusion of administrative contracts, protection of users of services of general interest and

undertaking other administrative activities in administrative matters, in accordance with the law.

Application of the Law

Article 4

This Law shall apply in all administrative matters.

Provisions of special laws that, due to the specific nature of administrative matters in certain administrative areas, prescribe necessary derogations from the rules of administrative procedure, cannot be contrary to the principles and the purpose of this Law, nor can they reduce the level of protection of the rights and legal interests of parties prescribed by this Law.

Principle of Legality and Legitimate Expectations of Parties

Article 5

The public authority shall decide and act in an administrative matter on the basis of the law, other regulations and general acts.

When deciding on an administrative matter, a public authority shall consider previous decisions it rendered in essentially identical administrative matters.

Where a public authority determines that special circumstances indicate the need to change a previously adopted legal position on a particular issue in an administrative matter, it shall give reasons for doing so.

When a public authority is authorised by law to decide an administrative matter in the exercise of discretionary powers, the administrative act shall be issued within the limits of the authority granted, in accordance with the purpose for which that authority was granted and with previous decisions issued by the public authority in substantially identical administrative matters.

Proportionality Principle

Article 6

An administrative activity of a public authority may restrict the right of a party only where this is necessary to achieve the purpose prescribed by law, proportionate to the objective to be achieved and does not violate human rights and freedoms.

Should obligations be imposed on a party and other participants in a procedure, the public authority shall, in relation to the party and other participant in the procedure, apply the prescribed measures that are more favourable to them, provided that these measures achieve the purpose of the law.

Legal Protection Right of a Party

Article 7

A party shall have the right to legal protection in an administrative matter.

Principle of Active Assistance to a Party

Article 8

The public authority shall enable a party and other participants in an administrative procedure to exercise and protect their rights and legal interests as easily and efficiently as possible, while ensuring that the exercise of those rights and legal interests does not prejudice the rights and legal interests of other persons or conflict with the public interest.

Where, in view of the existing facts, the authorised official conducting the administrative procedure and issuing the administrative act (hereinafter referred to as: authorised official) becomes aware or considers that a party or another participant in the administrative procedure has grounds for exercising a right or legal interest, the authorised official shall warn the party or other participant of the legal consequences of their acts or omissions.

Lack of knowledge or legal understanding on the part of a party or another participant in the administrative procedure shall not prejudice the protection of their rights and legal interests.

Use of Language and Script in the Procedure

Article 9

The public authority shall conduct the administrative procedure in Montenegrin language.

If a party or another participant in the administrative procedure does not understand Montenegrin language, the public authority shall provide interpretation during the proceedings in their language or a language they understand and shall serve summons and other documents on them in their language and script.

Principle of Economy and Efficiency of the Procedure

Article 10

The administrative procedure shall be conducted without delay and at the lowest possible cost, while ensuring that all facts and circumstances relevant to the effective and full exercise and protection of the rights and legal interests of parties and other participants in the procedure are properly and fully established.

Principle of Establishing the Truth

Article 11

All facts and circumstances relevant to the lawful and proper determination of an administrative matter shall be properly and fully established in the administrative procedure.

Principle of Independence and Discretionary Assessment of Evidence

Article 12

The authorised official shall independently establish the facts and circumstances in the administrative procedure and shall decide the administrative matter on the basis of the facts and circumstances established.

The authorised official shall determine which facts and circumstances are to be considered proven on the basis of a free assessment, following a conscientious and careful assessment of each item of evidence individually and of all evidence as a whole, as well as on the basis of the results of the entire administrative procedure.

Principle of Obtaining Data *Ex Officio*

Article 13

When deciding in an administrative procedure, a public authority shall, *ex officio*, inspect, obtain and process data from official records and registers kept by that public

authority or another competent authority, unless access to such data is restricted in line with law.

Right of a Party to Make a Statement

Article 14

A party shall have the right to participate in the administrative procedure for the purpose of establishing facts and circumstances relevant to the issuance of an administrative act.

Prior to the issuance of an administrative act, a party shall have the right to make a statement on the results of the examination procedure.

An administrative act may be issued without a statement from the party only in cases prescribed by law.

Prohibition of Abuse of Rights

Article 15

The public authority shall prevent any abuse of rights of a party in an administrative procedure.

Right to Inspect Files

Article 16

The public authority shall enable parties and other participants in an administrative procedure to inspect the case files and obtain information on the progress of the procedure, in accordance with law.

Using Gender-Sensitive Language

Article 17

All terms used in this Law for natural persons in the masculine gender shall mean the same terms for the feminine gender.

II. ADMINISTRATIVE ACTIVITIES

1. Administrative Act

Concept of an Administrative Act

Article 18

The public authority shall decide on the right, obligation or legal interest of a party in an administrative matter by issuing a decision.

A decision in an administrative matter may also have another title, in line with a special law.

Partial, Supplementary and Provisional Decisions

Article 19

Where several issues are to be decided in an administrative matter and the conditions have been met for deciding only some of them, a decision may be issued only on those issues (partial decision).

Where it has not decided all issues that are the subject of an administrative procedure, a public authority may, upon the proposal of a party or *ex officio*, issue a decision on unresolved issues (supplementary decision).

A decision shall be issued rejecting the proposal of a party referred to in paragraph 2 of this Article.

Where, in view of the circumstances of the case, disputed issues or relations need to be provisionally regulated before the conclusion of the procedure, a decision shall be issued on the basis of the facts known at the time of its issuance (provisional decision). Such a decision shall be designated as provisional and shall be revoked by the decision determining the principal administrative matter.

Partial, supplementary and provisional decisions shall be deemed independent decisions for the purposes of legal protection and enforcement.

Guarantee Act

Article 20

The public authority may, at the request of a party, issue a decision guaranteeing that party the acquisition of a right, subject to the conditions prescribed by a special law (guarantee act).

A guarantee act shall be drawn up in writing.

The public authority shall issue a decision on the acquisition of the right guaranteed to a party by a guarantee act where the conditions set out in the guarantee act have been fulfilled, unless, between the issuance of the guarantee act and the fulfilment of the conditions for acquiring the right referred to in paragraph 1 of this Article, the legal basis for acquiring that right has ceased to exist or the legal basis or factual circumstances have substantially changed.

Decision Form

Article 21

Decisions shall be rendered in writing.

Exceptionally, in cases prescribed by law, a decision may be rendered orally.

Written Decision Content

Article 22

A written decision shall contain an introduction, operative part, rationale, an instruction on legal protection, the signature of an authorised official and the seal of the public authority.

The introduction to a decision shall contain the name of the public authority rendering it, the provision of a law or other regulation prescribing the jurisdiction of that authority, the name and surname or name of the party and its legal representative or proxy, if any, and a brief indication of the subject matter of the administrative procedure.

The operative part of a decision shall contain the decision on the administrative matter and shall be concise and clear.

The operative part of a decision may specify:

- 1) a condition upon the fulfilment of which the legal effect of the decision begins or ceases;
- 2) the time limit from which the legal effects of the decision begin or cease, or the period during which the decision has legal effect;

3) an order requiring a party to perform, refrain from or tolerate an action.

Where it is prescribed that an appeal does not stay enforcement of a decision, this shall be stated in the operative part of the decision.

The operative part of a decision may also decide on the costs of the procedure.

The rationale of a decision shall be comprehensible and shall contain a brief presentation of the request of the party, the factual situation on the basis of which the decision was rendered, the regulations on the basis of which the decision was rendered, the reasons which, having regard to the established factual situation, support the decision contained in the operative part, the reasons for which any request or proposal of the party was not upheld or the statement of the party on the results of the examination procedure was not taken into account and, where the decision was rendered on the basis of discretion, the main reasons for the decision. Where an appeal does not stay enforcement of the decision, the rationale shall also contain a reference to the regulation prescribing this or detailed reasons for which the appeal does not stay enforcement.

The instruction on legal protection shall inform the party whether an appeal may be filed against the decision or administrative dispute proceedings or other court proceedings may be initiated. The instruction shall state the public authority to which a legal remedy may be submitted or the court before which judicial protection may be sought. Where an incorrect instruction on legal protection has been given, the party shall not suffer adverse consequences and may act in line with the applicable regulations. Where a decision contains no instruction on legal protection or the instruction is incomplete, the party may act in line with the applicable regulations and may, within 60 days from the date of receipt of the decision, request the public authority that rendered the decision to supplement it.

The decision shall be signed by the authorised official. If a decision is issued in electronic form, it shall be signed with an advanced electronic signature.

Exceptionally, where a decision is issued on a prescribed form, a facsimile may be affixed in place of a signature.

Decision with Summary Rationale

Article 23

A written decision may have a summary rationale:

- 1) where this is prescribed by a special law for the purpose of protecting the public interest;
- 2) in simple administrative matters in which the request of the party is fully upheld and such decision does not prejudice the rights and legal interests of the opposing party or a third person or conflict with the public interest.

The abbreviated statement of reasons referred to in paragraph 1 of this Article shall mean that the statement of reasons of the decision contains a brief presentation of the request of the party, factual situation and regulations on the basis of which the decision was rendered.

Decision in the Form of a Note in the File

Article 24

In administrative matters of lesser importance in which the request of the party is upheld and the right or legal interest of the opposing party or third persons is not affected nor the public interest, the decision may consist only of the operative part in the form of a

note in the file, if the reasons for such decision are obvious and unless otherwise prescribed.

At the request of the party, the public authority that issued the decision referred to in paragraph 1 of this Article shall issue the decision in writing.

Oral decision

Article 25

Provided that exceptionally urgent measures are undertaken to ensure public order and peace and security or to eliminate an imminent danger to the life and health of people or to property, a public authority may also issue a decision orally.

Upon the request of the party, the public authority that issued the decision orally shall issue that decision to the party in writing no later than eight days from the date of submission of the request.

The request referred to in paragraph 2 of this Article may be submitted within two months from the date of issuing the oral decision.

Rectification of Obvious Errors in a Decision

Article 26

The public authority may, at any time, rectify errors in names or numbers, errors in writing or calculation and other obvious errors in a decision it has issued or in certified copies of that decision.

A separate decision shall be issued on the rectification of errors referred to in paragraph 1 of this Article. Rectification of an error shall have legal effect from the date when the decision being rectified has legal effect.

2. Administrative Contract

Administrative Contract between a Public Authority and a Party

Article 27

For the purpose of establishing, modifying or terminating a specific legal relationship in an administrative matter within the competence of a public authority, an administrative contract may be concluded between a public authority and a party if this is prescribed by a special law, when the conclusion of such contract is in the public interest and when that contract does not prejudice the rights of third persons.

The administrative contract referred to in paragraph 1 of this Article shall be drawn up in writing.

Annulment of an Administrative Contract

Article 28

An administrative contract concluded between a public authority and a party shall be annulled:

- 1) if the conditions for its conclusion referred to in Article 27 of this Law have not been met;
- 2) in cases in which, in line with this Law, a decision must be annulled.

Annulment of an administrative contract upon an action filed by a party or by a public authority shall be decided in administrative dispute proceedings.

Amendment and Termination of an Administrative Contract due to Changed Circumstances

Article 29

An administrative contract may be amended or terminated due to circumstances arising after its conclusion which could not have been foreseen at the time of the conclusion of the contract and which substantially impede the fulfilment of obligations under the contract or for other reasons, in line with a special law.

Unilateral Termination of an Administrative Contract

Article 30

Should a party fail to fulfil the obligations under an administrative contract, the public authority shall unilaterally terminate the administrative contract.

The public authority shall also unilaterally terminate the administrative contract where this is necessary to eliminate an imminent danger to the life and health of people or property or where such danger could not be eliminated in another manner.

