

# WORLD TRADE ORGANIZATION

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**Committee on Safeguards**

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NOTIFICATIONS OF LAWS, REGULATIONS AND  
ADMINISTRATIVE PROCEDURES RELATING  
TO SAFEGUARD MEASURES

HUNGARY

The following communication, dated 29 February 1996, has been received from the Permanent Mission of Hungary.

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**Act No. IV of 1957**  
**on the General Rules of State Administrative Procedure<sup>1</sup>**

**CHAPTER I**

**Basic Provisions**

Objective of the Act

**Section 1**

The objective of this Act is to facilitate the efficient performance of state administrative tasks by regulating the official procedure of the public administrative organs.

Basic Principles

**Section 2**

(1)<sup>2</sup> In their procedure, the public administrative organs will consistently enforce the principals of legality, democracy and humanism.

(2) The public administrative organs shall further the assertion of rights and the performance of duties, as well as the strengthening of civic discipline.

(3)<sup>3</sup>

(4) The public administrative organs carry out their tasks with the active participation of the civilian population. The state administrative procedure is based on the efficient cooperation of the authorities, the clients and other organs and persons participating in the procedure.

(5) In the state administrative procedure, Hungarian and non-Hungarian (foreign) clients shall enjoy full equality before the law, and their affairs shall be managed without any discrimination or partiality. Everyone is entitled to use their mother language in the state administrative procedure both in word and in writing. No one shall suffer any disadvantage because of not knowing the Hungarian language.

(6) In the state administrative procedure, the client has the right to make a statement and to resort to a legal remedy; however, they must cooperate in good faith and as efficiently as they can. In order to ensure this, the organ proceeding in the given matter must inform the client about their rights and liabilities.

(7) The public administrative organs shall discharge their duties by a rapid and simple procedure.

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<sup>1</sup>Day of promulgation: 9 June 1957. Day of entry into force: 1 October 1957. Amended and formulated as a text of uniform structure by Act No. I of 1981. Amendments made before that are not included. The wording used in the Act was modified by paragraph (4), Section 72 of Act No. XXIII of 1992.

<sup>2</sup>Paragraphs (1)-(2) of Section 2 have been amended according to Section 29 of Act No. XX of 1991.

<sup>3</sup>Paragraph (3) of Section 2 has been abrogated by Section 29 of Act No. XX of 1991.

## The Scope of the Act

### **Section 3**

- (1) When public administrative organs proceed in state administrative matters, the provisions of this Act shall be applied.<sup>4</sup>
- (2) Acts of Parliament, law-decrees<sup>5</sup> or government decrees may authorize bodies other than public administrative organs to manage state administrative affairs. The bodies thus authorized shall proceed in the matter as laid down in the present Act.
- (3) For the purposes of the present Act, state administrative procedure is defined as any affair or matter in which a public administrative organ states a right or liability, confirms data, keeps records or carries out official checks concerning the client.
- (4) The client is a private person, a legal entity or other organ without a legal person whose right or vested interest is affected by the given matter. The organ which, based on its scope of duties, is concerned with the given matter is entitled to the client's rights.
- (5) Unless an international agreement or rule of law directs otherwise, in state administrative affairs of non-Hungarian clients the public administrative organ shall act as laid down in the present Act.
- (6)<sup>6</sup> Unless a rule of law directs otherwise<sup>7</sup>, the present Act shall be applied in matters of national defence, foreign trade administration and social insurance, in matters concerning laws on the prohibition of unfair market practices and price fixing, in fiscal and excise tax matters, as well as in matters relating to the legal protection of industrial property.
- (7)<sup>8</sup> The scope of this Act does not cover the procedure to be followed in petty offenses and in naturalization affairs.
- (8) The rules of law relating to state administrative procedures not mentioned in paragraphs (6) and (7) may deviate from the provisions of the present Act only if such deviations are allowed by the law.

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<sup>4</sup>For official matters coming under the competence of the local authorities, see Section 109 of Act No. LXV of 1990 and Act XX of 1991.

<sup>5</sup>The "law-decree" as a source of law no longer exists.

<sup>6</sup>Paragraph (6) of Section 3 is a text established by Section 82 of Act No. LVIII of 1993 and amended according to point (a), Section 117 of Act No. XXXIII of 1995. The amendment will come into force on 1 January 1996.

<sup>7</sup>See Act No. CX of 1993, the Government Decree No. 6/1976 (III.31.) MT and Decree No. 2/1976 (VI.17.) HM, Act No. II of 1975 on social insurance, in uniform structure with the Government Decree No. 89/1990 (V.1). issued to implement the former, Decree No. 6/1982 (II.17.) PM on the official procedure of the foreign exchange authorities and Decree No. 1/1982 (I.16.) KkM on the general procedural rules of foreign trade administration, as well as Act No. XCI of 1990 on the order of taxation and Act No. LVIII of 1993 on the excise tax regulations and control and on the tax imposed on distilling on a contract basis.

<sup>8</sup>Paragraph (7) of Section 3 is the text established by paragraph (2), Section 24 of Act No. LV of 1993.

## CHAPTER II

### Jurisdiction and Competence

#### Section 4

- (1) The public administrative organ must proceed in the matter belonging to its jurisdiction in its area of competence. If it fails to fulfil this obligation, its superior authority shall, either on request or in the line of its official duties, direct it to do so.
- (2) Matters belonging to its jurisdiction shall not be drawn away from the public administrative organ.<sup>9</sup>

#### Determination of Jurisdiction

#### Section 5

- (1) The jurisdiction or scope of authority of the public administrative organ is determined by a rule of law. This must specify the organ which conducts the proceedings of first instance in the matter.
- (2)<sup>10</sup>
- (3) Unless other provisions are made by a rule of law, it is the responsibility of the organ of the lowest grade to act in the matter in the first instance.
- (4) If a court rules that the public administrative organ has or lacks jurisdiction in a given matter, or passes a decision on the merits of the case, that decision shall be binding upon the public administrative organ.

#### Determination of Competence

#### Section 6

- (1) Unless other provisions are made by a rule of law, that public administrative organ shall have competence to act in the matter.
  - (a) in the area of which the permanent or temporary domicile (seat, registered offices) of the client are situated;
  - (b) in matters concerning real estate (land, house, apartment, other premises, etc.) that public administrative organ shall have competence to act in whose jurisdiction the real estate is situated;
  - (c) in matters concerning an activity subject to licensing or notification, that public administrative organ shall have competence to act in whose area of jurisdiction the given activity is practised or intended to be practised.

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<sup>9</sup>See Act No. LXV of 1990 and Act XX of 1991.

<sup>10</sup>Paragraph (2), Section 5 has been abrogated by Section 29 of Act No. XX of 1991.

(2)<sup>11</sup> If the client is staying abroad or if his/her residence is unknown, competence shall be determined on the basis of the client's last known residence within the country; in the absence of such, the matter shall be referred to the Chief Notary of the Metropolitan Municipality to conduct the proceedings.

(3) If several public administrative organs have competence to act in a given matter, the proceedings shall be conducted by the one at which they were initiated earlier (precedence).

(4) If a public administrative organ obtains knowledge of the fact that, on the basis of precedence, some other public administrative organ has already acted in the matter, it shall stay its proceedings or revoke its decision, and send notification of that fact both to the public administrative organ that has proceeded in the matter and to the client.

