

*"Official Gazette of RM", No. 60/2003*

By virtue of Article 88 item 2 of the Constitution of the Republic of Montenegro, I pass this

## **D E C R E E**

### **ON PROMULGATION OF THE LAW ON ADMINISTRATIVE DISPUTES**

This is to promulgate the Law on Administrative Disputes, adopted by the Parliament of the Republic of Montenegro at the first session of the second regular assembly in 2003, on the day the 21<sup>st</sup> of October 2003.

Number 01-1094/2

Podgorica, 22 October 2003

Signed by

The President of the Republic of Montenegro,

**Filip Vujanovi**

## **L A W**

### **ON ADMINISTRATIVE DISPUTES**

#### **I MAIN PROVISIONS**

##### *Article 1*

In administrative disputes, the court decides determines whether an administrative document is lawful and, where it is so provided by the law, whether other individual document is lawful.

##### *Article 2*

(1) For the purposes of this Law, the administrative document is a document by which a government authority, local self-government authority, or the institution or other legal person, while discharging the functions of public authority, decides in the administrative matters about the rights, obligations or legal interests of a natural or legal person.

(2) Other individual document, for the purposes of this Law, is a document by which an authority or institution or legal person referred to in paragraph 1 of this Article, decides about the rights, obligations, or legal interests of a natural or legal person in other legal matters (hereinafter referred to as: other document).

### *Article 3*

- (1) Any natural or legal person may instigate the administrative dispute proceedings if they believe that an administrative or other document has infringed upon any of their rights or interests that are based in law.
- (2) Government authority, organization, community, group of persons, etc, other than those with a status of legal person, may instigate the administrative dispute proceedings, provided they can be the holders of the rights and obligations that were resolved in the administrative proceedings or other proceedings.
- (3) Where an administrative or other document infringed upon the law for the benefit of a natural person, a legal person or other party, the public prosecutor or other competent authority may instigate the administrative dispute proceedings.
- (4) Public prosecutor or other competent authority may instigate the administrative dispute proceedings if the administrative or other document infringes upon the law to the detriment of the government, local self-government unit, institution, or other entity.

### *Article 4*

- (1) Administrative dispute proceedings shall be resolved by the Administrative Court of the Republic of Montenegro (hereinafter referred to as: the Administrative Court) and the Supreme Court of the Republic of Montenegro (hereinafter referred to as: the Supreme Court).
- (2) In the administrative dispute proceedings, the court shall sit in a panel, unless in the event referred to in Article 14 paragraph 2 of this Law.

### *Article 5*

- (1) In the administrative dispute proceedings, the court shall decide by entering either a judgment or a decision.
- (2) The court shall enter a judgment when deciding about a claim.
- (3) The court shall enter a decision when deciding about the matters of procedure and the matters laid down in this Law.
- (4) Decisions entered in the administrative dispute proceedings shall be binding.

### *Article 6*

Upon the request of the court conducting the administrative dispute proceedings, the courts, other government authorities, local self-government authorities, and institutions and other legal persons discharging the functions of public authority shall provide legal help.

## **II ADMINISTRATIVE DISPUTES**

### *Article 7*

(1) Administrative dispute proceedings may be instigated against the administrative or other document that was issued in second instance.

(2) Administrative dispute proceedings may also be instigated against the first-instance administrative or other document that is appealable in the administrative or other proceedings.

(3) Administrative dispute proceedings may also be instigated when a competent authority fails to, upon a request or appeal filed by a party, issue the appropriate administrative or other document, on the terms laid down in this Law.

### *Article 8*

Administrative dispute proceedings may not be conducted against the documents:

- 1) issued with regard to the matters in which judicial protection is provided outside the administrative dispute proceedings;
- 2) issued with regard to the matters which are decided directly by the Parliament of the Republic of Montenegro and the President of the Republic of Montenegro, based on the powers vested in them by the Constitution.

### *Article 9*

(1) Administrative or other document may be contested:

- 1) due to the infringement upon the rules of procedure;
- 2) due to the faultily or inadequately determined factual situation;
- 3) due to the incorrect application of the substantive law.