In cases referred to in paragraphs 1 and 2 of this Article, the administrative contract shall be terminated by a decision stating and explaining the reasons for the termination of the administrative contract.

A party may initiate administrative dispute proceedings against the decision referred to in paragraph 3 of this Article.

3. Services of General Interest

Protection of Services of General Interest User Rights

Article 31

Where a user of services of general interest considers that the provision of those services violated their rights or legal interests, the user may, for the purpose of protecting those rights or legal interests, file an objection with the public authority supervising the work of the company, other legal person or entrepreneur providing services of general interest (hereinafter referred to as: the service provider), within eight days, unless otherwise prescribed by a special law.

Service of general interest shall mean a service provided to users by a service provider in the performance of an activity of public interest.

Public authority referred to in paragraph 1 of this Article shall examine the allegations of the service user, undertake measures within its competence in the performance of supervision and, without delay and no later than 15 days, render a decision on the objection, unless otherwise prescribed by a special law.

Administrative dispute proceedings may be initiated against the decision referred to in paragraph 3 of this Article.

4. Other Forms of Administrative Activities

Other Administrative Activities

Article 32

Other administrative activity shall mean the issuance of certificates concerning facts recorded in official records, certificates concerning facts not recorded in official records, as well as any other administrative activity prescribed by a special law (keeping records, undertaking factual actions, etc.).

Issuance of Certificates and Other Documents on Facts Recorded in Official Records

Article 33

The public authority shall, in line with the law, issue a certificate or other document regarding facts recorded in official records kept by that authority.

A certificate or other document regarding facts recorded in official records shall be issued on the basis of data contained in those records and shall have the status of a public document.

A certificate or other document regarding facts recorded in official records shall be issued to a party upon an oral request, as a rule, on the same day when the party requested its issuance and no later than eight days from the date of submission of the request, unless otherwise prescribed by the regulation establishing the official records.

Should the public authority refuse a request for the issuance of a certificate or other document regarding facts recorded in official records kept by that authority, it shall render a decision thereon. A party may file an appeal against that decision.

Should, within eight days from the date of submission of the request, the public authority neither issue a certificate or other document regarding facts recorded in official records kept by that authority nor render a decision rejecting the request and notify the party thereof, the party may file an appeal as if the request had been rejected.

Should the party, on the basis of the evidence at its disposal, consider that a certificate or other document regarding facts recorded in official records has not been issued in line with the data contained in those records, the party may request its amendment or the issuance of a new certificate or other document.

The public authority shall render a decision rejecting a request of a party to amend or issue a new certificate or other document. Should, within eight days from the date of submission of a request for the amendment or issuance of a new certificate or other document, the public authority fail to act upon the request, the party may file an appeal as if the request had been rejected.

Issuance of Certificates and Other Documents on Facts Not Recorded in Official Records

Article 34

The public authority shall also issue a certificate or other document regarding facts not recorded in official records kept by that authority, where this is prescribed by law or other regulation and shall establish the facts on the basis of which the certificate is issued in the evidentiary procedure.

A certificate or other document issued in the manner referred to in paragraph 1 of this Article shall not bind the public authority to which it is submitted as evidence in the procedure for deciding on an administrative matter. That public authority may establish again the facts stated in the certificate or other document.

A certificate or other document concerning facts not recorded in official records kept by the public authority, or a decision refusing the request, shall be issued to the party within 15 days from the date of submission of the request. A party may file an appeal against the decision.

Provided that, within the time limit referred to in paragraph 3 of this Article, the public authority neither issues a certificate or other document regarding facts not recorded in

official records kept by that authority nor renders a decision rejecting the request and notifies the party thereof, the party may file an appeal as if the request had been rejected.

Objection Regarding Other Administrative Activities

Article 35

Should the public authority, by undertaking other administrative activities prescribed by a special law, violate the rights and interests of a party, the party may, within eight days, file an objection with the head of that authority, who shall render a decision thereon no later than 15 days, unless otherwise prescribed by a special law.

A party may initiate administrative dispute proceedings against the decision referred to in paragraph 1 of this Article.

III. JURISDICTION

1. Subject Matter and Territorial Jurisdiction

Subject Matter Jurisdiction

Article 36

The subject-matter jurisdiction of a public authority shall be determined in line with the law governing the relevant administrative area or the law or other regulation prescribing the jurisdiction of individual authorities.

Territorial Jurisdiction

Article 37

The territorial jurisdiction of a public authority shall be determined:

- 1) in administrative matters regarding immovable property — according to the place where the immovable property is located;
- 2) in administrative matters regarding business or other activity of a party — according to the registered office of the party or according to the place where the business or activity is carried out or should be carried out;
- 3) in other administrative matters, according to the permanent residence of the party or, where the party has no permanent residence in Montenegro, according to its temporary residence or, where the party has no temporary residence either, according to its last permanent or temporary residence in Montenegro;
- 4) in administrative matters regarding a ship or an aircraft or where the grounds for conducting an administrative procedure arose on a ship or aircraft — according to the home port of the ship or the home airport of the aircraft;
- 5) in administrative matters in which territorial jurisdiction cannot be determined in line with items 1 to 3 of this paragraph — according to the location where the grounds for conducting the administrative procedure arose.

Provided that two or more public authorities simultaneously have territorial jurisdiction over the same administrative matter, jurisdiction shall lie with the public authority that first initiated the administrative procedure. Territorially competent authorities may agree which of them shall conduct the procedure. Each territorially competent authority shall perform within its territory the actions in the administrative procedure that cannot be delayed.

Mandatory Nature of Rules on Jurisdiction

Article 38

Subject matter and territorial jurisdiction may not be amended by mutual agreement between public authorities, between public authorities and parties or between the parties themselves.

The public authority shall, ex officio and throughout the administrative procedure, ensure that it has subject matter and territorial jurisdiction. Should circumstances affecting jurisdiction arise in the course of an administrative procedure, the public authority that had jurisdiction until then shall continue to conduct the administrative procedure if this significantly facilitates the procedure and ensures protection of the party.

Jurisdiction in Urgent Administrative Matters

Article 39

Provided that the delay would entail danger and the territorially competent public authority cannot undertake the necessary urgent action, another public authority having subject matter jurisdiction may undertake that action outside the territory of its territorial jurisdiction. The public authority that undertook the action shall immediately notify the territorially competent public authority thereof.

Conflict of Jurisdiction

Article 40

The procedure for deciding on a conflict of jurisdiction which, in line with the law governing state administration or the law governing local self-government, is decided by the Government of Montenegro (hereinafter referred to as: the Government) or by the competent authority in a municipality, the Capital City or the Old Royal Capital shall be initiated upon the proposal of the public authority that last declared itself competent or lacking jurisdiction or at the request of a party.

The authority competent to resolve the conflict of jurisdiction referred to in paragraph 1 of this Article shall resolve the conflict without delay and no later than 15 days from the date of submission of the request for resolving the conflict of jurisdiction or from the date when it became aware of the existence of the conflict of jurisdiction.

The authority referred to in paragraph 1 of this Article, by the decision resolving the conflict of jurisdiction, shall annul the decision rendered in the administrative matter by the authority lacking jurisdiction or the decision by which the competent public authority declared itself lacking jurisdiction and shall forward the case files to the competent authority.

A party may neither file an appeal against the decision resolving the conflict of jurisdiction nor initiate administrative dispute proceedings.

Decision-Making with Consent, Confirmation, Approval or Opinion

Article 41

Where it is prescribed by law or other regulation that a decision is rendered by one public authority with the prior consent, confirmation or approval or upon the previously obtained opinion of another public authority, the decision shall be rendered after the other public authority gives its consent, confirmation or approval or provides its opinion, and the introduction to the decision shall state the name of that public authority and the number and date of the act by which it gave its consent, confirmation or approval or provided its opinion. Failure to accept an opinion shall not affect the legality of the decision, but the reasons for not accepting it shall be stated in the rationale.

The public authority shall give the consent, confirmation or approval or provide the opinion referred to in paragraph 1 of this Article within 20 days from the date when the consent, confirmation, approval or opinion was requested, unless otherwise prescribed by law or other regulation.

Should the public authority fail to act in line with paragraph 2 of this Article, it shall be deemed to have given its consent, confirmation or approval, i.e. the public authority rendering the decision may render the decision without obtaining the opinion, unless otherwise prescribed by law or other regulation.

Joint Decision

Article 42

Provided that it is prescribed by law or other regulation that two or more public authorities are to decide on a single administrative matter, each of those authorities shall decide on matters within its jurisdiction and they shall agree which of them shall render a joint decision, which shall also state the acts of the other public authorities.

Provided that public authorities referred to in paragraph 1 of this Article cannot agree which of them shall render the joint decision, a decision shall be rendered by the public authority that first received the request of the party.

2. Cooperation and Assistance

Implementation of Administrative Activities at a Single Point

Article 43

Provided that, for the purpose of exercising a right or legal interest of a party, it is necessary, in line with a special law or other regulation, to implement several administrative activities, public authorities shall enable the party, at a single point, to submit requests and other submissions and obtain notifications, information, advice and prescribed forms relating to the exercise of its rights or legal interests within the jurisdiction of those public authorities.

The public authority that receives a request or other submission at the point referred to in paragraph 1 of this Article shall, ex officio and without delay, forward it to the public authorities competent to decide or act upon the request or other submission.

The time limit for deciding or acting upon a request or other submission submitted at the point referred to in paragraph 1 of this Article shall be calculated from the date of submission of the request or other submission.

The implementation of administrative activities at a single point referred to in paragraph 1 of this Article shall not affect the subject matter or territorial jurisdiction of public authorities or the right of a party to address the competent public authority directly.

Legal Assistance

Article 44

Public authorities shall provide legal assistance to each other in the administrative procedure, within the limits of their jurisdiction.

The public authority may request legal assistance when it requires information concerning facts, data or other evidence held by another public authority or where an action needs to be undertaken outside the territory of the competent public authority.

The public authority from which legal assistance is requested shall provide such assistance without delay and no later than 15 days from the date when the assistance was requested.

Should the public authority referred to in paragraph 3 of this Article fail to provide legal assistance within the prescribed time limit, the public authority that requested legal assistance may address the public authority supervising the work of the authority from which assistance was requested.

Legal assistance for the performance of individual actions in the administrative procedure may be requested from a court, in line with special regulations. Exceptionally, the competent public authority may request the court to provide it with the case files necessary for conducting the administrative procedure. The court shall act upon such request where this does not interfere with court proceedings. The court may set a time limit within which the public authority shall return the case files.

International Legal Assistance

Article 45

Legal assistance in relations with foreign authorities shall be provided in line with an applicable international treaty and, where no such treaty exists, the principle of reciprocity shall apply. Should there be doubt as to the existence of reciprocity, an opinion shall be provided by the state administration authority competent for foreign affairs.

Public authorities shall provide legal assistance to foreign authorities in the manner prescribed by law. An action that is the subject of a request from a foreign authority for legal assistance may also be performed in the manner requested by the foreign authority, provided that such manner is not contrary to public order.

Should international treaties fail to provide for the possibility of direct communication with foreign authorities, public authorities shall communicate with foreign authorities through the state administration authority competent for foreign affairs.

3. Authorised Official

Designation and Powers of an Authorised Official

Article 46

Administrative procedure shall be conducted and a decision rendered, in line with this Law, by an authorised official designated by the internal organisation and job descriptions act of the public authority.

Should an authorised official fail to be designated within a public authority, decision in the administrative procedure shall be rendered by the head of that authority.

In the case referred to in paragraph 2 of this Article, administrative procedure shall be conducted by a person authorised by the head of the public authority.

Decision-Making by a Collegial Authority

Article 47

A collegial authority shall decide on administrative matters by a majority vote of all its members, unless otherwise prescribed by law.

