

# 500/2004 Coll.

## ACT

of 24 June 2004

### Code of Administrative Procedure

Amendment: 413/2005 Coll.  
Amendment: 384/2008 Coll.  
Amendment: 7/2009 Coll.  
Amendment: 227/2009 Coll. (partially)  
Amendment: 227/2009 Coll.  
Amendment: 167/2012 Coll.  
Amendment: 303/2013 Coll.  
Amendment: 250/2014 Coll.  
Amendment: 243/2016 Coll.

The Parliament has adopted this Act of the Czech Republic:

## PART ONE

### INTRODUCTORY PROVISIONS

#### TITLE I

#### SUBJECT-MATTER OF THE REGULATION

##### Section 1

(1) This Act sets forth the procedure to be taken by executive authorities, territorial self-governance entity authorities<sup>1)</sup> and other bodies, legal and natural persons, where they act within the scope of public administration (hereinafter referred to as "administrative authority").

(2) This Act or its individual provisions shall be applied unless a special law stipulates another procedure.

(3) This Act shall not be applicable to legal acts conducted by administrative authorities and to relations among authorities of the same territorial self-governance entity in the performance of their autonomous powers.

#### TITLE II

#### BASIC PRINCIPLES OF ADMINISTRATIVE AUTHORITY OPERATION

##### Section 2

(1) An administrative authority shall proceed in compliance with the acts and other legal regulations as well as international treaties which form part of the legislation (hereinafter referred to as "legal regulations"). Where law is mentioned herein, it shall also include international treaties forming part of the legislation.

(2) An administrative authority shall execute its powers only for those purposes for which it has been entrusted thereto by law, and within the scope determined thereby.

(3) An administrative authority shall examine the rights acquired in good faith as well as the lawful interests of persons affected by the activities of the administrative authority in the particular case (hereinafter referred to as "persons concerned"), and may interfere with these rights only under the conditions set forth by law and in the inevitable scope.

(4) An administrative authority shall care to ensure that the adopted solution be consistent with the public interest and that it respected the circumstances of the particular case and that no reasonable discrepancies arose in respect of decisions on cases of identical or similar merit.

##### Section 3

Unless implied otherwise by law, the administrative authority shall proceed so as to ascertain the status of the case in respect of which no reasonable doubts arise, within the scope necessary to ensure compliance of its act with the requirements set forth by Section 2.

##### Section 4

(1) Public administration is a service for the public. Any one person fulfilling the tasks implied by the powers of an administrative authority shall be obliged to behave in a courteous manner in respect to persons concerns and to respond to their needs as practicable.

(2) In association with an act conducted thereby, the administrative authority shall instruct the person concerned adequately on their rights and obligations, if necessary with a view to the nature of the act and the personal situation of the person concerned.

(3) If necessary with a view to defending their rights and if it does not jeopardise the purpose of the act, the administrative authority shall, in good time, notify the persons concerned of its intended act.

(4) The administrative authority shall allow for the persons concerned to apply their rights and lawful interests.

#### Section 5

If practicable with a view to the nature of the case under consideration, the administrative authority shall strive to peacefully settle any disputes hindering the proper consideration of and decision on the case in question.

#### Section 6

(1) An administrative authority shall process cases without unnecessary delay. If the administrative authority fails to complete acts within statutory timelines or, where no statutory timeline has been established, within a reasonable period of time, provisions against protection from failure to act shall apply to remedy the situation (Section 80).

(2) An administrative authority shall act in such a way so that no one incur unnecessary costs, and so that persons concerned be burdened as little as possible. It shall request source materials from the person concerned only where stipulated by a legal regulation. Where, however, it is possible to obtain the necessary data from official records kept by the administrative authority proper, and if so requested by the persons concerned, it shall be obliged to arrange for their provision itself. When obtaining data as referred to hereunder, the administrative authority shall be in the same position in respect to third parties whom such data may concern as the person concerned upon whose request it obtains the data.

#### Section 7

(1) In applying their process rights, persons concerned shall have an equal status. In respect of the persons concerned, the administrative authority shall proceed impartially and shall request all persons concerned to observe their process obligations equally.

(2) Where the equal status of persons concerned could be jeopardised, the administrative authority shall adopt measures to safeguard such status.

#### Section 8

(1) Administrative authorities shall take care to ensure that their procedures running in parallel and pertaining to the same rights or obligations of the person concerned be consistent. The person concerned shall be obliged to forthwith notify the administrative authorities of the fact that several such procedures are concurrently conducted by various administrative authorities or other public governance bodies.

(2) Administrative authorities shall mutually cooperate in order to safeguard good administration.

## **PART TWO**

### **GENERAL PROVISIONS GOVERNING ADMINISTRATIVE PROCEDURE**

#### TITLE I

#### ADMINISTRATIVE PROCEDURE

##### Section 9

An administrative procedure shall mean the process of the administrative authority the purpose of which is the issuance of a decision which, in respect of a particular case, establishes, changes or revokes the rights or obligations of an explicitly defined person or which, in respect of a particular case, declares that such a person has or has not any rights or obligations.

#### TITLE II

#### ADMINISTRATIVE AUTHORITIES

##### **Chapter 1**

##### **Jurisdiction of administrative authorities**

##### Section 10

##### **Subject-matter jurisdiction**

Administrative authorities shall have the subject-matter jurisdiction to act and decide in cases entrusted thereto by or under the law.

## Section 11

### **Territorial jurisdiction**

(1) Territorial jurisdiction of an administrative authority shall be determined by

- a) the place of activity in respect of procedures pertaining to the activity of the party to the procedure (Section 27);
- b) the place where real estate is located in respect of procedures pertaining to real estate;
- c) the place of operation in respect of procedures pertaining to business operation of a party to the procedure who is a natural person<sup>2)</sup>;
- d) the address of permanent residence in respect of other procedures pertaining to natural persons<sup>3)</sup> or, where applicable, the address of residence within the territory of the Czech Republic with a view to the type of stay of a foreign national<sup>4)</sup> (hereinafter referred to as the "place of permanent residence"); where the natural person's place of permanent residence is outside the Czech Republic, the territorial jurisdiction shall be based upon the person's last known place of residence within the territory of the Czech Republic;
- e) the place of its registered office or the registered office of its organisational unit in respect of other procedures pertaining to legal persons;<sup>5)</sup> for a foreign legal person, the territorial jurisdiction of the administrative authority shall be based upon the registered office of its organisational unit established in the Czech Republic; if the organisational unit has been closed, the territorial jurisdiction shall be based upon the last registered office of this organisational unit within the territory of the Czech Republic.

(2) If territorial jurisdiction lies within more than one administrative authority and unless they agree otherwise, the procedure shall be carried out by that with whom the application was first filed or who performed an ex officio act as the first one. In other cases, or if it is impossible to determine the conditions of territorial jurisdiction, territorial jurisdiction shall be determined by the decision of the next jointly superior administrative authority. Where no such authority exists, territorial jurisdiction shall be determined by the decision of a central administrative authority<sup>6)</sup> competent to act in the case under consideration.

## Section 12

### **Referral due to lack of jurisdiction**

Where a submission is filed (Section 37) with an administrative authority without subject-matter or territorial jurisdiction, it shall forthwith refer it by resolution to the concerned administrative authority and, concurrently, shall notify the person filing the submission (hereinafter referred to as "petitioner") to this effect. If the administrative authority where the submission was referred to considers itself without subject-matter or territorial jurisdiction, it may decide to refer it to another administrative authority or to return it only with the approval of its superior administrative authority. Resolutions issued hereunder shall be only noted in the dossier.

### **Request**

## Section 13

(1) The concerned administrative authority may issue a resolution to request its subordinate or superior administrative authority or another administrative authority with subject-matter jurisdiction (hereinafter referred to as "requested administrative authority") to carry out an act which would be difficult or impossible for the former to be carried out thereby. Such resolution shall be delivered only to the requested administrative authority and no appeal against it may be filed.

(2) The requested administrative authority shall carry out the requested act as well as any acts necessary for the purposes of the request.

(3) The requested administrative authority shall carry out the act without unnecessary delay. Where it is not practicable to carry out the act forthwith, it shall be completed by the requested administrative authority within the timeline of 30 days of the delivery of the request. In case the requested administrative authority cannot comply with the timeline, its superior administrative authority may extend the timeline as necessary upon the former's request.

(4) If the request is contradictory to legal regulations, the requested administrative authority shall, by means of a resolution which will be only noted in the dossier, decline the conduct of the act and shall inform the requesting administrative authority to this effect. The requested administrative authority which is not subordinate to the requesting authority may decline the conduct of the act also if its conduct would seriously jeopardise the conduct of the latter's own tasks or if the conduct of the request would incur unreasonable costs. The conduct of the request may be declined only with the previous approval of the superior administrative authority.

(5) The requested administrative authority shall be authorised as per Section 136, paragraph 4.

(6) Requests filed to foreign countries shall be governed by special legal regulations.<sup>7)</sup>

## **Chapter 2**

### **Exclusion from considering and deciding cases**

#### **Section 14**

(1) Any one person immediately involved in the execution of powers of an administrative authority (hereinafter referred to as an "official"), in respect of whom it is reasonable to presume that, due to its relation to the case, parties to the procedure or representatives thereof, it has such interest in the outcome of the procedure which appears to cast doubt upon its impartiality shall be excluded from any and all acts within the procedure through the conduct of which it could influence the outcome of the procedure.

(2) The party to the procedure may claim the official's bias as soon as it learns thereof. The claim shall be rejected if the party to the procedure had provably known about the reason for exclusion but failed to raise the claim without unnecessary delay. The claim shall be forthwith heard by the official's superior or a person of a similar position (hereinafter referred to as the "superior") who shall issue a decision thereon.

(3) An official who learns of circumstances suggesting that he/she is excluded, shall be obliged to inform its superior thereof without any delay. Until the superior assesses whether the official is excluded and completes the necessary acts, such person may perform only acts that cannot be delayed.

(4) The superior of an official who has been excluded shall forthwith appoint another official in place thereof who shall not be in a subordinate position to the excluded official. Decisions thereon shall only be noted in the dossier. Where no other person can be appointed, the superior shall forthwith notify the superior administrative authority to this effect and, concurrently, shall refer the dossier thereto. The superior administrative authority shall proceed as referred to under Section 131, paragraph 4.

(5) Furthermore, excluded shall be such official who has participated in a procedure involving the same case on another level. Involvement in acts prior to the start of the procedure or in the conduct of inspection carried out pursuant to a special law shall not constitute a reason for exclusion.

(6) The provisions of the preceding paragraphs shall not apply to heads of central administrative authorities.

(7) The provisions of sections 1 to 4 shall likewise apply to experts and interpreters.

## **Chapter 3**

### **Conduct of procedure and acts of administrative authorities**

#### **Section 15**

##### **Conduct of procedure**

(1) Individual acts within a procedure shall be executed in writing, unless stipulated otherwise by law or unless impracticable due to the nature of the case. Individual communications in the course of the procedure may be made to the party to the procedure orally, unless the party to the procedure insists on a written format. The content of acts executed in other than a written format shall be noted in the dossier, unless the law stipulates otherwise.

(2) Acts of the administrative authority in the procedure shall be executed by officials authorised to do so pursuant to the internal regulations of the administrative authority or appointed by the head of the administrative authority (hereinafter referred to as "authorised officials").

(3) Authorised officials shall be obliged to maintain confidentiality in respect of facts they learn of in association with the procedure and which need to remain confidential in order to ensure the proper conduct of public administration or to preserve the interests of other persons, unless stipulated otherwise by law. Authorised officials shall be exempt from this obligation only on grounds established by a special law or upon the consent of the person affected by the respective fact. The provisions of special laws governing exemptions from the confidentiality obligations shall not be prejudiced hereby.

(4) Authorised officials for the respective case shall be entered in the dossier and the administrative authority shall inform the party to the procedure about this upon request. Upon request of the party to the procedure, the authorised official shall give his/her name, surname, official or other designation and the organisational unit of the administrative authority to which he/she has been assigned.<sup>9)</sup>

#### **Section 16**

##### **Language of the procedure**

(1) Communication within the procedure shall be carried out and documents executed in the Czech language. Parties to the procedure may also communicate and file submissions in the Slovak language.

(2) Documents executed in a foreign language shall be submitted by the party to the procedure in the original version and, concurrently, in an officially attested translation to the Czech language, unless the administrative authority informs the party to the procedure that such translation is not required. Such declaration may be made by the administrative authority also on its official notice board for an indefinite number of future procedures.

(3) Every person who declares that he/she does not speak the language of the procedure shall have the right to have an interpreter<sup>10)</sup> entered on the list of interpreters; he/she shall use the interpreter's services at his/her own expense. In procedures regarding an application, the applicant who is not a citizen of the Czech Republic, shall arrange for the services of an interpreter at his/her own expense, unless the law specifies otherwise.<sup>11)</sup>

(4) A citizen of the Czech Republic who is a member of a national minority established traditionally and in the long term within the territory of the Czech Republic<sup>12)</sup> shall have the right to use the language of such national minority in submissions and oral hearings. Where the respective administrative authority has no officials speaking the language of the national minority, the citizen shall arrange for the services of an interpreter included on the list of interpreters. The costs of interpretation and costs of translation shall be, in such a case, borne by the administrative authority.

(5) For deaf users of the Czech sign language, the administrative authority shall appoint an interpreter of the Czech sign language pursuant to a special law<sup>13)</sup>. For deaf persons preferring the Czech language, it shall appoint a mediator capable of communicating with the person using communication systems based on the Czech language, as preferred by the person.

For deaf and blind persons, a mediator capable to communicate with the person via communication systems for the deaf and deaf and blind as preferred by the deaf and blind person shall be appointed. The mediator shall be appointed under the same circumstances as a Czech sign language interpreter<sup>13)</sup>. The administrative authority shall issue a resolution to be communicated to the persons involved only.

## Section 17

### Dossier

(1) A dossier shall be created for each case. Each dossier shall have its own file number. A dossier shall comprise, in particular, of submissions, official reports, records, decisions executed in writing and other written documents pertaining to the matter in question. An annex forming part of the dossier shall contain particularly evidence, visual and audio recordings and records on electronic media. A dossier shall contain a list of all of its parts, including annexes, with the specification of the date of their entry into the dossier.

(2) Where requested files are sent by mail, the sending administrative authority shall select such postal service which includes an acknowledgement of the send-off and delivery of the mail.

(3) With a view to the protection of confidential information and with a view to the protection of other information governed by the statutory non-disclosure obligation, part of the written documents or records shall be kept separate from the dossier in cases stipulated by a special law.

(4) Where the respective administrative authority does not keep official archives, it shall forward the dossier following its final decision to an administrative authority which provides official archiving therefor.

## Section 18

### Official report

(1) An official report shall be executed on oral hearings (Section 49) and oral submissions, interrogation of a witness, examination of an expert, production of documentary evidence and site inspections where these are carried out outside oral hearing, as well as on other acts associated with the procedure regarding the case in question which involve interaction with the parties to the procedure. In addition to the official report, a visual or audio recording made be also taken.

(2) An official report shall contain, in particular, the place, time and identification of acts which are the subject of the record, data allowing for the identification of attendees, description of the course of the respective acts, identification of the administrative authority and the name, surname and position or service ID of the authorised official, who conducted the acts. Data allowing for the identification of a natural person shall mean the name, surname, date of birth and address of permanent residence, or other data pursuant of a special law.

(3) An official report shall be signed by the authorised official or a person appointed to draft the official report as well as any and all persons taking part in the oral hearing or conduct of the act. Withholding of a signature, reasons for such withholding, and objections against the content of the official report shall be entered in the official report.

(4) Other persons directly affected by the content of the official report may file a complaint (Section 175) against the content thereof immediately after having studied the official report.

(5) Corrections of obvious errors, such as typographical and numerical errors, shall be made in the official report by the authorised official who shall confirm such corrections with his/her signature. Each correction shall be made in a manner safeguarding the legibility of the original entry. Where such correction may imply a legal meaning, the parties to the procedure shall be informed thereof.

(6) In case of corrections other than those referred to under paragraph 5, their execution shall be subject to a decision which shall be entered in the dossier.

## Chapter 4

### Delivery

#### Section 19

##### Common provision regarding delivery

(1) A written document shall be delivered by the administrative authority which executed the document. The administrative authority shall deliver the written document by means of a public data network into the data mailbox<sup>13a)</sup>. Where it is not possible to deliver the written document in this manner, the administrative authority may deliver it by itself; in cases specified by law, the written document may be delivered through a municipal authority or an administrative authority of the same rank<sup>14)</sup> (hereinafter referred to as the "municipal authority") or through a police body having jurisdiction in the place of delivery; where a body of the municipality has jurisdiction over the case, it may deliver the written document through the municipal police.

(2) Where it is not possible to deliver the written document through a public data network into a mailbox<sup>13a)</sup>, it may be delivered also through a postal service operator. The administrative authority shall select such a postal service where the concluded contract on postal services<sup>15)</sup> will imply also the obligation to deliver the mail containing the written document in a manner which complies with the requirements hereof governing written document deliveries.

(3) Where it is permissible by law or with a view to the nature of the case, the administrative authority shall, upon request of a party to the procedure, deliver to a mailing address or e-mail address<sup>16)</sup> provided thereto by the party to the procedure, particularly where this may contribute to accelerating the procedure; such address may be provided also for procedures that may be commenced with the same administrative authority in the future.

(4) Written documents referred to under Section 59, Section 72, paragraph 1, written documents referred to in this matter by a special law, and other documents in respect of which the authorised official orders so shall be delivered to the addressee's own hands.

(5) Delivery into the addressee's own hands shall apply also to written documents where there is a risk that it could be issued to another party to the procedure who has a contradictory interest in the case. If a written document is delivered to another party to the procedure with a contradictory interest in the case, the written document shall be construed as delivered only if the addressee of the written document recognises its receipt from the recipient or if it is apparent from his/her behaviour that it has been delivered thereto.

(6) Where it is necessary for the procedure to evidence the delivery, a written proof confirming that the written document has been delivered or that the mail containing the written document has been delivered, shall be safeguarded, including the delivery date. Where it is impracticable to evidence the delivery, the delivery shall be repeated. Nevertheless, a written proof of delivery shall not be required if it is apparent from the behaviour of the party to the procedure that the delivery has been made.

(7) Persons in charge of delivery shall be authorised to establish the identity of the addressee and persons who are authorised to receive the documents in its stead. Upon request of the person in charge of delivery, these persons shall be obliged to produce their identity card (Section 36, paragraph 4). Where the person in charge of delivery conducts acts referred to by this Act, he/she shall be considered an official owing obligations of a postal secret holder as referred to by a special law.<sup>17)</sup>

(8) Upon request of the addressee, written documents referred to under paragraph 4 shall be delivered in another manner referred to herein; in such a case, the written document shall be construed as delivered on the third day of its sending date. Where deliveries to an e-mail address are concerned, the written document shall be construed as delivered at the moment when the receipt of the delivered written document is confirmed by the addressee by means of a message signed with its recognised electronic signature.<sup>16)</sup> Should the addressee fail to confirm the receipt of the written document on the following working day of the send-off of the message which has not been returned as undeliverable (paragraph 9) at the latest, the administrative authority shall deliver the written document as if the addressee did not request delivery to an e-mail address.

(9) Where it was impossible to deliver the written document to the e-mail address of the addressee's as referred to under paragraph 3 or 8, as the data message has returned as undeliverable, the administrative authority shall forthwith make another attempt to deliver it; should the other attempt to deliver fail, it shall deliver the written document as if the addressee did not request delivery to the e-mail address.