(2) There shall be no improper application of regulations if a competent authority has ruled in the exercise of its discretion, on the grounds and within the limits of the scope of authority vested in it by the regulations and in accordance with the purpose for which such authority was vested into it.

### *Article 10*

The defendant in the administrative dispute proceedings is the authority whose document is being contested.

### *Article 11*

Also a party to the dispute shall be any person to whom the annulment of the contested administrative or other document would cause direct detriment (the interested person).

### *Article 12*

When the aim is to protect the public interest, the public prosecutor or other competent authority may enter into the administrative dispute proceedings.

### *Article 13*

(1) As a rule, the complaint shall not preclude the execution of the administrative or other document against which it was filed.

(2) At the request of the prosecutor, the authority whose document is being executed, or the authority responsible for execution in the case of a document issued by an organization that is not authorized for execution, shall suspend the execution until the court decision is rendered final and enforceable, where the execution would be prejudicial to the prosecutor in such a manner that it would be hard to counterbalance, and the suspension is not contrary to the public interest, nor would the suspension incur any major unrecoverable detriment to the opposing party. Appended to the request for suspension should be the evidence that the complaint was filed. The competent authority shall issue the administrative decision upon the request not later than three days after receiving the request.

(3) The authority referred to in paragraph 2 of this Article may also suspend the execution of the contested document for other important reasons, provided it is not contrary to the public interest.

### *Article 14*

(1) Public prosecutor may request that the court orders a provisional measure to regulate the situation pending the court decision, provided the measure referred to in Article 13 paragraph 2 of this Law cannot preclude serious prejudicial consequences for the prosecutor or the contested document would cause unrecoverable detriment.

(2) The provisional measure shall be decided by the presiding judge of the panel of judges within five days after the request submission date.

### **III PROCEEDINGS PURSUAN**

authority. The party may instigate the administrative dispute proceedings against the administrative decision of the second-instance authority and, under the conditions referred to in paragraph 1 of this Article, it may also instigate the administrative dispute proceedings if such authority fails to issue the administrative decision

### *Article 19*

(1) The complaint must indicate the name and surname, occupation, the place and address of residence or name and registered office of the prosecutor, the document in respect of which the complaint is filed, the reasons for filing the complaint, and the direction and scope of the proposed annulment of the document. Appended to the complaint should be the original or a certified transcript of the document in respect of which the complaint is filed.

(2) If restoration of objects or compensation for damage is requested by the complaint, the complaint shall also contain a specific claim in respect of such objects or level of suffered damage.

(3) Appended to the complaint shall be a transcript of the complaint and its appendices for the authority that is the defendant and for each of the interested persons, if any.

### *Article 20*

Public prosecutor may renounce the complaint at any time before the Administrative Court enters a decision and in such a case the court shall issue an administrative decision to terminate the proceedings.

### *Article 21*

(1) If the complaint is incomplete or incomprehensible, the presiding judge of the panel of judges shall call upon the prosecutor to, within a specified time period, remedy all flaws in the complaint and inform him about the consequences of inaction.

(2) If the public prosecutor fails to, within the specified time period, remedy the flaws in the complaint and the nature of flaws is such that they preclude the operations of the Administrative Court, in not finding that the contested document is null and void, the Court shall issue an administrative decision to reject the complaint as disorderly.

### *Article 22*

(1) The Administrative Court shall issue the administrative decision to reject the complaint if it finds that:

- 1) the complaint was filed either untimely or before due time;

- 2) the document that is contested by the complaint is not the administrative or other document;
- 3) it is apparent that the administrative or other document that is contested by the complaint does not infringe upon the right of the prosecutor or his interests based in the law;
- 4) it was allowed to file an appeal against the administrative or other document that is contested by the claim but such appeal was not filed or was not filed in due time;
- 5) a final and enforceable court decision was already entered about the same matter in the administrative or other dispute proceedings.

(2) For the reasons referred to in paragraph 1 of this Article, the Administrative Court may reject the complaint at any time during the proceedings.

### *Article 23*

If it does not reject the complaint on the grounds of Article 21 paragraph 2 or Article 22 of this Law and if it finds that the contested administrative or other document contains such flaws that they preclude the assessment of the lawfulness of the document, the Administrative Court may enter a judgment to annul the document without forwarding the complaint for response.