#### Examination of Jurisdiction and Competence

### **Section 7**

(1) The public administrative organ must examine its jurisdiction and competence in all stages of the proceedings *ex officio*. If it states that it has no jurisdiction or competence in the given matter, it shall immediately refer the case to the competent public administrative organ which has jurisdiction over it, and shall simultaneously notify the client of that fact.

(2) Regardless of its jurisdiction and competence, the public administrative organ must take measures in cases when the lack of the said measures would involve a delay resulting in an unavoidable loss or danger. The measures taken shall immediately be reported to the competent public administrative organ authorized to act in the matter, which organ will review whether the said action shall be maintained.

#### Designation of the Public Administrative Organ Acting in the Matter

### **Section 8**

(1) If in a given matter:

- (a) more than one public administrative organ has established its jurisdiction and competence;
- (b) more than one public administrative organ has established the lack of its jurisdiction or competence and therefore the proceedings could not be initiated or are not in process;
- (c) more than one competent public administrative organ has initiated proceedings and on the basis of precedence it cannot be decided which public administrative organ is entitled to conduct the proceedings; the public administrative organs concerned shall attempt to settle the dispute among themselves without any delay.

(2)<sup>12</sup> If the proceedings mentioned in paragraph (1) fail to yield a result within 8 days, the public administrative organ which is to act in the given matter shall be designated by the following organ:

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<sup>11</sup>Paragraph (2) of Section 6 is the text established by Section 30 of Act XXIV of 1991.

<sup>12</sup>Paragraph (2) of Section 8 is the text established by Section 22 of Act No. XX of 1991.

- (a) if there is a conflict of competence, it shall be designated by the nearest common superior public administrative authority; in the absence of such an authority, the Commissioner of the Republic shall designate a public administrative organ to act in the matter, of the authorities competent to act in his/her area of operation.
- (b) if there is a conflict of jurisdictions, the public administrative organ which is to act in the matter shall be designated by the Constitutional Court.

#### Proceedings Outside the Area of Competence

### **Section 9**

- (1) Public administrative organs may institute proceedings outside their area of competence only if this is made possible by a rule of law.
- (2)<sup>13</sup> The heads of the district administrative organs of the capital and those of district offices of towns of country rank are entitled to conduct proceedings in the entire area of the capital or town of county rank.

#### Requests

### **Section 10**

Every organ shall, within its own scope of duties, comply with requests received from public administrative organs within fifteen days.

### **Section 11**

- (1) If in a state administrative procedure action has to be taken in the area of competence of some other public administrative organ, the competent public administrative organ having jurisdiction over the given matter shall be requested to take the said action.
- (2) The authority to whom the request was sent may refuse complying with the request only if the given matter does not belong to its jurisdiction or competence. In such cases the request shall immediately be sent to the competent authority having jurisdiction over the said matter, with simultaneous notification of the public administrative organ by whom the request was sent.

### **Section 12**

- (1) Unless an international agreement or rule of law directs otherwise, requests sent from abroad shall be sent to the public administrative organ authorized to take action by the Foreign Minister (Secretary for Foreign Affairs).
- (2) Unless an international agreement or rule of law directs otherwise, requests sent to authorities outside the country, as well as responses given to requests or petitions submitted by foreign organs or persons shall be presented, through the competent Minister, to the Foreign Minister.
- (3) In case of doubt, the competent Minister shall make a statement in agreement with the Foreign Minister on the granting of the request made or petition submitted by a foreign organ or person.

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<sup>13</sup>Paragraph (2) of Section 9 is the text established by Section 23 of Act No. XX of 1991.

## CHAPTER III

### Proceedings of First Instance

#### Initiation of the Proceedings

##### **Section 13**

(1) The state administrative procedure is initiated at the request of, or following an announcement or declaration made by the client (further on: petition), or in the line of duties of the public administrative organ (*ex officio*). The superior authority may order the public administrative organ to initiate or continue the proceedings.

(2) In cases specified by law, the client shall be notified of the initiation of proceedings. The initiation of proceedings that concern numerous people shall be made public.

##### **Section 14**

(1) The client may withdraw his/her request concerning the initiation of proceedings until the resolution becomes legally valid. In such cases the public administrative organ shall discontinue the proceedings, unless the proceedings can be initiated also *ex officio*, in which case the public administrative organ will continue them. The stay of proceedings shall be communicated to the parties notified according to paragraph (2) of Section 13, whereas the continuation of proceedings shall be communicated to the client.

(2) If the circumstance necessitating the initiation or continuation of the proceedings instituted or conducted *ex officio* no longer exists, the public administrative organ shall discontinue the proceedings and notify all those who, according to paragraph (2) of Section 13, have been notified of the institution of the proceedings.

#### Time-limit for Transaction of Affairs

##### **Section 15**

(1)<sup>14</sup> The resolution on the merits of the case shall be passed in thirty days from the date of submitting the petition or from the date when the proceedings were instituted *ex officio*. Time-limits shorter than that may be fixed by any rule of law, while time-limits longer than that may only be set by an Act of Parliament, a law-decree or a government decree.

(2) Decisions in individual state administrative procedures falling within the competence of a corporate body shall be passed within the time-limit specified in paragraph (1) or, if this is not possible, at the next board meeting at the latest.

(3) When this is justified, the head of the public administrative organ acting in the given matter may prolong the time-limit by maximum thirty days, on a single occasion. If the proceedings were instituted on request, the client shall be notified of that fact.

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<sup>14</sup>As to its implementation see Government Decree No. 136/1994 (X.26.).

## Petitions

### **Section 16**

- (1) In state administrative matters, petitions may be submitted to the public administrative organ in word or in writing. It may be required by a rule of law that clients submit their petition on a form introduced for that purpose.
- (2) The annexes specified by the relevant rule of law must be enclosed to the petition. Clients must not be asked to produce data that the records of the given public administrative organ, established under and required by the law, must contain (Section 27, paragraph (3)).
- (3) Petitions shall be judged on the basis of their content. The transaction of a given affair must not be refused just because its designation does not agree with its content.
- (4) Private persons may submit their petitions on the initiation of proceedings of first instance - besides the competent public administrative organ authorized to conduct the given proceedings - also to the notary of the municipality having jurisdiction of the client's domicile or place of work.

## Record

### **Section 17**

- (1) If requested by the client or if it is otherwise necessary in the interest of the proceedings, minutes shall be drawn up and simultaneously an audio recording shall be made (further on: records) of verbal petitions, hearings of clients, witnesses and experts, inspections and trials.
- (2)<sup>15</sup> The record shall contain the name of the public administrative organ proceeding in the matter, the place and time of drawing up or making the record, the personal identification data and address of the person given a hearing, the warning to his rights and liabilities, the essential declarations and statements concerning the given case, and - if the minutes are drawn up in writing - the signature of the person given a hearing, the official in charge and the recorder (keeper of the minutes).
- (3) No record needs to be made of verbal petitions if the request is immediately complied with by the public administrative organ. In that case, it is sufficient to make a note of performance on the document itself or enter it in the records, as required by the rules concerning the transaction of the given matter.
- (4) If no record is drawn up, a note shall be made of the proceedings listed in paragraph (1). That note shall contain the data specified in paragraph (2) and the essence of the declarations made.

## Representation

### **Section 18**

- (1) Unless a rule of law directs that the client has to act in person, his/her legal representative or attorney may also proceed on his/her behalf.

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<sup>15</sup>Paragraph (2) of Section 17 is the text established by Paragraph (1), Section 40 of Act No. LXVI of 1992.