A collegial authority may authorise in writing one of its members or an official of that authority to conduct the procedure, as an authorised official, and propose the decision to be rendered by the collegial authority.

Recusal of an Authorised Official

Article 48

The authorised official shall be recused in the following cases:

- 1) in the matter in which the administrative procedure is conducted, that official is a party, witness, expert witness, proxy or legal representative of a party;
- 2) the authorised official is related by blood to a party or the representative or proxy of a party in the direct line or in the collateral line up to and including the fourth degree, is the spouse or common-law partner of any of them or is related by marriage up to and including the second degree, including where the marriage or common-law union has ceased;
- 3) the authorised official is the guardian, adoptive parent, adoptee or foster parent of the party or the representative or proxy of a party;
- 4) the authorised official has already participated in the first-instance administrative procedure;
- 5) the authorised official has an interest-based, contractual or other relationship with a party on the basis of which the authorised official receives remuneration or other income, or is a member of the management board, supervisory board or another working or professional body of the party;
- 6) the authorised official may derive a benefit or suffer damage from the outcome of the administrative procedure;
- 7) other circumstances exist that call into question the impartiality of that official.

Should, in the course of an administrative procedure, an authorised official or a member of a collegial authority become aware of the existence of any of the circumstances referred to in paragraph 1 of this Article, that person shall discontinue further work on the case and, without delay, notify the head of the public authority or the collegial authority thereof.

A party that considers that any of the circumstances referred to in paragraph 1 of this Article exists as grounds for recusal of an authorised official shall, without delay, notify the head of the public authority thereof. Where the decision is rendered by the head of the public authority, the party shall notify the authority supervising the work of the public authority of the circumstances constituting grounds for recusal.

Decision on Recusal of an Authorised Official

Article 49

The head of the public authority shall decide on the recusal of an authorised official.

The authority prescribed by law shall decide on the recusal of the head of the public authority.

A decision on the recusal of a person referred to in paragraphs 1 and 2 of this Article shall be rendered within five days from the date when the public authority was informed of the grounds for recusal or from the date when it received the request for recusal.

A decision on the recusal of a person referred to in paragraphs 1 and 2 of this Article shall designate the official who shall conduct the administrative procedure and render the decision.

Should a decision be rendered on the recusal of a member of a collegial authority, that authority shall decide without the participation of the member recused by the decision.

A separate appeal against a decision on recusal shall not be allowed.

Recusal of a Recording Clerk

Article 50

Provisions of Articles 48 and 49 of this Law shall apply mutatis mutandis to the recusal of a recording clerk.

A decision on the recusal of a recording clerk shall be rendered by an authorised official.

IV. PARTY AND REPRESENTATION

Party to an Administrative Procedure

Article 51

A party to an administrative procedure shall be a natural or legal person at whose request the administrative procedure was initiated, whose rights, obligations or legal interests are the subject of an administrative procedure conducted ex officio or who, for the purpose of protecting its rights or legal interests, has the right to participate in the procedure.

A state or other authority, settlement, group of persons and other entity without a legal personality may also be a party to an administrative procedure where they may be holders of rights, obligations or legal interests being decided upon or in relation to which other administrative activities are undertaken in administrative matters.

During the administrative procedure, the public authority shall, ex officio, verify whether a person appearing as a party may be a party to the procedure and whether the party is represented by its legal representative or authorised representative.

Death of a Natural Person or Cessation of a Legal Person

Article 52

Provided that, in the course of an administrative procedure, a natural person dies or a legal person that is a party to the procedure ceases to exist, procedure may be discontinued or continued, depending on the nature of the administrative matter that is the subject of the administrative procedure.

Provided that, due to the nature of the administrative matter, administrative procedure cannot be continued, the public authority shall discontinue the procedure by a decision.

Procedural Capacity and Representative

Article 53

A party having full legal capacity may independently undertake actions in the administrative procedure (procedural capacity) or act through a representative or proxy, in line with this Law.

Legal Representative

Article 54

Actions in the procedure on behalf of a party lacking procedural capacity shall be undertaken by its legal representative, designated by law or by an act of the competent public authority.

A legal person shall undertake actions in the administrative procedure through an authorised representative designated on the basis of the general act of that legal person.

A state or other authority shall undertake actions in the administrative procedure through an authorised representative, while a settlement, group of persons and other parties without legal personality shall act through a person authorised by them, unless otherwise prescribed by a special regulation.

Should an authorised official establish that the legal representative of a person under guardianship does not exercise the necessary care in representation, the authorised official shall notify the guardianship authority thereof.

Temporary Representative

Article 55

The public authority shall appoint a temporary representative for a party where this is required by the urgency of deciding a particular administrative matter, in the following cases:

- 1) a party lacking procedural capacity has no legal representative;
- 2) a party is absent and its permanent or temporary residence is unknown;
- 3) a party has neither permanent nor temporary residence in Montenegro and has failed to comply with the request of the public authority to appoint a representative within a specified time limit;
- 4) the legal representative is in a conflict of interest with the party represented;
- 5) a legal person, settlement, group of persons or another entity without a representative has failed to comply with the request of the public authority to appoint a representative within a specified time limit;
- 6) the interest of a party or the protection of life and health or property of considerable value requires urgent action, while participation of the party or its representative in the implementation of that activity is impossible or would entail disproportionate costs.

Should the public authority appoint a temporary representative for a party lacking procedural capacity, it shall notify the guardianship authority thereof without delay.

Should the public authority appoint a temporary representative for a party on the grounds referred to in paragraph 1 items 2 and 3 of this Article, it shall publish a notice of the appointment of the temporary representative on its notice board and website and in the "Official Gazette of Montenegro".

A person appointed as a temporary representative shall accept the representation and may refuse it only on the grounds prescribed by a special law or other regulation. The temporary representative shall participate only in the administrative procedure for which that representative was appointed and until the legal representative or authorised representative, the party itself or its proxy appears.

Proxy

Article 56

A party or its legal representative may designate a lawyer or another person having full legal capacity to represent the party in the procedure as its proxy, except in actions in which the party itself is required to make statements.

A power of attorney by which a party authorises a proxy within the meaning of paragraph 1 of this Article may be drawn up in writing or given orally for the record. Should the power of attorney be drawn up in writing and the public authority suspect its authenticity, the public authority shall order the submission of a certified power of attorney.

The scope of the power of attorney shall be determined by its content. A power of attorney may be granted for the entire administrative procedure or only for individual actions in the procedure and may also be limited in time. A power of attorney shall not cease upon the death of a party, loss of its procedural capacity or change of its legal representative, but the legal successor of the party or its new legal representative may revoke the power of attorney previously granted.

A party present when its proxy makes an oral statement may, immediately after the statement has been made, amend or revoke the statement of its proxy. Should the written or oral statements concerning facts made by a party and its proxy be inconsistent, an authorised official shall assess both statements.

Provisions of the law governing civil proceedings shall apply mutatis mutandis to matters relating to powers of attorney that are not regulated by this Law.

Joint Representative or Joint Proxy

Article 57

Two or more parties may act jointly in the same matter, unless otherwise prescribed by law, and shall designate one of them to act as their joint representative or shall designate a joint proxy.

A joint representative or joint proxy shall be designated in writing and the designation shall be signed by all parties or shall be designated orally for the record before the public authority.

Provided that a joint representative or joint proxy has been designated, each party shall retain the right to act independently in the administrative procedure.

Expert Advisor

Article 58

In an administrative procedure requiring expert knowledge of issues relating to the subject matter of the procedure, a party may bring an expert who shall provide explanations and advice to the party (hereinafter referred to as: the expert advisor). The expert advisor shall not represent the party.

The authorised official may prohibit a person from acting as an expert advisor where that person lacks legal capacity or engages in unauthorised legal practice and shall render a decision thereon.

A separate appeal against the decision referred to in paragraph 2 of this Article shall not be allowed.

V. COMMUNICATION BETWEEN PUBLIC AUTHORITIES AND PARTIES

1. Submissions

Concept, Content and Manner of Filing Submissions

Article 59

A submission in an administrative procedure shall mean a request, proposal, application, petition, appeal, representation, objection or other submission by which a party addresses to the public authority in relation to a particular administrative matter.

A submission shall be sufficiently clear and, in order for action to be taken upon it, shall contain: the name of the public authority to which it is addressed; the subject matter to which the submission relates; the name and surname, permanent or temporary residence

and address of the party, or the name and registered office of the party; the name and surname of the representative, proxy or authorised representative; and the manner in which the party wishes the public authority to respond to the submission.

A party may file a submission to the public authority by delivering it directly, sending it by post or fax or submitting it in electronic form, in line with the regulations governing electronic government. Unless otherwise prescribed by law, brief and urgent communications may also be made by telephone or sent by telegram, where this is possible due to the nature of the matter and an authorised official shall draft a written note thereof and attach it to the case files.

Incomplete Submission

Article 60

Should a submission contain a formal shortcoming preventing action upon it or where the submission is unclear or incomplete, authorised official shall immediately and no later than three days from the date of receipt of the submission require the party to remedy the shortcomings and shall set a time limit within which the party shall do so.

Should the party remedy the shortcomings within the specified time limit, submission shall be deemed to have been duly filed from the date of its original filing.

Should the party fail to remedy the shortcomings within the specified time limit, authorised official shall, within seven days from the date of expiry of the time limit referred to in paragraph 2 of this Article, render a decision rejecting the submission.

Filing a Submission

Article 61

A submission shall be filed to the public authority competent to receive it.

In cases of oral submissions that are not subject to a time limit and do not require urgent action, the days or hours during working hours when such submissions may be made may be specified. The public authority shall publish the times for making oral submissions on its website and in a prominent place on its premises.

A party temporarily residing in another state may file a submission with a diplomatic or consular mission of Montenegro, which shall forward it without delay to the competent public authority to which it is addressed.

Persons deprived of liberty may file a submission through the authority or institution in which they are held.

Action of a Public Authority Lacking Jurisdiction upon a Submission

Article 62

Should a public authority receive a submission for which it has no competence, it shall forward the submission without delay to the competent public authority or court and notify the party thereof. In the case of an oral submission, the authorised official shall orally inform the party that made the submission that the public authority is not competent and shall direct the party to the competent public authority or court.

Should the public authority receive a submission for which it has no competence and cannot determine which public authority or court is competent to act upon the submission, it shall, without delay, render a decision rejecting the submission for lack of competence and serve it on the party.

Submission in Electronic Form

Article 63

A submission may be filed to the public authority in electronic form, in line with the regulations governing electronic government.

Should a submission be filed in electronic form, the public authority shall, without delay, send the party an electronic acknowledgment of receipt of the submission.

Should a submission filed to the public authority in electronic form not be read for technical reasons, the public authority shall notify the party thereof without delay, require the party to submit it in another appropriate form and set a time limit for its submission. Should the party fail to act upon the request of the public authority within the specified time limit, the submission shall be deemed not to have been filed. Should the party file the submission in another appropriate form, the submission shall be deemed to have been filed on the date on which it was submitted in electronic form.

Registration and Acknowledgment of Received Submissions

Article 64

The public authority that receives a submission shall register it in the order of receipt.

Should the public authority receive several submissions in the same postal delivery or electronically, those submissions shall be deemed to have been filed simultaneously.

At the request of a party, the public authority shall issue an acknowledgment stating that the submission was received, the date and time of receipt, the subject matter of the submission and, where applicable, a list of documents enclosed with the submission. No fee shall be charged for issuing the acknowledgment.

2. Record

Drafting the Record and Its Content

Article 65

A record shall be drafted of an oral hearing or another important action in the administrative procedure, as well as of important oral statements made by parties or third persons in the administrative procedure.

