

Legislative Decree No. 18/97
Of 10 November

The Government proposes to give continuity to the process initiated with Legislative Decree 2/95, gradually gathering, modernizing and clarifying the norms principles today dispersed regarding homogeneous aspects activity, procedure and organization of the Public Administration, until it is possible to gather in a single Administrative Code the fundamental of the Cape-Verdian administrative law.

Thus, under the legislative authorization given by Article 2 a) of Law No. 23/V/97, of 27 May, and

In the use of the faculty conferred by paragraph b) No. 2 of Article 216 of the Constitution. The Government decrees the following:

Article 1
Object

1. This Legislative Decree establishes the legal bases free of charge administrative proceedings.
2. For the purpose of this legislation the following definitions apply:
 - a) Administrative proceeding, the succession of acts and formalities tending to the formation and manifestation of the will of the Public Administration or to its execution;
 - b) Administrative process, the set documents and other papers in which materialize the acts and formalities that integrate the administrative procedures.

Article 2
Ambit

1. This Legislative Decree applies to:
 - a) All the acts of the direct or indirect administration of the State, even in the ambit of the technical activity or of private management;
 - b) The administrative acts planned by other organs of the State that, although not integrated into the Public Administration, develop materially administrative functions;
 - c) To the acts practiced by public or private concessionaire entities, in the exercise of the powers of authority.
2. This Legislative Decree may, by Decree-Law, ordered to apply plainly to the local governments and to the private institutions public interest. The subsidiary legislation shall apply to them, henceforth.

CHAPTER I General Provisions

Article 3 Principles

1. The administrative proceedings respect the general principles established in Chapters II and IV of Legislative Decree No. 2/95, of 20 June.
2. The administrative proceeding is free of charge, save for special disposition imposing the payment of fees or of expenses made by the Administration.
3. In the event of proven economic insufficiency on the Administration, at the request of the interested party, shall exempt the latter totally or partially, from the payment of fees or of the expenses referred to in No. 1.

Article 4 The Right and the Capacity to Intervene

1. All persons have the right to intervene personally in the administrative proceeding or to be represented or assisted in it.
2. Save for special provision, the capacity to intervene in the administrative proceeding has as its basis the measure of the capacity to exercise the rights according to civil law, which is also applicable to resolving the incapacity.

Article 5 Legitimacy

1. The titleholders of legally protected subjective rights or interests, as well as the non-political associations whose objective is the defense of those interests, have the legitimacy to initiate and intervene in the administrative proceeding, in the ambit of the decisions that were or can be taken in them.
2. Also considered endowed with legitimacy to protect the interests juridically recognized in favor of a pl

Article 6 Initiative

1. The administrative proceeding is initiated ~~ex~~ or at the request of the interested parties.

2. The ex-officio initiation of an administrative proceeding shall be communicated to the person whose rights or legally protected ~~interests~~ interests may be harmed by the acts to be practiced in the proceeding ~~or~~ capable, from the outset, of nominal identification, informing them of the entity that ordered ~~the~~ instituted the proceeding, from the date of its beginning, of the service where the ~~same~~ and of the respective object, save in the cases in which:

a)

4. The non-observance of the deadlines established must be justified by the responsible organ or agent before the immediate hierarchical superior or before the competent collegial organ, within the five days that follow the term of the same deadlines.

5. In counting the deadline, the following rules are applicable:

- a) The deadline begins to run independently of any formalities;
- b) The date in which the event takes place from which the deadline begins to run is not included in the count;
- c) The deadline is suspended on Saturdays, Sundays and Holidays, save if it is a legally established ninety day deadline;
- d) The date of the deadline is transferred to the first following workday, when it falls on a day in which the service where the act must be practiced is not open to the public or does not operate during the normal hours.

6. The deadlines whose counting begin with the notification start running, in the cases in which it is dispensed with, on the day following that in which the act is practiced, in the presence of the interested party of the day in which the intervention of the interested party occurs, as the case may be.

7. If the interested parties reside or are outside the island where the service for which the proceedings are running is located, if the deadlines fixed in the law do not already attend to this circumstance, the proceedings shall only be initiated only after the expiration of the extension of:

- a) Eight days if the interested parties reside or are in another island of the country;
- b) Fifteen days if they reside in a foreign country.

CHAPTER II Of the March of the Proceedings

SECTION I Of the Beginning of Proceeding

Article 11 Initial Requirement

I. Save in the cases in which the law admits a verbal request, the initial application by the interested parties, should be formulated in writing and contain:

- a) The designation of the administrative organ it is directed to;
- b) The identification of the requester by indication of the name, civil status, profession and residence, or, in the case of a collective person, the kind, the type, the denomination and the main

- c) The identification of the kind, the number and the validity period of the identification document;
- d) The exposé of the facts in which the request is based and, when possible to the requester, the respective legal fundamentals;
- e) The indication of the request in clear and precise terms;
- f) The date and the signature of the requester or of someone else in its behest, if the same does not know how or cannot sign;
- g) The postal address, telephone, telex, fax or electronic address, through which the requester may be contacted;
- h) The indication of the documents that accompany the request.

2. No more than one request can be formulated in each application, save when dealing with alternative or subsidiary requests.

3. When the law allows verbal formulation of the application, a term shall be prepared to this effect, which should contain the contents referred to in subparagraphs a) to e), g) and h) of No. 1 and be signed, after being read, by the requester and by the agent that receives the request.