- (2) If the client does not act in person, the public administrative organ may examine whether the person proceeding on his/her behalf is entitled to represent him/her. Rules of law may set specific formal requirements for attesting the title of representation.
- (3) The public administrative organ will reject action by an attorney who is not suitable for acting as representative or who fails to attest his/her title of representation.
- (4) For clients who are staying in an unknown place or who are unable to proceed in the given matter on their own - if they do not have a legal representative or attorney - the public guardianship authority shall appoint a guardian *ad litem*.
- (5) The documents shall be delivered to the client, or - if the client has a legal representative, guardian *ad litem* or attorney authorized in writing - to these latter parties. Writs of summons, however, should be served upon the party summoned, by simultaneous notification of his/her representative.

### Exclusion

#### **Section 19**

- (1) Public servants shall not take part in handling their own affairs.
- (2) Public servants who have taken part in passing a resolution on a matter in lower (first) instance, as well as persons who have testified or acted as experts on the matter in lower (first) instance, shall not participate in decision-making on the merits of the case on a higher level.
- (3) Persons who cannot be expected to pass an unbiased judgement on the matter shall not take part in the proceedings.
- (4) Public servants shall inform the head of the public administrative organ of any reason for exclusion that may exist in connection with their participation in the proceedings. Reasons for exclusion may be reported also by the client. It is the head of the public administrative organ who shall make a decision in cases of exclusion and simultaneously designate an official to handle the given matter.
- (5)<sup>16</sup> If a reason for exclusion arises in the case of the head of a public administrative organ, the mayor, the mayor of the capital, the notary, the chief notary of the capital, the head of a district office of a town of county rank, or a public servant employed by the mayor's office, the public servant or authority designated by the superior authority shall act in the given case, unless a rule of law directs otherwise.
- (6) The public administrative organ shall not take part in handling its own affairs.
- (7) The rules of exclusion shall be adequately applied against the members or head of the corporate body proceeding in a state administrative procedure.

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<sup>16</sup>Paragraph (5) of Section 19 is the text established by Section 26 of Act No. XX of 1991.

### Contribution of the Special Authority

#### **Section 20**

A rule of law may require that before passing a decision the approval of some other public administrative organ (further on: special authority) be obtained. Unless a rule of law directs otherwise, the public administrative organ entitled to pass a decision on the merits of the case shall send a letter of request to the special authority.

#### **Section 21**

(1) Unless a rule of law directs otherwise, the special authority must give effect to the letter of request within fifteen days. A specific day may also be appointed as the time-limit of performance.

(2) If the special authority fails to make a declaration within the prescribed time-limit or on the day fixed, it shall be taken as if it has given its consent, except if on the day fixed it has asked a further eight-day extension of the time for making a declaration.

### Summons

#### **Section 22**

(1) The public administrative organ may obligate persons, to whom the said organ considers it necessary to give a hearing during the proceedings, to appear before the public administrative organ or in a designated place before the day fixed or within a specified time-limit. Clients may not be obligated to appear in a procedure which has been initiated by themselves.

(2) The summons must usually be served so that the summoned person shall receive it at least five days before the hearing, and appearance at the hearing should, as far as possible, not impede the summoned person in the performance of his/her work.

#### **Section 23**

(1) The summons shall state the matter and the capacity (client, witness, etc.) in which the public administrative organ wishes to give a hearing to the summoned person. The summoned person shall be warned of the consequences of his/her failure to attend the hearing.

(2) Summoning may be made in writing or by telephone. If summoning is made by telephone, a written record shall be made of it.

(3) If a public servant obligates a person attending the proceedings to appear at another date, records this fact on the document and has it signed by the summoned person, this shall have the same legal force as a writ of summons.

(4) The public administrative organ may summon to its seat private persons residing or staying outside its seat only if this is required by a rule of law or requested by the private persons themselves, or if the person to be given a hearing can reach the seat of the public administrative organ proceeding in the matter more easily than he/she can get to the public administrative organ of lowest grade at the seat of which he/she is residing or staying. It is this latter public administrative organ which shall be sent a letter of request with a view to the given person's hearing.

(5)<sup>17</sup> The head of the public administrative organ operating in the capital or that of the district office of a town of county rank may summon persons from the entire area of the capital or town of county rank, respectively.

(6) Members of the armed forces, armed organizations and police shall be summoned in writing, through the proper headquarters.

## **Section 24**

(1) The summoned person is obliged to comply with the summons.

(2) If the summoned person fails to comply with the summons or leaves the place of the proceedings without permission before the hearing, without offering an adequate excuse for his/her absence or leave, he/she may be fined Ft 1,000.

(3) If the summoned person fails to appear even to a repeated summons and fails to offer an excuse for his/her absenteeism, he/she may be brought in with the help of the police. Unless a rule of law directs otherwise, the public prosecutor's approval is required for the implementation of this compulsory attendance. The public prosecutor's approval may be requested by the head of the public administrative organ proceeding the matter.

(4) If a member of the armed forces, armed organizations or police has to be brought in, this must be done by sending a letter of request to the proper headquarters.

(5) If the summoned person offers a justifiable excuse for his/her absenteeism or leave, the decision levying a fine or the writ of attachment must be withdrawn.

(6) In the case of a summons requiring immediate appearance or that made by telephone, no fine may be levied on the person who fails to appear, nor may his/her compulsory attendance be ordered.

(7) If the representative of a legal entity or some other organization without a legal entity fails to appear after having received a writ of summons, and the head of the legal entity (other organization) refuses to give the name of the representative when called upon to do so, a fine of up to 1,000 Ft may be imposed on the head in question.

## Notice

## **Section 25**

If the client cannot be summoned on the basis of paragraph (1), Section 22, or if the public administrative organ does not consider it necessary to summon the client, the public administrative organ shall send a notice to the client, informing him/her about the hearing of witnesses and experts, the inspection and the trial, notifying him/her that he/she may, but is not obliged to, attend the said hearing (inspection, trial).

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<sup>17</sup>Paragraph (5) of Section 23 is the text established by Section 27 of Act No. XX of 1991.

### Statements of Facts

#### **Section 26**

- (1) The public administrative organ shall state the facts of the case which are necessary for passing a decision. If the available data is insufficient for this, a procedure to produce evidence must be conducted either *ex officio* or on request.
- (2) Facts which are of public knowledge or officially known to the public administrative organ need not be proved.
- (3) Principal means of evidence: client's declaration, documents, testimony, inspection and expert opinion.
- (4) The public administrative organ shall evaluate the evidence one by one and in totality, and states the facts of the case according to its best conviction based upon the evidence.

### The Client's Declaration

#### **Section 27**

- (1) The client has the right to make a declaration, either verbally or in writing, in the course of the proceedings, and he/she is also entitled to refuse to make a statement. If the client fails to make a statement or refuses to give the data requested, the public administrative organ shall pass a decision on the basis of the available data, or shall stay the proceedings. The client must be warned of this fact.
- (2) Before giving a hearing to clients, the public servant is obliged to supply the clients with the necessary information and to warn them of their rights and liabilities. In the course of the proceedings the public administrative organ shall make sure that the client suffers no disadvantage whatever because of ignorance of the rules of law.
- (3)<sup>18</sup> The public administrative organ shall not request the client to communicate data that the records of the given public administrative organ, established under and required by the law, must contain. This rule shall be applied for the data contained in the records instituted at the mayor's office by a rule of law, in the proceedings conducted by the mayor, the mayor of the capital, the notary, the chief notary and the public servants employed by the mayor's office.
- (4) On a client or client's representative who, in bad faith, states an untrue fact of substantial importance to the given matter, a fine of up to five thousand (Ft 5,000) may be imposed. The penalizing decision may be revoked if the client reveals the untrue statement that he/she has made.