### *Article 24*

(1) If the Administrative Court is filed more than one complaint in respect of the documents in which the rights and obligations relate to identical or similar factual situation and have identical legal grounds, the Court may, after receiving the response to the complaint, conduct the proceedings based on one complaint and suspend other proceedings until a final and enforceable decision is passed in the case that was selected (proceedings pursuant to a sample case).

(2) Before passing the conclusion to suspend the proceedings, the Administrative Court shall allow the prosecutor to declare himself about the response to the complaint and about the suspension of the proceedings.

(3) No appeal shall be allowed against the conclusion to suspend the proceedings.

### *Article 25*

After a final and enforceable judgment is passed in the selected case, the Administrative Court shall, without oral hearing even if the parties have requested it, determine on the cases in which the proceedings were suspended, unless they have some essential specificities in matters of fact or matters of law.

## *Article 26*

(1) If, in the course of the court proceedings, the authority issues other document which amends or annuls the document against which the administrative dispute proceedings were initiated, or if, as in the event referred to in Article 18 of this Law, issues the document subsequently, such authority shall, in addition to notifying the prosecutor, notify the Administrative Court at the same time.

(2) In the event referred to in paragraph 1 of this Article, the Administrative Court shall



*Article 29*

(1) If an oral hearing is being held, the judge presiding the panel of judges shall determine the date of the hearing and su

(2) If the Administrative Court determines at the oral hearing that the factual situation is different from the facts determined in the administrative or other proceedings, or if it determines that rules of procedure were infringed in such proceedings and that this had affected the resolution of the matter, it shall enter the judgment to annul the contested document.

(3) In the event referred to in paragraph 2 of this Article, the competent authority whose document was rendered null and void shall comply with the judgment of the

- 3) based on public debates or other evidence in the material of the case, it is evident that the factual situation is different than the one determined in the administrative proceedings;
  - 4) the document has already been annulled in the same dispute proceedings and the competent authority has not fully complied with the judgment; or
  - 5) the document has already been annulled in the same dispute proceedings and the competent authority failed to issue a new document within 30 days after the annulment date or other date determined by the Court;
  - 6) the competent second-instance authority failed to timely issue the document pursuant to the complaint that was filed, or the first-instance authority, when the appeal was excluded by the law.
- (2) In the event referred to in paragraph 1 items 4, 5 and 6 of this Article, the Administrative Court may determine the factual situation itself and enter the judgment on the basis of the factual situation determined in this way.
- (3) Decision referred to in paragraph 1 of this Article shall completely replace the annulled document.

#### *Article 36*

- (1) The Administrative Court shall decide by majority vote of the members of the panel.
- (2) About the deliberation and voting, the minutes shall be made which will be signed by the presiding judge, members of the panel, and the recording secretary.
- (3) Deliberation and voting shall be made without presence of the parties.

#### *Article 37*

t e r t . s t

(4) When the complaint was filed based on Article 18 of this Law and the Administrative Court finds that it is founded, it shall pass a judgment to admit the complaint and order the competent authority to issue the administrative decision.

### *Article 38*

(1) If an oral hearing was held, the presiding judge shall, immediately after the hearing is completed, orally announce the decision and state the most important reasons underlying it.

(2) In complex matters, the Administrative Court may defer its decision by eight days after the day the hearing is concluded. In such a case, the decisions shall not be published; rather, the Court shall deliver the transcript of the judgment to the parties.

(3) If, after the oral hearing is completed, the Administrative Court is not able to enter a decision because it must first determine some fact for the deliberation of which a new oral hearing is not necessary, the Court shall pass the decision without the hearing not later than eight days after the day when such fact is determined.

### *Article 39*

(1) A judgment contains: the designation of the Court; the indication that it is pronounced in the name of the people; the name and surname of the presiding judge, members of the panel of judges, and recording secretary; the name and surname, occupation and place of residence or domicile of the parties, their representatives and proxies; short description of the matter of the dispute proceedings; the day when the decision was entered and published; the disposition, exposition and notice of right to appeal if the decision is appealable. The disposition must be given separately from the exposition.