The record referred to in paragraph 1 of this Article shall contain the name of the public authority; place, date and time; administrative matter in relation to which the administrative procedure is conducted; name and surname of the authorised official; parties present and their legal representatives, proxies or authorised representatives; third persons; a brief and accurate account of the course of the oral hearing, content of the actions undertaken and statements made in the administrative procedure and information of the documents used in the administrative procedure.

Prior to finalisation, the record shall be read to the parties, other persons who made statements and other persons participating in the administrative procedure. The end of the record shall state that the record was read and that no objections were made or, where objections were made, shall briefly state their content. A record shall be signed by the authorised official and the recording clerk, where one was present. Persons who made statements shall sign the record immediately below their statements and at the end of each page containing their statements. Nothing may be added to or altered in a signed and closed record. Any addition to a record that has already been closed shall be entered as an addendum to the record and signed by the authorised official and the person upon whose proposal the addition was entered.

Should a participant in the administrative procedure refuse to sign the record or leave the place where the oral hearing is held or another action is undertaken before the record is closed, this fact shall be entered in the record together with the reasons for which the record was not signed.

Status of a Public Document

Article 66

The record referred to in Article 65 of this Law shall have the status of a public document.

The record shall constitute evidence of the course and content of an oral hearing or another action in the administrative procedure and of the statements made, except for those parts of the record in respect of which an objection has been made that they were not properly drawn up.

The accuracy of the record may be challenged.

Record of a Collegial Authority

Article 67

Should a collegial authority decide in an administrative procedure, a separate record of deliberation and voting shall be drafted. Should a unanimous decision be rendered in appeal proceedings, a record of deliberation and voting need not be drafted and a note thereof may instead be made in the case file.

The record referred to in paragraph 1 of this Article shall contain, in addition to information on the composition of the collegial authority, the subject matter under consideration, a brief summary of the decision rendered and any separate opinions. A record shall be signed by the person presiding and the recording clerk.

3. Inspection of Case Files and Information on the Course of the Administrative Procedure

Right to Inspect Case Files

Article 68

A party shall have the right to inspect the case files, make the necessary notes and obtain copies of the files at its own expense. Inspection of the files shall be free of charge and shall be carried out under the supervision of an authorised official.

A request to inspect the case files and obtain copies thereof may be submitted in writing, orally for the record or electronically, in line with the regulations governing electronic government.

The public authority shall, within five days from the date of submission of the request referred to in paragraph 2 of this Article, provide the conditions for inspecting the case files and obtaining copies thereof on the premises of the public authority. In special cases, where this is suitable for the applicant, the files may also be inspected on the premises of another public authority or a diplomatic or consular mission of Montenegro.

Where case files are kept in electronic form, the public authority shall provide the technical means for their inspection and for downloading them in electronic or printed form.

Right to Information on the Course of the Procedure

Article 69

A party and another person who demonstrates a probable legal interest in the matter shall have the right to be informed of the course of the administrative procedure and of matters relating to that procedure.

VI. SUMMONING, SERVICE AND NOTIFICATION

Summoning and Service

Article 70

Summoning of a party and other participants in the administrative procedure and service of a summons, decision or another official document (hereinafter referred to as: document) shall be carried out in written form, orally or electronically.

Unless otherwise prescribed by law or other regulation, the authorised official shall independently decide on the manner of summoning a party or another participant in the administrative procedure and the manner of service of documents, taking into account the legal protection of the party, the rational use of resources and simplification of the administrative procedure.

Manner of Summoning and Service

Article 71

Where a party is present, the public authority shall summon the party orally and serve documents directly and authorised official shall draw up an official note thereof and attach it to the case files.

Brief and urgent notices may be communicated to the party by telephone or in another appropriate manner and an official note thereof shall be drawn up and attached to the case files.

A document may be served on a party through a postal operator, electronically, by personal or substituted service or in another appropriate manner.

Places of Service

Article 72

A document shall, as a rule, be served at the dwelling, business premises or workplace of the person on whom service is to be effected and, in the case of attorney, at the office of that attorney.

A document may also be served outside the premises referred to in paragraph 1 of this Article where the person on whom service is to be effected has consented thereto.

Time of Service

Article 73

A document shall be served on a working day between 8:00 and 20:00.

The public authority may, for particularly important reasons, order that service be effected on a Sunday or public holiday, while service after 20:00 may be effected only where it cannot be delayed.

Personal Service

Article 74

A document shall be served personally on a party or another participant in the administrative procedure, except where the party has a legal representative, proxy or proxy for receipt of documents, on whom service shall be effected.

Service of a document on a legal representative, proxy or proxy for receipt of documents shall be deemed to constitute service on the party.

Proxy for Receipt of Documents

Article 75

Where a party informs the public authority that it has appointed a proxy for receipt of documents, the public authority shall serve all documents on that proxy.

The proxy for receipt of documents shall forward each document referred to in paragraph 1 of this Article to the party without delay.

Joint Proxy for Receipt of Documents

Article 76

Provided that more than ten parties participating in the administrative procedure with identical requests do not have a joint proxy, they shall, at the request of the public authority, designate a joint proxy for receipt of documents within the time limit set by that authority.

Should the parties fail to designate a joint proxy within the time limit referred to in paragraph 1 of this Article, the public authority may appoint a joint proxy for them.

A document served on a joint proxy for receipt of documents shall identify all parties on whose behalf service is effected.

Service on a Legal Representative or Proxy

Article 77

Service of documents on a legal representative or proxy shall be effected in the manner referred to in Articles 71, 72 and 73 of this Law.

International Service

Article 78

Service of documents on foreign nationals, members of international organisations and persons enjoying diplomatic immunity shall be effected through the state administration authority competent for foreign affairs, unless otherwise provided by an international treaty.

Service in Special Cases

Article 79

Service of documents on persons deprived of liberty shall be effected through the administration of the authority or institution in which they are held.

Change of Permanent Residence, Temporary Residence or Registered Office

Article 80

Should a party or its legal representative change its permanent residence, temporary residence or registered office during the administrative procedure, it shall immediately notify the public authority conducting the administrative procedure thereof. Should a party

or its legal representative fail to do so and an authorised official or another official of the public authority is unable to contact them, service of documents on the party or its legal representative shall be effected by public notification, in line with Article 87 of this Law.

Provided that a proxy or proxy for receipt of documents changes its permanent or temporary residence during the administrative procedure and fails to notify the public authority conducting the administrative procedure thereof, further service of documents shall be effected as if no proxy or proxy for receipt of documents had been appointed.

Errors in Service

Article 81

Should an error occur in the service of a document, service shall be deemed to have been effected on the date when it is established that the person whom the document was addressed to actually received it.

Service through a Postal Operator

Article 82

Service of a document through a postal operator shall be effected by ordinary or registered mail.

A person to whom a document was sent by ordinary mail shall be deemed to have received it on the seventh day from the date when it was delivered to the postal operator, if it was sent to an address in Montenegro, or on the tenth day if it was sent outside Montenegro, unless that person proves that the document was received with delay.

A document sent by registered mail shall be deemed to have been received on the date indicated in the acknowledgment of receipt of that consignment.

Electronic Service

Article 83

Should a party request in a submission that a document be served electronically and provide an email address for receipt, the public authority shall serve the document on the party electronically, provided that the public authority has the technical capacity for such manner of service.

A document shall be served electronically at the email address provided by the party in its submission.

A document sent electronically shall be deemed to have been received at the date and at the time indicated in the acknowledgment of receipt of the electronic document, in line with the law governing electronic documents.

Should the document referred to in paragraph 3 of this Article be unreadable for technical reasons, the party may request the public authority to serve that document in another appropriate form.

Obligation and Manner of Personal Service

Article 84

A document shall be served personally on the person whom it is intended to in cases when the time limit commencing upon service of that document may not be extended, when personal service is prescribed by law or other regulation or when so ordered by an authorised official.

Service shall be effected by an employee designated by the public authority or by a person employed by a postal operator or another delivery service (hereinafter referred to as: the courier).

Service shall be confirmed by a certificate of service (hereinafter referred to as: proof of service), which shall contain, in addition to the signatures of the recipient and the courier, particulars of the document being served, including the name of the public authority and the number and date of the document, as well as the date of service.

Should the recipient not be found at the address at which service was to be effected, the courier shall make another attempt to effect service within 24 to 72 hours of the first attempt. Should the recipient not be found on the second attempt or refuse to receive the document, the courier shall draft a written note thereof.

In the case referred to in paragraph 4 of this Article, the courier shall leave, at the place where service was to be effected, a notice stating the name and surname of the recipient, particulars of the document being served, premises of the public authority at which the recipient may collect the document and the date when the notice was left.

Service shall be deemed to have been effected upon expiry of seven days from the date when the notice referred to in paragraph 5 of this Article was left.

Substituted Service

Article 85

Where personal service is not mandatory and the person whom service is to be effected is not found at their dwelling, service shall be effected by handing the document to an adult member of their household.

Should service be effected at the business premises or workplace of the person whom the document is to be served and that person is not found there, the document may be handed to a person employed at the same place, provided that person agrees to receive it. Service on a lawyer may also be effected by handing the document to a person employed at the law office.

Service referred to in paragraphs 1 and 2 of this Article may not be effected on a person participating in the same procedure with an opposing interest.

The person receiving the document shall sign the proof of service and thereby undertake to deliver the document to the recipient. The courier shall enter in the proof of service the relationship of that person to the person on whom service was to be effected, the date on which the document was handed over and particulars of the document being served. Should a third person refuse to receive the document, the document shall be left in the mailbox of the recipient.

Service shall be deemed to have been effected upon expiry of seven days from the date when the document was served through a third person or left in the mailbox and a warning to that effect shall be stated on the envelope and the proof of service.

Proof of Service

Article 86

The proof of service shall be signed by the recipient and the courier.

The recipient shall personally enter the date of receipt on the proof of service.

Should the recipient be illiterate or unable to sign, the courier shall enter the name and surname of the recipient and the date of delivery on the proof of service and shall add a note stating why the recipient did not sign it.

Should the recipient refuse to sign the proof of service, the courier shall record that fact on the proof of service and write out in words the date of delivery of the document, in which case service shall be deemed to have been duly effected.

Public Notification

Article 87

Should the service not be possible in the manner referred to in Articles 84 and 85 of this Law or should service concern a large number of persons unknown to the public authority and service in another manner not be possible or appropriate, as well as in other cases prescribed by law, service shall be effected by public notification.

Service by public notification shall be effected by publishing the document on the website of the public authority, the electronic government portal and the notice board of the authority and the document may also be published in daily newspapers.

Service by public notification shall be deemed to have been effected upon expiry of ten days from the date of publication of the document and the public authority may extend that time limit for justified reasons.

The date of publication and the date of expiry of the time limit shall be stated in the document.

Should a decision be served by public notification, the rationale of the decision may be omitted, in which case the public authority shall publish information on the place, premises and manner in which the rationale may be inspected.

VII. TIME LIMITS

Determining and Extending Time Limits

Article 88

Time limits may be determined for undertaking individual actions in the administrative procedure.

Should time limits not be prescribed by law or other regulation, they shall be set by an authorised official, taking into account the circumstances of the case and the principles of proportionality, economy and efficiency.

Time limit set by an authorised official, as well as a time limit prescribed by law or other regulation for which the possibility of extension is provided, may be extended at the request of a party or another person participating in the administrative procedure, provided that the request was submitted prior to the expiry of the time limit and that justified reasons for extension exist.

Calculation of Time Limits

Article 89

The time limits shall be calculated in days, months and years and may also be calculated in hours.

Should a time limit be specified in days, the day when the service was effected or the day when the event from which the duration of the time limit is to be calculated occurred shall not be included in the time limit and the first following working day shall be taken as the commencement of the time limit.