### Documents

#### **Section 28**

- (1) In order to state the facts of a case, the public administrative organ may invite the client to present a document or some other file, or may send a letter of request to some other organ to this end (Section 10).

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<sup>18</sup>Paragraph (3) of Section 27 is the text established by Section 24 of Act No. XX of 1991.

(2) Unless a rule of law directs otherwise, the client is allowed to make a declaration about the fact that he/she wishes to prove, instead of presenting a document which is excessively difficult to obtain.

(3) The provisions regarding documents shall apply to all objects which record data, usually by technical or chemical means (photographs, films, audio recordings, magnetic disks, magnetic tapes etc.).

### Witnesses

#### **Section 29**

(1) Facts relevant to the case may also be proved by a witness.

(2) The person called in evidence is obliged to appear at the hearing and - with the exceptions stated in point (b), paragraph (3) and in paragraphs (4) and (5) - to testify.

(3) The following persons cannot be brought forward as witness:

- (a) persons who cannot be expected to bear testimony which could be used as evidence;
- (b) on facts qualified as state secret, service secret or occupational secret, persons who have not been granted an exemption from the obligation of secrecy by the organ or person authorized to do that.

(4) The giving of evidence may be refused if the witness is a relative of any of the clients.

(5) The giving of evidence may be refused on matters in which the witness, by giving evidence, would accuse himself/herself or his/her relative of having committed a crime.

#### **Section 30**

(1) At the beginning of the hearing the identity of the witness must be established. The witness shall make a declaration on his/her relations with the clients and state whether he/she is unbiased towards them. The witness shall be warned of his/her rights and liabilities and of the consequences of committing perjury.

(2) Witnesses who have not testified yet usually must not be present at the hearing of the client or of other witnesses.

(3) If the public administrative organ hears the witness out of trial, the rules of trial must be applied to the hearing as applicable.

### Inspection

#### **Section 31**

(1) An inspection (survey) may be ordered to state the facts of the case. During that inspection,

- (a) the owner of the object to be inspected may be obligated to present the said object;
- (b) a local inspection (examination of the spot) may be conducted.

(2) Should the prior notification or summoning of those concerned endanger the success of the

inspection, the ordering of the inspection shall be communicated to those concerned verbally, before the inspection is begun.

(3) The owner of the object to be inspected may refuse presenting the object of inspection if he/she is bound by the obligation of secrecy (Point (b), paragraph (3), Section 29) concerning the given object of inspection, and if he/she has not been exempted from that obligation.

### Expert

#### **Section 32**

(1) An expert must be called in evidence if special expertise is required for stating a fact or other circumstance material to the given case, or if expert testimony is required by a rule of law.

(2) Either an employee of the public administrative organ proceeding in the case - who has the required expertise - shall be drawn into the proceedings to act as expert, or the organization specified by the relevant rule of law shall be consulted. If the public administrative organ proceeding in the case does not have an employee who would possess the expertise required for passing a decision on the special matter, some other organization or panel of experts shall be consulted. Whenever this is justified, a person possessing the required expertise may be designated directly to act as expert. The client also may propose a person to act as expert.

(3) On the client's request, the public administrative organ may designate - either before or after receiving the original expert's opinion - an expert other than the expert originally appointed, provided that the costs of the expert are met and paid in advance by the client.

#### **Section 33**

(1) Persons for whom a reason for exclusion (Section 19) exists, who cannot be called in evidence as a witness, or who can refuse to testify (Section 29, paragraphs (3)-(4)) shall not act as expert.

(2) The expert shall be provided with all the data that he/she needs for performing his/her duties. In order to ensure this, the expert may inspect the documents of the case and may be present at the hearing of the client and the witness, that at the inspection and at the trial, and he/she may put questions to the client and the witness. On the basis of a rule of law the client may be obligated to participate in the expert's investigation.

(3) Before the expert gives his/her opinion, he/she shall be warned of the consequences of giving a false opinion.

(4) If the public administrative organ hears the expert out of sessions, the rules of trials shall be applied to the hearing as applicable.

### Interpreter

#### **Section 34**

(1) If during the proceedings a foreign language is used - and if the public servant in charge of the case does not speak that language - the services of an interpreter shall be made use of.

- (2) If a deaf, mute or deaf-mute person participates in the state administrative procedure, the services of an interpreter shall be made use of.
- (3) The provisions concerning the expert shall also apply to the interpreter as applicable.

Consequences of Refusal to Give Evidence and to Act as Expert, and of Impeding the Inspection

**Section 35**

- (1) If, after having been warned of the consequences, the witness, the expert or the owner of the object of inspection refuses to testify, cooperate, give expert opinion or present the object of inspection without offering an acceptable excuse for doing so, a fine of up to Ft 1,000 may be imposed on him/her.
- (2) The decision imposing a fine may be revoked if - after the refusal - the witness testifies, the expert performs his/her duties and the owner of the object of inspection meets his/her responsibilities.
- (3) The person impeding the on-site inspection or refusing to participate in the expert investigation may be fined as laid down in paragraphs (1) and (2). Acts of Parliament, law-decrees<sup>19</sup> or government decrees may allow the use of other means of coercion, too.

Trial

**Section 36**

- (1) The public administrative organ shall conduct a trial if this is required by a rule of law, or if a collective hearing of the persons participating in the proceedings is necessary for stating the facts of the case.
- (2) At the trial, the public administrative organ gives a hearing to the client, the witness and the expert, and it inspects the object of inspection.
- (3) The client and his/her representative may comment on what has been said at the trial, may put questions to the person heard, or propose that other persons be called in evidence or that other evidence be produced.
- (4) Persons who disturb the trial shall be called to order by the official presiding over the trial. If they cause repeated or serious disturbance, the official presiding over the trial shall order them to leave the room and impose on them a fine of up to Ft 1,000. Against members of the armed forces, armed organizations or the police - if the official presiding over the trial considers it insufficient to impose a fine - disciplinary proceedings may be instituted.

Suspension of the Proceedings

**Section 37**

- (1) If passing a decision on the merits of a case depends on the previous judgement of a matter in which some other organ is competent to proceed, the public administrative organ may suspend the proceedings. If the client is entitled to institute the proceedings before the other organ mentioned above, he/she shall be invited to do so, by setting a suitable time-limit. Should the client fail to comply with

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<sup>19</sup>The "law-decree" as a source of law no longer exists.

this request, the public administrative organ shall either stay the proceedings or pass decision on the basis of the available data.

- (2) The term of suspension shall not be reckoned in the time available for settling the matter.
- (3) The decision ordering the suspension of proceedings is appealable.

#### Agreement

### **Section 38**

- (1) If a rule of law so directs, or if it is permitted by the nature of the given matter, the public administrative organ shall attempt to reach an agreement before passing a decision.
- (2) If the agreement conforms to the relevant rules of law and does not hurt the lawful interest of the parties or others, the public administrative organ shall assent to the agreement or draw it up in a decision; in the opposite case, it shall continue the proceedings.