#### Section 20

##### Delivery to natural persons

(1) A natural person shall be delivered mail to its mailing address (Section 19, paragraph 3), an address recorded in the population register information system intended for delivery of written documents<sup>17a)</sup>, the address of its permanent residence, business address in cases related to business, or, in delivery through a public data network, to its electronic address; delivery to a natural person, however, may be conducted wherever such person may be reached. Where the delivery is conducted by the administrative authority itself, the persons conducting delivery may deliver also outside the territorial district of the administrative authority.

(2) A written document to be delivered to own hands may be delivered to the addressee or also to a person authorised by the addressee for the receipt of the written document by means of a written power of attorney with officially attested signature; official attestation shall not be required if the power of attorney was granted in the presence of the delivering body.

(3) A written document not deliverable to own hands and the receipt of which is to be acknowledged by the recipient, may be delivered to the addressee directly or by means of a hand-over to another suitable natural person residing, acting or employed in the same place or neighbourhood who agrees to pass the written document to the addressee.

(4) A written document not deliverable to own hands or the delivery of which does not require acknowledgement by the recipient, may be delivered by means of inserting the written document to the addressee's private mailbox or another suitable place or by means referred to under paragraph 3.

(5) Delivery of a written document related to the business activities of a natural person to be delivered to its place of business<sup>2)</sup> shall be likewise governed by Section 21.

(6) A written document addressed to an attorney-at-law, including written documents delivered to own hands, may be received also by trainee attorneys or other employees of the attorney. Where the attorney practices law together with other attorneys, a written document, including those delivered to own hands, may be also handed over to these attorneys, their trainee attorneys, or other employees of theirs. Where an attorney practices law as a member of a partnership, the written document addressed to the attorney, including a document to be delivered to his/her own hands, may be also received by other partners from such partnership, trainee attorneys, or other employees of the partnership. Delivery of written documents to notaries, bailiffs and other persons providing legal assistance pursuant to special laws, shall be adequately governed by sentence one to three. The provisions governing deliveries to legal persons (Section 21) shall be likewise applicable to deliveries of written documents to attorneys-at-law, notaries, bailiffs, and other persons providing legal assistance pursuant to special laws.

## Section 21

### Delivery to legal persons

(1) Written documents for legal persons shall be delivered to their mailing address (Section 19, paragraph 3), address of their registered office<sup>2)</sup> or the registered office of their organisational unit involved in the procedure; for foreign legal persons, deliveries shall be made to their address of the registered office of their organisational unit established in the Czech Republic, if the written document concerns this organisational unit. Deliveries through the public data network shall be made to the e-mail address of the legal person. In other cases, deliveries to foreign legal persons shall be made in the manner referred to under Section 22.

(2) A written document to be delivered to own hands may be received by bodies and persons referred to under Section 30 or other persons appointed to receive written documents.

(3) A legal person may not request a waiver of an act default claiming that no one is present at the address of its registered office or the registered office of its organisational unit. Nevertheless, in case no one was accessible at the said address, the administrative authority may deliver the written document to the address of persons referred to under Section 30.

(4) A written document not to be delivered to own hands and the receipt of which is to be acknowledged by the recipient may be delivered to a natural person authorised to receive the written document on behalf of the addressee, to a natural person who acknowledges the receipt of the written document by the addressee's stamp, or, furthermore, to another suitable natural person residing, acting or employed at the same place or in its neighbourhood who agrees to pass the mail containing the written document onto the addressee.

(5) A written document not to be delivered to own hands and the receipt of which is not to be acknowledged by the recipient, may be delivered by placing the mail into the addressee's private mailbox or another suitable place or in a manner referred to under paragraph 4.

(6) The provisions of paragraphs 1 to 5 shall likewise apply to deliveries to administrative authorities and other public authorities.

## Section 22

### Delivery abroad

Addressees staying abroad or whose registered office or address of residence or another mailing address pursuant to Section 19, paragraph 3 is abroad may be delivered via a postal service operator or via the concerned state administration authority authorised to deliver written documents from abroad. Should such delivery of the written document fail, the administrative authority shall appoint a custodian [Section 32, paragraph 2(d)].

## Section 23

### Deposition

(1) Where an addressee has not been reached in case of delivery referred to under Section 20, and it was not possible to deliver the written document in another manner permissible as per Section 20, the written document shall be deposited.

(2) Where no person to whom it would be possible to deliver the written document, in case of delivery referred to under Section 21 has been reached, and it was not possible to deliver the written document in another manner permissible as per Section 21, the written document shall be deposited.

(3) A written document shall be deposited with

- the administrative authority that executed the written document; or
- the municipality or postal service operator facility if delivered through them.

(4) by means of a notification of unsuccessful attempt to deliver the written document placed in the addressee's private mailbox or another suitable place, The addressee shall be invited to collect the deposited written document within the timeline of 10 days by means of a notification of the unsuccessful attempt to deliver the written document placed in the addressee's private mailbox or another suitable place; concurrently, the addressee shall be informed where, from what date and at what time of day it is possible to collect the written document. If practicable and unless precluded by the administrative authority, the written document shall be placed in the mailbox or another suitable place after the expiry of the 10 days; otherwise, it shall be returned to the administrative authority that executed the written document.

(5) Along with the notification referred to under paragraph 4, the addressee shall be advised in writing of the legal consequences resulting from conduct referred to under Section 24, paragraphs 1, 3 and 4 or of the procedure that may be employed as per Section 24, paragraph 2. This notification shall also contain identification of the administrative authority sending the written document and its address.

#### Section 24

##### **Impediments to delivery**

(1) Where the addressee of the deposited written document fails to collect the written document within the timeline of 10 days of the date when it was available for collection, the written document shall be considered delivered as of the last day of this timeline.

(2) Where the addressee evidences that he/she was unable to collect the deposited written document within the predefined timeline due to his/her temporary absence or for another substantial reason without his/her fault, he/she may, under the conditions referred to in the provisions of Section 41, apply for declaration of nullity of the delivery or of the moment when the written document was delivered.

(3) Should the addressee of the written document who is a natural person or a natural person to whom a written document addressed to a legal entity is to be handed over, make the delivery impossible by refusing to receive the written document or failing to provide cooperation necessary for the proper delivery, he/she shall be given an advice of legal consequences resulting from his/her conduct referred to under paragraph 4; no new advice, however, shall be necessary, if the addressee has already been advised as per Section 23, paragraph 5.

(4) Should the person referred to under paragraph 3 make the hand-over impossible or should he/she, despite advice as per Section 23, paragraph 5 or as per paragraph 3, fail to make the delivery possible, the written document shall be construed as delivered as of the date of the unsuccessful attempt of delivery.

#### Section 25

##### **Delivery through public notice**

(1) In respect of persons of unknown residence or registered office and persons to whom delivery has been proven to be repeatedly unsuccessful as well as persons who are not known and other cases stipulated by law, deliveries shall be made by way of a public notice.

(2) Delivery by public notice shall be made by placing the written document or a notification of the possibility to collect the written document on the official notice board of the administrative authority delivering the written document; the date of publication shall be specified on the written document. The written document or notification shall be published also by way allowing for remote access. On the fifteenth day of the publication the written document shall be construed delivered, if the obligation set forth by sentence two has been met within this timeline as well.

(3) In procedures where deliveries by public notice are made in several administrative districts of several municipalities, the administrative authority delivering the written document shall send it also to the concerned municipal authorities no later than on the publication date; these municipal authorities shall be obliged to publish the written document without any delay on their official notice boards for the period of at least 15 days. The publication date shall be the date of publication on the official notice board of the administrative authority delivering the written document. Otherwise, the provisions of paragraph 2 shall likewise apply.

(4) Where the public notice concerns issues of rights of national minorities and if a committee for national minorities or another body for the issues of national minorities has been established in the administrative district, the administrative authority shall publish the public notice also in the language of the concerned national minority.

(5) Natural persons exercising their responsibilities in the sphere of public administration shall deliver by public notice via the official notice board of the municipal authority at the place where they exercise their responsibilities.

#### Section 26

##### **Official notice board**

(1) Each administrative authority shall establish their official notice board which shall be continuously accessible to the public. For the authorities of a territorial self-governance entity, a single official notice board shall be established. The content of the official notice board shall be also published in a manner allowing for remote access.

(2) The provision of paragraph 1 shall not apply to natural persons exercising the responsibilities of an administrative authority, except for natural persons undertaking business where the exercise of such responsibilities is associated to the subject-matter of their business.



(3) Where the administrative authority is not capable of arranging for the publication of the content of the official notice board by ways allowing for remote access as per paragraph 1, the person referred to under Section 160, paragraph 1, which this administrative authority forms part of, shall conclude a public contract (Section 160) on the publication of the content of the official notice board in a manner allowing for remote access with a municipality with extended powers within the administrative district of which it has its registered office.

(4) Where no public contract as referred to under paragraph 3 has been concluded, a special law shall apply to the municipal authority.<sup>18)</sup> Where another administrative authority is concerned, its superior administrative authority shall decide about exercising this obligation for the former by itself or about appointing another subordinate administrative authority having subject-matter jurisdiction in its administrative district to do so. The decision of the superior administrative authority shall be published for the minimum period of 15 days on the official notice board of the administrative authority failing to fulfil the obligation.

### TITLE III

## PARTIES TO PROCEDURE AND REPRESENTATION

### Chapter 1

#### Parties to procedure

##### Section 27

(1) Parties to procedure (hereinafter referred to as a "party") shall be:

- a) applicants and other persons concerned to whom the decision of the administrative body necessarily applies due to common rights or obligations with the applicant, in procedures regarding an application;
- b) persons concerned whose right or obligation is to be established, changed or cancelled by the decision or in respect of whom the decision is to declare that they have or have not a right or obligation, in ex officio procedures.

(2) Parties shall be also other persons concerned if their rights or obligations may be directly affected by the decision.

(3) Parties shall be also persons stipulated by a special law. Unless stipulated otherwise by a special law, they shall have the position of parties as referred to under paragraph 2, unless the decision is to establish, change or cancel a right or obligation of theirs or declare them as having or not having a right or obligation; in such a case their position shall be that of parties referred to under paragraph 1.

##### Section 28

(1) Should any doubts arise, a party shall be considered also a person claiming to be a party, unless the opposite is evidenced. The administrative authority shall issue a resolution on whether a person is or is not a party; the resolution shall be notified to the person whose involvement in the procedure has been decided upon only, and other persons shall be advised thereof. The procedure stipulated by the previous sentence shall not hinder further consideration and decision of the case in question.

(2) If a person in respect of whom it had been concluded by resolution that he/she is not a party, filed an appeal against such resolution, and the appeal was granted, and in the meantime the person missed an act it could have executed as a party, it shall be entitled to execute such act within the timeline of 15 days of the notification of the decision on appeal; the provisions of Section 41, paragraph 6, sentence two shall be likewise applicable.

##### Section 29

#### Capacity to be party to procedure

(1) Any one person shall be capable of executing acts within a procedure autonomously (hereinafter referred to as "capacity to be party to procedure") within the scope of its legal capacity.<sup>19)</sup> The provision of Section 28 shall apply likewise.

(2) Persons with partial legal incapacitation shall not be capable of being parties to procedure within the scope of such incapacitation.<sup>20)</sup>

(3) An administrative authority may provide an opportunity for a natural person without capacity to be party to procedure to voice its opinion on the case during the procedure.

(4) In a procedure involving a minor as a party thereto who is able to voice its opinion, the administrative authority shall act in a manner allowing to obtain the minor's opinion on the case. For this purpose, the administrative authority shall give the child an opportunity to be heard either directly or through a representative or the concerned body in charge of social and legal protection of children. Where necessary with a view to the child's interest, the child's opinion may be obtained also without the presence of parents or other persons responsible for the upbringing of the child. In such a case, the administrative authority shall invite a suitable adult person to participate in the act. The administrative authority shall take the opinion of the child into account with a view to the child's age and intellectual capacity.

(5) Acts related to common property or rights shall be carried out by the parties jointly, unless implied otherwise by a special law<sup>21)</sup>.

## Section 30

### Acts of a legal person

(1) Only a person authorised by court pursuant to a special law for the procedure shall act on behalf of the legal person.<sup>22)</sup>

(2) Only one person may act on behalf of the legal person in the same case and time.

(3) In a procedure before an administrative authority, acts on behalf of the state shall be conducted by the head of the organisational unit of the state having competencies assigned thereto by a special legal regulation, or an employee of that or another organisational unit of the state authorised thereby.

(4) Acts on behalf of a territorial self-governance entity shall be carried out by a person authorised by a special law to represent the territorial self-governance entity externally, its employee or a member of the municipality appointed by such person.

(5) Any one person conducting acts must evidence its authorisation.

## Section 31

### Representative

A representative of the party shall be a legal guardian, custodian or agent; parties whose interests are not in conflict may be represented also by a common agent or common representative.

## Section 32

### Representation under the Guardianship Act

(1) A party shall be represented by a legal custodian within the scope in which it is not capable to be party to procedure.

(2) An administrative authority shall appoint a custodian for

a) a party referred to under paragraph 1, unless the party has a legal guardian or if it impossible for the legal guardian to represent the party and unless the party has a custodian as referred to by a special law;

b) persons hindered by a legal impediment to act within the procedure themselves, unless they have appointed their agent;

c) a legal person without a body competent to act on its behalf or, if applicable, to which it is possible to deliver, or, if applicable, in respect of which another procedure has been initiated in order to establish who such body of the legal person is;

d) persons with unknown place of residence or registered office and persons to whom it has been provably impossible to deliver;

e) persons who are not known;

f) persons of particularly severe health handicaps with whom it is not possible to communicate, not even through an interpreter or mediator as per Section 16, paragraph 5;

g) persons affected by a transitory mental disorder preventing them to act autonomously in the procedure, if necessary in order to defend their rights; in these cases, the administrative authority shall decide on the basis of an expert medical report;

h) parties referred to under Section 27, paragraph 1, to whom the delivery of a notice of the commencement of an ex-officio procedure has been unsuccessful (Section 46, paragraph 2); or

i) parties stipulated by a special law.

(3) Where a party other than that upon whom an obligation is to be imposed or who is to be deprived of a right in the procedure is concerned, the administrative authority shall not appoint a custodian referred to under paragraphs 2(d) and e) and shall deliver to the parties mentioned therein by means of a public notice.

(4) The custodian appointed by the administrative authority shall be the person in whose care the person for whom the custodian is being appointed is, or another suitable person. This person shall be obliged to accept the custodianship, unless substantial reasons prevent him/her from doing so. For a party who, with a view to its expected own legal incapacity, expressed its will to have a certain person appointed as its custodian, the administrative authority shall establish a person identified as custodian in a preliminary declaration a custodian, if such person expresses its consent therewith<sup>43)</sup>. A custodian may not be a person with respect to whom there is a reasonable cause to believe that such person's interests in the procedure justify concerns that he/she will improperly defend the interest of the person under custody.

(5) The administrative authority shall decide on the appointment of a custodian by means of a resolution.

(6) The resolution on the appointment of a custodian shall be notified only to the person that is being appointed custodian, and unless precluded by the nature of the case or the condition of the person under custody causing the person under custody being incapable of understanding the content of the resolution, also to the person under custody.

(7) Should the custodian fail to protect the rights or interests of the person under custody or if there is a reasonable cause to believe that the custodian's interest in the outcome of the procedure justifies concerns that he/she will not properly defend the interests of the person under custody, the administrative authority shall cancel the previous appointment of the custodian by means of a resolution and appoint another person to act as custodian.

(8) The custodianship shall terminate as soon as the represented person begins to be represented by a legal guardian or gains the capacity to act as party to procedure or the reasons for which the custodian was appointed cease to exist. The administrative authority shall record this fact in the dossier upon learning thereof; in case of doubt it shall decide by means of a resolution to be notified only to the custodian and the person under custody or its legal guardian.

### Section 33

#### **Representation under the power of attorney**

(1) A party may select an agent. The authorisation to represent shall be evidenced by means of a written power of attorney. The power of attorney may also be granted orally and recorded as an official report. A party may only have a single agent in the same case and time.

(2) The authorisation may be granted

a) for a particular act, a group of acts or for a particular part of the procedure;

b) for the entire procedure;

c) for an indefinite number of procedures regarding a particular subject-matter which are to be commenced at a defined time or without limitation in the future; in such a case, the signature on the power of attorney shall always be officially attested and, until the commencement of the procedure, the power of attorney shall be deposited with the administrative authority with subject-matter jurisdiction, or granted and recorded as an official report; or

d) within a different scope as per a special law.

(3) The agent may grant a power of attorney to another person to act on behalf of the party in lieu of the former, only if the power of attorney explicitly permits him/her to do so, unless a special law stipulated otherwise.<sup>23)</sup>

(4) If deliveries of a written document to the agent are unsuccessful, the course of action stipulated by Section 32, paragraph 2(d) or Section 32, paragraph 3 shall be employed and the party shall be advised of this course of action as well as about the content of the written documents.

### Section 34

(1) A representative referred to under Sections 32 and 33 shall act in the procedure on behalf of the represented person. The acts of the agent establish rights and obligations directly for the represented person.

(2) Except for cases where the represented person is to carry out something in the procedure personally, written documents shall be delivered to the representative only. Delivery to the represented person shall have no effect upon the course of timelines, unless the law stipulates otherwise.

(3) In case of doubts regarding the scope of representation, the representative shall be authorised to act on behalf of the represented person within the entire procedure.

(4) An administrative authority may acknowledge acts conducted to the benefit of the party by a person other than the representative if the party requests so and no other party can be harmed thereby. Acknowledgement of the acts shall be decided on by the administrative authority by means of a resolution; where the applicant's request is not granted, only the applicant shall be notified of the resolution.

### Section 35

#### **Common agent and common representative**

(1) To facilitate the course of a procedure, in procedures where more than one party claim identical interests, the administrative authority may invite these parties to appoint a common agent within a reasonable timeline. The parties may appoint a common representative also without such invitation.

(2) Where the parties, having been invited to do so by the administrative authority, fail to appoint a common agent and, if it is reasonable to expect that it will cause delays in the procedure, the administrative authority may appoint any of the parties who is a natural person or any of the natural persons referred to under Section 30, paragraph 1, the common representative for the parties claiming identical interests by means of a resolution, having regard to their interests. Until this is done, written documents may be delivered to the parties by way of deposition with the administrative authority; the parties shall be notified of this possibility in the invitation mentioned in paragraph 1. The position of the common representative shall terminate as of the date when the parties notify the administrative authority of having appointed a common agent as per paragraph 1.

(3) For the procedure, also several common agents may be appointed or several common representatives established of which each shall act only on behalf of a certain group of parties.

(4) Section 34 shall likewise apply to a common agent and a common representative.

## Chapter 2

### Acts by parties

#### Section 36

(1) Unless the law provides otherwise, parties shall be entitled to propose evidence and make other proposals for the entire duration of the procedure until the issuance of the decision; the administrative authority may, by means of a resolution, determine until when the parties may make their proposals.

(2) Parties shall have the right to express their opinion in the procedure. Unless the law provides otherwise, the administrative authority shall provide information about the procedure upon request of the parties.

(3) Unless the law provides otherwise, prior to the issuance of the decision, parties shall have the opportunity to express their view of source materials for the decision; this shall not apply to the applicant if its application is fully granted, and to a party who waived its right to express its view on source materials.

(4) In dealings with an administrative authority, the party shall have a right to consultations with a person who may, pursuant to the Civil Code, help in its decision-making as a supporter<sup>44)</sup>; where more than one such person is available, the party shall select one of them. Should the party's supporter in the course of the procedure argue on its own behalf that the legal acts taken by the supported party are invalid, the administrative authority shall take this objection into account in the procedure.