The time limit specified in months or years shall expire at the end of the day in the relevant month or year that corresponds numerically to the day when the service was effected or the event from which the duration of the time limit is calculated occurred.

Should there be no such day in the relevant month, the time limit shall expire on the last day of that month.

The expiry of a time limit may also be specified by reference to a particular calendar date.

Sundays and public holidays shall not prevent the commencement or running of time limits.

Should the last day of a time limit fall on a Sunday, public holiday or another day when the public authority before which the action is to be undertaken does not work, the time limit shall expire at the end of the first following working day.

Calculation of Time Limits for Filing Submissions

Article 90

A submission shall be deemed to have been filed within the time limit if it was filed with the competent public authority prior to expiry of that time limit.

Should a submission subject to a time limit be filed with a public authority lacking jurisdiction prior to expiry of the time limit and received by the competent public authority after its expiry, it shall be deemed to have been filed within the time limit.

Should a submission be sent by registered mail or telegram, date when it was delivered to the postal operator shall be deemed to be the date when it was filed with the public authority it was addressed to.

Should a submission be sent electronically, it shall be deemed to have been filed on the date and at the time stated in the electronic acknowledgment of receipt referred to in Article 63 paragraph 2 of this Law.

Should a submission be filed with an organisational unit outside the registered office of the public authority or with a diplomatic or consular mission, the date when it was filed with that unit or mission shall be deemed to be the date when it was filed with the public authority.

Should the party be a person deprived of liberty, date when that person delivered the submission to the authority or institution in which that person is held shall be deemed to be the date when the submission was filed with the public authority.

VIII. RETURN TO THE STATUS QUO ANTE

Application for Return to the Status Quo Ante

Article 91

A party that, for justified reasons, failed to undertake an action in the administrative procedure within the prescribed time limit and consequently lost the right to undertake that action shall, upon its application, be granted return to the status quo ante.

The party shall state in the application for return to the status quo ante the circumstances that resulted in the failure referred to in paragraph 1 of this Article and shall make those circumstances plausible.

Should the facts the application for return to the status quo ante is based on be generally known, the public authority may decide on the application without obtaining a statement from the opposing party.

An application for return to the status quo ante may not be based on circumstances previously assessed by the public authority as insufficient for extending the time limit or adjourning the hearing.

Should the return to the status quo ante be requested because the time limit for filing a submission was missed, that submission shall also be enclosed with the application.

An application for return to the status quo ante shall not stay the administrative procedure, but the public authority competent to decide on the application may temporarily suspend the procedure.

Time Limit for Filing an Application for Return to the Status Quo Ante

Article 92

An application for return to the status quo ante shall be filed within eight days from the date when the reason preventing the party from undertaking an action in the administrative procedure within the prescribed time limit ceased to exist or, should the party become aware of the failure at a later date, from the date when it became aware thereof.

An application for return to the status quo ante may not be filed after the expiry of 30 days from the date of the failure.

Return to the status quo ante may also be granted after the expiry of the time limit referred to in paragraph 2 of this Article in the event of force majeure.

Decision on Return to the Status Quo Ante and Its Consequences

Article 93

An application for return to the status quo ante shall be filed with the public authority before which the omitted action should have been undertaken.

The public authority shall decide on the application referred to in paragraph 1 of this Article by a decision within ten days from the date of filing the application.

Should return to the status quo ante be granted, the administrative procedure shall be restored to the stage at which it stood prior to the failure and the legal consequences resulting from the failure shall be annulled.

A party shall have the right to appeal against a decision rejecting an application for return to the status quo ante, unless the decision was rendered by the second-instance authority.

Administrative dispute proceedings may be initiated against a decision rendered by the second-instance authority.

IX. COSTS OF THE ADMINISTRATIVE PROCEDURE

Costs of the Public Authority and Parties

Article 94

Should the administrative procedure be initiated at the request of a party and two or more parties with opposing interests participate in the procedure, the costs of the administrative procedure shall be borne by the party at whose request the procedure was initiated or by the party against whom the procedure was conducted and concluded unfavourably to that party, unless otherwise prescribed. A party that has withdrawn its request shall bear all costs incurred prior to discontinuation of the administrative procedure, unless otherwise prescribed by special regulations.

Should the administrative procedure be initiated at the request of a party and it can be reliably anticipated that the procedure will incur costs relating to an inspection, expert examination, attendance of witnesses or other actions, the party may be ordered by a decision to deposit in advance the amount necessary to cover those costs. Should the

party fail to deposit that amount within the specified time limit, the public authority may refrain from taking such evidence or discontinue the procedure, unless the public interest requires the procedure to be continued.

Should an administrative procedure initiated ex officio be concluded favourably for the party, costs of the procedure shall be borne by the public authority that initiated the procedure, unless otherwise prescribed.

The costs of the procedure shall be decided upon in the decision on the administrative matter.

Should the administrative procedure be concluded by settlement, each party shall bear its own costs of the procedure, unless otherwise determined by the settlement.

Reimbursement of Expenses and Fees of Other Participants in the Administrative Procedure

Article 95

Witnesses, expert witnesses, interpreters and officials shall be entitled to the prescribed reimbursement of travel expenses and expenses incurred as a result of staying outside their permanent or temporary residence. Should they also be entitled to earnings for that period, they shall be entitled to the prescribed reimbursement of lost earnings. In addition to the prescribed reimbursement, expert witnesses and interpreters shall be entitled to the prescribed special fee for the expert examination performed or interpretation provided.

Witnesses, expert witnesses and interpreters shall make a request for reimbursement of expenses or payment of the fee referred to in paragraph 1 of this Article during their examination, submission of the expert opinion or provision of interpretation. Otherwise, they shall forfeit the right to reimbursement or payment of the fee. The authorised official shall inform the witness, expert witness and interpreter thereof and shall enter that information in the record.

The amount of reimbursement of expenses or the fee referred to in paragraph 1 of this Article shall be determined by a decision rendered by the public authority before which the administrative procedure is conducted and it shall determine who is to make the payment and the time limit for payment. A separate appeal against this decision shall be allowed. This decision shall constitute an enforceable instrument.

Exemption from Payment of Costs

Article 96

A party may be exempted, wholly or partially, from payment of costs in the administrative procedure should it be unable to bear those costs without jeopardising its necessary subsistence or the necessary subsistence of its family.

A foreign national may be exempted from payment of costs where this is provided for by an international treaty or, should no such treaty exist, subject to reciprocity.

The request of a party for exemption from payment of costs shall be decided upon by a decision against which the party shall have the right to appeal.

Secondary Legislation

Article 97

The Government shall determine the amount of reimbursement of expenses and fees in the administrative procedure, as well as the manner of their payment.

X. INITIATION, CONDUCT AND CONCLUSION OF THE ADMINISTRATIVE PROCEDURE

1. Initiation of the Administrative Procedure

Manners of Initiating the Procedure

Article 98

An administrative procedure shall be initiated at the request of a party or ex officio.

Should the administrative procedure be initiated at the request of a party, it shall be deemed to have been initiated on the date on which the request of the party was submitted to the public authority.

Should the administrative procedure be initiated ex officio, it shall be deemed to have been initiated when any action is undertaken within the public authority for the purpose of conducting the procedure.

Rejection of a Request of a Party on the basis of Procedural Grounds

Article 99

The competent public authority shall reject, by a decision, the request of a party for initiation of an administrative procedure if:

- 1) the subject matter of the administrative procedure does not constitute an administrative matter;
- 2) the applicant is not the holder of a right or legal interest or, in line with this Law, cannot be a party to the administrative procedure;
- 3) a request subject to a time limit was not submitted within that time limit;
- 4) another administrative procedure or court proceedings have already been initiated in the same administrative matter, or that administrative matter has already been decided by a final decision by which a right was recognised to the party or an obligation was imposed on it; or
- 5) a decision rejecting the request of the party has already been rendered and served on the party in the same administrative matter and the legal and factual circumstances have not subsequently changed.

A final decision shall mean a decision that may no longer be challenged in administrative dispute proceedings or other court proceedings.

The public authority may reject the request of a party for initiation of an administrative procedure at any stage of the procedure should it establish the existence of any of the grounds referred to in paragraph 1 of this Article.

Initiation of the Procedure Ex Officio

Article 100

The public authority shall initiate an administrative procedure ex officio where this is prescribed by law or other regulation and where it establishes or becomes aware that, having regard to the existing factual situation, the procedure should be initiated for the purpose of protecting the public interest.

When initiating an administrative procedure ex officio, the public authority shall also take into account any representations submitted by citizens and other entities, as well as warnings and recommendations of other public authorities.

2. Amendment and Withdrawal of a Request

Right to Amend and Withdraw a Request

Article 101

A party may amend a submitted request for initiation of an administrative procedure prior to rendering the first-instance decision, provided that the amendment is based on the same factual situation.

A party may withdraw its request at any stage of the administrative procedure.

Discontinuation of the Procedure

Article 102

Should an administrative procedure be initiated at the request of a party and the party withdraw that request, the public authority shall render a decision discontinuing the administrative procedure and shall notify the opposing party thereof, if there is one.

A decision discontinuing the administrative procedure shall also be rendered ex officio should the conduct of the party or other circumstances indicate that the party has withdrawn the request for the initiation of the administrative procedure.

In cases referred to in paragraphs 1 and 2 of this Article, the public authority shall continue the administrative procedure should its conduct be required in the public interest or requested by the opposing party.

Should the public authority discontinue an administrative procedure initiated ex officio and that procedure could have been initiated at the request of a party, the procedure shall be continued should the party so request.

3. Settlement

Conclusion of a Settlement

Article 103

Should two or more parties with opposing requests participate in an administrative procedure, the authorised official shall seek, throughout the procedure, to have the parties conclude a settlement in full or in respect of individual disputed issues.

A settlement in the administrative procedure shall always be clear and specific and shall not prejudice the public interest or the legal interests of third persons, which the authorised official shall ensure ex officio. Should it be established that a settlement would prejudice the public interest or the legal interests of third persons, the authorised official shall not accept the proposed settlement and shall render a decision thereon.

A record shall be drafted of a settlement concluded in the administrative procedure. The settlement shall be deemed to have been concluded when the parties sign the record after the record of settlement has been read to them. A certified copy of the record of settlement shall be provided to the parties at their request.

Should the administrative matter be fully resolved by the settlement concluded, the authorised official shall discontinue the administrative procedure by a decision.

Should the settlement concluded in the administrative procedure relate only to individual disputed issues, the authorised official shall state in the operative part of the decision rendered on the administrative matter the issues in respect of which the settlement was concluded.

A settlement concluded in the administrative procedure shall have the force of an enforceable decision and shall constitute an enforceable instrument.

4. Preliminary Issue

Resolution of a Preliminary Issue

Article 104

Should the resolution of an administrative matter depend on the prior resolution of a legal issue falling within the jurisdiction of a court or another authority (hereinafter referred to as: preliminary issue), the authorised official may, under the conditions prescribed by this Law, resolve that issue independently or suspend the administrative procedure until the competent authority resolves it.

The authorised official shall suspend the administrative procedure should the preliminary issue concern the existence of a criminal offence, the existence of a marriage, the establishment of paternity or other cases prescribed by law. The procedure shall also be suspended should the preliminary issue already be the subject of proceedings before a competent court or another authority.

Should the preliminary issue concern a criminal offence prosecuted ex officio and criminal prosecution not be possible, the authorised official shall also resolve that issue.

Should the authorised official independently resolve the preliminary issue, the resolution of that issue shall have legal effect only in the administrative matter in which it was resolved.

A decision shall be rendered on the suspension of the administrative procedure for the purpose of resolving a preliminary issue.

