

Administrative Procedures Act

No. 37/1993

SECTION I

Scope of the Act

Article 1

Field of application

This Act shall apply to state and municipal administration.

The act shall apply when the authorities, including boards of administration, decide as to individuals' rights and obligations. It shall not, however, apply in relation to the drafting of regulations and other general government edicts.

The provisions in Section II on eligibility to deal with specific cases shall also apply to contracts under the civil law.

Article 2

Application vis-à-vis other Acts

This Act shall not apply to property registration, enforcement procedures, attachment, restrictions on property rights pending appeal, court injunction, forced sale, suspension of payments, composition proceedings, bankruptcy, settlement of estate, or other official settlements.

The provision of other statutes, whose procedural rules go further than is provided for in this Act, shall prevail.

Questions on the eligibility of municipal council members and other municipal administrators shall, however, be determined on the basis of the Municipal Administration Act.

SECTION II

Limitations on Eligibility

Article 3

Grounds for disqualification

A civil servant or board member shall be disqualified from sitting in a case:

1. if he is either a party to a case, or the spokesman or the representative of such a party;
2. if he is, or has been, a party's spouse, a relative in the descending or ascending line, whether natural or adoptive or by marriage, or a first cousin;
3. if he is related to a spokesman or a representative of a party in one of the ways described in sub-paragraph 2 of this

Article;

4. when a complaint has come under review, if he has previously taken part in dealing with the case at a lower administrative level. The same shall apply to an official in whom are vested powers of supervision or inspection if he has previously been associated with the case in this capacity;

5. if the case concerns to a substantial degree either himself, his relatives pursuant to sub-paragraph 2 of this Article, his immediate superiors in their personal capacity, or an agency or a privately owned company for which he has responsibility;

6. if, finally, such circumstances obtain as are likely to cast reasonable doubt upon his impartiality.

The question of disqualification shall not, however, arise if what is at stake is negligible, if the nature of the case is such, or if the rôle of the official or board member in the handling of the case is so trivial as to rule out any danger of ulterior motives influencing the decision.

Article 4

The effects of disqualification

A person who has been disqualified from sitting in a case may not take part in its pre-paration or the subsequent conduct and conclusion thereof. Until he is replaced he is, however, allowed to take all necessary steps to ensure due process.

A board member who has been so disqualified shall leave the boardroom when the case is to be dealt with.

Article 5

Procedure

A civil servant who is aware of facts which might reflect upon his own eligibility to sit shall bring this knowledge without delay to the attention of the head of the administrative body in question.

The head of the administrative body shall decide whether the official ought to withdraw from a case. In cases when the eligibility of the head of an administrative body is called in question he shall himself decide whether to withdraw.

An administrative board shall decide whether a member (or members) should withdraw from a case. Members whose eligibility is under scrutiny shall not take part in this decision. This provision shall not, however, apply if as a result it becomes impossible to obtain a quorum within the board, in which case all the members of the board shall decide on the eligibility of individual members to sit in the specific case.

Article 6

Assigning a replacement

When a civil servant withdraws from a case and there is no-one to take his place, the appointing authority shall assign a replacement to handle the case in question.

SECTION III

General Rules

Article 7

Duty of guidance

An authority shall provide those who apply to it with the necessary assistance and guidance in cases that fall within its competence.

If an authority receives a written application concerning a matter outside its competence it shall forward the application to the proper authority as soon as possible.

Article 8

Setting of time limit

When in a statute provision is made for a time limit, the relevant period shall not include the date from which it is counted.

If the final day of a time limit is a public holiday, it shall be extended to the first working day that follows. Other holidays which fall within the time limit when set shall be included therein.

Article 9

Prompt handling

Cases shall be decided as quickly as possible.

When an opinion is to be sought, this shall be done at earliest possible opportunity. If more than one opinion is required, they should be sought simultaneously in so far as possible. An authority shall give a deadline for the submission of an opinion.

When it becomes evident that a decision in a case will be delayed, the parties shall be informed. Furthermore, the reasons for the delay shall be given, as well the date when a decision is to be expected.

If there is undue delay in the conclusion of a case a complaint to this effect may be lodged with the authority to which a decision in the case may be appealed.

Article 10

Rule of investigation

An authority shall ensure that a case is sufficiently investigated before a decision thereon is reached.

Article 11

Principle of equality

In deciding cases a public authority shall make every effort to ensure that, legally, it is consistent and observes the rule of equal treatment.

The parties to a case may not be discriminated against on the grounds of their ethnic origin, sex, colour, nationality, religion, political conviction, family, or other comparable considerations.