#### Reckoning of the Term (Deadline)

### **Section 39**

- (1) The day of communication and delivery, that of putting up and removing the notice, and the duration of the proceedings conducted by the special authority (Section 21) shall not be reckoned in the term given in days.
- (2) If the last day of the term is a day which is kept as a holiday at the public administrative organ, the term shall expire on the first working day after the said holiday.
- (3) In the case of petitions sent by mail, the day of posting shall be regarded as the time of submission.
- (4) In case of doubt, the deadline shall be regarded as having been kept.

#### Excuses

### **Section 40**

- (1) Persons who failed to appear on the day set as deadline or have failed to keep the deadline may submit a request for justification to the organ proceeding in the matter. The request for justification shall be judged and decided upon by the public administrative organ during the proceedings of which the omission or default occurred.
- (2) Requests for justification may be submitted within eight days as from the day set as deadline or from the last day of the deadline not kept. If the client obtained knowledge of the default or the hindrance ceased to exist only later, the term of deadline shall be reckoned from the day of obtaining knowledge or the cessation of hindrance.
- (3) Requests for justification may be submitted for six months as from the day of deadline not kept or from the last day of the term missed.



- (4) If a deadline is not kept, the omission shall be rectified simultaneously with submitting the request for justification.
- (5) If the public administrative organ accedes to the request for justification, it shall continue the proceedings and - depending on the results of the proceedings - keep in force, modify or revoke its earlier decision.
- (6) The decision rejecting the request for justification is appealable only if the request is aimed at obtaining justification for not keeping a time for appeal.

#### Inspection of Documents

### **Section 41**

- (1) The client and his/her representative may inspect, and make copies of, the documents generated in the course of the proceedings.
- (2) In addition to the client and his/her representative, the public administrative organ allows also other persons (representatives of organs) to inspect and make copies of the documents, if they can prove that the knowledge of the content of documents is necessary for enforcing their rights or performing their duties.
- (3) Inspection of the minutes drawn up at consultations or voting, draft resolutions and documents containing state secrets or service secrets must not be allowed. Inspection or copying of documents which serve as a basis of a decision on the merits of a case must not be prohibited under the pretext that they contain a service secret.

## **CHAPTER IV**

### **Resolutions Passed by the Public Administrative Organ**

#### Form and Content of the Resolutions

### **Section 42**

- (1) The public administrative organ passes resolutions on both the merits of cases and on questions to be decided in the course of the proceedings.
- (2) In proceedings initiated at the client's request - in cases specified by rules of law - the legal consequences of the resolution entertaining the application shall be applied also if the public administrative organ did not refuse granting the request within the specified deadline.

### **Section 43**

- (1) The resolution must contain:
- (a) the name of the public administrative organ proceeding in the case, the name and address (seat) of the client, the number of the case, its subject-matter and the name of the public servant handling it;

- (b) the enacting part of the resolution shall contain the decision of the public administrative organ, as well as information on the possibility of lodging an appeal and of judicial revision;
  - (c) the "reasons" part of the resolution shall contain the facts of the case as stated and the evidence on which it is based; the production of evidence offered by the client but disregarded, with the reasons for non-observance; the name of the special authorities that have proceeded in the case, and the rules of law on the basis of which the public administrative organ has adopted the resolution;
  - (d) the place and time of passing the resolution, the name and official position of the signatory of the resolution, and the stamp of the public administrative organ.
- (2) In the absence of an adverse party, the "reasons" part of the resolution of first instance granting the request, and that of the resolution containing an agreement or approval may be omitted. From the resolution of first instance granting the request the information on legal remedies may also be omitted.
- (3) The resolution shall be formulated on a separate sheet, taken down on record or written on the document. The resolution must be drawn up on a separate sheet if it is to be served upon the client or if, at the client's request, the declared resolution is to be sent to the client.
- (4) In the resolution taken down on record or written on the document the data specified in points (a) and (b) of paragraph (1) need not be indicated, provided that they appear from the document.
- (5) A rule of law may require that the public administrative organ issues its resolution on a document form designed specifically for that purpose.

#### **Section 44**

- (1) If the resolution contains an obligation, a term or deadline for performance shall be set.
- (2) The resolution may also state part performance.

#### Communication of the Resolutions

#### **Section 45**

- (1) The resolution shall be communicated by service. If the client is present, the resolution may also be read to him/her, unless this is prohibited by a rule of law.
- (2) If so directed by a rule of law, the resolution may also be communicated by promulgation or exhibition in public.
- (3) In the case of public danger, life-danger or the risk of substantial or irreparable damage the resolution may be communicated also by means of telecommunication. The date and time of communication shall be recorded on the document.
- (4) The resolution shall be sent or information about it shall be provided, the organ (person) specified by the relevant rules of law, as well as to the special authority that has proceeded in the case.

#### **Section 46**

- (1) The promulgation of the resolution shall be taken down on record.
- (2) The promulgated resolution shall be sent to the client - if he/she so requests - within eight days.

#### **Section 47**

- (1) The day of communicating the resolution shall be that day on which it was served, promulgated, the document exhibited in public was removed, or on which the resolution was communicated by means of telecommunication.
- (2) On documents exhibited in public both the day of putting up and that of removal shall be indicated.

#### Rectification and Completion of the Resolution

#### **Section 48**

- (1) If the resolution contains erroneous data concerning names and numbers, errors of calculation or other clerical errors of similar nature, the public administrative organ may rectify or replace the resolution - if necessary, after giving a hearing to the client.
- (2) The public administrative organ may complement the resolution in the line of its duties (*ex officio*) or at the client's request, if it did not pass a decision on questions relevant to the merits of the case. The complement shall not involve other provisions of the resolution.
- (3) The rectification or complement shall be recorded also on the original and possible also on the office copies of the basic resolution, and shall be communicated to the client as specified for the basic resolution.
- (4) Completion of the resolution shall not be allowed if this would violate a right acquired and exercised in good faith.

### CHAPTER V

#### **Official Certificate, Card and Records**

#### **Section 49**

- (1) In the course of the proceedings described in this chapter, the provisions of the present Act shall be applied with the differences regulated therein.
- (2) The document issued by the public administrative organ to attest a certain fact or condition, the attestation of the said fact or condition in other similar means, and incorporation into the official records shall be regarded as a resolution.
- (3) The public administrative organ shall pass a resolution on the refusal of issuing an official certificate and an official card, as well as on the refusal of incorporation into the official records (amendment, deletion).

### Official Certificate

#### **Section 50**

- (1) For the attestation of a fact, condition or other data (further on: data) the public administrative organ issues an official certificate.
- (2) In addition to the public administrative organs listed in Section 6, an official certificate may also be issued by those public administrative organs:
  - (a) in the area of which the fact to be proved has occurred or the condition has lasted or ceased;
  - (b) in the area of which the matter relevant to the production of evidence exists, or existed in the period to be proved;
  - (c) the records of which contain the data concerned.
- (3) The official certificate must be issued in writing, or, alternatively, a clause may be added to the document submitted by the client, within eight days as from the submission of the petition. The official certificate must state the name of the person to whom it has been issued, the purpose of its issue, and the evidence on the basis of which it has been issued.
- (4) In the absence of evidence to the contrary, the content of the official certificate must be accepted by everyone.

#### **Section 51**

- (1) An official certificate may be issued if this is required by a rule of law, or if the client proves that it is necessary to issue such a certificate.
- (2) The public administrative organ shall refuse to issue an official certificate if:
  - (a) the issue of such a certificate is contrary to the law;
  - (b) if the data to be proved by the official certificate can be attested by some other document;
  - (c) if the client cannot state the purpose for which he/she requests the certificate, or if he/she asks for the certification of an untrue fact.