Should the administrative procedure be suspended and proceedings for resolving a preliminary issue conducted ex officio not have been initiated yet before the competent court or another authority, the public authority conducting the procedure shall request the competent authority to initiate proceedings for resolving the preliminary issue.

In an administrative matter in which proceedings for resolving a preliminary issue are initiated at the request of a party, the authorised official may, by the decision suspending the administrative procedure for the purpose of resolving the preliminary issue, order one of the parties to request the competent court or another authority to initiate proceedings for resolving that issue and set a time limit within which the party shall submit the request and provide the authorised official with evidence thereof. In that case, the authorised official shall warn the party of the consequences of the failure to act.

Should the party at whose request the administrative procedure was initiated fail, within the specified time limit, to provide evidence that it requested the competent court or another authority to initiate proceedings for resolving the preliminary issue within the meaning of paragraph 7 of this Article, the party shall be deemed to have withdrawn the request for initiation of the administrative procedure and the authorised official shall discontinue the administrative procedure by a decision. Should the opposing party fail to act within the meaning of paragraph 7 of this Article, the authorised official shall continue the procedure and shall also resolve the preliminary issue.

5. Examination Procedure

Establishing the Factual Situation

Article 105

The authorised official shall establish all facts and circumstances relevant to deciding on the administrative matter.

The authorised official shall obtain ex officio data concerning facts recorded in official records, regardless of the form in which those records are kept, including written or electronic form.

A party shall state accurately, truthfully and specifically the factual situation presenting the basis of the request, propose evidence supporting its statements and, where possible, submit that evidence, except when legal presumptions or generally known facts are concerned or when data constituting evidence are recorded in official records.

Should the party fail to act in the manner referred to in paragraph 3 of this Article, the authorised official shall order the party to do so within a reasonable time limit.

Should the party at the request of which the administrative procedure was initiated fail, within the time limit referred to in paragraph 4 of this Article, to propose or submit evidence in line with paragraph 3 of this Article, the authorised official shall reject that request by a decision.

Should the administrative procedure be initiated ex officio or at the request of the opposing party and the party fail to submit the requested evidence within the specified time limit, the authorised official shall continue the procedure and decide on the administrative matter.

Summary Procedure

Article 106

The public authority may decide an administrative matter in a summary administrative procedure:

- 1) should the factual situation be capable of being established on the basis of data contained in official records;
- 2) should the party state in its request the facts or submit evidence on the basis of which the factual situation may be established or should that situation be capable of being established on the basis of generally known facts or facts known to the public authority.

Evidence

Article 107

All means suitable for establishing the factual situation and appropriate to the particular case may be used as evidence in the administrative procedure, including documents, witness testimony, statements of parties, findings and opinions of expert witnesses, interpretation and inspection.

Generally known facts, facts known to the public authority and legal presumptions need not be proved.

Provisions governing means of evidence in civil proceedings shall apply mutatis mutandis to matters relating to means of evidence that are not regulated by this Law.

Presenting Evidence before Another Public Authority

Article 108

Should presenting the evidence before the public authority conducting the administrative procedure be impossible, involve disproportionate costs or result in a

considerable loss of time, the public authority may, on its own initiative or at the request of a party, decide that the evidence or part thereof be taken before another public authority.

In the case referred to in paragraph 1 of this Article, provisions of Articles 44 and 45 of this Law shall apply.

Preservation of Evidence

Article 109

Should there be a probability that certain evidence cannot be presented in the examination procedure or that its taking in that procedure will be hindered or rendered impossible, such evidence may, for the purpose of its preservation, be taken at any stage of the administrative procedure, including prior to initiation of the procedure.

Evidence shall be preserved ex officio or upon the application of a party or a person having a legal interest.

The public authority conducting the administrative procedure shall have jurisdiction to preserve evidence during the procedure, while the public authority within whose territory the objects to be inspected are located or the persons to be examined reside shall have jurisdiction to preserve evidence prior to initiation of the procedure.

A decision shall be rendered on the preservation of evidence, without suspending the administrative procedure.

Maintenance of Order

Article 110

The authorised official shall ensure the maintenance of order during the administrative procedure and may warn a person obstructing the work or order the removal of that person from the premises of the public authority.

6. Statement of a Party on the Results of the Examination Procedure

Right of a Party to Make a Statement

Article 111

Prior to rendering a decision, the public authority shall, except in the cases referred to in Article 113 of this Law, inform the party of the results of the examination procedure.

A party shall have the right to make a statement on the results of the examination procedure.

The public authority shall inform the party of the results of the examination procedure orally or by written notice.

The notice referred to in paragraph 3 of this Article shall contain the following:

- 1) the name and surname or name of the party participating in the administrative procedure and the date of initiation of the procedure, should the administrative procedure have been initiated at the request of the party;
- 2) information on the evidence taken and the results of the examination procedure;
- 3) information on the right of the party to inspect the case files and the place where such inspection may be carried out;
- 4) information on the right of the party to make a statement on the results of the examination procedure and the manner of exercising that right.

Manner in Which a Party Makes a Statement

Article 112

A party may make a statement on the results of the examination procedure in writing or orally for the record before the public authority, within the time limit set by the public authority.

The time limit referred to in paragraph 1 of this Article may not be shorter than three or longer than eight days.

Should the party fail to make a statement on the results of the examination procedure, the public authority shall render a decision without the statement of the party.

Exceptions to the Right of a Party to Make a Statement

Article 113

A decision may be rendered without a statement of the party on the results of the examination procedure:

- 1) in urgent cases for the purpose of protecting the public interest;
- 2) should it be evident that the decision will be rendered in favour of the party; and
- 3) should this be prescribed by law.

7. Conclusion of the Procedure

Time Limit for Rendering a Decision

Article 114

The time limit for rendering and serving a decision in the administrative procedure shall be 30 days from the date of initiation of the procedure, unless otherwise prescribed by a special law.

Justified Extension of the Time Limit

Article 115

Should the administrative procedure not be concluded within the prescribed time limit due to the complexity of the administrative matter, time limit may be extended by the period necessary for rendering the decision, provided that such period may not exceed one half of the time limit referred to in Article 114 of this Law. The time limit that has been extended once may not be extended again.

In the case referred to in paragraph 1 of this Article, the party shall be informed of the extension of the time limit, the date of its expiry and the reasons for its extension prior to expiry of the time limit referred to in Article 114 of this Law.

Decision on the Request of a Party

Article 116

Should the administrative procedure be initiated at the request of a party, the public authority may uphold the request in whole or in part or reject it.

Conclusion of the Procedure in Case of Administrative Silence

Article 117

Should the administrative procedure be initiated at the request of a party and the public authority fail to render and serve a decision on the party within the prescribed or extended

time limit, the request shall be deemed to have been upheld, provided that this is prescribed by a special law.

In the case referred to in paragraph 1 of this Article, the party shall have the right to request from the first-instance or second-instance public authority a certificate confirming that its request has been upheld. The certificate shall contain all elements of a decision upholding the request of the party.

Should the public authority fail to issue the certificate referred to in paragraph 2 of this Article within seven days from the date of submission of the request for its issuance or fail, within that time limit, to render a decision subsequently deciding on the request of the party, the party may initiate administrative dispute proceedings.

Provisions of Articles 139 and 140 of this Law shall apply to the annulment and revocation of the certificate referred to in paragraph 2 of this Article.

XI. LEGAL REMEDIES

1. Right of a Party to a Legal Remedy

Types of Legal Remedies

Article 118

A party that considers that an administrative activity of the public authority in an administrative matter has violated its rights and/or legal interests shall have the right to the following legal remedies:

- 1) appeal;
- 2) reopening of the procedure; and
- 3) objection.

2. Appeal

Right to Appeal

Article 119

A party shall have the right to appeal against a decision rendered at first instance or where a decision has not been rendered within the time limit prescribed by law, unless an appeal is excluded by law.

An appeal against a first-instance decision of a ministry may be filed only where this is prescribed by law or where the administrative matter concerned is excluded from administrative dispute proceedings.

No appeal may be filed against a decision of the Government.

Subject Matter of Appeal Proceedings

Article 120

The legality of the contested decision shall be examined in appeal proceedings.

Should a decision have been rendered on the basis of discretion, the expediency of the decision shall also be assessed in appeal proceedings.

Content of and Time Limit for an Appeal

Article 121

An appeal shall state the decision being contested, name of the public authority that rendered the decision, number and date of the decision and the grounds based on which the party contests it.

Any submission contesting a decision, even if not titled as an appeal, shall be deemed to constitute an appeal should its content clearly indicate the intention of the party to appeal against the decision.

New facts and new evidence may be presented in an appeal, provided that the appellant shall explain why they could not have been presented in the first-instance procedure.

An appeal shall be filed within 15 days from the date of service of the decision, unless another time limit is prescribed by law.

Waiver of the Right to Appeal and Withdrawal of an Appeal

Article 122

A party may waive the right to appeal in writing or orally for the record before the public authority from the date of receipt of the first-instance decision until the date of expiry of the time limit for filing an appeal.

In administrative matters involving two or more parties, waiver of the right to appeal shall have legal effect only if all parties waive the right to appeal.

A party may withdraw an appeal prior to service of the decision on the appeal.

Should a party withdraw an appeal, appeal proceedings shall be discontinued by a decision, which shall also determine the costs of the appeal proceedings.

Withdrawal of an appeal may not be revoked.

Submission of an Appeal

Article 123

An appeal shall be submitted to the public authority that rendered the first-instance decision.

Should an appeal be submitted to the authority competent to decide at second instance (hereinafter referred to as: the second-instance authority), that authority shall forward it to the first-instance public authority without delay.

In the case referred to in paragraph 2 of this Article, the appeal shall be deemed to have been submitted to the first-instance authority on the date on which it was submitted to the second-instance authority.

Suspensive Effect of an Appeal

Article 124

A decision may not be enforced during the time limit for filing an appeal.

Exceptionally, a decision may be enforced during the time limit for filing an appeal and after an appeal has been filed, should this be prescribed by law, should this be required for the protection of the public interest or the undertaking of urgent measures or should the postponement of enforcement cause irreparable damage to the opposing party or a person having a legal interest (urgent enforcement).

Action and Powers of the First-Instance Authority upon an Appeal

Article 125

The first-instance public authority shall examine whether the appeal is timely, admissible and filed by an authorised person. Should the appeal be untimely, inadmissible or filed by an unauthorised person, the first-instance authority shall reject the appeal by a decision.

Should the first-instance public authority not reject the appeal on the grounds referred to in paragraph 1 of this Article, it shall examine the legality of the decision and, where the decision was rendered on the basis of discretion, shall also assess its expediency.

Should two or more parties with opposing interests participate in the administrative procedure, the first-instance public authority shall serve the appeal on, or notify, all parties and set a reasonable time limit for their response to the appeal.

Should the first-instance public authority establish that the appeal is well founded, it shall uphold the appeal in full and replace the contested decision with a new decision no later than 15 days from the date of receipt of the appeal. An appeal against that decision may be submitted to the second-instance authority.

Should the first-instance public authority not replace the contested decision with a new decision, it shall forward the appeal and the case files to the second-instance authority without delay.

Should an appeal be filed on the grounds of administrative silence and the first-instance public authority fail to render a decision within seven days from the date of receipt of the appeal, it shall forward the appeal to the second-instance authority without delay, together with the case files and a written explanation of the reasons for which the decision was not rendered within the prescribed time limit.

Action and Powers of the Second-Instance Authority upon an Appeal

Article 126

Should an appeal be inadmissible, untimely or filed by an unauthorised person and the first-instance public authority fail to reject it on those grounds, the second-instance authority shall reject the appeal by a decision.

Should the second-instance authority not reject the appeal on the grounds referred to in paragraph 1 of this Article, it shall examine the legality of the decision and, should the decision have been rendered on the basis of discretion, shall also assess its expediency within the limits of the request made in the appeal, without being bound by the grounds of appeal.