(5) The party, its representative or supporter<sup>44)</sup> shall be obliged to present an identity card upon request of an authorised official. For the purposes of this Act, an identity card shall mean a document which is a public deed and which shows the name and surname, date of birth and place of permanent residence, or address of residence outside the territory of the Czech Republic, and which also represents the face or another detail allowing the administrative authority to identify the person presenting the card as the card's authorised holder.

#### Section 37

### Submission

(1) A submission shall mean an act made toward the administrative authority. A submission shall be considered on the basis of its actual content, regardless of its identification.

(2) A submission must clearly show who has filed it, in respect of what case and what is being proposed. A natural person shall specify the name, surname, date of birth, and place of permanent residence or other mailing address referred to under Section 19, paragraph 3, if applicable, in the submission. In submissions pertaining to the person's business activities, the natural person shall specify name and surname, and/or the complement distinguishing the person of the entrepreneur or the type of business associated with this person or the type of business carried out thereby, the identification number of the person and the address entered in the Companies Register or another register stipulated by law as the place of business or another mailing address, if applicable. A legal person shall specify its name or company name, identification number of the person or a similar detail and the address of the registered office, or another mailing address, if applicable, in the submission. The submission shall contain the identification of the administrative authority to which it is addressed, other particulars stipulated by law, and a signature of the person making the submission.

(3) Should the submission lack the required particulars or if it is otherwise defective, the administrative authority shall help the submitter to eliminate the shortcomings or shall invite the submitter to eliminate those and shall provide a reasonable timeline for this purpose.

(4) A submission may be made in writing or orally to be recorded in an official report or in electronic format signed by a certified electronic signature.<sup>16)</sup> Providing the submission is confirmed or amended as referred to in sentence one within five days, it may be made using other technical means, in particular cable, fax, or a public data network without the use of a certified electronic signature.

(5) A person making a submission in electronic format as per paragraph 4, sentence one, shall also specify the provider of the certification services which issued the person's certificate<sup>16)</sup> and keeps the person's file, or shall attach the certificate to the submission.

(6) Submissions shall be filed with the administrative authority of subject-matter and territorial jurisdiction. A submission shall be construed filed on the date it was delivered to such authority.

(7) If the administrative authority is not capable of safeguarding the receipt of submission in electronic format pursuant to paragraph 4, the person referred to by Section 160, paragraph 1, whose part the respective administrative authority is, shall conclude a public contract (Section 160) on the operation of the electronic address of the mailroom with a municipality with extended powers within whose administrative district it is established.

(8) Where no public contract is concluded as per paragraph 7, a municipal authority shall proceed pursuant to a special law;<sup>16)</sup> in case another administrative authority is concerned, the regional authority shall decide that the municipal authority of a municipality with extended powers shall carry out this obligation within whose administrative district the former belongs in its stead. The decision shall be issued by a regional authority within its delegated powers. The decision of the regional authority shall be published for the minimum period of 15 days on the official notice board of the administrative authority who failed to execute the obligation.

## Section 38

### Viewing of a dossier

(1) Parties and their representatives shall have the right to view the dossier, even where the decision regarding the case is final (Section 73). Where the party has no representative, the dossier may be viewed both by the party and the party's supporter<sup>44)</sup>.

(2) Other persons shall be permitted by the administrative authority to view the dossier if they prove their legal interest or another substantial reason and if the rights of any of the parties or other persons concerned or the public interest are not hindered thereby.

(3) Blind persons shall have the content of the dossier read thereto. Upon request, the administrative authority shall enable the blind person to make an audio recording. Furthermore, the administrative authority shall permit the blind person's attendant to view the dossier.

(4) The right to view the dossier shall be associated with the right to make notes and the right to have the dossier or parts thereof copied by the administrative authority.

(5) Where an administrative authority declined a person's request to view the dossier or part thereof, it shall issue a resolution thereon which shall be notified to this person only.

(6) Those parts of the dossier which contain confidential information or facts to which the statutory confidentiality obligation applies shall be excluded from the right to view the dossier; this shall not apply to those parts of the dossier which have been or will be used as evidence; such parts of the dossier, however, may be viewed only by a party to the procedure or a representative thereof providing they have been instructed in advance about the consequences of breaching the confidentiality obligation regarding these facts and that an official report on such instruction has been drafted, and signed thereby. The provision of paragraph 4 shall not apply.

## TITLE IV

### TIMELINES AND TIMING

## Section 39

### Defining timelines for completion of acts

(1) The administrative authority shall determine a reasonable timeline for the party to complete an act, unless stipulated by law and where it is necessary to do so. The determination of the timeline must not jeopardise the purpose of the procedure or impede the equality of parties. The resolution on timeline determination shall be notified only to the person for whom it is intended and, if applicable, to persons otherwise directly affected thereby.

(2) Upon request of the party and under the conditions stipulated by paragraph 1, the timeline defined by the administrative authority may be reasonably extended by means of a resolution.

## Section 40

### Timing

(1) Where the conduct of a certain act within a procedure is associated with a timeline,

a) the course of the timeline shall not include the day on which the fact determining the start of the timeline occurred; this shall not apply where a timeline defined by hours is concerned; in case of doubt, the start of the timeline shall be the day following the day on which it has been certain that the fact determining for the start of the timeline already occurred;

b) timelines defined by weeks, months or years shall terminate upon the expiry of the day whose identification is the same as the day on which the fact determining the start of the timeline occurred; if such a day does not exist within the month, the timeline shall expire upon the last day of the month;

c) where the expiry of the timeline falls on a Saturday, Sunday or a public holiday,<sup>25)</sup> the last day of the timeline shall be the next working day; this shall not apply where timelines based on hours are concerned;

d) the timeline shall be kept if on the last day of the timeline a submission is made with an administrative authority of subject-matter and territorial jurisdiction or if on such a day mail addressed to this administrative authority containing a submission is handed over to a postal licence holder or a special postal licence holder and/or to a person of a similar standing in another country; where, due to substantial reasons, the party is unable to make a submission with an administrative authority of subject-matter and territorial jurisdiction, the timeline shall be kept if on the last day of the timeline a submission is made with an administrative authority of a higher level; this administrative authority shall forthwith pass the submission to the administrative authority of subject-matter and territorial jurisdiction.

(2) In case of doubt, a timeline shall be considered kept unless the opposite is proven.

## Section 41

### **Reversal to previous status**

(1) A reversal to previous status shall mean a waiver of a default of an act which has to be completed no later than upon oral communication or within a specified timeline, or the permission to take back or change the content of the submission which otherwise could not be done.

(2) A party may request a waiver of act default within the timeline of 15 days of the day on which the obstacle preventing the submitter to complete the act ceased to exist. The request shall be associated with the missed act, otherwise the administrative authority shall not consider it. Act default may not be waived if one year has passed since the day on which the act was to be completed.

(3) An administrative authority may grant the request for waiver a suspensive effect if the submitter is in risk of a serious injury and if the granting of the suspensive effect does not cause any injury arising from affecting the rights acquired in good faith or from affecting a public interest greater than the injury imminent for the submitter.

(4) An administrative authority shall waive an act default if the submitter proves that the act was impeded due to substantial reasons arising without the submitter's fault.

(5) An administrative authority shall not waive an act default if it is obvious that the injury that would arise from affecting the rights acquired in good faith or from affecting a public interest would be greater than the injury imminent for the submitter.

(6) The waiver of act default shall be decided on by a resolution of the administrative authority which at the time of request for waiver of an act default administers the procedure. In case the administrative authority waives the act default, it shall supplement the procedure within the meaning of the act the default of which has been waived.

(7) The resolution through which the administrative authority does not waive the act default shall be notified to the submitter only.

(8) A party may request a change to the content of a submission only until the decision is issued (Section 71). An administrative authority may permit the submission to be taken back or changed only in case the submitter is in risk of a substantial injury; this shall not prejudice the provision of Section 45, paragraph 4. The provisions of paragraphs 2 to 4, 6 and 7 shall apply likewise.

## TITLE V

### COURSE OF ACTION PRIOR TO COMMENCEMENT OF A PROCEDURE

## Section 42

### **Receipt of motions to commence a procedure**

An administrative authority shall be obliged to receive motions to commence an ex officio procedure. If requested so by the submitter of the motion, the administrative authority shall be obliged to inform the submitter within the timeline of 30 days of the date of receipt of the motion that it has commenced the procedure or that it has not identified grounds for commencing the ex officio procedure or that it has passed the motion onto the concerned administrative authority, as applicable. The administrative authority shall not send a communication where it proceeds in respect of the person who submitted the motion pursuant to Section 46, paragraph 1 or Section 47, paragraph 1.

## Section 43

### **Decision to take no further action**

(1) A procedure regarding an application (Section 44) shall not be commenced and the administrative authority shall not act in the case by a resolution if

a) an act has been performed in respect thereof which obviously is not an application or it is impossible to identify the submitter therefrom, or

b) a submission has been made for which no administrative authority has subject-matter jurisdiction.

(2) The resolution to take no further action in the case shall be always notified to the person it pertains, if known, and to the submitter.

## TITLE VI

### COURSE OF FIRST-INSTANCE PROCEDURE

#### Chapter 1

##### Commencement of a procedure

###### Section 44

##### Commencement of a procedure regarding application

(1) A procedure regarding an application shall commence on the day when the application or another motion initiating the procedure (hereinafter referred to as "application") was delivered to the administrative authority of subject-matter and territorial jurisdiction.

(2) If the law or the nature of the case implies that the application may be filed only jointly by several applicants, it shall not be necessary for the submissions to be filed at one time. The date of the submission of the last of the aforementioned shall be relevant for the commencement of the procedure; the administrative authority shall advise other applicants of the commencement of the procedure.

###### Section 45

##### Application

(1) An application shall have particulars referred to under Section 37, paragraph 2 and it has to clearly indicate what the applicant requests or what is being claimed thereby. Furthermore, the applicant shall be obliged to identify other parties known thereto.

(2) If the application does not have the mandatory particulars or if it is otherwise defective, the administrative authority shall help the applicant to eliminate the shortcomings on-site or it shall invite the applicant to eliminate them, establishing a reasonable timeline for this purpose and instructing the applicant of the consequences of failure to eliminate the shortcomings within such timeline; concurrently, it may suspend the procedure (Section 64).

(3) An application must not be obviously legally impermissible. Such application shall not be considered by the administrative authority and the administrative authority shall stop the procedure (Section 66). The resolution shall be notified to parties who have been advised of the commencement of the procedure.

(4) The applicant may limit the subject-matter of its application or take the application back; this right cannot be exercised at the time from the issuance of the decision of a first-instance administrative authority until the commencement of the appeal procedure.

###### Section 46

##### Commencement of an ex officio procedure

(1) An ex officio procedure shall be commenced on the day when the administrative authority notified the party referred to under Section 27, paragraph 1 by delivering a notification or by an oral declaration of the commencement of the procedure, and, where the party is not known to the administrative authority, such notification is made to any other party. The notification shall contain the identification of the administrative authority, the subject-matter of the procedure, name, surname, position or employee number and signature of the authorised official.

(2) If an ex officio procedure involves more than one party mentioned in Section 27, paragraph 1, notification of commencement of the procedure to the first one of them shall be relevant for the commencement of the procedure. For those whose notification of the commencement of the procedure was unsuccessful, the administrative authority shall appoint a custodian; the resolution on the appointment of a custodian shall be delivered by means of a public notice.

(3) The notification of commencement of a procedure may be joined with another act within the procedure.

###### Section 47

(1) The administrative authority shall be obliged to notify all of the parties known thereto of the commencement of the procedure without unnecessary delay.

(2) The administrative authority shall be obliged to notify those persons who became parties to the procedure only after the commencement thereof, as soon as the administrative authority becomes aware of them; this shall not apply to persons who joined the procedure themselves.

(3) In addition to the course of action outlined in paragraphs 1 and 2, notification of commencement of a procedure may be also published on the official notice board of the administrative authority.

## Section 48

### **Impediments to procedure**

(1) Commencement of a procedure with one administrative authority shall prevent the commencement of a procedure in the same case for the same reason with another administrative authority.

(2) A single person may be granted a right or imposed an obligation for the same reason only once.

## **Chapter 2**

### **Oral hearings**

## Section 49

(1) An administrative authority shall order an oral hearing in cases set forth by law, and, furthermore, if it is necessary for the achievement of the purpose of the procedure and application of rights of the parties. Unless there is a danger in delay, the administrative authority shall advise the parties of the oral hearing no less than five days in advance. This obligation shall not apply in respect of the party who waived its right to participate in the oral hearing.

(2) An oral hearing shall be non-public, unless the law stipulates or the administrative authority determines the hearing or parts thereof to be public. In the determination of a public oral hearing, the administrative authority shall take care to protect confidential information and the rights of parties, in particular the right to protection of an individual, as well as the protection of morality. Minors may be excluded from participation in the oral hearing due to the protection of morality.

(3) If a party referred to under Section 27, paragraph 1 proposes that the oral hearing be public, the administrative authority shall grant its request, unless this may cause an injury to other parties. The provision of paragraph 2, sentence two and three shall apply likewise.

(4) The proposal of a party to make an oral hearing public shall be decided on by the administrative authority by means of a resolution which shall only be noted in the dossier.

(5) A party 's supporter<sup>44)</sup> may participate also in non-public hearings.

## **Chapter 3**

### **Grounds for the issuance of a decision**

## Section 50

(1) Grounds for the issuance of a decision may comprise, in particular, of proposals from parties, evidence, facts known to the administrative authority from its official activities, source materials from other administrative authorities or public authorities, as well as generally known facts.

(2) Grounds for the issuance of a decision shall be collected by the administrative authority. Unless the purpose of the procedure might be put at risk, the administrative authority may, upon a party's request, allow that the grounds for the issuance of the decision be collected by the former in its stead. Unless stipulated otherwise by a special law, parties shall be obliged to fully cooperate with the administrative authority in the provision of grounds for the issuance of the decision as necessary.

(3) The administrative authority shall be obliged to identify all circumstances relevant to the protection of public interest. In a procedure where an ex officio obligation is to be imposed, the administrative authority shall be obliged, with or without a motion, to find any relevant circumstances advantageous as well as disadvantageous for the person upon whom the obligation is to be imposed.

(4) Unless the law stipulates that any of the grounds are binding for the administrative authority, the administrative authority shall assess the grounds, particularly evidence, at its discretion, taking care to account for everything that has been disclosed during the procedure, including assertions made by parties.

### **Provision of evidence**

## Section 51

(1) Any item of evidence which is adequate to assess the state of affairs and which is not obtained or conducted contrary to legal regulations may be used for the purposes of taking evidence. This concerns, in particular, documents, examinations, witness testimonies, and expert opinions.

(2) Parties shall be notified in due time of the taking of evidence beyond the scope of oral hearings, unless there is a danger in delay. Such obligation of the administrative authority shall not apply to a party which waived its right to participate in the taking of evidence.

(3) If, in compliance with the requirements of Section 3 a fact that makes it impracticable to grant the application has been identified, the administrative authority shall not take further evidence and shall decline the application.



## Section 52

Parties shall be obliged to propose evidence supporting their allegations. The administrative authority shall not be bound by the proposals of the parties, nevertheless, it shall always take evidence necessary to assess the state of affairs.

## Section 53

### **Documentary evidence**

(1) An administrative authority may, by means of a resolution, order a person having a document necessary for the taking of evidence to submit such document. The resolution shall be notified solely to the person upon whom the obligation is being imposed.

(2) The submission of the document may not be requested or it may be declined for reasons for which the witness may not be heard or for which the witness is entitled to refuse the testimony (Section 55, paragraphs 2 to 4).

(3) Documents issued by the courts of the Czech Republic or other state authorities or the authorities of territorial self-governance entities within the scope of their powers as well as documents declared by special laws as public instruments shall confirm that they represent the declaration of the authority which issued the document and, unless there is a proof to the contrary, shall confirm also the veracity of whatever is being certified or confirmed therein.

(4) Unless an international treaty being part of the legislation stipulates otherwise, the authenticity of official stamps and signatures on public instruments issued by authorities of foreign countries must be attested by authorities having the power to do so.

(5) A submission of an instrument may be, in cases and under conditions set forth by a special law, replaced with an affidavit of a party or a testimony of a witness.

(6) Taking documentary evidence shall be recorded in the dossier. Where parties or involved persons are present, or if the public is present during the act, documentary evidence shall be taken by reading the document or communicating the content thereof.

## Section 54

### **Evidence by examination**

(1) The owner or user of a thing or a person keeping the thing with him/her, shall be obliged to present it to the administrative authority or to suffer an examination of the thing on-site. The administrative authority shall issue a resolution thereon which shall be notified solely to the person specified in sentence one. Where there is a danger in delay, the course of action outlined under Section 138 shall be taken.

(2) An examination may not be conducted or may be refused by the person referred to under paragraph 1 for reasons for which the witness may not be heard or for which the witness is entitled to refuse the testimony (Section 55, paragraphs 2 to 4).

(3) Unless a person to whom the resolution is notified as per paragraph 1 is concerned, an on-site examination shall be notified by the administrative authority also to the person authorised to handle the object of the examination.

(4) The administrative authority may also invite impartial persons to take part in the examination, to safeguard their presence in the taking of evidence. Such persons shall not have the rights and obligations of parties to the procedure.

## Section 55

### **Evidence by witness testimony**

(1) Any one person who is not a party to the procedure shall be obliged to testify as a witness and do so truthfully and refrain from hiding any facts.

(2) A witness must not be asked questions about confidential information protected by a special law, in respect of which the witness is obliged to maintain confidentiality, unless he/she has been released from such obligation by the concerned authority.

(3) Furthermore, a witness must not be interrogated if he/she would break the obligation to maintain confidentiality imposed or recognised by the state, unless he/she is released from this obligation by the concerned authority or the person in whose interest this obligation is kept thereby.

(4) A person who could expose himself or a close person<sup>26)</sup> to the risk of being prosecuted for a criminal deed or administrative offence through a testimony may refuse such testimony.

(5) Prior to the interrogation, the administrative authority shall advise the witness of the reasons for which he/she may not be interrogated, of the right to refuse testimony, of the witness's obligation to testify truthfully and refrain from hiding any facts and of the legal consequences of a false or incomplete testimony.

## Section 56

### **Evidence by expert opinion**

If the decision depends on an assessment of facts requiring expert knowledge not possessed by officials, and if an expert assessment cannot be obtained from another administrative authority, the administrative authority shall appoint an expert by means of a resolution. The resolution shall be notified solely to the expert. The administrative authority shall, in an adequate manner, advise the parties of the intended appointment of an expert or, where applicable, of the appointment of such expert. The administrative authority shall request that the expert execute the opinion in writing and submit it to the former within a timeline concurrently defined by the administrative authority. The expert may be also heard by the administrative authority.

### **References for preliminary ruling**

## Section 57

(1) Where the issuance of a decision depends on the resolution of an issue on which the administrative authority is not empowered to decide and on which no final decision has been issued as yet, the administrative authority

a) shall file a motion to initiate a procedure by the concerned administrative authority or another public authority; in cases stipulated by law the administrative authority shall be obliged to file such motion; or

b) may invite a party or another person, as applicable, to file a request for the initiation of a procedure with a concerned administrative authority or another public authority within a timeline determined by the administrative authority; or

c) may form an opinion thereon; nevertheless, an administrative authority may not form an opinion on whether a criminal act, offence or another administrative office has been committed and who is responsible for it, or on issues of civil status.