2) request for review.

(2) On extraordinary legal remedies the court shall, as a rule, deliver judgment in closed session.

### **1. Request for extraordinary reassessment of court decision**

#### *Article 41*

(1) Against a decision of the Administrative Court, a party who took part in the administrative dispute proceedings, and the public prosecutor or other competent authority, may file a request for extraordinary reassessment of court decision.

(2) The Supreme Court shall decide on the request for extraordinary reassessment of court decision in a panel of three judges.

#### *Article 42*

(1) Request for extraordinary reassessment of court decision may be filed because of:

1) infringement of a point of law;

2) infringement of a point of practice procedure in the administrative dispute proceedings that may be relevant for resolution of the case.

(2) Request for extraordinary reassessment of the court decision shall be submitted to the Supreme Court not later than 30 days after the day the Administrative Court received the decision.

#### *Article 43*

(1) Request for extraordinary reassessment of the court decision shall contain the indication of the court decision the reassessment of which is being proposed, as well as the reasoning and scope of the proposed reassessment.

(2) If the request is incomplete or incomprehensible, the Supreme Court shall proceed pursuant to Article 21 of this Law.

#### *Article 44*

(1) The Supreme Court shall issue the administrative decision to dismiss the disallowed or untimely request, or the request for extraordinary reassessment of court decision that was filed by an unauthorized person.

(2) If the Supreme Court does not dismiss the request for extraordinary reassessment of court decision, it shall deliver it to the opposing party and the opposing party may, within the term set out by the court, file an answer to the request.

(3) The Administrative Court and the authority which is the defendant must without delay deliver to the Supreme Court, at its request, all materials of the case to which the request for extraordinary reassessment of court decision is related.

#### *Article 45*

As a rule, the Supreme Court shall determine on the request for extraordinary reassessment of the court decision in closed session. The court shall examine the request only within the limits of the request, and shall ex officio take care of major infringements of the rules of administrative proceedings.

#### *Article 46*

(1) The Supreme Court shall enter a judgment to accept or reject the request.

(2) The Supreme Court may, by entering a judgment to accept the request, rescind or modify the court decision in respect of which the request was filed.

(3) If the Supreme Court rescinds the court decision, the case shall be returned to the Administrative Court. In the review, the Administrative Court shall implement all procedural actions and deliberate all the matters identified by the Supreme Court.

(4) Decision may not be changed to the detriment of

- 3) if the decision is based upon a judgment that was entered in a criminal or civil action but was later rescinded by other final and enforceable court decision;
- 4) if the document upon which the decision is based is false or false amended or if the witness, the legal assessor, or the party has given a false statement to the court and the court decision is based upon such statement;
- 5) if the party finds or acquires the opportunity to use the decision that was previously made in the same administrative dispute;
- 6) if the interested party has not been given the possibility to participate in the administrative procedure.

(2) In respect with the circumstances referred to in items 1 and 5 of this Article, a review shall be permitted only if the party without its own fault was not in a position to present those circumstances in the previous procedure.

#### *Article 48*

(1) A review may be requested not later than 30 days from the day the party was notified of the reason for review. If the party was notified of the reason for review before the proceedings before the court was concluded and was not able to use such reason during the proceedings, the review may be requested within 30 days from the day the decision is submitted.

(2) After the expiry of five-year period since the court decision became final and enforceable, a review may not be requested.

#### *Article 49*

(1) The Court which has issued the decision against which the request was filed shall determine on the request for review.

(2) On the request for review the Court shall determine in the panel of five judges.

#### *Article 50*

Request for review shall contain, in particular:

- 1) legal basis for the review, the decision and the evidence, i.e. the circumstances which make the existence of such basis probable;
- 2) the circumstances that suggest that the request was filed within the term provided by the law, and the pertaining evidence;
- 3) the proposed direction and scope of the redefinition of the decision that was passed.

### *Article 51*

(1) The court shall issue an administrative decision to reject the request for review if it finds that the request was filed by an unauthorized person or was not filed in a timely fashion or that the party has not rendered probable the existence of legal basis for review.