After examining the legality or expediency of the first-instance decision within the meaning of paragraph 2 of this Article, the second-instance authority may reject the appeal, annul the decision in whole or in part or amend it.

The second-instance authority shall reject the appeal should it establish that the first-instance procedure was properly conducted, that the decision was correct and based on law and that the appeal is unfounded.

The second-instance authority shall also reject the appeal should it establish that the first-instance decision is based on law, although for reasons other than those stated in the rationale of that decision. In that case, the second-instance authority shall state its reasons in the decision.

Should the second-instance authority find that the facts were not fully or correctly established in the first-instance procedure or that the appellant was not given an opportunity to make a statement on the results of the examination procedure, it may supplement the procedure and remedy the deficiencies itself. Should the second-instance authority find that, on the basis of the established facts, the administrative matter must be

decided differently from the manner in which it was decided by the first-instance decision, it shall annul the first-instance decision by its decision and decide the administrative matter itself.

Should the second-instance authority find that the deficiencies in the first-instance procedure would be remedied more quickly and economically by the first-instance public authority, it shall annul the first-instance decision by its decision and refer the matter back to the first-instance authority for a new procedure.

Should the second-instance authority annul the first-instance decision, it shall instruct the first-instance public authority as to the respects in which the procedure is to be supplemented and the first-instance public authority shall act fully in line with the second-instance decision and render a new decision without delay and no later than 20 days from the date of receipt of the case. The party shall have the right to appeal against that decision.

Should the second-instance authority have already annulled the first-instance decision once upon an appeal and the party file an appeal against the new decision of the first-instance public authority, the second-instance authority shall annul the first-instance decision and decide the administrative matter itself.

Amendment of a Decision

Article 127

Upon an appeal, the second-instance authority may amend the first-instance decision in favour of the party that filed the appeal beyond the request sought in the appeal, but within the request made in the first-instance procedure, provided that the rights of third persons are not prejudiced.

Second-Instance Decision

Article 128

The second-instance authority shall decide on an appeal by a decision.

Provisions of this Law relating to the form and constituent parts of a first-instance decision shall apply mutatis mutandis to a decision rendered upon an appeal.

Appeal in the Event of Administrative Silence

Article 129

Should the second-instance authority establish that the first-instance public authority failed, for justified reasons, to render a decision within the time limit prescribed by law, it shall order the first-instance public authority by a decision to render a decision within a time limit not exceeding 30 days.

Should the second-instance authority establish that the reasons for which the first-instance public authority failed to render a decision within the time limit prescribed by law are not justified, it shall decide on the request of the party itself within 45 days from the date of receipt of the appeal or shall order the first-instance public authority by a decision to decide on the request of the party within 15 days from the date of receipt of that decision.

Time Limit for Rendering a Decision upon an Appeal

Article 130

A decision upon an appeal shall be rendered and served on the party as soon as possible and no later than 45 days from the date of receipt of the appeal, unless a shorter time limit is prescribed by a special law.

Service of a Second-Instance Decision

Article 131

Upon receipt of the second-instance decision, the first-instance public authority shall serve that decision on the parties without delay.

3. Reopening of the Procedure

Grounds and Time Limit for Reopening the Procedure

Article 132

An administrative procedure in which a decision against which no appeal may be filed was rendered may be reopened at the request of a party in the following cases:

- 1) new facts become known or it becomes possible to use new evidence which, alone or in conjunction with evidence already taken and used, could have led to a different decision had those facts or evidence been presented or used in the previous procedure;
- 2) the decision of the public authority that conducted the administrative procedure was based on a preliminary issue subsequently resolved substantially differently by the competent public authority;
- 3) an authorised official who was required by law to be recused participated in rendering the decision or the decision was rendered by a person not authorised to render it;
- 4) the collegial authority that rendered the decision did not decide in the prescribed composition or the prescribed majority did not vote in favour of the decision;
- 5) a person entitled to participate as a party in the administrative procedure was not given an opportunity to participate in the procedure;
- 6) the party was not represented by a legal representative although, in line with law, it should have been so represented;
- 7) the Constitutional Court of Montenegro, in proceedings upon a constitutional appeal, established a violation of human or minority rights and freedoms guaranteed by the Constitution;
- 8) the decision differs substantially from earlier decisions rendered by the public authority in substantially identical administrative matters;
- 9) the position taken in a judgment of the European Court of Human Rights in an identical matter, delivered prior to the decision becoming final, may affect the legality of the decision.

A party may submit a request for reopening of the procedure within 30 days from the date on which it became aware of the grounds for reopening or acquired the possibility of using new evidence, or within six months from the date on which it became aware of the judgment of the European Court of Human Rights.

After the expiry of three years from the date of service on the party of the decision referred to in paragraph 1 of this Article, the procedure may not be reopened.

Request for Reopening of the Procedure

Article 133

A party shall submit a request for reopening of the administrative procedure to the public authority that rendered the decision, in the manner prescribed by this Law for submitting a submission.

In the request for reopening of the procedure, the party shall make plausible the grounds for which the reopening is requested.

A request for reopening of the procedure shall, as a rule, not stay enforcement of the decision to which it relates.

Exceptionally, should enforcement of the decision referred to in paragraph 3 of this Article cause damage to the party that would be difficult to compensate and should postponement not be contrary to the public interest or cause greater or irreparable damage to the opposing party or a person having a legal interest, the public authority competent to decide on the request for reopening of the procedure may postpone enforcement of the decision by a decision.

Competent Authority

Article 134

The public authority that rendered the decision against which no appeal may be filed shall decide on the request for reopening of the administrative procedure.

Decision on Reopening of the Procedure

Article 135

The public authority referred to in Article 134 of this Law shall examine whether the request for reopening of the procedure is timely, admissible and submitted by an authorised person and whether the grounds on which reopening is requested have been made plausible.

Should the conditions referred to in paragraph 1 of this Article not be fulfilled, the public authority shall reject the request by a decision.

Should the conditions for reopening of the procedure be fulfilled, the public authority shall examine whether the circumstances or evidence presented as grounds for reopening may lead to a different decision. Should the public authority establish that they cannot lead to a different decision, it shall reject the request by a decision.

Should the public authority establish that the circumstances or evidence presented as grounds for reopening may lead to a different decision, it shall render a decision allowing reopening of the procedure. A decision allowing reopening of the procedure shall stay enforcement of the decision to which the request for reopening relates.

Should this be possible in view of the circumstances of the case and in the interest of expediting the administrative procedure and should the public authority establish that the conditions for reopening are fulfilled, it shall undertake the procedural actions that need to be repeated without rendering a separate decision allowing reopening of the procedure.

Decision in the Reopened Procedure

Article 136

In the reopened procedure, the public authority shall render a decision on the basis of the established facts and evidence obtained in the previous and reopened administrative procedures.

By the decision referred to in paragraph 1 of this Article, the public authority may leave in force the decision to which the request for reopening relates or replace it with a new decision. Should the decision be replaced, the public authority shall annul or revoke the previous decision, having regard to all facts and circumstances.

An appeal against a decision rendered upon the request for reopening of the procedure and against a decision rendered in the reopened procedure may be filed only where the decision was rendered by the first-instance public authority. Should the decision be rendered by the second-instance authority, administrative dispute proceedings may be initiated against that decision.

4. Objection

Action upon an Objection

Article 137

In cases referred to in Articles 31 and 35 of this Law, the public authority competent to decide upon an objection shall examine the legality of the administrative activities.

Appropriate Application of Provisions on Appeals

Article 138

Provisions of this Law relating to the form, content and submission of an appeal shall apply appropriately to an objection, unless otherwise prescribed by a special law.

XII. ANNULMENT AND REVOCATION OF DECISIONS

Mandatory Annulment of a Decision

Article 139

A decision shall be annulled in the following cases:

- 1) it was rendered in the administrative procedure in a matter falling within the jurisdiction of a court;
- 2) it was rendered in a matter that cannot be decided in an administrative procedure;
- 3) its enforcement is legally or factually impossible;
- 4) its enforcement constitutes a criminal offence;
- 5) it was rendered as a consequence of coercion, extortion, blackmail, pressure or another unlawful action;
- 6) it was rendered by the public authority without a prior request of the party that was necessary in that administrative matter and the party did not subsequently consent to that decision expressly or tacitly;
- 7) it was rendered by a public authority lacking jurisdiction or by one public authority without the consent, confirmation or approval of another public authority;
- 8) a final decision resolving the same administrative matter differently had already been rendered;
- 9) it is based on a judgment rendered in court proceedings that was subsequently finally quashed;
- 10) it contains an irregularity prescribed by law as grounds for mandatory annulment of a decision.

In the case referred to in paragraph 1 of this Article, the decision shall be annulled within ten years from the date on which it became enforceable, ex officio or upon the proposal of a party.

The decision shall be annulled by the public authority that rendered it, the second-instance authority or the supervisory authority, in line with law.

Should the decision referred to in paragraph 3 of this Article be rendered by the first-instance public authority, an appeal may be filed against it, while administrative dispute proceedings may be initiated should the decision be rendered by the second-instance authority or the authority exercising supervision in the administrative procedure.

Annulment and Revocation of an Unlawful Decision

Article 140

A decision shall be annulled or revoked, in whole or in part, within three years from the date when it became enforceable, in the following cases:

- 1) it was rendered on the basis of a false document or false testimony of a witness or expert witness, or as a consequence of a criminal offence;
- 2) a decision favourable to the party was rendered on the basis of false statements of the party by which the authorised official was misled;
- 3) position taken in a judgment of the European Court of Human Rights in an identical matter, delivered prior to the decision becoming final, may affect the legality of the decision.

Should there be a manifest violation of a substantive provision, a decision by which a party acquired a right may be annulled or revoked, depending on the nature of the administrative matter and the consequences that would result from annulment or revocation of the decision, within one year from the date on which the decision became enforceable.

In administrative matters involving two or more parties with opposing interests, a decision may be revoked only with the consent of the parties having a legal interest.

The decision referred to in paragraph 1 of this Article may be annulled or revoked by the public authority that rendered it and, should the decision have been rendered by the first-instance public authority, also by the second-instance authority. Should there be no second-instance authority, the decision may be annulled or revoked by the public authority supervising the work of the authority that rendered the decision. Public authority shall render this decision ex officio, upon the proposal of a party or upon the proposal of another public authority. Should a party or another public authority submit a proposal for annulment or revocation of an unlawful decision and the authority not accept the proposal, it shall notify the proposer thereof.

Revocation of a Lawful Decision

Article 141

A lawful decision by which a party acquired a right may be revoked in whole or in part in the following cases:

- 1) revocation is necessary to eliminate a serious and imminent danger to the life and health of people, as well as to public safety, and that danger cannot be eliminated in another manner;

2) the decision is conditional upon an obligation that the party failed to fulfil within the prescribed time limit.

The decision referred to in paragraph 1 of this Article shall be revoked, ex officio or upon the proposal of another authority, by the public authority that rendered it.

Legal Consequences of Annulment and Revocation

Article 142

Annulment of a decision shall also annul the legal consequences produced by that decision.

Revocation of a decision shall not annul the legal consequences already produced by that decision but shall prevent the revoked decision from producing further legal consequences.

A party that suffers actual damage as a consequence of revocation of a decision on the grounds referred to in Article 141 paragraph 1 item 1 of this Law shall be entitled to compensation for the damage suffered, excluding compensation for loss of profit. The competent court shall decide on a request for compensation for damage suffered in civil proceedings.