(2) Where a preliminary ruling procedure is conducted by the concerned administrative authority or another concerned public authority or if an administrative authority filed a motion to initiate such procedure pursuant to paragraph 1(a) or made an invitation pursuant to paragraph 1(b), the administrative authority shall proceed in compliance with Section 64. If a procedure upon motion of an administrative authority has not been initiated or the request for initiation of a procedure has not been filed within the predefined timeline, the procedure may continue.

(3) The administrative authority shall be bound by the preliminary ruling of the concerned authority which is final or provisionally enforceable.

(4) If the issue of the decision depends on the resolution of an issue which is within the powers of the administrative authority, but which may not be decided on in a joint procedure, the administrative authority shall initially carry out a procedure regarding this preliminary ruling, if authorised to initiate ex officio procedures, or shall invite whoever is authorised to file the request to do so.

## **Chapter 4**

### **Ensuring the purpose and course of a procedure**

## Section 58

### **Introductory provisions**

An administrative authority shall avail of security instruments (Sections 59 to 63 and Section 147) only in those cases where it is required and within the scope necessary to safeguard the course and purpose of the procedure.

## Section 59

### **Summons**

An administrative authority shall summon a person whose personal presence during an act in the procedure is necessary for the conduct of the act. Summons shall be made in writing and delivered to own hands in good time, usually at least five days in advance. The summons shall specify who, when, where, in what case and for what reason is to arrive and what the legal consequences of failing to do so are. The summoned person shall be obliged to arrive in time to the defined place; if he/she is unable to do so for substantial reasons, he/she shall be obliged to forthwith excuse himself/herself to the administrative authority, specifying the reasons therefor.

## Section 60

### **Bringing a person before the administrative authority**

(1) If a party or a witness fails to arrive without a proper excuse or adequate reasons as invited by summons, the administrative authority may issue a ruling on the basis of which the party or witness shall be brought before the administrative authority. The ruling executed in writing shall be delivered to authorities which are to bring the person; officials fulfilling the tasks of these authorities shall deliver the ruling to the person to be brought before the administrative authority.

(2) Persons shall be brought before an administrative authority upon request of the latter by the Czech Police or another armed body referred to by a special law. In respect of procedures conducted by municipalities, persons may be brought also by the municipal police.

#### Section 61

##### **Interim measure**

(1) An administrative authority may, ex officio or upon request of a party, issue a decision ordering a provisional measure prior to the completion of the procedure, if it is necessary to provide for interim arrangements in respect of the relationships among parties or if there is a concern that the conduct of an execution might be jeopardised. An interim measure may be applied to order a party or another person to do something, refrain from something or suffer something, or to seize a thing that may serve as evidence or a thing that may be subject to execution.

(2) The decision on a party's request for interim measure shall be adopted within the timeline of ten days. The decision shall be notified solely to the person whom it concerns or, if appropriate, also to another party which asked for its issuance. An appeal against the decision ordering an interim measure shall have no suspensory effect; it may be filed only by a party to which the decision is notified.

(3) The administrative authority shall revoke an interim measure by a decision as soon as the reason for which it was ordered ceases to exist. Should the administrative authority fail to do so, the interim measure shall expire on the day when the decision in the case became enforceable or otherwise legally final.

(4) A person to whom a decision on a seizure of a thing has been notified, shall be obliged to surrender the thing to the administrative authority. Where such thing is not surrendered to the administrative authority within the predefined timeline, it may be taken from the person holding it. The surrender or taking of the seized thing shall be documented by a written official report which will contain a description of the seized thing. The administrative authority or the official taking the thing shall issue a receipt for the person who surrendered the thing or from whom the thing has been taken. Once the interim measure expires, the thing shall be returned to the person from whom it was seized, unless it is subjected to execution.

#### Section 62

##### **Procedural penalties**

(1) An administrative authority may decide to impose a procedural penalty up to the amount of 50,000 CZK to a person who substantially obstructs the course of the procedure by

- a) failing to present upon summons to the administrative authority without an excuse;
- b) disturbing order despite previous call to order; or
- c) failing to observe instructions of an official.

(2) A procedural penalty referred to under paragraph 1 may be imposed also upon a person filing a substantially offensive submission.

(3) When determining the amount of the procedural penalty, the administrative authority shall take care to ensure that it is not grossly inadequate with a view to the severity of the consequence and the meaning of the subject-matter of the procedure; the penalty may be imposed also repeatedly.

(4) A procedural penalty shall be collected in compliance with a special law<sup>27)</sup> by the administrative authority that imposed it. In the procedure regarding the imposition of an obligation the execution of which is within the powers of the administrative authority, the executing administrative authority (Section 103, paragraph 2) shall be the administrative authority that imposed the procedural penalty. Income from procedural penalties shall form part of the budget from which the operation of the administrative authority that imposed the penalty is covered.

(5) The party to the procedure on procedural penalty imposition shall be only the person upon whom the procedural penalty is to be imposed. The first act within the procedure regarding the procedural penalty imposition is the issuance of the decision. Appeal from the decision on procedural penalty imposition shall always have a suspensory effect.

(6) A finally imposed procedural penalty may be waived or reduced through a new decision of the administrative authority that imposed it. In doing so, the administrative authority shall take into account particularly how the person upon whom the procedural penalty has been imposed has been observing his/her procedural obligations in further course of the procedure.

#### Section 63

##### **Exclusion from the site of an act**

(1) Whoever may, by his/her unacceptable conduct, disrupt the order during oral hearings or on-site examinations, or another act, may be excluded by the administrative authority, upon prior notice, from the site where the act takes place. Such resolution shall be delivered verbally. The administrative authority shall advise the person excluded on the consequences of his/her failure to leave. Exclusion shall be enforced by the same bodies that bring person before the administrative authority as per Section 60.

(2) Where an act is not carried out in the official rooms of the administrative authority, a person having an ownership or occupancy right to the area where the act is being carried out cannot be excluded from the site of the act.

## **Chapter 5**

### **Suspension and termination of a procedure**

#### **Suspension of a procedure**

##### Section 64

(1) An administrative authority may suspend a procedure by its resolution

- a) together with an invitation for the elimination of shortcomings of the application as per Section 45, paragraph 2;
- b) together with an invitation to pay an administrative fee which is associated with a particular act within the procedure, and with determination of a timeline for such payment; the procedure shall continue as soon as a proof of payment of the administrative fee is submitted to the administrative authority;
- c) where a preliminary ruling procedure is under way or the administrative authority has
  - 1. instigated such procedure as per Section 57, paragraph 1(a),
  - 2. made an invitation as per Section 57, paragraph 1(b), and/or
  - 3. conducted an act as per Section 57, paragraph 4An act by the administrative authority shall be considered also the hand-over of a written document for delivery pursuant to Section 19 and publication of a written document on the official notice board;
- d) until a custodian is appointed for a party incapacitated in respect of the procedure;
- e) for other reasons stipulated by law.

(2) In a procedure regarding an application, the administrative authority shall suspend the procedure upon request of the applicant; if there is more than one applicant, it may do so only providing all of them agree with such suspension.

(3) In an ex officio procedure, the administrative authority may suspend the procedure for substantial reasons, if it is not contrary to public interest, upon request of a party if all parties referred to under Section 27, paragraph 1(b) agree therewith.

(4) A procedure may be suspended for a necessary period of time. When proceeding pursuant to paragraphs 2 and 3, the administrative authority, in determining the period of suspension, shall take into account the proposal of the party.

##### Section 65

(1) Once a procedure is suspended, the administrative authority and the parties shall conduct acts necessary to eliminate the reasons for suspension. Furthermore, the administrative authority may carry out acts pursuant to Section 137, paragraph 1 and Section 138. Timelines relevant for the conduct of acts shall not run in the procedure. The timeline for the issuance of the decision shall be suspended on the very day when any of the reasons referred to under Section 64, paragraph 1 arose, and shall not expire sooner than 15 days of the date when the suspension of the procedure ended.

(2) The administrative authority shall continue the procedure as soon as the obstacle for which the procedure has been suspended ceases to exist or the timeline determined by the administrative authority pursuant to Section 64, paragraph 2 or 3 expires. Where the procedure was suspended as per Section 64, paragraph 2 or 3, the administrative authority may resume the procedure also upon request of the party which applied for its suspension. The administrative authority shall notify parties of the resumption of the procedure and shall note the fact into the dossier.

#### **Termination of a procedure**

##### Section 66

(1) A procedure regarding an application shall be terminated by the administrative authority, if

- a) the applicant has taken the application back; where there are several applicants, the take-back must be agreed by all of the applicants; in a contentious case, the administrative authority shall not terminate the procedure if it, for substantial reasons, does not agree with the take-back of the contestant;
- b) an obviously legally not acceptable application has been filed;
- c) the applicant has failed to eliminate substantial defects of the application preventing the continuation of the procedure within a predefined timeline;
- d) the applicant has failed to pay the administrative fee applicable thereto with respect to the procedure within a predefined timeline;
- e) it identifies an impediment to the procedure referred to under Section 48, paragraph 1;
- f) the applicant died or ceased to exist, unless the procedure is continued by the legal successors or unless there is more than one applicant and/or the thing or right to which the procedure pertains ceased to exist; the procedure shall be terminated as of the date when the administrative authority gains knowledge of the death or dissolution of the applicant, or of the cessation of the thing or right;

g) the application has apparently lost its cause;

h) other reasons stipulated by law arise.

(2) The administrative authority shall terminate an ex officio procedure by resolution if it learns that a procedure regarding the same matter has been commenced with another administrative authority prior to the start of this procedure or if the reason for a procedure which cannot be continued by legal successors no longer exists, particularly where the party died or ceased to exist or the thing or right to which the procedure pertains ceased to exist. Such resolution shall only be noted in the dossier.

## **Chapter 6**

### **Decision**

#### **Section 67**

##### **Content and form of the decision**

(1) By means of a decision, an administrative authority establishes, changes or revokes rights or obligations of an explicitly specified person in a particular case or it declares in a particular case that such a person has or has not rights or obligations, or in cases defined by law decides on process issues.

(2) The decision shall be executed in writing. The decision shall not be executed in writing where the law so provides; the operative part of such decision, substantial sections of its rationale and advice on appeal shall only be announced verbally and a record containing the operative part of the decision, rationale, date of issue, reference number, date of execution, official stamp, name, surname or service number and signature of the official shall be made in the dossier.

(3) A verbally announced decision shall be confirmed by the administrative authority in writing where the party request such written confirmation. The written confirmation shall contain only the operative part of the decision (Section 68, paragraph 2) and other particular referred to under Section 69.

##### **Particulars of the decision**

#### **Section 68**

(1) The decision shall contain an operative part, a rationale, and an advice for the parties.

(2) The operative part shall specify the resolution of the issue that is the subject-matter of the procedure, legal provisions on the basis of which the decision was adopted, and identification of the parties pursuant to Section 27, paragraph 1. Parties which are natural persons shall be identified by data allowing to establish their identity (Section 18, paragraph 2); parties which are legal persons shall be identified by their name and registered office. The operative part of the decision shall specify a timeline for the fulfilment of an imposed obligation or, where applicable, other data necessary for its successful fulfilment and a statement that the suspensory effect of an appeal is excluded (Section 85, paragraph 2). The operative part of the decision may contain one or more verdicts; a verdict may contain ancillary provisions.

(3) The rationale shall specify the reasons for the verdict(s) of the decision, grounds for its issuance, considerations taken into account by the administrative authority in their assessment and in the interpretation of legal regulations, and information on how the administrative authority handled the proposals and objections of parties and their responses on the grounds of the decision.

(4) The rationale shall not be required if a first-instance administrative authority fully satisfies all of the parties.

(5) The advice shall specify whether it is possible to file an appeal against the decision, at what timeline, the date when the timeline begins to run, the administrative authority deciding on the appeal, and the administrative authority with which the appeal may be filed.

(6) Where the appeal has no suspensory effect, this fact must be mentioned in the advice.

#### **Section 69**

(1) The decision executed in writing shall be entitled as "decision" or otherwise as set forth by law. Furthermore, the decision executed in writing shall contain an identification of the administrative authority issuing the decision, a reference number, date of execution, an official stamp, name, surname and position or service number and signature of the authorised official. The signature of the authorised official may be replaced on the counterpart by words "in his/her own hand", or the abbreviation thereof ("v. r."), following the surname of the authorised official, and the words "Certified as Accurate by:" followed by the name, surname, and signature of the official responsible for the written execution of the decision.

(2) The decision executed in writing shall specify the names and surnames of all parties.

(3) Where, upon a party's request, the decision is to be delivered electronically, the official responsible for the written execution of the decision, shall execute an electronic version of the decision, but instead of having it officially stamped he/she shall attach the words "officially stamped", and shall sign the document with his/her certified electronic signature.<sup>16)</sup>

(4) Upon a party's request, the administrative authority shall issue a counterpart of the decision executed in writing. Upon a party's request, only the counterpart of the operative part of the decision may be issued.

#### Section 70

The correction of obvious mistakes in a decision executed in writing shall be carried out by the administrative authority which issued the decision either upon request of a party or ex officio by a resolution. Where the correction concerns the operative part of the decision, the administrative authority shall issue an amending decision to this effect. The first act of the administrative authority regarding a correction shall be the issuance of such decision. The right to file an appeal against the amending resolution or amending decision shall lie solely with the party which may be directly affected thereby.

#### Section 71

##### **Timelines of the issuance of a decision**

(1) The administrative authority shall be obliged to issue the decision without unnecessary delay.

(2) The issuance of the decision shall mean

a) the handover of a counterpart of the decision executed in writing for delivery as per Section 19, or another act aimed at its delivery where the delivery is conducted by the administrative authority itself; this fact shall be specified on the written document or the mail with the words "Transmitted for delivery on:";

b) a verbal announcement, if it has the effect of a notification (Section 72, paragraph 1);

c) publication of a public notice, where delivery pursuant to Section 25 is concerned; or

d) recording of a resolution into the dossier where it should only be noted in the dossier.

(3) Where the decision cannot be issued immediately, the administrative authority shall be obliged to issue the decision no later than within 30 days of the commencement of the procedure, which shall be extended by the period

a) of up to 30 days if it is necessary to order an oral hearing or local investigation, if it is necessary to summon a person, have somebody brought before the administrative authority, or delivery by means of a public notice to persons to whom delivery has been proven to be unsuccessful, or where a particularly complex case is concerned;

b) necessary for the conduct of a request referred to under Section 13, paragraph 3, drafting of an expert opinion or delivery of a written document abroad.

(4) The timelines for the issue of the decision shall not run for the period necessary to collect data referred to under Section 6, paragraph 2.

(5) Failure to comply with timelines cannot be challenged by the party that has caused the situation.

#### Section 72

##### **Notification of a decision**

(1) A decision shall be notified to the parties by means of a delivery of a counterpart thereof executed in writing to their own hands or by means of an oral announcement. Unless the law stipulates otherwise, the oral announcement shall have the effect of a notification only where the party concurrently waives its right for the delivery of the decision executed in writing. This fact shall be noted in the dossier.

(2) Where all of the parties waive their right to the delivery of the decision executed in writing, only a record in the dossier as per Section 67, paragraph 2, sentence two shall be made instead of the written execution of the decision.

(3) A party may waive its right to the notification of all decisions issued within the procedure, except for the decision completing the procedure and the decision through which an obligation is imposed thereupon in the course of the procedure, and the right to be advised of resolutions recorded in the dossier. Where all of the parties waived their right to be advised of all resolutions within the procedure, the resolution shall only be noted in the dossier.

##### **Finality, enforcement, and other legal effects of a decision**

#### Section 73

(1) Unless stipulated otherwise herein, a decision that has been notified and against which no appeal may be filed, shall be considered final.

(2) A final decision shall be binding for the parties and for all administrative authorities; the provision of Section 76, paragraph 3, last sentence shall not be prejudiced thereby. In respect to other persons, a final decision shall be binding in cases stipulated by law within the scope specified thereby. A final decision on civil status shall be binding for everybody. Where the rights and obligations of parties are based upon a right to a movable or immovable thing<sup>26)</sup> the final decision shall be binding also for the legal successors of the parties.

#### Section 74

- (1) A decision shall become enforceable upon becoming final or at a later date specified in its operative part. The decision shall be provisionally enforceable where the appeal has no suspensory effect.
- (2) A decision imposing an obligation to perform shall be enforceable if final and if the timeline for the fulfilment of the obligation has expired. A decision imposing an obligation to perform shall be provisionally enforceable if the appeal has no suspensory effect, and, where a timeline for the fulfilment of the obligation has been established, upon the expiry of the timeline.
- (3) The provisions governing enforcement shall likewise apply also to other legal effects of the decision.

#### Section 75

##### **Finality or enforcement clause**

- (1) An administrative authority which decided in the last instance shall note the finality or enforcement of the decision on the decision executed in writing which remains part of the dossier. Concurrently, it shall note the date of the pronouncement of the decision or the date on which the written document was handed over for delivery.
- (2) Upon a party's request, a first-instance administrative authority shall place a finality or enforcement clause on the counterpart of the decision which was delivered to the party. Upon a party's request, a counterpart of the operative part together with the finality or enforcement clause shall be executed.
- (3) Where it is noted incorrectly, or if the decision is no longer final or enforceable, the administrative authority shall notify to this effect persons for whom it has noted the data referred to under paragraph 1, and shall make a notification to this effect by means of a public notice.

#### Section 76

##### **Resolutions**

- (1) In cases stipulated by law the administrative authority shall decide by means of a resolution.
- (2) Resolutions referred to by Section 11, paragraph 2, Section 13, paragraph 4, Section 28, paragraph 1, Section 29, paragraph 1, Section 38, paragraph 5, and Section 80, paragraph 4(b) and c) may be issued without prior procedure, if a similar resolution has been issued in accordance with an established decision-making practice on the same or another matter under similar facts. The effects of such resolutions shall commence upon the issuance thereof.
- (3) A resolution shall be notified as per Section 72, unless the law stipulates that it is only to be noted in the dossier. A resolution which is to be notified pursuant to Section 72 shall become final, if notified and no appeal may be filed thereagainst. A resolution which is only noted in the dossier shall be adequately notified to the parties; such resolutions shall become final upon its noting into the dossier. A resolution that is only noted in the dossier may be changed by the administrative authority in the course of the procedure by a new resolution; the new resolution shall be only noted in the dossier.
- (4) Resolutions regarding the jurisdiction of administrative authorities shall be also notified to all administrative authorities concerned thereby.
- (5) Appeal against a resolution may be filed by the party to which the resolution is notified. An appeal against a resolution shall have no suspensory effect. No appeal may be filed against resolutions which are only noted in the dossier and against resolutions where the law so provides.

### **Chapter 7**

#### **Nullity of a decision**

#### Section 77

- (1) A decision for the issuance of which the administrative authority has no subject-matter jurisdiction shall be null; this shall not apply if the decision has been issued by an administrative authority superior to an administrative authority with subject-matter jurisdiction. Nullity for this reason shall be identified and declared through a decision by the administrative authority superior to the administrative authority which issued the null decision.
- (2) Furthermore, a decision containing defects causing it to be apparently internally contradictory or legally or virtually unfeasible, or other defects for which it cannot be considered a decision of an administrative authority at all, shall be null. Nullity for these reasons shall be pronounced by a court in compliance with the code of administrative justice.<sup>29)</sup>
- (3) Where the reason for nullity concerns only a particular verdict of the decision or its ancillary provision, only such part shall be construed as null, unless the nature of the case implies that it is not severable from the rest of the content.