(2) If the court does not reject the request, it shall deliver it to the opposing party and any interested persons and invite them to respond to the request within 15 days.

### *Article 52*

(1) Upon expiry of the term set out for the response to the request for review, the court shall resolve the issue of the request by entering a judgment.

(2) If the review is approved, previous decision shall be rendered null and void, in whole or in part.

(3) Previous procedural actions shall not be repeated if they are not affected by the reasons for review.

(4) The judgment that was entered to allow the review shall also address the main issue in the case.

### *Article 53*

Against the court decision passed upon the request for review, legal remedies allowed in the main issue in the case may be pursued.

### *Article 54*

In the repeated proceedings, the provisions of this Law shall apply that concern the proceedings upon a complaint in the administrative dispute proceedings and legal remedies pursuant to final and enforceable court decisions, unless otherwise provided in the provisions of Articles 47 to 53 of this Law.

## **3. Other provisions of the proceedings**

### *Article 55*

Provisions of the law regulating the litigation proceedings shall apply mutatis mutandis to such issues of the administrative dispute proceedings which are not regulated by this Law.



### *Article 56*

(1) In the administrative dispute proceedings, every party shall bear its own expenses if the court delivers judgment in closed session.

(2) If the court delivers judgment at an oral hearing, the expenses shall be determined pursuant to the provisions of the law governing the litigation proceedings.

## **V BINDING CHARACTER OF JUDGEMENT**

### *Article 57*

When the court renders null and void the document against which the administrative dispute proceedings have been instigated, the case shall be returned to the status in which it was before the annulled document was issued. If, by the nature of the matter under the dispute proceedings, a document should be issued to replace the annulled document, the competent authority shall be under obligation to issue such document without delay and not later than 30 days after the judgment is serviced. In doing so, the competent authority shall be bound by the legal perception of the court and any comments of the court with regard to the proceedings.

### *Article 58*

(1) If the competent authority, after rendering the document null and void, does not issue the document in accordance with the judgment of the court, and the public prosecutor files a new complaint, the court shall render the contested document null and void and, as a rule, resolve the issue itself, by entering the judgment. Such judgment shall completely replace the document of the competent authority.

(2) In the event referred to in paragraph 1 of this Article, the court shall notify the authority exercising supervision over the operations of the authority which have not complied with the judgment of the court.

(3) The supervising authority shall notify the court about any measures that were taken, not later than 30 days after.

### *Article 59*

(1) If the competent authority, after rendering a document null and void, does not immediately and not later than 30 days, issue a new document or the document in execution of the judgment entered on the basis of Article 37 paragraph 4 of this Law, the party may, by a separate submission, request that such document is issued. If the competent authority again does not issue the document seven days after such request, the party may request that the document be issued by the court which has entered the first-instance judgment.

(2) Upon the request referred to in paragraph 1 of this Article, the court shall ask the competent authority for the information about the reasons for failing to issue the document. The competent authority shall be required to provide such information immediately and not later than seven days. If the competent authority fails to provide such information or if the information that was provided, in the exercise of the discretion of the court, does not justify inexecution of the court judgment, the court shall pass the administrative decision which shall completely replace the document of the competent authority. The court shall deliver such administrative decision to the authority responsible for execution and at the same time notify the authority exercising the supervision. The authority responsible for execution shall without delay execute such administrative decision.

#### ***Article 60***

(1) Decisions of the court that were passed in the administrative dispute proceedings shall be executed by the authority responsible for execution of administrative or other documents.

(2) If the court has adjudicated on the basis of Article 35 of this Law and the court decision obliges the government, the decision shall be executed by the court in accordance with the law governing the execution proceedings.

#### ***Article 61***

Where a judgment is made in the administrative dispute proceedings and the competent authority has issued the document within the execution of such judgment, and the competent authority is asked to make a review pursuant to such document, the review may be approved if the reasons for review have arisen with the authority which has issued the document.

### **VI TRANSITIONAL AND FINAL PROVISION**

#### ***Article 62***

Administrative dispute proceedings initiated before the day of the implementation of this Law shall be resolved in accordance with