### Official Card

#### **Section 52**

- (1)<sup>20</sup> In cases specified by an Act of Parliament or a decree of the local authority, the state administrative organ issues an official card for the regular attestation of the client's data. The issue of an official card for the regular attestation of the client's data may be ordered also by a government decree.

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<sup>20</sup>Paragraph (1) of Section 52 is the text established by paragraph (2), Section 40 of Act No. LXVI of 1992.

- (2) Only the data specified by rules of law may be entered into the official card.
- (3) In the absence of evidence to the contrary, the data and rights specified in the official card must be accepted by everyone and the client cannot be obligated to present other evidence to prove the said data or rights.

#### Official Records

#### **Section 53<sup>21</sup>**

- (1) The state administrative organ shall keep a register of the data specified by rules of law. The registration of personal data of citizens may be prescribed only by an Act of Parliament or by a decree of the local authority on the basis of the authorization granted by law, in the scope specified therein.
- (2) The state administrative organ may impart the personal data contained in its records and in the documents serving as a basis thereof - in addition to those concerned by them - only to the organs and persons specified in an Act of Parliament or in a decree of the local authority formulated on the basis of the authorization granted by law, by precisely stating the purpose of data handling and the scope of data involved.

### **CHAPTER VI**

#### **Official Checks and Inspection**

#### **Section 54**

- (1) The provisions of this Act shall be applied to official inspection with the differences regulated in this chapter.

#### **Section 55**

In order to implement the tasks falling within its jurisdiction, the public administrative organ shall carry out official inspection.

#### **Section 56**

The client shall be notified in advance of the official inspection, unless such advance information would endanger the success of inspection. In such cases the client, when present, shall be informed by word of mouth when starting the inspection.

#### **Section 57**

- (1) If this is necessary for the success of the official inspection, the representatives of the public administrative organ shall have the right to enter the premises (area), inspect the documents or objects, and observe the working process (activity) concerned, they may request information from the client or his/her representative, and may produce evidence in other means.
- (2) If the official inspection is obstructed in any way, the provisions of Section 35 shall be duly applied.

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<sup>21</sup>Section 53 is the text established by paragraph (3), Section 40 of Act No. LXVI of 1992.

## **Section 58**

The official inspection must be carried out in such a way that, as far as possible, it shall not hinder the client in performing his/her work or conducting his/her proper activities.

## **Section 59**

(1) If it states a violation of a rule of law, the public administrative organ shall take the necessary measures; especially, it shall:

- (a) exercise its official duties as laid down in this Act;
- (b) call the attention of the client or the superior (interest-representing) body to the breach of law observed;
- (c) apply to another public administrative organ, requesting it to take the appropriate measures;
- (d) initiate disciplinary, petty offence, civil, criminal or other procedure.

(2) The petitioned organ shall examine the request of the public administrative organ in its merits, and shall notify the public administrative organ of its own action or of the reasons for disregard within thirty days.

## **CHAPTER VII**

### **Legal Remedies**

## **Section 60**

Unless this chapter directs otherwise, in the proceedings regulated herein the provision of Chapters II-IV shall be duly applied.

### Amendment and Revocation of the Resolution

## **Section 61**

(1) If the public administrative organ states that its resolution, still unadjudged by a superior authority or by the court, violates a rule of law, it shall amend or revoke that resolution.

(2) Upon receipt of an application for relief from the client, the public administrative organ may amend or revoke its resolution if it agrees with the content of the application for relief, provided that no adverse party is involved in the given case.

(3) The public administrative organ is entitled to amend or revoke the resolution only once, within one year as from the resolution is announced. The special authority may modify or withdraw its consent (Section 20) only up to the time when the public administrative organ proceeding in the case passes its resolution.

(4) The amendment or revocation of the resolution may be excluded or made subject to a special condition by a rule of law.

- (5) Amendment or revocation of the resolution shall not be allowed if this would violate a right acquired and exercised in good faith.

### Appeal

#### **Section 62**

- (1) The client has the right to lodge an appeal against the decision of the first instance, passed on the merits of the case. Persons affected by the provisions of the resolution shall also have a right of appeal.
- (2) Unless a rule of law directs otherwise, the appeal may be lodged within fifteen days as from the publication of the resolution.
- (3) Unless a special appeal is allowed by a rule of law, resolutions preceding the decision on the merits of the case and statements issued by the special authority may be contested only in the appeal lodged against the resolution on the merits of the case. Against resolutions imposing a fine an appeal lies.
- (4) Persons having a right of appeal may waive that right within the time for appeal.

#### **Section 63**

- (1) The appeal has delaying force as regards the implementation of the resolution, unless the public administrative organ has ordered immediate implementation.
- (2) Immediate implementation of the resolution may be ordered:
- (a) if this is necessary because of life-danger or for public safety, or if the omission of immediate implementation would involve a substantial loss or irreparable damage;
  - (b) if the resolution contains provisions as to the maintenance or care of someone;
  - (c) if this is rendered possible by an Act of Parliament, a law-decree or a government decree for some other important reason.
- (3) Immediate implementation shall be specifically stated in the resolution and reasons for it shall be provided therein.

#### **Section 64**

No appeal shall lie if the Government or a member of the Government has acted in the first instance, or if a rule of law excludes the right of appeal in a case because applications for alteration or revocation of the resolution shall be submitted to the court.

#### **Section 65**

- (1) The appeal shall be lodged with the public administrative organ which has passed the resolution to be contested. The appeal must contain new facts and evidence.
- (2) The appeal, together with all documents of the case, shall be presented to the higher authority within eight days as from the expiration of the deadline, unless the public administrative organ revokes the contested resolution or modifies, amends or completes it as requested in the appeal.

## **Section 66**

- (1) The responsibility of judging the appeal lies with the superior public administrative organ.
- (2) The superior authority shall examine the resolution contested by an appeal and the procedure preceding the passing of that resolution, irrespective of who has lodged the appeal and for what reason. As a result of its investigation it affirms, alters or annuls the resolution.
- (3) Failing data sufficient for passing a resolution on the merits of the case or if further elucidation of the facts of the case is needed, the superior authority shall annul the resolution and shall either order the public administrative organ acting in the first instance to institute new proceedings, or take action itself to have the facts of the case supplemented.

## **Section 67**

The resolution passed during the appellate procedure shall be communicated in writing - through the public administrative organ that has proceeded in the first instance - to the appellant and to all those who have been notified of the resolution of first instance.

### Application for Review

## **Sections 68-70<sup>22</sup>**

### Supervisory Measures

## **Section 71**

- (1) If a resolution passed by the public administrative organ contravenes a rule of law, the superior public administrative organ may alter or annul that resolution, and may direct the public administrative organ that has acted in the case to institute new proceedings. The superior public administrative organ shall have these powers also if a special authority - through its superior authority - lodges a complaint because of the non-observance of its consent, within fifteen days as from the receipt of the resolution (Section 45, paragraph (4)).
- (2) The resolution may not be altered or annulled:
  - (a) if it has been revised by the court;
  - (b) if alteration or annulment of the resolution would violate a right acquired and exercised in good faith;
  - (c) if one year has elapsed since the resolution became legally valid;
  - (d) if this is excluded or made subject to a condition by a rule of law.<sup>23</sup>

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<sup>22</sup>Sections 68-70 have been abrogated by paragraph (4), Section 15 of Act No. XXVI of 1991.