#### Section 78

- (1) At all times, nullity shall be determined and declared ex officio. Parties to the procedure within which the decision has been issued, as well as those who are mentioned in the written execution of such decision, as well as any legal successors of all of these persons, if bound by the decision, may instigate the declaration of nullity; if the administrative authority identifies no grounds for the commencement of a procedure to declare nullity, it shall inform the submitter to this effect, stating the reasons therefor, within 30 days.

(2) No appeal may be filed against a decision through which the administrative authority declared nullity.

(3) If the administrative authority concludes that another administrative authority has conducted an act which is a null decision, it shall file a motion with the administrative authority with jurisdiction to declare nullity.

## Chapter 8

### Costs of a procedure

#### Section 79

(1) The costs of a procedure shall mean, in particular, cash expenses of parties and their representatives, including the administrative fee, lost wages of the parties and their legal guardians, costs of evidencing, interpreter fees and remuneration for representation.

(2) The decision on the costs of the procedure may be provided in the operative part of another decision or may be issued separately; it may be issued also in the course of the procedure. The decision shall be notified only to persons affected thereby.

(3) Unless the law stipulates otherwise, the administrative authority or the authority concerned (Section 136) and the party shall bear their respective costs.

(4) The implementing legal regulation stipulates the scope within which the administrative authority reimburses cash payments and lost wages to other persons, particularly in association with the performance of the function of a custodian, and with the collection of grounds for the issuance of a decision. The claim for compensation must be made with the administrative authority within eight days of the time the costs were incurred, otherwise it shall become void.

(5) The obligation to compensate the costs of the procedure with a lump-sum payment shall be imposed by the administrative authority upon the party who initiated the procedure by breaching its legal obligation. The implementing legal procedure stipulates the lump-sum amount of the costs of procedure and the lump-sum amount of the costs of procedure in particularly complex cases of where an expert has been engaged. In cases deserving special consideration, the lump-sum amount may be reduced upon request.

(6) The obligation to compensate the costs of procedure which otherwise would not be incurred by the administrative authority, may be imposed upon the person who caused them to be incurred through a breach of his/her obligation.

(7) The costs of data collection referred to under Section 6, paragraph 2 shall consist of cash payments made by the administrative authority incremented with the amount adequate to administrative fees that the person concerned who requested the collection of data would be obliged to pay if the latter collected the data itself; these costs shall be covered by the person concerned who applied for the collection of data.

(8) The compensation of costs shall be collected by the administrative authority that imposed it pursuant to a special law<sup>27)</sup>. In respect of the procedure regarding the imposition of the obligation for the execution of which the administrative authority has jurisdiction, the body in charge of the execution shall be the administrative authority that imposed the compensation of the costs.

## TITLE VII

### PROTECTION FROM INACTION

#### Section 80

(1) Should an administrative authority fail to issue a decision on a case within the statutory timeline, the superior administrative authority shall take an ex officio action against inactivity upon learning thereof.

(2) The action against inactivity shall be taken by the superior administrative authority also where the concerned administrative authority fails to commence a procedure within the timeline of 30 days of the date when it gained knowledge of facts justifying the commencement of an ex officio procedure.

(3) The action against inactivity may be taken by the superior administrative authority also in case where the circumstances clearly indicate that the administrative authority with subject-matter and territorial jurisdiction will fail to observe the timeline set forth for the issuance of the decision on an application or to commence an ex officio procedure or continue a procedure as appropriate. After the expiry of timelines for the issuance of a decision, the request for action against inactivity may be filed by parties.

(4) A superior administrative authority may

- a) order the inactive administrative authority to take appropriate action within a predefined timeline to remedy the situation or issue a decision;
- b) take the case over by resolution and decide in lieu of the inactive administrative authority;
- c) through a resolution, appoint another administrative authority within its administrative district to conduct the procedure; or
- d) through a resolution, adequately exceed the statutory timeline for the issuance of a decision, if it may be reasonably assumed that the administrative authority will issue the decision on the case within the exceeded timeline and if such course of action is more convenient for the parties; timelines set forth under Section 71, paragraph 3 shall be taken into account thereby.



(5) The course of action referred to under paragraph 4(b) and c) may not be applied in respect to authorities of territorial self-governance entities in the exercise of their autonomous powers.

(6) The resolution referred to under paragraph 4 shall be notified to administrative authorities referred to under paragraphs 4(b) to d) and to parties referred to under Section 27, paragraph 1; other parties shall be advised thereof by means of a public notice. The superior administrative authority shall issue a ruling also in case the party's request referred to under paragraph 3, sentence two is not granted; such resolution shall be notified solely to such party; no appeal may be filed against such resolution.

## TITLE VIII

### APPEAL PROCEDURE

#### Appeal

##### Section 81

(1) A party may file an appeal against a decision, unless stipulated otherwise by law.

(2) The right to file an appeal shall not apply to a party which waived this right, in writing or verbally with record in an official report, after the notification of the decision.

(3) Where the appellant took a filed appeal back, he/she may not submit it again.

(4) A statutory body of a legal person shall have the right to file an appeal against a decision which is to limit the capacity of a legal person to act autonomously before an administrative authority, even if this decision is provisionally enforceable.

##### Section 82

(1) An appeal may be directed against the operative part of the decision, an individual verdict or its ancillary provision. An appeal directed solely against the rationale of a decision shall not be permissible.

(2) An appeal shall have the particulars referred to under Section 37, paragraph 2 and shall contain information as to what decision it is directed against, the scope within which it is challenged, and where the conflict with legal regulations or incorrectness of the decision or the procedure preceding thereof is considered to be. Where the appeal does not specify the scope within which the decision is being challenged, it shall be understood that the applicant demands the revocation of the entire decision. The appeal shall be filed in the necessary number of counterparts, so as to one counterpart was for the administrative authority and one for each party. Where the party fails to deliver the necessary number of counterparts, the administrative authority shall execute them at the cost of the party.

(3) Where the appeal is directed only against a particular verdict of the decision or an ancillary provision of a verdict, which does not form an indivisible whole with the others, and unless any of the parties might be harmed thereby, the rest of the operative part shall become final, if practicable with a view to the nature of the case.

(4) New facts and proposal for taking new evidence mentioned in the appeal or in the course of the appeal procedure shall be considered only where such facts or evidence that could not be previously applied by the party are concerned. Where a party objects that it was not allowed to conduct a certain act within a first-instance procedure, this act must be conducted together with the appeal.

#### Timelines allowed for appeals

##### Section 83

(1) The timeline for the filing of an appeal shall be 15 days of the date of notification of the decision, unless stipulated otherwise by a special law. An appeal may be filed only after the issuance of the decision. Where an appeal is filed prior to the notification of the decision to the appellant, it shall be construed as filed on the first day of the period allowed for the appeal.

(2) In case of a missing, incomplete or incorrect advice referred to under Section 68, paragraph 5, an appeal may be filed within 15 days of the notification of an amending resolution as per Section 70, sentence one, if issued, no later, however, than within 90 days of the notification of the decision.

##### Section 84

#### Timelines allowed for appeals against non-notified decisions

(1) A person who was a party, but was not notified of the decision by the administrative authority, may file an appeal within 30 days of the date when it learnt of the issuance of the decision and resolution of the case decided, no later, however, than within one year of the day when the decision was notified to the last party notified by the administrative authority; default of the act may not be waived. The provisions hereof shall not apply to parties referred to under Section 27, paragraph 1.

(2) A party who provably gained knowledge of a decision may not rely on the non-notification thereof. Such party shall be considered a party to whom the administrative authority delivered the decision with a missing advice as per Section 83, paragraph 2.

(3) In the conduct of a procedure after an appeal has been filed pursuant to paragraph 1, special attention shall be paid to the legitimate interests of parties acting in good faith. The suspensory effect of the appeal may be precluded for substantial reasons (Section 85, paragraph 2) even subsequently.

### **Effects of an appeal**

#### **Section 85**

(1) Unless stipulated otherwise by law, a legitimate appeal filed in good time shall have a suspensory effect. As a result of the suspensory effect of the appeal, finality, enforcement or any other legal effects of the decision shall not be applied.

(2) An administrative authority may preclude the suspensory effect of an appeal, if

- a) it is urgently required by the public interest;
- b) any of the party is in risk of suffering a substantial harm; or
- c) so requested by a party; this shall not apply where harm may be caused to other parties or where it is not in the public interest.

(3) In order to protect rights acquired in good faith, legitimate interests of parties or the public interest, the suspensory effect of an appeal the default of which the administrative authority waives may be precluded.

(4) Preclusion of the suspensory effect of an appeal must be justified. The verdict of precluding the suspensory effect of an appeal shall form part of the decision on the matter; appeal from such verdict may not be filed.

### **Filing an appeal and course of action to be taken by the administrative authority which issued the challenged decision**

#### **Section 86**

(1) An appeal shall be filed with the administrative authority which issued the challenged decision.

(2) The administrative authority which issued the challenged decision shall send a counterpart of the submitted appeal to all parties who may have appealed, inviting them to provide their opinion on the appeal within a reasonable timeline which must not be shorter than five days. If need be, the administrative authority shall complement the procedure as necessary. The provision of this paragraph shall not be applied if the appeal was filed in default or if it was impermissible.

(3) The provision of Section 82, paragraph 4, sentence one shall likewise apply to the opinions by parties on the filed appeal. Opinions of parties on a filed appeal shall form part of the dossier. Opinions filed in default need not be considered.

#### **Section 87**

The administrative authority which issued the challenged decision may revoke or amend the decision, if this results in the full satisfaction of the appeal and if no harm may be caused to any of the parties, unless all of those concerned thereby express their consent therewith. An appeal from this decision may be filed.

#### **Section 88**

### **Passing a dossier to the appellate administrative authority**

(1) Where the administrative authority which issued the appealed decision does not identify grounds for course of action set forth by Section 87, it shall hand the dossier with its opinion over to the appellate authority within 30 days of the delivery of the appeal. Where the appeal challenged only a separate verdict of the decision as per Section 82, paragraph 3 and the particular part of the dossier is severable, the administrative authority shall hand over only such part of the dossier which pertains to the issue decided on by the challenged verdict of the decision. In case of an impermissible or default appeal, it shall pass the dossier to the appellate authority within 10 days, restricting its opinion to the specification of reasons substantial for the assessment of the default or impermissibility of the appeal.

(2) Where, prior to the hand-over of the dossier to the appellate administrative authority, any of the reasons for terminating a procedure referred to under Section 66, paragraph 1(a), e), f) or g) or under Section 66, paragraph 2, arises, the administrative authority which issued the challenged decision shall terminate the procedure, unless the decision on the appeal could be of relevance to compensation of damages.

### **Course of action to be taken by the appellate administrative authority**

#### **Section 89**

(1) Unless stipulated otherwise by law, the appellate administrative authority shall be the immediate superior administrative authority.

(2) The appellate administrative authority shall review compliance of the challenged decision and procedure preceding the issue of the decision with legal regulations. The correctness of the challenged decisions shall be reviewed thereby only within the scope of objections specified in the appeal, or otherwise if so required in the public interest. Defects of the procedure that may not be reasonably considered to have impacted the compliance of the challenged decision with legal regulations, or its correctness, if applicable, shall be disregarded; this provision shall not prejudice the right to compensation of damages caused by improper official course of action.

## Section 90

### Decision of the appellate administrative authority

(1) If the appellate administrative authority concludes that the challenged decision is contrary to legal regulations or that it is incorrect,

a) it shall revoke the challenged decision or part thereof and terminate the procedure;

b) it shall revoke the challenged decision or part thereof and return the case for new consideration to the administrative authority which issued the decision; in the rationale of this decision, the appellate administrative authority shall provide its legal opinion which shall be binding for the administrative authority which issued the challenged decision in the new consideration of the case; an appeal from the new decision may be filed; or

c) it shall alter the challenged decision or part thereof; the change may not be made if any of the parties upon whom an obligation is being imposed would be in risk of harm as a result of loss of opportunity to file an appeal; the course of action set forth by Section 36, paragraph 3 shall be taken only where grounds for the decision newly collected by the appellate administrative authority are concerned; if necessary with a view to eliminate the defects of rationale, the appellate administrative authority shall amend the decision in its rationale section; the appellate administrative authority may not, through its decision, change a decision of an authority of a territorial self-governance entity issued within an autonomous jurisdiction.

(2) Furthermore, the course of action set forth by paragraph 1(a) shall be taken by the appellate administrative authority also where an appeal from a decision on a provisional measure is concerned and the decision on the case has already become final, unless the decision on this appeal could be of relevance for the compensation of damages.

(3) The appellate administrative authority may not change the challenged decision to the prejudice of the appellant unless an appeal has been filed also by another party whose interests are not identical or where the challenged decision is in conflict with legal regulations or another public interest.

(4) Should the appellate administrative authority find out that a fact substantiating the termination of the procedure has arisen, it shall directly revoke the challenged decision and shall terminate the procedure, unless another decision on the appeal may be relevant as to the compensation of damages or to legal successors of parties.

(5) Where the appellate administrative authority does not identify grounds for course of action stipulated by sections 1 to 4, it shall dismiss the appeal and confirm the challenged decision. Where the appellate administrative authority alters or revokes only a part of the challenged decision, it shall confirm the rest of it.

(6) The decision in the appeal procedure shall be issued by the appellate administrative authority within timelines set forth by Section 71. The timeline shall commence as of the date of hand-over of the dossier to the appellate administrative authority for decision (Section 88).

## Section 91

(1) The decision of the appellate administrative authority may not be further appealed. The decision of the appellate administrative authority shall become final if notified to all appellants and parties referred to under Section 27, paragraph 1.

(2) If the challenged decision is provisionally enforceable, the provisions of Section 99 shall likewise apply to the effects of its revocation.

(3) Where the appellant has withdrawn the filed appeal, the appeal procedure shall be terminated as of the date of withdrawal of the appeal. If the filed appeal has been withdrawn by all appellants, the appeal procedure shall be terminated as of the date of withdrawal of the appeal by the last of the appellants. On the day following the termination of the procedure, the challenged decision shall become final. The administrative authority shall issue a resolution on the termination of the procedure, which shall be only noted in the dossier and advised to appellants as well as to other parties if they have been advised of the filed appeal pursuant to Section 86, paragraph 2. An appeal may be withdrawn no later than within the issue of the decision of the appellate administrative authority.

(4) Where the procedure involves more than one party and all of the parties have waived their right to file an appeal, the decision shall become final on the day following the day of the waiver by the last of them.

## Section 92

(1) Defaults and impermissible appeals shall be dismissed by the appellate administrative authority. Where the decision has already become final, it shall subsequently examine whether there might be potential grounds for a review of the decision within a review procedure, for resumption of the procedure or for the issuance of a new decision. If it identifies potential grounds for the commencement of a review procedure, for resumption of the procedure or for the issuance of a new decision, the default or impermissible appeal shall be considered as an instigation for a review procedure, or a request to resume the procedure or a request for the issuance of a new decision.

(2) Where the appellate administrative authority concludes that the appeal was filed in good time and that it is permissible, it shall return the case to the administrative authority which decided in the first instance.

## Application of general provisions

### Section 93

(1) Unless provided otherwise under this Title, the provisions of Titles I to IV, VI, and VII of this Part shall likewise apply to appeal procedures.

(2) Whenever a superior administrative authority is mentioned in Titles I to VII of this Part, it shall be, in the course of action stipulated by this Title, understood to be the administrative authority immediately superior to the appellate administrative authority; otherwise the provisions of Section 178 shall apply.

## TITLE IX

### REVIEW PROCEDURE

#### Section 94

(1) In a review procedure, administrative authorities shall review ex officio final decisions in those cases where there is a reasonable doubt as to whether the decision is in compliance with legal regulations. A review procedure may be initiated even if the decision is provisionally enforceable pursuant to Section 74 and has not become final as yet; where an appeal has been filed following the commencement of such review procedure, the course of action stipulated by the provisions of Title VIII of this part shall be taken. A party may instigate the conduct of a review procedure; such instigation shall not be construed as a proposal to commence the procedure; if the administrative authority does not identify grounds for the commencement of the review procedure, it shall notify the submitter to this effect, specifying the reasons therefor, within the timeline of 30 days.

(2) A review procedure shall not be permissible, if the decision granted a party a permission to legally act or to enter a right in respect of a real estate registered in the Land Registry or if it has been decided in a case of civil status and the applicant has acquired rights in good faith. Decisions issued pursuant to Section 97 may not be reviewed within a review procedure, either. A decision of an appellate administrative authority referred to under Section 90, paragraph 1(b) may not be reviewed, if a new decision has arisen from the new consideration of the case.

(3) Resolutions not to take further action (Section 43) and resolutions on terminating a procedure (Section 66) only may be autonomously subjected to a review procedure. Other resolutions may be reviewed only in conjunction with the decision in the case, or with another decision the issuance of which they preceded, and only if it may be relevant for the consistency of the decision in the case or another decision with legal regulations or for compensation of damages.

(4) If, following the commencement of a review procedure, the administrative authority arrives at a conclusion that despite the decision having been issued contrary to a legal regulation, the harm that would arise from its revocation or alteration for any party who has acquired a right by the decision in good faith, would be in apparent disproportion to the harm caused to another party or to the public interest, it shall terminate the procedure.

(5) When deciding within a review procedure, the administrative authority shall be obliged to examine the rights acquired in good faith, particularly where it is altering the decision which has been issued contrary to legal regulations (Section 97, paragraph 3) or where it determines when the effects of the decision issued within a review procedure should commence (Section 99).

#### Section 95

(1) An administrative authority superior to the administrative authority that issued the decision shall commence a review procedure ex officio if, after a preliminary consideration of the case, it concludes that it may be reasonably assumed that the decision has been issued contrary to legal regulations.

(2) If the instigation to commence a review procedure has been filed by a party, the review procedure may be conducted by the administrative authority that has issued the reviewed decision, if it fully grants the request of the party submitting the instigation, and if no harm might be caused to any other party, unless all of those concerned express their consent therewith. Otherwise, it shall refer the case for the conduct of a review procedure to the superior administrative authority.

(3) Decisions issued by first-instance administrative authorities may also be reviewed within a review procedure which examines the decision of an appellate administrative authority.

(4) The parties to a review procedure shall be the parties to the original procedure within which the reviewed decision has been issued, who are concerned by the reviewed procedure, or their legal successors.

(5) Should any of the parties or a public interest be in risk of a severe harm, the concerned administrative authority may, upon commencement of the review procedure or in the course thereof, suspend the enforcement or other legal effects of the reviewed decision by means of a resolution.

(6) Where a decision of a central administrative authority is concerned, the decision within the review procedure shall be taken by the Minister or by the head of another central administrative authority; the provisions of Section 152, paragraph 3 shall likewise apply.

## Section 96

(1) A resolution on the commencement of a review procedure may be issued no later than within two months of the date when the concerned administrative authority gained knowledge of the grounds for the commencement of the review procedure, no later, however, than within one year of the decision on the case becoming final.

(2) Compliance of the decision with legal regulations shall be assessed on the basis of the legal status and the facts at the time of its issue. Defects of the procedure in respect of which it cannot be reasonably presumed that they could have had an impact upon compliance of the challenged decision with legal regulations or upon its correctness, as applicable, shall be disregarded. The concerned administrative authority shall assess the documentary materials and, where necessary, shall arrange for opinions to be given by parties and administrative authorities which conducted the procedure.

(3) A review procedure concerning a provisional measure cannot be conducted once the decision on the case has become enforceable or otherwise took legal effect or once this decision has been revoked, unless its consideration is relevant for compensation of damages.