Article 12

Principle of proportionality

A public authority shall reach an adverse decision only when the lawful purpose sought cannot be attained by less stringent means. Care should then be taken not to go further than necessary.

SECTION IV

Right to be heard

Article 13

Right to be heard

A party to a case shall be given the opportunity to express his views on the subject-matter of the case before a public authority reaches a decision thereon, unless his reasoned position on the matter already appears in the documentation on the case, or it is clearly unnecessary for him to do so.

Article 14

Notification of a case being processed

If a party to a case has the right to express his views on its subject-matter pursuant to Article 13, a public authority shall notify him as soon as possible when his case comes up for examination, unless it is clear that this is already known to him.

Article 15

Right to information

A party to a case shall have the right to acquaint himself with the documentation and other material bearing on the case. If a party asks for duplicates or photocopies thereof he shall be given them unless the documents are of such nature or so voluminous that this presents a considerable difficulty. The prime minister may determine, by a special system of charges, the amount payable for duplicates and photocopies made pursuant to this Article.

Laws on secrecy shall not limit the duty to grant access to material under this Article.

The provisions of this Article shall not apply to the investigation and conduct of criminal cases. The defendant in such proceedings may, however, demand access to the case file after the case has been discontinued or concluded by other means.

Article 16

Material not subject to the right to information

A party's right of access to material shall not apply to:

1. Minutes of State Council and Cabinet meetings, notes from ministerial meetings, or documents prepared for such meetings.
2. Correspondence between the authorities and experts for use in court cases or relating to the decision whether to take a case to court.
3. Working papers prepared for its own use by an authority. A party shall, however, have the right of access to working papers containing a final decision on the winding up of a case, or information which is not found elsewhere. Where the

restrictions in para 1 of this Article only apply to a section of a document, a party shall be given access to other sections thereof.

Article 17

Restriction of right to information

In certain circumstances a public authority may restrict the access of a party to a case to material if the advantage to be gained by the party from use of the material is deemed to be outweighed by a greater interest, public or private, *inter alia* when laws on registration and the use of personal files preclude access to the material.

Article 18

Deferment of cases

A public authority may set a party to a case a time limit within which to examine the case material and express his views on it.

Otherwise, a party can, at whatever stage of the procedure, request a deferment of decision until he has had time to acquaint himself with the case material and put forward his point of view. A case shall, however, not be deferred if such deferment entails exceeding the statutory time limit for its conclusion.

Article 19

Stating reasons for denial. Right of complaint

A decision by an authority to deny a party to a case access to the case material or to some extent to restrict such access shall be notified to the party with reasons given in accordance with Section V of this Act.

A denial or restriction of access to case material may be complained of to the competent public authority. The complaint shall be lodged within 14 days of the party having been notified of the decision.

SECTION V

Notification of Decisions, Reasons, etc.

Article 20

Notification of decisions. Guidance

Once an authority has reached a decision a party to a case shall be notified thereof unless this is obviously unnecessary. A decision shall be binding upon notification.

A written notification of a decision, unaccompanied by a statement of reasons, shall give guidance as to:

1. a party's right to be given reasons for the decision;
2. a right of complaint, when applicable, the relevant time limit and cost, as well as where to lodge the complaint;
3. the deadline for taking a decision to court if such deadline is provided for by law.

If the reasons for a decision accompany notification, guidance pursuant to the second paragraph, sub-paragraphs 2 and 3 of this Article, shall be given.

Guidance pursuant to sub-paragraphs 2 and 3 need not, however, be given with notification of decision if a party's

application has been granted in all respects.

Article 21

When reasons must be given

A party to a case can demand a written statement from a public authority of the reasons for a decision where they were not given on notification.

This provision shall not, however, apply if:

1. a party's application has been granted in all respects;
2. the decision concerns examination grades;
3. it deals with grants in the field of the arts, culture, or science.

An application for the reasons for a decision shall be lodged within 14 days of its notification to a party; the relevant authority must reply thereto within 14 days of receipt.

Rulings in cases involving a complaint shall always be accompanied by a statement of reasons.

Article 22

Statement of reasons

When giving reasons, reference shall be made to the rules of procedure on which the authority's decision is based. To the extent that a decision is based on an assessment of the facts, the statement of reasons shall contain the main opinions deciding the outcome of that assessment.

When applicable, the statement of reasons shall also contain a brief description of the most important facts influencing the decision in a case.

A statement of reasons may be limited as regards material, to which a party has been denied a right of access, pursuant to Articles 16 and 17.

Where an administrative board has not approved a statement of reasons to accompany its decision, the chairman shall give the reasons for the decision in accordance with the first three paragraphs of this Article.

SECTION VI

Revocation of a Decision, etc.