<sup>23</sup>See Point 2 of the Government Decree No. 1029/1992 (V.14.).



Judicial Revision of Administrative Resolutions

**Section 72<sup>24</sup>**

- (1) With reference to a violation of the legal regulations, the client, or the aggrieved party whose lawful interests have been prejudiced, may - unless an Act of Parliament directs otherwise - commence an action for the judicial revision of a resolution passed on the merits of an administrative matter, within thirty days as from the publication of the resolution.
- (2) Judicial revision of an administrative resolution may take place only if the client has exhausted his/her right of appeal in the state administrative procedure, or if an appeal does not lie.
- (3) Submission of a statement of claim has delaying force regarding the implementation of the resolution; however, the public administrative organ may declare its resolution immediately enforceable with regard to the public interest or a relevant interest of the client. The party may apply for a stay of execution in his/her statement of claim.
- (4) No judicial revision of administrative resolutions is admissible:
  - (a) if this is excluded by an Act of Parliament;
  - (b) if the resolution furthers the enforcement of a legally valid court decision;
  - (c) if the resolution is of temporary nature and a final decision has to be passed within a term specified by a rule of law;
  - (d) if the administrative resolution has been passed on the authorization of foreign trade in goods, services and rights of material value;
  - (e) if the administrative resolution contains provisions regarding the manufacture and distribution of firearms; ammunition, explosives, radiating matter or narcotic drugs;
  - (f)<sup>25</sup> if the administrative resolution orders the appearance of persons liable to military service before the recruiting commission, at a medical examination, for the evaluation of applications for unarmed military service or civil service (retention in reserved occupation), or for some other reason;
  - (g) if, in the case of civil service, the administrative resolution contains provisions as to the designation of employer, the notice to commence the civil service, the retention in military service or, in the case of mobilization, draft deferment (retention in reserved occupation);
  - (h) if the administrative resolution contains provisions on the obligatory performance of civil defence service;
  - (i) if the administrative resolution contains provisions as to the defence of the national frontiers.

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<sup>24</sup>Section 72 is the text established by Section 3 of Act No. XXVI of 1991.

<sup>25</sup>Points (f)-(g) of paragraph (4), Section 72 contain the text established by Section 262 of Act No. CX of 1993.

### Section 73

- (1)<sup>26</sup> When stating a violation of the rules of law, the court shall set aside the administrative resolution and, if necessary, obligate the public administrative organ to institute new proceedings. An Act of Parliament may provide that the court may alter the administrative resolution.
- (2) After the court has passed a decision on the merits of the case, the public administrative organ shall not institute new proceedings in the same case if the facts of the case are the same.
- (3) The provisions of the court decision and its reasons are binding on the public administrative organ, which must take into consideration the content of the said decision during the repeated proceedings and in the decision-making.

#### Measures taken by the Attorney

### Section 74

- (1) The attorney's protest, objection, warning and other measures taken by the attorney in a state administrative procedure shall be governed by the Act on the State Attorney's Office of the Republic of Hungary.<sup>27</sup>

#### Nullity

### Section 75

- (1) In the proceedings regulated in this chapter, the resolution passed by the public administrative organ shall be annulled irrespective of the rights acquired and exercised in good faith.
- (a) if the case falls within the jurisdiction of an organ other than a public administrative organ;
- (b) if an employee of the public administrative organ, who has proceeded in the case, has committed a breach of duty in a manner which is contrary to the Penal Code, and this has influenced the resolution passed by the public administrative organ, provided that the commission of crime has been stated by a non-appealable judgement, or that the passing of such a judgement is prevented by factors other than the lack of evidence.
- (2) The resolution passed by the public administrative organ cannot be annulled according to paragraph 1 if at least 3 years have elapsed since the resolution entered into legal effect.

## CHAPTER VIII

#### Execution

### Section 76

During the enforcement procedure, the provisions of this Act shall be applied with the differences regulated in this Chapter.

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<sup>26</sup>Paragraphs (1) and (3) of Section 73 contain the text established by Section 4 of Act No. XXVI of 1991.

<sup>27</sup>See Act No. V of 1972.

### Enforceable resolutions

#### **Section 77**

- (1) The resolution of first instance of the public administrative organ shall be considered legally binding and enforceable if no appeal has been lodged against it during the time for appeal, the right of appeal was waived, or if appeal is excluded by this Act.
- (2) Those resolutions of first instance the immediate implementation of which has been ordered by the public administrative organ may also be enforced.
- (3)<sup>28</sup> The resolution of second instance passed in the given case shall come into force after it is made public. Non-appealable resolutions may be implemented unless they are open to judicial review.
- (4) If the public administrative organ has set a deadline or term of accomplishment, the resolution will become enforceable only after that deadline has expired.
- (5) Unless otherwise provided by a rule of law, in justified cases the public administrative organ which has passed the resolution may extend the term of accomplishment or set a later deadline.

### Issue of an Execution Warrant

#### **Section 78**

- (1) Unless otherwise provided by a rule of law, implementation of the resolution shall be ordered by the public administrative organ which has proceeded in the case in first instance.
- (2) In the case of proceedings conducted in the line of its duties (*ex officio*), the public administrative organ shall immediately order the implementation of the resolution. In other cases, at the request of the party entitled, it orders that the resolution be implemented within 15 days.

### Collection of Money Owing

#### **Section 79**

- (1)<sup>29</sup> If the resolution orders the payment of money and the private person obligated to pay fails to comply with it, the public administrative organ which has proceeded in first instance shall invite the obligor's employer (the organ paying his/her emoluments) to deduct the amount specified in the resolution for the obligor's wage, allowances or claims - in the case of cooperative members, from the pay due to him/her on the basis of the legal relationship having the nature of labour relations - (further on: wage) and transfer or pay it to the party entitled to it.
- (2) If an immediate attachment of debts is not possible, or if it has not been successful or would require an excessive amount of time to succeed, the obligor's other chattels - in addition to his/her wages - must also be drawn under distraint. In such cases execution shall be levied by the tax authorities according to the general rules of the tax administration procedure.<sup>30</sup>

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<sup>28</sup>Paragraph (3) of Section 77 is the text established by Section 5 of Act No. XXVI of 1991.

<sup>29</sup>Paragraph (1) of Section 79 is the text established by Point (3), Section 61 of Act No. II of 1992.

<sup>30</sup>See Act. No XCI of 1990.

## Section 80

(1) If a legal person or some other organization without a legal entity fails to settle its debt, the public administrative organ which has acted in first instance - with the exception stated in paragraph (2) - shall invite the financial institution keeping the obligor's bank account to transfer the said amount from the obligor's account or make it payable to the party entitled.

(2) If both the party entitled and the obligor are business organizations, after the expiration of the term of accomplishment without success the obligor may collect its claim - through a financial institution, from the bank account kept thereat - by an immediate order to collect.

(3)<sup>31</sup> The provisions of paragraph (1) shall be applied to private persons subject to the obligation to enter into a bank account contract, including the private persons' companies without a legal entity.

### Execution of a Specific Act

## Section 81

If the execution is directed at the performance of a specific act (conveyance of property, evacuation of an apartment, etc.) or at a specific conduct (further on: specific act), the execution shall be levied by the public administrative organ of the lowest grade in whose jurisdiction the obligor's domicile or seat or the property in question is situated. If not the public administrative organ issuing the execution warrant is entitled to levy execution, the case shall be referred to the organ entitled to do that.