## Section 97

### **Decisions in review procedures**

(1) Should the administrative authority, after the commencement of a review procedure, find out that no legal regulations have been breached, it shall terminate the procedure by means of a resolution. Such resolution shall only be noted in the dossier.

(2) The decision on a case under a first-instance review procedure may not be issued after the expiry of 15 months of the date when the decision on the case becomes final. Where a review procedure is under way, it shall be stopped by the administrative authority by means of a resolution. Such resolution shall only be noted in the dossier.

(3) A decision which has been issued contrary to legal regulations shall be revoked or altered by the concerned administrative authority, or revoked and the case returned thereby to the appellate administrative authority or a first-instance administrative authority; those administrative authorities shall be bound by the legal opinion of the concerned administrative authority.

## Section 98

### **Fast-track review procedure**

Where the breach of a legal regulation is obvious from the documentary materials, other conditions of the review procedure are met, and no explanations of parties are required, the concerned administrative authority may carry out a fast-track review procedure. Evidence shall not be produced. The first act of the administrative authority in a fast-track review procedure shall be the issuance of a decision pursuant to Section 97, paragraph 3.

## Section 99

### **Effects of decisions in review procedures**

(1) The effects of a decision in a review procedure may commence retrospectively from the finality or provisional enforcement of the reviewed decision and/or from the finality or provisional enforcement of a decision under a review procedure. In the decision through which the reviewed decision which has been issued contrary to legal regulations is being revoked or altered, the administrative authority shall, with a view to the content of the reviewed decision, determine the time when its effects are to commence.

(2) Where a decision through which an obligation has been imposed is being revoked or altered, and where no other solution is justified by the facts in the case, the administrative authority shall stipulate that the effects of the decision in the review procedure are to commence as of the date of finality or provisional enforcement of the reviewed decision.

(3) Where a decision through which a right has been granted is being revoked or altered, and where no other solution is justified by the facts in the case, the administrative authority shall stipulate that the effects of the decision in the review procedure are to commence as of the date of its finality or provisional enforcement; nevertheless, where the reviewed decision has been issued on the basis of inaccurate or incomplete data provided by the applicant, the administrative authority shall stipulate that the effects of the decision in the review procedure are to commence as of the date of finality or provisional enforcement of the reviewed decision.

## TITLE X

### **RESUMED PROCEDURE AND NEW DECISION**

## Section 100

### **Resumed procedure**

(1) A procedure before an administrative authority completed with a final decision on the case shall be resumed upon request of a party, where

a) previously unknown facts or evidence that existed at the time of the original procedure and which could not be applied by the

party to whose benefit it may serve in the original procedure have been disclosed or the evidence taken turned out to be false; or

b) a decision which served as the basis for the decision in the procedure to be resumed has been revoked or altered; and where such facts, evidence or decisions may justify another approach to the case in question.

(2) A party may file a request for a procedure to be resumed with any administrative authority which has decided on the case, within the timeline of three months of the date when it gained knowledge of the grounds substantiating the resumption of the procedure, no later, however, than within three years of the date of finality of the decision. A person who could have applied the grounds for resumption within appeal procedure may not claim the resumption of the procedure. The decision on the resumption of a procedure shall be taken by the administrative authority that decided the case in the last instance.

(3) Within the three-year timeline from the finality of the decision, the administrative authority that decided the case in the last instance may also decide about the resumption of the case ex officio, if any of the grounds referred to under paragraph 1 arise and if there is a public interest in the resumed procedure; the decision on the resumption of the procedure must be issued prior to the expiry of the aforementioned timeline.

(4) Furthermore, the concerned administrative authority shall decide to resume the procedure ex officio in case the decision has been achieved through a criminal deed. The timeline referred to under paragraph 3 shall begin to run as of the day following the date of finality of the judgement.

(5) The provisions of Section 94, paragraphs 4 and 5 shall likewise apply to resumption of a procedure.

(6) A request for resumption of a procedure shall be granted a suspensory effect if there is a risk of a severe harm for a party or public interest. The decision through which a procedure is resumed, shall have a suspensory effect if the challenged decision has not been executed to date, unless the administrative authority precludes the suspensory effect in the decision on grounds referred to under Section 85, paragraph 2 or unless the enforcement of other effects of a decision have already lapsed as per a special law. The decision through which a request for resumption is dismissed shall be notified solely to the applicant who may file an appeal thereagainst.

#### Section 101

##### **New decision**

A new procedure may be conducted and a new decision issued in a case only if

a) it is necessary in the course of action set forth by Section 41, paragraph 6, sentence two;

b) the new decision will grant an application which has been finally dismissed;

c) the new decision, on substantial grounds, ex post establishes or alters the expiry or effect of the decision or a timeline for the fulfilment of an obligation or ex post allows for performance in instalment or by parts, as applicable; reduction of the expiry or effect of the decision or the timeline for the fulfilment of an obligation shall be possible only if permissible by law;

d) the decision in the case has been revoked by another public authority as per a special law; or

e) a special law so stipulates.

#### Section 102

##### **Common provision**

(1) The administrative authority having had jurisdiction over the original first-instance procedure shall have jurisdiction over the new procedure upon the issue of a decision to resume the procedure, or over a new procedure as per Section 101. The appellate administrative authority shall have jurisdiction only if the procedure has been resumed for reasons pertaining solely to the procedure before this administrative authority.

(2) The issue of who may be a party thereto, shall be assessed in the new procedure on the basis of the legal status and facts at the time of the new procedure.

(3) A new procedure referred to under Section 101 may be commenced upon request also in case the original procedure was commenced ex officio, and vice versa. The request may be filed by any of the parties to the original procedure or its legal successor providing it is directly affected by the original decision.

(4) If a party's request does not give grounds for the commencement of a new procedure, the administrative authority shall, by means of a resolution, decide about terminating the procedure. The resolution shall be notified solely to the applicant and to those persons in respect of whom the administrative authority has carried out an act.

(5) Enforcement or any other legal effects of the original decision may be suspended in a new procedure referred to under Section 101, with effect from the start of the new procedure or in the course thereof. Should this be done upon request of a party, the provisions of Section 95, paragraphs 4 and 5 shall likewise apply.

(6) In a new procedure, the administrative authority may avail of the source materials of the original decision, including source materials for the decision on appeal, unless precluded with a view to the reason for the new procedure. The legal opinion of the appellate administrative authority shall be binding for the administrative authority conducting the new procedure, unless such legal opinion becomes irrelevant due to a change in the legal status or facts.

(7) In the new procedure, the administrative authority shall examine rights acquired in good faith.

(8) Unless stipulated otherwise in paragraphs 1 to 7, the provisions governing first-instance procedures shall apply to the course of action to be taken in the new procedure.

(9) The new decision issued as per Section 100 or Section 101(a) shall revoke the original decision; the parties shall be advised to this effect in the decision executed in writing; the provision of Section 99 shall likewise apply. In other cases, the new decision shall prevent the enforcement or other legal effects of the original decision; where the effects of the new decision are not obvious from the content thereof, the impact upon enforcement or other legal effects of the original decision shall be determined by the administrative authority.

## TITLE XI

### EXECUTIONS

#### Chapter 1

##### Introductory provisions

###### Section 103

(1) The provisions of this Title shall be applied where the person upon whom the obligation of a monetary or non-monetary performance has been imposed by the enforcement order (hereinafter referred to as "obligor"), fails to voluntarily fulfil such obligation within the predefined timeline.

(2) The administrative authority in charge of the execution shall be the administrative authority competent to conduct the execution pursuant to this Act or to a special law.

###### Section 104

An enforcement order on the basis of which an execution notice or an execution order is issued, shall be

- a) an enforceable decision referred to under Section 74; or
- b) an enforceable settlement referred to under Section 141, paragraph 8.

###### Section 105

(1) An enforcement order shall be applied before the administrative authority in charge of execution by

- a) the administrative authority that issued a first-instance decision or that approved settlement; or
- b) a person entitled by the enforcement order.

(2) The administrative authority referred to under paragraph 1(a) or the person entitled by the enforcement order may apply for the conduct of the execution also with a court of justice or a bailiff.

#### Chapter 2

##### Executions in respect of monetary performance

###### Section 106

(1) The administrative authority in charge of an execution which, upon request of the administrative authority referred to under Section 105, paragraph 1(a) or of the person entitled by the enforcement order, conducts executions in respect of monetary performances, shall be the general tax administration with territorial jurisdiction pursuant to a special law, unless the law stipulates that the administrative authority in charge of the execution shall be the administrative authority referred to under Section 105, paragraph 1(a).<sup>30)</sup>

(2) A municipal or regional authority shall be the administrative authority in charge of the execution if it is concurrently the administrative authority referred to under Section 105, paragraph 1(a) or if such administrative authority is another authority of the territorial self-governance entity. Upon request of a municipal authority, the execution shall be performed by the general tax administration with territorial jurisdiction as per a special law.

(3) The course of action applicable to the administration of taxes shall be applicable to the execution, collection and record-keeping of monetary performances.

## **Chapter 3**

### **Executions in respect of non-monetary performance**

#### **Subchapter 1**

#### **General provisions**

##### **Section 107**

#### **Jurisdiction**

(1) The administrative authority in charge of execution with jurisdiction over executions in respect of non-monetary performances shall be the administrative authority referred to under Section 105, paragraph 1(a), if such is an executive authority. A municipal or regional authority shall be the administrative authority in charge of execution if it is concurrently the administrative authority referred to under Section 105, paragraph 1(a), or if such administrative authority is another authority of the territorial self-governance entity.

(2) Upon request of another administrative authority referred to under Section 105, paragraph 1(a), the execution shall be conducted by the municipal authority of a municipality with extended powers within the administrative district of which the administrative authority has its registered office.

##### **Section 108**

#### **Right to enforce a non-monetary obligation**

(1) The administrative authority in charge of execution may issue an execution notice or order an execution in respect of a person other than the one upon whom the obligation of non-monetary performance has been imposed by the enforcement order and who is mentioned in the execution order, and continue in the ordered execution only if it has been evidenced that the non-monetary obligation has passed or transferred onto such person.

(2) The passage or transfer of a non-monetary obligation or right shall be evidenced solely by an instrument issued by an administrative authority, court of justice or a notary, or attested by an authority with jurisdiction as per a special legal regulation,<sup>31)</sup> unless the passage or transfer of the non-monetary obligation or right is directly implied by a legal regulation.

(3) If the obligor died or ceased to exist after the execution had been ordered, the administrative authority in charge of the execution may continue the conduct of the execution pertaining to property forming part of inheritance against the heir or the legal guardian thereof or against the administrator of the inheritance, if appointed. Where a legal person ceases to exist, the administrative authority in charge of the execution may continue the execution against its legal successors.

(4) The administrative authority in charge of execution may order the execution no later than within five years and conduct it no later than within ten years of the timeline when the obligation should have been fulfilled voluntarily.

##### **Section 109**

#### **Execution notice**

(1) Unless there is a substantial risk that the purpose of the execution will be derailed, the administrative authority in charge of the execution may, prior to ordering the execution, invite the obligor to perform the non-monetary obligation by means of an execution notice and to determine a new timeline for the performance thereof to the obligor.

(2) An execution notice shall be issued by means of a resolution containing, in addition to the particulars referred to under Section 68,

- a) an identification of the enforcement order on the basis of which it is being issued;
- b) determination of the non-monetary obligation which is to be fulfilled, information about the original timeline in which the non-monetary obligation should have been fulfilled, and the date as of which the information in the execution notice is provided;
- c) determination of a new timeline within which the non-monetary obligation is to be fulfilled; and
- d) a warning that unless the non-monetary obligation is fulfilled within the determined new timeline, the administrative authority in charge of execution shall order the execution upon the expiry of such timeline.

(3) No appeal may be filed against an execution notice.

##### **Section 110**

#### **Ordering executions**

The administrative authority in charge of execution shall order an execution through the issuance of an execution order

- a) ex officio, if it is the concerned administrative authority in charge of execution, whereas the timeline stipulated by Section 80, paragraph 2 shall not apply;
- b) upon request of a person entitled by the enforcement order; or
- c) upon request of an administrative authority as per Section 107, paragraph 2.



## Section 111

### Execution order

(1) An execution order shall be a resolution which, in addition to the particulars stipulated by Section 68, shall contain

- a) an identification of the enforcement order on the basis of which it is being issued;
- b) determination of the non-monetary obligation which is to be fulfilled;
- c) the method in which the execution is to be carried out;
- d) things and rights to be affected by the execution; and
- e) other data, if necessary for the conduct of the execution.

(2) An execution order shall be notified to the obligor and to other persons acquiring rights or having obligations as a result of the execution order.

(3) No appeal may be filed against an execution order.

## Section 112

### Modes of execution

An execution aimed at enforcing a non-monetary obligation shall be governed by the nature of the obligation imposed. It may be ordered and conducted in the following ways:

- a) replacement discharge in case of substitutable performances;
- b) direct enforcement in case of non-substitutable performances; particularly through vacating, seizing a movable property, and bringing a person before an authority's; or
- c) the imposition of coercive fines.

## Section 113

### Postponing and suspending an execution

(1) For substantial reasons, the administrative authority in charge of execution may, by means of a resolution, postpone or suspend the conduct of execution, particularly where the obligor applies for deferral of the fulfilment of the obligation and if with a view to the obligor's behaviour it may be reasonably anticipated that the obligor will fulfil its obligation no later than within the same timeline as that when the execution may be conducted and unless there is a risk that the purpose of the execution will be derailed by this; or without a request where facts relevant for the termination of the execution are under investigation. The administrative authority in charge of execution shall do so also where the law so provides. Where necessary, the administrative authority shall request cooperation of the person who applied for the postponement or suspension of the execution. No appeal may be filed against the resolution issued pursuant to this paragraph.

(2) Should the reasons which resulted in the postponement or suspension of the execution, cease to exist and unless the execution is terminated, the administrative authority in charge of the execution shall continue the execution pursuant to Section 65, paragraph 2.

## Section 114

(1) In the conduct of an execution, the authorised official shall prove, through his/her authorisation, on the basis of which particular execution order he/she is acting.

(2) Any one person shall be obliged to grant the authorised official referred to under paragraph 1 access to the site where the execution is to be carried out.

## Section 115

### Terminating an execution

The administrative authority in charge of execution shall terminate the conducted execution upon request or ex officio by means of a resolution, against which no appeal may be filed, if

- a) the obligation ceased to exist after the execution had been ordered;
- b) after the execution had been ordered, the right to conduct the execution expired or the enforcement order forming basis of the execution was revoked;
- c) the termination of the execution has been requested by the person upon whose request pursuant to Section 110(b) and c) the execution was ordered;

- d) the course of the execution suggests that its continuation would be associated with extraordinary or inadequate difficulties;
- e) it turns out that the execution was ordered for the purposes of enforcing a non-existent obligation or against a non-existent obligor;
- f) the conduct of the execution is impermissible, because a reason for which it was not possible to conduct the execution had existed before the execution was ordered; or
- g) the conduct of the execution is impermissible, because another reason implied by a special law or the situation in the case for which it is not possible to conduct the execution arose after the execution had been ordered.

#### Section 116

##### **Costs of execution**

- f).
  - (1) The costs of execution shall be covered by the obligor, unless the execution is terminated as per Section 115(e) or f).
  - (2) Where the execution has been terminated pursuant to Section 115, paragraph 1(c), the costs of the execution shall be covered by the person applying for the termination of the execution.
  - (3) The compensation of the costs of execution shall consist of a lump-sum payment of 2,000 CZK and of a compensation of cash costs incurred during the conduct of the execution. The obligation to cover the costs of the execution shall be imposed by the administrative authority in charge of the execution by means of a decision upon the obligor. Cash costs shall be covered in the form of advance payments by the administrative authority in charge of execution from its budget.
  - (4) The obligor shall cover the costs of execution always where an execution order has been issued or if, during the execution through seizure of a movable property the authorised official seized the movable property or, in case of execution through direct enforcement, carried out vacating.
  - (5) Where some of the acts of execution are conducted jointly against more than one obligor, the administrative authority in charge of the execution shall divide the compensation of costs incurred proportionally to the scope of enforce obligations applicable to individual obligors.
  - (6) The costs of execution shall be collected and the execution thereof conducted by the administrative authority in charge of execution which imposed the compensation thereof pursuant to a special law <sup>27)</sup>.

#### Section 117

##### **Objections**

- (1) The obligor or another person upon whom an obligation has been imposed thereby may file objections against resolutions or other acts of the administrative authority in charge of execution from which appeal may not be filed.
- (2) Objections may not be filed, if the resolution has already been carried out or another act performed.
- (3) Objections shall have a suspensory effect only if
  - a) they are directed against a resolution postponing or suspending an execution;
  - b) they are directed against an execution order ordering execution through vacating;
  - c) they are directed against a resolution terminating an execution;
  - d) any of the reasons referred to under Section 115(a), b), e), f) or g) are being applied; or
  - e) the administrative authority in charge of the execution so decides.
- (4) The objections shall be decided on by the administrative authority in charge of execution. No appeal may be filed against the decision on objections.

#### Section 118

##### **Common provisions**

- (1) The provisions of Part One and, with necessary modifications, the provisions of Titles I to X of this Part shall likewise apply to the course of action referred to under this Part.
- (2) The party referred to under Section 27, paragraph 1 shall be, for the purposes of the course of action stipulated by the chapter herein, the obligor.
- (3) An act default may not be waived under the course of action referred to in this Chapter, nor may a procedure be resumed or a new decision issued.

#### **Subchapter 2**

## **Execution by replacement discharge**

### **Section 119**

(1) Where the enforcement order subjects the obligor to the conduct of a work or other discharge, which may be performed also by a person other than the obligor, the administrative authority in charge of execution shall issue an execution order on the basis of which another person shall be appointed to conduct the work or discharge, if such person so agrees; the work or discharge shall be performed at the costs and risk of the obligor.

(2) In the appointment, the administrative authority in charge of the execution shall explicitly define the work or discharge which should have been, in accordance with the enforcement order, conducted by the obligor and the conduct of which is entrusted to another person.

(3) If, in association with the conduct of the execution, the necessity to relocate construction materials or things outside the premises or land of the obligor arises, and unless the obligor, during the conduct of the execution declares in writing that such things have been abandoned thereby,<sup>32)</sup> the administrative authority in charge of execution shall be obliged to safeguard the storage of such things for the period of six months and to inform the obligor to this effect and about the possibility to collect such things. The obligor shall be obliged to cover the costs of storage. Should the obligor fail to collect the things within the aforementioned timeline, they shall become the property of the state; where the execution is conducted by an authority of a territorial self-governance authority, they shall become the property of such territorial self-governance entity. If the obligor declares that he/she will abandon the things, they shall become the property of the state. Disposal of the things, if necessary, shall be carried out at the expense of the obligor.

(4) The administrative authority in charge of execution may, by means of a resolution, impose upon the obligor the obligation to pay the necessary costs or an advance payment thereof of a predefined amount to the administrative authority in charge of execution within a predefined timeline which may not be less than eight days of the date of the finality of the decision; this shall not prejudice the further course of action in the conduct of the execution.

## **Subchapter 3**

### **Execution by direct enforcement**

#### **Section 120**

Direct enforcement of an obligation shall be conducted particularly through vacating a real estate, construction, apartment, room or other premises (hereinafter referred to as "structure"), through seizing a movable property or through bringing a person before an authority.

#### **Vacating**

#### **Section 121**

(1) Where the enforcement order prescribes that the obligor must vacate the structure, the administrative authority in charge of the execution shall issue an execution order and conduct the execution. The administrative authority in charge of the execution shall advise the obligor at least five days in advance of the vacating. Furthermore, it shall advise to this effect also the municipality within the territory of which the structure to be vacated is located. The act of vacating shall be conducted in the presence of an invited person (Section 128).