4. The applications may also be formulated with the contents referred to in Nos. 1, 2 and 3, as the case may be, by telex, fax or e-mail, if the service has adequate receiving equipment. In the event of doubt, the latter may confirm by other means, the authenticity of the application and the identity of the requester.

5. For the more frequent types of requests, optional application models approved by the competent administrative organs to evaluate requests may be optionally used and the service should make them available at no charge.

6. The services should dispose of printed application supports to be provided to the users, by payment of the value, inscribed in them.

Article 12 Deficiency of the Initial Request

1. If the initial application does not satisfy the provisions of Article 11, the requester shall be asked to overcome the existing deficiencies.

2. Without prejudice to the provisions of No. 1, the organs and administrative agents should overcome the deficiencies in the applications ex-officio, so as to keep the interested parties from suffering losses by means of simple formal irregularities or mere imperfection in the formulation of their requests.

3. The unidentified applications, those whose requests are unintelligible and as well, those formulated under the terms of No. 4 of Article 11, are provisionally disapproved if the authenticity of the application and the identity of its author are not confirmed: Also provisionally disapproved are those that contain language that is offensive to the honor of the persons, the institutions of the State or the organs of Public Administration.

4. When the user, due to a forgiving error~~or~~ within the established deadline, addresses the application to an incompetent~~or~~ organ, the following shall apply:

Article 17
Provisional Measures

1. In any phase of the proceedings the court for the final decision may, ex-officio or at the request of the interest

parties themselves or by the spouse of those united in fact, ascendant, descendant, brother, or in the same degrees;

- d) It is susceptible of causing moral or material damage to the interested party itself or to some of the persons referred to in subparagraph c).

7. Non-compliance by the interested party of the notification foreseen in No. 4 is freely interpreted for the purpose of proof, according to the circumstances of the case, and the administrative organ should not dispense with seeking to investigate the facts or of proffering a decision. However, when the information, documents or acts solicited from the interested party are necessary to the evaluation of the request made by it, the proceedings shall not be moved forward, and the interested party notified accordingly.

8. If there is a just concern that producing proof of interest to the decision will become impossible or difficult to materialize, the competent organ may, ex-officio or at the fundamented request of the interested party, proceed to the collection beforehand and even before the documenting of the proceedings:

Article 22 Expert Analysis

I. The exams, inspections, evaluations and other similar diligences may be carried out by one or more experts with the necessary specialized knowledge to the investigations that constitute the respective object, and they may also be solicited directly to public services that, by their competence, are apt for the respective realization.

2. Save for provisions expressly to the contrary, the expert opinions referred to in the law are mandatory and non-binding.

3. The expert opinions must always be fundamented in fact and in law and conclude express and clearly on all the issues indicated in the consultation.

4. In the absence of special provision, the expert opinions shall be emitted in 20 days, except when the competent documenting organ establishes, fundamentally, a different deadline. The deadline to emit the expert opinion starts only counting from the moment in which the consulting entity is placed in the situation to emit it.

5. When a mandatory expert opinion is not emitted within the deadline foreseen in No. 4, the proceeding may proceed and may be decided without the expert opinion, save for express legal provision to the contrary.

Article 24 Interested Audiences

1. At the end of the documenting process, interested parties have the right to be heard, save for the legally determined cases of existence of exemption of an audience, under the terms of Article 40 of Legislative Decree 2/95, of 20 June.

2. It behooves the documenting organs, in each case, to decide if the audience is to be written or verbal.

3. Realization of the audience of the interested parties suspends the counting of the Administration deadlines in the administrative proceedings.

Article 25 Written Audience

1. When the option is for a written audience, the documenting organ shall notify the interested parties to, within a period not shorter than eight days, state what they have say, simultaneously supplying them with the elements necessary to inform them of all the relevant aspects for the decision in matters of fact and of law and indicating to them the location and the times in which the case-files can be consulted.

2. In the response, the interested parties can pronounce themselves on issues that constitute object of the proceedings, as well as how to request complementary diligences and add to the documents.

Article 26 Verbal Audience

1. When the option is for the verbal audience, the documenting organ shall order the convocation of the interested parties with advance notice of at least five days.

2. During the verbal audience, the aspects relevant to the decision in matters of fact and of law can be evaluated.

3. A no-show by the interested party does not constitute motive for postponement of the audience, save if justification for the no-show is presented up to the moment established

for the realization of the audience.

4. Minutes shall be made for the audience, which shall indicate the extract of the allegations made by the interested parties, and the same may add any written or documented allegations, during the diligence or subsequently.

Article 27 Complementary Diligences

After the audiences of the interested parties, the complementary diligences deemed convenient may be carried out ex-officio or at the request of the interested parties, at the end of which the documenting organ shall close the preparatory phase of the decision concluded or, if it is competent, shall take the final decision.

Article 28 Report

1. Upon conclusion of the preparatory phase of the decision, the documenting organ, if it is not competent to make the final decision, shall elaborate a report containing:

- a) Indication of the interested party's request;
- b) Summary of the proceeding's contents;
- c) Proposed decision, synthesizing the reasons of fact and of law.

2. Save in the cases foreseen in the law without prejudice to the continuation of the proceedings, if the Administration decides that the public interest so requires, the

notification by mail is inevitable;

- c) By telegram, telephone, fax or electronic mail, if the urgency of the case recommends such means and the estate to be notified dispose of proper equipment for the reception;
- d) By notice posted in the customary places or by announcement to be