## Section 82

(1) The manner of execution shall be determined by the public administrative organ levying the execution. Thus,

- (a) it may have the specific act carried out at the obligor's expense and risk, or may entitle the obligee to carry out the specific act at the obligor's expense and risk, or to have it carried out by someone else; in all these cases, the public administrative organ may obligate the obligor to advance the expenses which are likely to incur;
- (b) at the obligee's request, the public administrative organ may obligate the obligor to pay the equivalent in money of the service in question;
- (c) the public administrative organ may impose a fine of up to Ft 10,000 on the obligor;
- (d) the public administrative organ may enforce the specific act with the help of the police; in order to enforce the said act, the police may apply the means of coercion laid down in the relevant rules of law.

(2) If the obligor is a legal person or some other organization without a legal entity, the fine stated in point (c) of paragraph (1) shall be imposed on the person obliged to take measures or, failing such a person, on the head of the given organization.

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<sup>31</sup>Paragraph (3) of Section 8 has been inserted into the Act by Section 5 of Law-decree No. 14 of 1987.

- (3) If the obligor has failed to meet his/her obligation by the deadline stated in the resolution imposing a fine, the fine may be imposed again.

### **Section 83**

- (1) Of the measures listed in Section 82, the public administrative organ shall take that measure which - under the conditions of the given case - can ensure with the highest probability that the given obligation is met.
- (2) The measures listed in Section 82 are ordered by a resolution issued by the public administrative organ. Resolutions obligating parties to meet costs or to pay equivalent in money or fines are appealable.

#### Delivery of Specific Movable Property

### **Section 84**

- (1) If the obligor has been obligated to hand out specific movable property, the public administrative organ of lowest grade, to the jurisdiction of which the given movable property belongs, shall hand over the said property to the obligee present, or shall see to it that the movable property in question is delivered to the address of the party entitled.
- (2) If the obligor refuses to hand out the specified movable property, the public administrative organ shall resort to the help of the police and shall levy compulsory execution immediately.
- (3) If the specific movable property is not available, the party entitled to it may request that the money equivalent of the movable property be determined. The equivalent in money shall be determined by the organ levying execution by issuing a resolution, which is appealable. Subsequently the act of distraining will be aimed at the collection of that amount.

#### Stay of Execution

### **Section 85**

- (1) The organ issuing the execution warrant or levying execution, or its superior authority, may - in the line of its duties or on request - order the suspension of execution if the resolution is likely to be altered or annulled, or if a stay of execution is justified by some equitable reason.
- (2) The act of distraining can usually be suspended for a period of maximum thirty days.

#### Statutory Limitation of Execution

### **Section 86**

- (1) Unless a rule of law directs otherwise, execution is subject to the statute of limitations within three years as from the time when the resolution becomes legally valid.
- (2) The statutory limitation of executions interrupted by any act of distraining.

### Execution for Security

#### **Section 87**

- (1) On the basis of a legally valid resolution, the public administrative organ may order the securing of the pecuniary claim or the sequestration of the specific movable property before the expiration of the term of accomplishment. This may be done also on the basis of a resolution which has been appealed against, or for which the time for appeal has not yet expired.
- (2) Execution for security may be ordered only if the subsequent performance of the obligation is likely to be in jeopardy.
- (3) Execution for security shall be done in conformity with the rules applying to execution aimed at the performance of an obligation. A stoppage of wage payment may be ordered only if the obligor has no other distrainable property.

### Protest Against Execution

#### **Section 88**

- (1) With the exceptions mentioned in paragraph (3), paragraph (2) of Section 83 and paragraph (3) of Section 84, no appeal lies against the resolution passed during execution.
- (2) Those whose rights are infringed upon or whose lawful interests are prejudiced by the distraint may, within three days as from acquiring information about the injury, lodge a protest with the organ levying compulsory execution.
- (3) Unless a rule of law directs otherwise, the organ levying compulsory execution shall judge the protest against execution by passing a resolution on it immediately but within eight days at the latest. This resolution is appealable.

## CHAPTER IX

### **Closing Provisions**

### Costs of Proceedings

#### **Section 89**

- (1) Unless a rule of law directs otherwise, the costs of state administrative procedure shall be met by the state. The liability to pay duties is governed by the rules on duties.<sup>32</sup>
- (2) The amount of the costs of proceedings shall be determined. The public administrative organ may obligate the client to pay the costs of proceedings in advance.
- (3) If several parties of identical interest and liable to meet the costs are involved in the proceedings, the costs shall be distributed among them proportionally.

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<sup>32</sup>See Act No. XCIII of 1990.

### Exemption from the Payment of Charges

#### **Section 90**

- (1) Private persons who - because of their income, pecuniary and property status - cannot meet the costs of proceedings or a part thereof, may be totally or partly exempted from payment of the costs of proceedings by the public administrative organ, in order to facilitate the enforcement of their rights. If the conditions justifying the exemption from payment change, the exemption may be modified or withdrawn.
- (2) Exemption from payment shall be interpreted as an exemption from the payment of duties and the costs of proceedings.
- (3) Exemption from payment shall be valid for the entire duration of the proceedings, starting from the submission of the application, and shall cover the act of distraining.

#### **Section 91**

The resolution rejecting the application for exemption from payment and that on the modification or withdrawal of the exemption are appealable.

### Separate Measures

#### **Section 92**

If during the proceedings a violation of the legal regulations has been committed, measures shall be taken to remedy the defects established and to eliminate their causes.

### Superior Authorities

#### **Section 93**

Unless an Act of Parliament, law-decree<sup>33</sup>, government decree or ministerial decree directs otherwise, during the application of this Act the "superior authorities" to take action shall be the public administrative organs specified in Sections 94-96.

#### **Section 94<sup>34</sup>**

- (1) In state administrative matters assigned to the mayor, the mayor of the capital, the notary, the chief notary, a public servant employed by the office of the municipal corporation or the head of the district office of a town of county rank, the superior authority shall be - unless an Act of Parliament or rule of law directs otherwise - the Commissioner of the Republic.
- (2) In state administrative matters assigned to the Commissioner of the Republic the superior authority shall be the ministry.

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<sup>33</sup>The "law-decree" as a source of law no longer exists.

<sup>34</sup>Section 94 is the text established by Section 28 of Act No. XX of 1991.

**Section 95<sup>35</sup>**

**Section 96**

The superior authority of the public administrative organs not mentioned in Sections 94-95 shall be the direct supervising organ, while in the case of ministries it shall be the minister in charge.

Explanatory Provisions

**Section 97**

For the purposes of this Act,

- (a) the terms "ministry" or "member of Government" shall also mean the organ operating under the direct supervision of the Government and the head thereof;
- (b) The term "relative" shall mean relatives in the direct line and their spouses, adoptive parents and foster-parents, adopted children and foster-children, brothers and sisters, spouses, the common-law husband and wife, the spouse's relative in the direct line, the spouse's brother or sister and their spouse.

Entry into force

**Section 98**

This Act is enacted and the necessary transitional rules are set by a separate law-decree<sup>36</sup>. The Act shall be enforced by the Government.

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<sup>35</sup>Section 95 has been abrogated by Section 29 of Act No. XX of 1991.

<sup>36</sup>See law-decree No. 25 of 1981: according to its Section 1, Act No. I of 1981 came into force on 1 January 1982.