Amendment and Annulment of a Decision in Connection with Administrative Dispute Proceedings

Article 143

The public authority against whose decision administrative dispute proceedings have been initiated in a timely manner may, prior to conclusion of the dispute, annul or amend its decision on the grounds on which the court could annul such decision, should it uphold all claims made in the action and provided that the rights of the opposing party in the administrative procedure or the rights of a third person are not prejudiced.

XIII. ENFORCEMENT

Enforceability of a Decision

Article 144

A decision rendered in the administrative procedure shall be enforced when it becomes enforceable.

A first-instance decision shall become enforceable:

- 1) upon expiry of the time limit for filing an appeal, should no appeal be filed;
- 2) upon service of the decision on the party, should an appeal not be allowed;
- 3) upon service of the decision on the party, should an appeal not stay enforcement;
- 4) upon service on the party of the decision rejecting the appeal; and
- 5) on the date when the party waives the right to appeal.

A second-instance decision amending the first-instance decision shall become enforceable upon service of that decision on the party.

Should a decision specify a time limit within which the action constituting the subject of enforcement may be performed, the decision shall become enforceable upon expiry of that time limit. Should a decision not specify a time limit for performance of the action, the decision shall become enforceable upon expiry of 15 days from the date of service of the decision on the party. The time limit for enforcement specified in the decision or the

prescribed time limit of 15 days shall commence on the date when the decision becomes enforceable within the meaning of paragraphs 2 and 3 of this Article.

Enforcement may also be carried out on the basis of a settlement, but only against a person that concluded the settlement.

Subject of Enforcement

Article 145

Enforcement of a decision for the purpose of fulfilling monetary and non-monetary obligations of a person shall be carried out in line with this Law (hereinafter referred to as: administrative enforcement).

Should the enforcement of a decision for the purpose of fulfilling monetary obligations be carried out against immovable property, shares or ownership interests of members in a company, such enforcement shall be carried out in line with the law governing compulsory enforcement of claims.

Enforcement Debtor and Enforcement Creditor

Article 146

Administrative enforcement shall be carried out against the person required to fulfil the obligation (hereinafter referred to as: enforcement debtor).

Administrative enforcement shall be carried out ex officio or upon the application of a party.

Administrative enforcement shall be carried out ex officio where required by the public interest, while enforcement in the interest of a party shall be carried out upon the application of that party (hereinafter referred to as: the enforcement creditor).

Time of Enforcement

Article 147

Administrative enforcement shall be carried out on a working day between 8:00 and 20:00.

Enforcement actions may be carried out on Sundays, public holidays and after 20:00 only where there is a risk arising from delay and the public authority conducting enforcement has issued a written order to that effect.

Jurisdiction to Conduct Administrative Enforcement

Article 148

Administrative enforcement, except for enforcement of monetary obligations, shall be conducted by the public authority that rendered the first-instance decision, unless otherwise prescribed by a special regulation.

Should it be prescribed that administrative enforcement may not be conducted by the public authority that rendered the first-instance decision and should no other authority be authorised by a special regulation, enforcement shall be conducted by the competent public authority within whose territory the permanent residence, temporary residence or registered office of the enforcement debtor is located, unless otherwise prescribed by law.

The administrative authority competent for police affairs shall, at the request of the public authority competent to conduct enforcement, provide assistance in conducting enforcement.

Should the first-instance public authority not be competent to conduct enforcement, it shall, ex officio or upon the application of the enforcement creditor, endorse the decision to be enforced with a certificate that it has become enforceable (certificate of enforceability) and shall immediately forward it to the authority competent to conduct enforcement.

Decision on Enforcement

Article 149

The public authority competent to conduct enforcement shall, ex officio or upon the application of the enforcement creditor, render a decision on enforcement stating the date on which the decision to be enforced became enforceable and the time, place and manner of enforcement.

The decision on enforcement may set an additional time limit for fulfilment of the obligation or order that the obligation be fulfilled immediately.

The decision on enforcement shall be served on the enforcement debtor and, should it have been rendered upon the application of the enforcement creditor, on the enforcement creditor, by personal or substituted service.

Appeal

Article 150

An appeal against a decision on enforcement shall be allowed and may relate only to the time, place and manner of enforcement, while the correctness of the decision being enforced may not be contested by the appeal.

The appeal shall be filed with the competent second-instance authority and shall not stay enforcement.

Enforcement through Another Person

Article 151

Should the obligation of the enforcement debtor consist of performing an action that may also be performed by another person and should the enforcement debtor fail to perform it at all or in full, that action shall be performed by another person at the expense of the enforcement debtor. The enforcement debtor shall be warned thereof in advance.

In the case referred to in paragraph 1 of this Article, the public authority conducting enforcement may, by a decision, order the enforcement debtor to deposit in advance the estimated amount required to cover the costs of enforcement, while the actual costs shall be calculated subsequently. This decision shall be enforceable.

Enforcement by Monetary Penalties

Article 152

The public authority conducting enforcement shall first warn the enforcement debtor that monetary penalties will be imposed should the enforcement debtor fail to fulfil the obligation within the specified time limit. Should the enforcement debtor, within that time limit, undertake an action contrary to its obligation or fail to fulfil the obligation, the public authority conducting enforcement shall compel the enforcement debtor to fulfil the obligation by imposing a monetary penalty.

A monetary penalty shall be imposed by a decision.

A monetary penalty imposed for the first time may not be less than EUR 500 or more than EUR 5,000 for a legal person and may not be less than EUR 50 or more than EUR 500 for a natural person.

An appeal against a decision imposing a monetary penalty shall not stay enforcement of the decision.

Monetary penalties imposed in line with this Law shall be enforced by the administrative authority competent for public revenue affairs and the funds collected from monetary penalties shall be paid into the Budget of Montenegro.

Enforcement by Direct Coercion

Article 153

Should enforcement of a non-monetary obligation be incapable of being conducted at all or in a timely manner in the manner referred to in Articles 151 and 152 of this Law, enforcement may, depending on the nature of the obligation, also be conducted by direct coercion, unless otherwise prescribed.

Enforcement of an Oral Decision

Article 154

Should an oral decision be rendered, the public authority may order that enforcement be conducted without rendering a decision on enforcement.

Discontinuation and Postponement of Enforcement

Article 155

Administrative enforcement shall be discontinued ex officio should it be established that the obligation has been fulfilled in full, that enforcement was not permitted, that enforcement was conducted against a person not subject to the obligation, that the enforcement creditor has withdrawn its application or that the enforceable instrument has been annulled or revoked. Should enforcement be discontinued, the enforcement actions undertaken shall be annulled, unless the enforceable instrument has been revoked.

Upon the application of a party and for the purpose of avoiding irreparable damage, the public authority that rendered the decision may postpone enforcement and, should this be necessary, extend the postponement until a final decision on the administrative matter is rendered, unless otherwise prescribed by law and provided that this is not contrary to the public interest.

Administrative enforcement shall be postponed should it be established that postponement of fulfilment of the obligation is permitted or that a decision on the principal matter differing from the provisional decision being enforced has been rendered. Postponement of enforcement shall be granted by the public authority that rendered the decision on enforcement.

Counter-Enforcement

Article 156

Should enforcement have been conducted on the basis of a decision and that decision subsequently be annulled, revoked or amended, the enforcement debtor shall have the right to request the return of anything taken from it or restoration of the situation to the state resulting from the new decision.

The public authority that rendered the decision on enforcement shall decide on the request of the enforcement debtor by a decision.

Securing Enforcement

Article 157

In order to secure enforcement, certain enforcement actions may, upon the application of a party or ex officio, be undertaken prior to the decision becoming enforceable should subsequent enforcement be capable of being prevented or substantially hindered.

In the case of enforcement of obligations that may be enforced compulsorily only upon the application of a party, the enforcement creditor shall make plausible the risk that fulfilment may be prevented or hindered and the public authority may make the undertaking of enforcement actions conditional upon the deposit of a specified amount of money to cover any damage that may be caused to the opposing party should the request of the enforcement creditor not be upheld by an enforceable decision on the administrative matter.

Securing enforcement may also be allowed should the obligation of the enforcement debtor have been established or made plausible by the enforcement creditor and should there be a risk that the enforcement debtor will prevent or substantially hinder fulfilment of the obligation by disposing of property, making arrangements with third persons or in another manner.

A provisional decision shall be rendered on securing enforcement referred to in paragraphs 1, 2 and 3 of this Article.

Should an enforceable decision on the administrative matter establish that the obligation of the party determined by the provisional decision does not exist, or should it otherwise be established that the request for rendering the provisional decision was unfounded, the enforcement creditor in whose favour the provisional decision was rendered shall compensate the opposing party for the damage caused by enforcement of the provisional decision.

The public authority that rendered the provisional decision shall decide on compensation for damage. Should it be evident that the provisional decision was rendered as a result of abuse of rights by the enforcement creditor, the enforcement creditor shall be subject to a monetary penalty in the amount of the average annual gross earnings achieved in Montenegro in the preceding year, according to data of the administrative authority competent for statistics.

An appeal against a decision imposing a monetary penalty shall not stay the enforcement of the decision.

XIV. RECORDS

Keeping records

Article 158

Public authorities shall keep records of actions undertaken in administrative matters.

The records referred to in paragraph 1 of this Article shall contain, in particular, data on: the number of administrative procedures initiated at the request of a party and ex officio; the manner and time limits for deciding administrative matters in first-instance and second-instance procedures; the number of requests upheld or rejected; the number of decisions annulled, revoked or amended; the number of procedures discontinued; the number of administrative contracts concluded; the number of decisions rendered upon objections; the number and type of certificates and other documents issued concerning facts recorded or not recorded in official records; the number of unlawful decisions

annulled or revoked; and the number of lawful decisions revoked under Article 141 of this Law.

Public authorities shall keep and present the data referred to in paragraph 2 of this Article by administrative area.

Report on Actions in Administrative Matters

Article 159

Public authorities shall submit an annual report on actions in administrative matters to the state administration authority or local self-government authority competent for the relevant administrative area no later than the end of January of the current year for the preceding year.

The state administration authority or local self-government authority competent for the relevant administrative area shall submit the report referred to in paragraph 1 of this Article to the state administration authority competent for administrative affairs for consolidation no later than the end of February of the current year for the preceding year.

The state administration authority competent for administrative affairs shall prescribe the content of the report referred to in paragraph 1 of this Article, as well as the detailed content and manner of keeping the records referred to in Article 158 of this Law.

XV. SUPERVISION

Supervision over Implementation of the Law

Article 160

Supervision over the implementation of this Law shall be exercised by the state administration authority competent for public administration affairs.

Inspection supervision over the implementation of this Law shall be exercised by the administrative inspection authority.

XVI. TRANSITIONAL AND FINAL PROVISIONS

Completion of Pending Procedures

Article 161

(Law Amending the Law on Administrative Procedure, Official Gazette of Montenegro 37/17 of 14 June 2017, Article 1)

Procedures that have not been finally concluded by the date of commencement of application of this Law shall be concluded in line with the provisions of the Law on General Administrative Procedure (Official Gazette of Montenegro 60/03 and 32/11).

Adoption of By-Laws

Article 162

Regulations for the implementation of this Law shall be adopted by 1 January 2016.

Cessation of Validity

Article 163

On the date of entry into force of this Law, the Law on General Administrative Procedure (Official Gazette of the Republic of Montenegro 60/03 and Official Gazette of Montenegro 32/11) shall cease to apply.

Entry into Force and Commencement of Application

Article 164

(Law Amending the Law on Administrative Procedure, Official Gazette of Montenegro 20/15 of 24 April 2015, Article 1)

(Law Amending the Law on Administrative Procedure, Official Gazette of Montenegro 40/16 of 30 June 2016, Article 1)

Article 1

This Law shall enter into force on the date of its publication in the “Official Gazette of Montenegro” and shall apply as of 1 July 2017.