(2) Where the enforcement order prescribes vacating of a structure which is in a condition immediately jeopardising the life or health of people<sup>33)</sup> the authorised official may, unless impossible to take another course of action due to lack of time, deliver the execution order to the obligor only upon the conduct of the execution. If the obligor is not present at the time of the act of vacating, the execution order shall be delivered thereto together with the official report on the vacating.

#### **Section 122**

(1) Where the authorised official finds out, upon vacating the structure, that the vacating of the structure concerns a person whose condition of health might be seriously jeopardised by the vacating, the conduct of the execution shall not be permissible. If no medical report is presented or if there are doubts regarding the correctness of such report, the authorised official shall request a report of a medical specialist.

(2) Where the structure or part thereof is in a condition immediately jeopardising the life or health of people, the administrative authority in charge of the execution shall always vacate it.

#### **Section 123**

(1) The execution shall be performed in such a manner that the authorised official shall

a) remove movable property belonging to the obligor and the members of his/her household as well as movable property, which, although belonging to another person, have been located in the vacated structure with the consent of the obligor from the vacated structure; and

b) exclude the obligor and any other person staying therein upon the right of the debtor from the vacated structure.

(2) Movable property removed from the vacated structure shall be handed over to the obligor or to any of the majors from the obligor's household.

## Section 124

(1) Should no one who could take the movable property be present during the vacating, or the take-over thereof is declined, a list of such movable property shall be drafted and shall be placed in custody with the municipality or another suitable custodian with the consent thereof, at the expense of the obligor. The administrative authority in charge of the execution shall advise the obligor as to in whose custody his/her movable property was placed, and the possibility to collect it.

(2) Should the obligor fail to collect the movable property with the custodian within six months of the date of placement into custody, the administrative authority in charge of execution shall sell it pursuant to the provisions on the sale of movable property as set forth by a special law.<sup>35)</sup>

(3) The proceeds of the sale shall be disbursed by the administrative authority in charge of the execution to the obligor after the deduction of the costs of custody, cash expenses arising from the sale of movable property and lump-sum costs of the sale; the lump-sum costs of the sale shall be 2,000 CZK. If the obligor declines in writing to take over the remaining proceeds, the remaining proceeds shall become a state budget income; where the execution is conducted by an authority of a territorial self-governance entity, the remaining proceeds shall become income of the budget of such territorial administrative entity. If the remaining proceeds are returned as undeliverable, or if it cannot be delivered for another reason, particularly if the address of the obligor's permanent residence is unknown, the remaining proceeds shall become a state budget income, unless claimed by the obligor within three years of the sale of the movable property; if the execution is conducted by an authority of a territorial self-governance entity, the remaining proceeds shall become the income of the budget of such territorial self-governance entity.

(4) Movable property the sale of which has been unsuccessful, shall become the property of the state. If the custodian refuses to take over the movable property, it shall become property of the state; where the execution is conducted by an authority of a territorial self-governance entity, it shall become the property of such territorial self-governance entity. Any disposal of the movable property, if necessary, shall be conducted at the expense of the obligor.

### **Seizure of movable property**

## Section 125

(1) Where the enforcement order prescribes that the obligor must surrender or provide movable property, the administrative authority in charge of execution shall issue an execution order for the conduct of the execution through seizure of movable property, which shall explicitly specify the movable property to be seized. An authorised official shall seize the movable property from the obligor or the person holding it, and shall hand it over to the person entitled to collect it; where there is no one to collect it, the administrative authority in charge of the execution shall arrange for its proper custody at the expense of the obligor. Section 124 shall likewise apply to such course of action.

(2) The execution order shall be delivered to the obligor by the authorised official upon the seizure of the movable property. If the obligor is not present at the time of the seizure of the movable property, the execution order shall be delivered to the obligor along with the official report on the seizure of the movable property. The administrative authority in charge of the execution shall not advise the obligor of the upcoming execution before the authorised official arrives at the site of seizure. Where the object of the execution is movable property kept on the records of a statutory registry, the execution order shall be delivered also by the person keeping such registry.

(3) Where an instrument is necessary for the use of the seized movable property, such instrument shall be taken from the obligor along with the seized movable property.

(4) Should the authorised official fail to find the movable property with the obligor, it shall determine by inquiry where the movable property is kept or what has happened to it. If the obligor or the person who is to surrender the movable property, unwilling to surrender it, the authorised official shall call on the person to provide reasons for the refusal.

(5) The authorised official shall draft an official report on the seizure of movable property which shall specify, in particular,

a) an identification of the movable property taken from the obligor or another person willing to surrender it, and, in case multiple items are concerned, an accurate list thereof, with information on the counts thereof, measures and weight, as applicable;

b) the obligor's statement as to where the movable property is located or, if applicable, a statement to the effect that the obligor refused to provide an explanation thereon;

c) the fact that the obligor or the person holding the movable property is not willing to surrender it, reasons for the refusal to surrender it, or, if applicable, refusal to give reasons.

## Section 126

### **Personal search and search of apartments and other rooms**

(1) During the seizure of movable property, the obligor shall be obliged to provide the authorised official with access to all places where the seized movable property might be located.

(2) If so required by the purpose of the conduct of the execution, the authorised official shall be authorised to carry out a personal search of the obligor and a search of the apartment (registered office, place of business) and other rooms of the obligor, as well as the obligor's cabinets or other containers located therein, in respect of which it is reasonable to anticipate that the movable property to be surrendered by the obligor is located therein; for these purposes the authorised official shall be authorised to gain access to the obligor's apartment or another room, or open or closed cabinets or other containers, if necessary.

(3) Any one in whose building the obligor has an apartment (registered office, place of business) or other rooms or premises shall be obliged to enable the authorised official to carry out a search of the apartment and other rooms or premises where the obligor has its things. Should such person fail to comply with this obligation, the authorised official shall be authorised to gain access to the place.

(4) Where the seized movable property is located with another person, such person shall be obliged to surrender it upon invitation by the administrative authority in charge of execution.

(5) In case it is reasonably suspected that the obligor or another person are hiding the movable property and if a call to surrender the hidden thing has been unsuccessful, the authorised official may carry out personal search.

(6) Searches shall be carried out in a considerate manner, particularly where personal searchers are concerned. A personal search shall be carried out by a person of the same sex. Upon request of the person to be searched, the personal search may be conducted only in the presence of an invited person (Section 128). The provisions of a legal regulation governing the authorities of a customs official shall adequately apply to the conduct of personal searches.

(7) In the seizure of movable property, the authorised official shall take measures necessary for the achievement of the purpose of the execution. Persons who grossly disturb the conduct of the act despite the authorised official's call for order, may be excluded by the authorised official from the site of the conduct of the act.

### **Bringing a person before an authority**

#### Section 127

Where execution is conducted by bringing a person before an authority, the execution order shall be delivered to bodies which are in charge of bringing the person before the authority; Section 60, paragraph 1, last sentence and paragraph 2 shall likewise apply.

### **Invited persons**

#### Section 128

An administrative authority may invite impartial persons to attend the conduct of an execution by direct enforcement in order to safeguard their presence in the conduct of a specific act. The rights and obligations of parties shall not apply to such persons.

### **Subchapter 4**

### **Executions through the imposition of coercive fines**

#### Section 129

(1) If it is impossible or impractical to carry out an execution by a replacement discharge or direct enforcement, the fulfilment of the obligation shall be enforced by gradual imposition of coercive fines up to the amount of costs of the replacement discharge, and if the replacement discharge cannot be carried out, up to the amount of 100,000 CZK. The administrative authority in charge of execution shall impose a coercive fine upon the obligor by means of a decision in which it shall prescribe that the obligor is to pay the fine within a timeline of no less than 15 days of the date of finality.

(2) Fines shall be collected and their execution conducted by the administrative authority in charge of execution that imposed them pursuant to a special law<sup>27)</sup>. The amount of the fine shall be determined by the administrative authority in charge of the execution with a view to the nature of the unfulfilled obligation. Income from fines shall be income of the budget from which the operation of the administrative authority in charge of execution which imposed the fine is covered. Paying the fine shall not release the obligor from the obligor's liability for the damage.

## **PART THREE**

## **SPECIAL PROVISIONS GOVERNING ADMINISTRATIVE PROCEDURE**

### TITLE I

### SPECIAL PROVISIONS GOVERNING ADMINISTRATIVE AUTHORITIES

#### Section 130

### **Jurisdiction of a public corporation's or other legal person's body**

(1) Where the law stipulates that a procedure is to be conducted by a territorial self-governance entity without specifying which of its authorities have jurisdiction over the acts, such authority shall be the regional authority where regions are concerned and the municipal authority where municipalities are concerned.

(2) Where the law stipulates that a procedure is to be conducted by another public corporation, without specifying which of its bodies has jurisdiction over the acts, the procedure shall be conducted by its executive body with general competence.

(3) Where the law stipulates that a procedure is to be conducted by another legal person, without specifying which of its bodies has jurisdiction over the acts, such body shall be its statutory body<sup>37)</sup> as per a special act or an employee appointed thereby; such appointment must be done in writing and notified to the administrative authority. This provision shall adequately apply to natural persons carrying out business.

### **Changes in jurisdiction**

#### **Section 131**

(1) A superior administrative authority may, upon instigation of a concerned administrative authority or upon request of a party, take a case over from its subordinate administrative authority by resolution and decide as a lower-instance administrative authority, if

a) the case concerns issues which, due to their exceptional complexity or irregularity, may be resolved only using outstanding expert knowledge;

b) the procedure involves a high number of parties (Section 144); or

c) it may be reasonably anticipated that the case will significantly influence the legal situation of the parties in administrative district of more than one subordinate administrative authority.

(2) A superior administrative authority may, by means of a resolution, appoint another concerned subordinate administrative authority with subject-matter jurisdiction within its administrative district to consider and decide upon a case, either upon instigation of the administrative authority that could, with a view to this paragraph, be appointed to consider and decide upon the case, or upon a party's request, if

a) there is reasonable cause to believe that the case will influence the legal situation of parties to the procedure within the district of the appointed administrative authority in a significantly greater degree than in the district of the concerned administrative authority; or

b) there is a need to join individual procedures into a common one (Section 140), in order to safeguard the necessary material accord and consistency of decisions.

(3) The provisions of paragraphs 1 and 2 shall not apply to authorities of territorial self-governance entities in the conduct of their autonomous powers.

(4) A superior administrative authority shall, by means of a resolution, appoint another subordinate administrative authority with subject-matter jurisdiction in its administrative district to consider and decide upon a case, if a subordinate administrative authority is not competent to consider and decide upon a case due to the exclusion of all officials (Section 14) of such authority or members of an authority which decides collectively (hereinafter referred to as a "collegiate body"); in such a case the superior administrative authority shall appoint an administrative authority the territorial district of which is contiguous with the administrative district of the non-competent administrative authority.

(5) The concerned administrative authority may, by means of a resolution, refer the case to a more suitable authority also in other situations. The referring administrative authority shall be obliged to request a prior approval of the administrative authority to which the case is to be referred. Such prior approval shall not be required if the applicant's address of permanent residence or registered office is within the territorial district of the administrative authority to which the case is to be referred, or the applicant stays within such territorial district. In respect of procedures regarding applications, this procedure shall be applied only upon request or with the approval of the applicant.

(6) When changing jurisdiction, administrative authorities shall take care to apply them only in justified cases and, if practicable, without burdening the parties by the procedure more than it would, should no change in jurisdiction occur.

(7) Changes in jurisdiction referred to under paragraph 1 and paragraph 2(a) shall be notified by public notice and parties shall be advised thereof in a suitable manner. In other cases, changes in jurisdiction may be notified by public notice, if considered reasonable by the administrative authority. Where a change in jurisdiction has been instigated or requested as referred to under paragraph 1 or 2, but the jurisdiction remains unchanged, the person instigating or requesting such change in jurisdiction shall be advised to this effect.

#### **Section 132**

Should, in the course of a procedure, the circumstances relevant for the determination of territorial or subject-matter jurisdiction in terms of the instance change, and unless stipulated otherwise by law, the procedure shall be completed by the administrative authority with original jurisdiction; the administrative authority which would otherwise assume jurisdiction shall be informed to this effect.

### **Disputes over subject-matter jurisdiction**

#### **Section 133**

(1) Where it is not possible to determine subject-matter jurisdiction in decision-making in the sphere of state administration pursuant to a special law, the first-instance procedure shall be carried out by the central authority within the powers of which the decided case lies, or, by the central administrative authority whose field of powers is the closest to the case decided.

(2) Where several administrative authorities consider themselves as having jurisdiction over a particular case, they shall be obliged to forthwith inform the next jointly superior administrative authority to this effect; such jointly superior administrative authority shall decide their dispute. Where no jointly superior administrative authority of the administrative authorities exists, the dispute regarding jurisdiction shall be considered by central administrative authorities which are superior to these administrative authorities. Where a dispute regarding jurisdiction among central administrative authorities is concerned, the course of action referred to under paragraph 3 shall be directly taken.

(3) Central administrative authorities shall be obliged to consider the case in a conciliation procedure which shall commence as of the date on which the proposal of the first one reaches the last one. Should they fail to arrive at a consensus within 15 days of the commencement of the conciliation procedure, a competence dispute among central administrative authorities shall arise; in such a case, they shall be obliged to forthwith bring an action to the Supreme Administrative Court.

(4) Where no administrative authority considers itself to have jurisdiction over the conduct of a procedure, a person who would be a party thereto or the administrative authority may bring an action to the court.<sup>38)</sup>

(5) The provisions of Sections 1 to 4 shall not apply to disputes between territorial self-governance entities in the conduct of their autonomous powers and disputes between territorial self-governance entities in the conduct of their autonomous powers and other administrative authorities.

(6) For the time over which jurisdiction is being determined as per paragraph 1 or the dispute referred to under paragraphs 2 to 4 lasts, timelines relevant to the conduct of acts within the procedure shall not progress.

### **Procedure before a collegiate body**

#### Section 134

(1) Unless specified otherwise by a special law, the procedure before a collegiate body shall be run by the chairperson, a chairing member or a member appointed by the body (hereinafter referred to as the "chair"). Resolutions, except for resolutions on whether a person is a party or not and resolution on terminating a procedure as well as acts which are not decisions shall be conducted by the chair autonomously. A collegiate body shall decide by a vote following a discussion. Unless stipulated otherwise by a special law, only the members of the collegiate body and the person who has been assigned with the drafting of the official report, unless drafted by any of the members, may participate in the discussion and voting. Each member of the collegiate body shall be entitled to file a proposal for the resolution of the collegiate body during the discussion before the vote is taken.

(2) A collegiate body shall have quorum if a simple majority of all of its members is present; the resolution of a collegiate body shall be adopted by a simple majority of the voting present members.

(3) The vote shall be conducted by the chair. Members shall take their votes individually; the chair shall be the last to take a vote. Where more than seven members are to vote, they may take their vote simultaneously. The official report on the voting of the collegiate body shall be signed by all of the present members and the person assigned to draft the official report; when viewing the dossier (Section 38), this official report shall be excluded therefrom.

(4) Objections referred to under Section 14, paragraph 2 shall be decided by the collegiate body as a whole by means of a resolution; the member of the collegiate body against whom the objection is directed, however, may not take a vote. Should the collegiate body have no quorum, the course of action set forth by Section 14, paragraph 4, sentence three shall be likewise applied.

(5) A collegiate body shall act in compliance with its rules of procedure in which it shall detail the conduct of the collegiate body.

### **Cooperation with the Police of the Czech Republic in the conduct of acts of an administrative authority**

#### Section 135

If there is a risk that a person will attempt to hinder or derail the conduct of an act of an administrative authority or if there is a danger imminent to persons or property, the administrative authority may ask the Police of the Czech Republic to provide cooperation of its members in the conduct of the act.

## TITLE II

### AUTHORITIES CONCERNED

#### Section 136

(1) Authorities concerned shall mean

a) authorities stipulated as such by a special law; and

b) administrative authorities and other public authorities with jurisdiction over the issuance of a binding opinion (Section 149, paragraph 1) or statements forming the basis for a decision of the administrative authority.

(2) In cases regarding the right of a territorial self-governance entity for self-governance, the territorial self-governance entities shall be in the position of authorities concerned.

(3) Authorities concerned shall provide the administrative authority running a procedure, with any and all information relevant for the procedure, unless an obligation stipulated by a special law is violated thereby.

(4) In association with the assessment of the question whether a procedure should be initiated, with a running procedure or with the conduct of surveillance, authorities concerned shall have the right to view a dossier and obtain copies of materials forming part of the dossier if these are relevant for the execution of their powers. In respect of other source materials for the issuance of a decision, authorities concerned shall provide their opinion if necessary for the fulfilment of their tasks or if they so reserve. Authorities concerned shall have the right to instigate the commencement of a review procedure.

(5) The administrative authority running a procedure and authorities concerned may, within the scope of their powers, perform joint acts, except for the issuance of the decision, or the results of an act by an authority concerned may be used in a procedure held before an administrative authority, if the administrative authority and the authority concerned so agree, and if no harm may be caused in respect of the rights of the parties to the procedure thereby.

(6) The provisions governing the settlement of jurisdiction disputes shall be adequately applicable to the solution of disputes between the administrative authority running the procedure and the administrative authorities which are authorities concerned, as well as among authorities concerned themselves regarding the solution of an issue which is the subject-matter of the decision-making, whereas in case no result is achieved in the conciliation procedure, the report on its course together with the proposals of individual central administrative authorities shall be, without unnecessary delay, submitted by the central administrative authority upon whose instigation the conciliation procedure was commenced to the government for solution. The provision of this paragraph shall not apply to the settlement of disputes with territorial self-governance entities, if the case pertains to the right of the territorial self-governance entity for self-governance. The provisions of Section 133, paragraph 6 shall apply likewise.

### TITLE III

## SPECIAL PROVISIONS GOVERNING THE COURSE OF ACTION PRIOR TO THE COMMENCEMENT OF A PROCEDURE

### Section 137

#### Explanations

(1) In order to check reports, other instigations and own findings, which might be a cause for opening a procedure ex officio, the administrative authority shall obtain necessary explanations. Furthermore, an administrative authority shall obtain explanations necessary for the determination of the anticipated scope of the source materials for the decision, if so stipulated by a special law. An explanation may be required thereby only where the relevant facts cannot be obtained through any other official course of action. The provisions on summons (Section 59) and bringing a person before an authority (Section 60) shall likewise apply to the obtaining of explanations. Provisions concerning refusal to cooperate in the taking of evidence and prohibited interrogation shall likewise apply to refusal to provide an explanation.

(2) Any one person shall be obliged to provide an administrative authority with an explanation as per paragraph 1. Whoever refuses to provide an explanation without any reasons, may be imposed a procedural fine (Section 62) upon by the administrative authority in an amount of up to 5,000 CZK.

(3) A report on the provision of explanation shall be drafted which shall contain data allowing for the identification of the person conveying the fact, referred to under Section 18, paragraph 2, an account of the facts, the date, name, surname and position or service number and signature of the authorised official.

(4) A report on the provision of explanation may not be used as evidence.

### Section 138

#### Preservation of evidence

(1) Prior to the commencement of a procedure, it is possible, either ex officio or upon request of a prospective party, to preserve evidence in respect of which there is reasonable concern that it will not be possible to take it at a later date at all or only with major difficulties and if it may be reasonably anticipated that the taking of such evidence may substantially influence the solution of the case to be decided. The administrative authority shall issue a resolution on the preservation of evidence which shall be notified to persons directly affected thereby. If there is danger in delay, the resolution may be notified also ex post, except for notification to persons who are required to provide personal cooperation in the conduct of the act.