Article 23

Modification and correction

An authority can vary its decision until such time as it has been notified to a party to a case.

After notification to a party of a decision an authority may correct manifest errors therein, provided that the authority notifies the party of the correction without delay and communicates to him a fresh copy of the decision.

Article 24

Review of a case

Once an authority has reached a decision and notified it, a party shall have the right to have his case reviewed:

1. where the decision was based on insufficient or wrong information as to the facts;
2. or where an adverse decision involving an order or a ban was based on circumstances which subsequently changed in a material way.

After three months have elapsed since a party was notified of a decision, cf. para 1.1 above, or where a party was, or should have been, aware of a change in the circumstances on which a decision, cf. para 1.2 above, was based, a petition for a review of a case will only be allowed subject to the approval of the other parties to the case. A case will not, however, be reviewed more than one year after the expiry of the time limit stated above unless there are compelling reasons for so doing.

Article 25

Revocation

An authority can, of its own accord, revoke a decision already notified to a party:

1. where doing so will not harm a party's interests,
2. or where a decision is null and void.

SECTION VII

Administrative Complaint

Article 26

Right of complaint

A party to a case shall have the right to complain to a higher authority about an administrative decision in order to have it revoked or varied, unless otherwise provided for by law or former practice.

A decision which does not conclude the determination of a case cannot be the subject of a complaint until the case has been concluded.

Article 27

Time limit for complaint

Unless otherwise provided for by law, a complaint shall be lodged within three months of the notification to a party of an administrative decision.

When public notification of a decision is required by law, the time limit for lodging a complaint begins to run with effect from the first notification if there are subsequent ones.

When a party asks for reasons pursuant to Article 21 the time limit for lodging a complaint begins to run only once that request has been complied with.

When a party requests a review of a case within the time limit for lodging a complaint, time ceases to run with regard to the complaint. If such a request for review is refused, the time limit for lodging a complaint resumes its course from the moment at which the party is notified of the decision on the matter of review.

A complaint shall be deemed to have been lodged in good time if it has been submitted to a higher authority or posted before the expiry of the time limit.

A higher authority may, in special cases and before expiry of the time limit for lodging a complaint, extend the said time limit.

Article 28

Complaint lodged after expiry of time limit

A complaint received after the expiry of time limit shall not be admissible unless:

1. there are valid reasons for the late submission of the complaint, or
2. there are important reasons for hearing the complaint.

A complaint shall, nevertheless, not be admissible if more than a year has elapsed since notification of the decision to a party.

Article 29

Legal effect of decisions in respect of which a complaint has been lodged

An administrative complaint shall not suspend the legal effect of a decision.

A higher authority may, nevertheless, when circumstances so indicate, defer the legal effect of a decision under complaint.

These provisions shall not, however, apply where otherwise provided for by law.

The question as to deferment of the legal effect of a decision which is the subject of a complaint shall be resolved as quickly as possible.

Article 30

Procedure for complaints

The provisions of Sections II - IV and VIII of this Act shall, as applicable, be observed in the handling of complaints.

Oral hearings may be conducted in cases of particularly exacting nature, when it is believed that this will result in a more complete investigation.

Article 31

Form and content of rulings involving complaints

Rulings by the higher authority in cases involving complaints shall always be made in writing and shall state *inter alia* the following items in succinct and clear manner:

1. the parties' claims
2. the matter at issue, including the decision complained of
3. a brief account of the facts and the points in dispute
4. the reasons for the decision pursuant to Article 22
5. a summing-up of the main conclusion at the end of the ruling.

SECTION VIII

Administrative Boards

Article 32

Appointment of board members

When appointing an administrative board to decide on the rights and obligations of individuals, the board members and an equal number of substitutes shall be appointed simultaneously. The substitutes shall be appointed in the same way as the board members.

When a board member is temporarily prevented from attending, a substitute shall take his seat on the board. On the death of a board member or when a board member is precluded for an indefinite period from attending for some other reason, a substitute shall take his place, whereupon a new substitute shall be appointed, unless the appointing authority decides to appoint a new board member.

Article 33

Convening of meetings

Meetings of administrative boards shall be called, with reasonable notice, by the chair-man. The chairman shall be obliged to call a meeting of the board at the request of a majority of the board members.

In the event of a board member's being unable to attend he must, without delay, inform the chairman, who in turn shall call a substitute to take his place.

Article 34

Procedure

A meeting of a majority of an administrative board shall constitute a quorum.

Matters shall be put to a vote unless otherwise provided for by law. A motion on which the voting is even shall be defeated. In the event of even voting for candidates for a post, the matter shall be settled by the drawing of lots.