(2) The administrative authority which would have jurisdiction over the procedure or the administrative authority in whose district the jeopardised evidence is present shall have jurisdiction over the preservation of the evidence. The person who may be an authorised official shall be present during the preservation of the evidence.

(3) Unless there is danger in delay, the prospective parties that are known to the administrative authority or the representatives or agents thereof shall have the right to attend the preservation of evidence and to provide their opinion thereon; the administrative authority shall advise them to this effect.

(4) An official report on the preservation of evidence shall be drafted. Taking evidence through such official report shall be governed by the provision of Section 53, paragraph 6. Where it is impossible to preserve an instrument itself, a copy thereof shall be taken to which the administrative authority shall attach a verification clause. Where evidence through an expert opinion is to be preserved, the course of action prior to the commencement of the procedure shall be restricted to the appointment of the expert, whereas the expert opinion shall be read or the expert heard only in the course of the procedure.



## Section 139

### **Preliminary information**

(1) Where so stipulated by a special law, any one person may request an administrative authority with jurisdiction for the issuance of a decision or a conduct of a conditioning act to provide a written preliminary information thereto as to

- a) whether a particular intention may be carried out only providing a decision is issued or a conditioning act conducted; and
- b) what criteria will be relevant to the assessment of the application for the issuance of a decision or conduct of a conditioning act or under what preconditions the application may be granted.

(2) Preliminary information may not concern the solution of an issue in respect of which the administrative authority is not empowered to decide (Section 57, paragraph 1). If the person applying for preliminary information fails to eliminate the defects of its submission, the administrative authority shall not provide the preliminary information without any further action.

(3) Preliminary information may be requested only once a for a particular case. Preliminary information may be requested also after the commencement of the procedure.

(4) The validity of the preliminary information may be restricted by the administrative authority. Preliminary information shall cease to be valid if a conflict between the preliminary information and a legal regulation which took effect only after the issue of the former has arisen or if circumstances relevant for the content of the preliminary information have changed. Preliminary information shall be invalid from the very beginning, if issued on the basis of false, incomplete, biased data or data concealed by the applicant.

## TITLE IV

### SPECIAL PROVISIONS GOVERNING CERTAIN PROCEDURES

## Section 140

### **Joint procedure**

(1) Upon request of a party or ex officio, an administrative authority may, by means of a resolution, join various procedures over which it has jurisdiction, if they pertain to the same subject-matter of the procedure or are otherwise factually related and/or concern parties, unless prevented by the nature of the case, purpose of the procedure or protection of the rights or legitimate interests of the parties. A procedure may be joint even in the course of the procedure providing no risk of harm for any of the parties arises therefrom.

(2) An administrative authority shall conduct a joint procedure also in respect of a joint application of several applicants or joint application pertaining to the same subject-matter of the procedure or other factually related issues. A joint procedure shall include also the issuance of a conditioning act for which the administrative authority is competent.

(3) Procedures on individual matters may be, by means of a resolution, excluded from the joint procedure and decided on autonomously, if it may speed up the procedure or for another reason.

(4) The resolution referred to under paragraphs 1 and 3 shall only be noted in the dossier.

(5) A single dossier shall be created for a joint procedure. Where matters are joined in the course of a procedure, a joint dossier shall be created the content of which shall, moreover, include the dossiers of the matters joint. Copies of all parts of a dossier kept for a joint procedure shall be included in a dossier created for a procedure which has been excluded from the joint procedure as per paragraph 3, if relevant to the case considered in the procedure.

(6) The issue of who the parties are, shall be assessed for the purposes of application of Section 27, paragraph 1 in a joint procedure as if the procedures were carried out autonomously.

(7) A joint decision shall be issued for a joint procedure. Where various appellate administrative authorities have jurisdiction to review the verdicts of a joint decision in an appeal procedure, several decisions shall be issued, of which each shall include those verdicts in respect of the review of which a single concerned appellate administrative authority has jurisdiction. Where the verdicts of such joint decisions condition each other, the appeal against the decision with a conditioning verdict shall have a suspensory effect also in respect of a decision with a follow-up verdict. Where the appeals have challenged both such decisions and the case cannot be handled as per Section 87, the first-instance administrative authority shall suspend the appeal procedure challenging the decision with the follow-up verdict until the appeal procedure challenging the decision with the conditioning verdict is completed; the provisions of Section 57, paragraph 3 shall apply likewise. Where the appeal challenged solely the decision with the conditioning verdict, the decision with the follow-up verdict shall become final as of the date of finality of the decision on appeal against the decision with the conditioning verdict; nevertheless, revocation or alteration of the decision with the conditioning verdict shall be a case for resuming the procedure.

## Section 141

### **Contentious procedure**

(1) In a contentious procedure, an administrative authority addresses disputes arising from public contracts (Part Five) and, where special laws so provide, cases of disputes arising from civil, labour, family or business relations.

(2) A contentious procedure shall be commenced upon a petition.

(3) The parties to the procedure shall be the petitioner and the respondent. The petitioner as well as the respondent shall have the status of parties as referred to under Section 27, paragraph 1. Persons having an interest in the outcome of the procedure may request to be secondary parties; such persons shall have the status of parties as referred to under Section 27, paragraph 2, nevertheless, their appeal against the decision on the case shall be permissible only if the appeal is lodged by the petitioner or by the respondent.

(4) In a contentious procedure, the administrative authority shall rely on evidence proposed by the parties. Where the proposed evidence is not sufficient for the determination of the situation, the administrative authority may take further evidence. If the parties fail to request evidence to support their respective allegations, in determining the situation, the administrative authority shall rely upon evidence taken. The administrative authority may also recognise identical allegations of the parties to be factual findings.

(5) A contentious procedure shall proceed pursuant to Section 64, paragraph 2 only if both the petitioner and the respondent so request.

(6) In a contentious procedure, the administrative authority may hear a party unless the fact to be evidenced cannot be proved in any other manner. Provisions on the interrogation of a witness shall likewise apply.

(7) Through a decision in a contentious procedure, the administrative authority shall either completely or partially grant the petition or completely or partially dismiss it.

(8) In a contentious procedure, the parties may reach a settlement which shall be subjected to an approval by the administrative authority. The administrative authority shall approve the settlement unless it is contrary to legal regulations or a public interest.

(9) In a contentious procedure, the appellate administrative authority shall review the challenged decision only within the scope of objections specified in the appeal.

(10) Where a provisional measure has been revoked in a contentious procedure or has become ineffective due to reasons other than the satisfaction of the petition or because a right of the party upon whose request the provisional measure was ordered has been satisfied, the party upon whose request the provisional measure was ordered shall be obliged to compensate any harm to the one who suffered it as a result of the provisional measure. This shall be decided, upon request, by the administrative authority that ordered the provisional measure.

(11) In a contentious procedure, the administrative authority shall award the party fully satisfied in the case the reimbursement of costs necessary for the effective application or defence of a right against the party who was not successful in the case. Where the party succeeded in the case only partially, the administrative authority may divide the reimbursement of costs proportionately or decide that none of the parties are entitled to reimbursement of costs. Although a party may have been only partly successful in the case, the administrative authority may decide on complete reimbursement of the party's costs of the procedure, if such a party was unsuccessful in respect of a relatively insignificant part or if the decision on the amount to be paid depended on an expert opinion or the discretion of the administrative authority.

#### Section 142

##### **Procedure to determine a legal relationship**

(1) Within the scope of its subject-matter and territorial jurisdiction, an administrative authority shall decide, upon request of any one person who evidences that such decision is necessary for the application of the person's rights, whether a particular legal relationship was established and when it was established, whether it still lasts or ceased to exist and when it ceased to exist.

(2) An administrative authority shall not proceed as stipulated by paragraph 1, if it may issue a certificate of the establishment, existence or termination of a particular legal relationship or if it may consider the issue of the establishment, existence or termination of such legal relationship within the scope of another administrative procedure.

(3) The provisions of Section 141, paragraph 4 shall likewise apply to evidence in a procedure to determine a legal relationship.

#### Section 143

##### **On-site procedure**

(1) Authorised officials may impose obligations by a decision on-site

a) if there is an immediate jeopardy to the life or health of people, if there is an immediate risk of a severe material damage or if a sudden accident happens;<sup>39)</sup>

b) if there is a reasonable cause to believe that a person upon whom an obligation is to be imposed would try to avoid its fulfilment;

c) where a security for fulfilment of an obligation is to be pledged (Section 147), a provisional measure (Section 61) or a procedural measure (Sections 62 and 63) has been imposed; or

d) in a procedure following the execution of surveillance.

(2) A precondition for imposing an obligation on site is the determination of the situation. The decision shall be declared orally; its written execution shall be delivered post hoc without unnecessary delay. Unless stipulated otherwise by a special law, appeal against a decision declared in the aforementioned manner shall have no suspensory effect. A written confirmation of the oral declaration of the decision shall be always issued (Section 67, paragraph 3) and provided to the party.

(3) In an on-site procedure, the authorised official shall pay special attention to preserve the rights and legitimate interests of the parties.

(4) The provisions of paragraphs 1 to 3 shall not apply to an on-site issuance of an order (Section 150, paragraph 5).

(5) In a procedure following the execution of surveillance conducted by the same administrative authority the commencement of an ex officio procedure may be declared on the site where the surveillance takes place.

#### Section 144

##### **Procedure with a large number of parties**

(1) Unless stipulated otherwise by a special law, a procedure with a large number of parties shall mean a procedure involving more than 30 parties.

(2) Parties to a procedure with a large number of parties may be advised of the commencement of the procedure by means of a public notice. The procedure shall commence upon the expiry of the timeline set forth by the public notice; such timeline must not be less than 15 days of the date of publication of the public notice on the official notice board.

(3) In a procedure with a large number of parties, the invitation referred to under Section 36, paragraph 3 for parties under Section 27, paragraph 2 may be replaced by the publication of the draft operative part and a rationale of the decision, stating the timeline, place and method for the filing of objections against the draft and proposals of supplementation of the procedure. Objections which might have been employed by a party previously in the procedure may not be filed after the publication of the draft.

(4) Where a custodian is appointed in a procedure with a large number of parties, a single person may be appointed a custodian for several parties the interests of which are in accord.

(5) In a procedure with a large number of parties, the administrative authority shall advise the parties about a filed appeal by means of a public notice, in which it shall stipulate the timeline for the filing of opinions which must not be less than five days long. The person filing an appeal shall not be obliged to file the appeal in the necessary number of counterparts as per Section 82, paragraph 2.

(6) In a procedure with a large number of participants, written documents, including written documents referred to under Section 19, paragraph 4, may be delivered by means of a public notice. This shall not apply to parties to procedure referred to under Section 27, paragraph 1, who are known to the administrative authority; individual deliveries shall be made to those parties to the procedure.

#### Section 145

##### **Procedures with application delivery time-order relevance**

(1) Where the law stipulates that the time order of delivery of an application is relevant to the conduct of the procedure, the administrative authority shall note the time details of such delivery, specifying also the hour and minute of delivery. Where several applications have been delivered at the same time, the detail specifying the time when the mail containing the application was accepted for postal delivery shall be decisive. In case of doubts, applications submitted to the administrative authority in person shall have preference. Should it be impossible to determine the time order of delivery, it shall be determined by drawing a lot; an official report thereon shall be drafted.

(2) The procedure shall be conducted for the application(s) of the best time-order ranking. Procedures for other applications shall be suspended by the administrative authority until the decision on the aforementioned application(s) is final. Where the administrative authority grants such application(s), it shall terminate the procedure on other applications by means of a resolution. If the administrative authority declines any of the applications, it shall continue to hold the procedure for the next application in the order; the provisions of the previous sentences shall likewise apply.

#### Section 146

##### **Procedure on the selection of an application**

(1) A procedure conducted pursuant to a special law in the form of selection of the application which best meets the predefined requirements, or selection of several such applications, where appropriate, shall be conducted as a joint procedure for all applications. None of them may be excluded from the joint procedure.

(2) A procedure conducted in the form of selection referred to under paragraph 1 shall commence through publication referred to under Section 25 and, concurrently, shall be announced through mass media. At the same time, a timeline of the filing of applications shall be announced, which may not be less than 30 days long, unless a special law stipulates otherwise, as well as the criteria for the assessment of filed applications, or, if appropriate, rules of the course of action if the procedure in the form of selection is to be conducted in more than one round. The procedure shall commence on the fifteenth day of the publication of the written document pursuant to Section 25, paragraph 2, providing all of the aforementioned data were published within this timeline also in at least two mass media commonly accessible within the territory of the Czech Republic. After the expiry of the timeline, no amendments to applications shall be allowed and act default shall not be waived.

(3) The administrative authority shall suspend another previously commenced procedure by means of a resolution, if, prior to the commencement of a procedure referred to under paragraph 2 an application on the case to be decided in the form of selection is delivered thereto; at the same time, it shall notify the applicant that such procedure is to commence; the administrative authority shall continue the procedure on this application within the scope of the procedure on selection.

(4) The dossier may be viewed only after the expiry of the timeline for the submission of applications referred to under paragraph 2.

(5) In a procedure on the selection of an application, the timeline for the issuance of a decision (Section 71) shall be extended by the time equal to the timeline for the submission of applications in a procedure conducted in the form of selection referred to under paragraph 2.

(6) In a procedure conducted in the form of selection as per paragraph 1, the administrative authority shall decide on the basis of a recommendation of a commission consisting of at least three members appointed by the head of the administrative authority; the commission shall decide by a resolution adopted by a majority of all of its members; the provisions of Section 14 shall likewise apply.

## TITLE V

### SPECIAL PROVISIONS ON SAFEGUARDING THE COURSE AND PURPOSE OF A PROCEDURE

#### Section 147

##### **Security for fulfilment of an obligation**

(1) An administrative authority may accept, upon request of a party, or in cases stipulated by a special law impose the obligation upon a party to lodge a monetary or non-monetary security for the fulfilment of obligations that may be imposed thereupon in the procedure, if it may facilitate the purpose of the procedure.

(2) In a procedure regarding an application an administrative authority may accept, upon request of a party, or in cases stipulated by a special law impose the obligation upon a party to lodge a monetary or non-monetary security for the fulfilment of an obligation that may arise for the party as a result of application of an entitlement arising from the decision, if it may facilitate the purpose of the procedure. If the applicant fails to lodge the security accepted by the administrative authority upon request of the former, within a predefined timeline, the administrative authority shall terminate the procedure.

(3) The decision about acceptance or imposition of a security shall be notified solely to the party concerned. An appeal from such decision shall have no suspensory effect; it may be filed only by the party to whom the decision is notified. The amount of the imposed monetary security or the value of a non-monetary security must not be apparently disproportionate in relation to the scope of the obligation the imposition or existence of which may be anticipated. In the collection and refund of a monetary security, the administrative authority that accepted or imposed the security shall proceed pursuant to a special law.<sup>27)</sup> A non-monetary security shall be deposited with the administrative authority; it may transfer it for custody or storage to a legal or natural person.

(4) The administrative authority shall terminate a procedure regarding an application, if the applicant fails to lodge the security for the fulfilment of an obligation that would arise for the party as a result of application of entitlement arising from the decision and which the administrative authority accepted upon request of the party pursuant to paragraph 2.

(5) The security shall be returned if the imposed obligation has been fulfilled as well as in case no obligation has been imposed in the procedure. If their obligation secured with the security is not fulfilled within its timeline, the monetary security shall be forfeited for the benefit of the person who would be entitled as a result of an execution.

(6) Where a non-monetary security is concerned, the administrative authority shall decide on the satisfaction of such claim through the sale of the security as per a special law.<sup>35)</sup> Should there be any balance remaining after the deduction of the costs of valuation<sup>40)</sup> and sale, it shall be returned to the person who lodged the security.

## TITLE VI

### SPECIAL PROVISIONS GOVERNING SOME DECISIONS

#### Section 148

##### **Interlocutory and partial decisions**

(1) If permissible with a view to the nature of the case and if reasonable, an administrative authority may issue

a) an interlocutory decision through which it decides on the substance of the case, particularly in a contentious procedure; or

b) a partial decision through which it usually decides on the legal relations of some of the parties only or decides only on some of the rights and/or obligations which are being decided in the procedure.

(2) Once an interlocutory or partial decision becomes final, the administrative authority shall issue a decision through which it shall decide on the rest of the case.

(3) A party may seek the issuance of an interlocutory or partial decision as part of protection from inaction of the administrative authority (Section 80). The superior administrative authority may order that the administrative authority issue an interlocutory or partial decision, or it may issue it itself, also concurrently with another measure against inactivity.

## Section 149

### **Decision conditioned by a binding opinion**

(1) A binding opinion is an act conducted by an administrative authority under the law which does not constitute an autonomous decision in an administrative procedure and the content of which is binding for the operative part of the decision of the administrative authority. Administrative authorities with jurisdiction to issue a binding opinion shall be the authorities concerned.

(2) An administrative authority shall, by ways of a resolution, suspend a procedure, if it learns that a procedure within which a binding opinion is to be issued, is being conducted.

(3) If a binding opinion has been issued in the course of a procedure regarding an application, which does not allow for the granting of the application, the administrative authority shall take no further evidence and shall decline the application.

(4) Where an appeal is directed against the content of a binding opinion, the appellate administrative authority shall request a confirmation or alteration of the binding opinion from the administrative authority superior to the administrative authority with jurisdiction for the issuance of the binding opinion. It shall send the appeal along with the statement of the first-instance administrative authority and with the statements of parties to such administrative authority. For the time when the administrative authority superior to the administrative authority with jurisdiction for the issuance of the binding opinion considers the case, the timeline referred to under Section 88, paragraph 1 shall not run.

(5) An illegitimate binding opinion may be revoked or altered within a review procedure, over which jurisdiction is held by the administrative authority superior to the administrative authority that issued the binding opinion. Where an administrative authority, in its official operation, finds out that another administrative authority issued an illegitimate binding opinion, it shall file an instigation with the administrative authority with jurisdiction over a review procedure and shall wait for its decision.

(6) Revocation or alteration of a binding opinion shall constitute grounds for resuming a procedure in case where a decision which was conditioned by the binding opinion has become final.

## Section 150

### **Order**

(1) Obligations in an ex-officio procedure and in a contentious procedure may be imposed by means of a written order. An order may be issued by an administrative authority if it finds the facts identified sufficient; the issuance of an order may be the first act within a procedure.

(2) In a procedure for the issuance of an order, the only source material may be a control report drafted pursuant to a special law by the same administrative authority with subject-matter and territorial jurisdiction over the administrative procedure following the control investigation, if such report has been drafted by the person who may be the authorised official and if the controlled person has been acquainted with the content of the report or has been duly invited to acquaint itself with the content of the report or if, in compliance with law, the objections of the controlled persons against the content of the report have been properly settled and if no doubts in respect of the content of the report exist for any other reason.

(3) The person upon whom an obligation is imposed may lodge a statement of opposition against the order within the timeline of eight days of the notification of the order. The submission of the statement of opposition shall revoke the order and the procedure shall continue. The timelines for the issuance of a decision shall begin to run again as of the date of the submission of the statement of opposition. A statement of opposition may not be taken back. A statement of opposition shall be lodged with the administrative authority that issued the order. An order against which no statement of opposition has been lodged shall become a final and enforceable decision.

(4) An order shall contain an advice in which the administrative authority shall state that a statement of opposition may be lodged against the order, the timeline within which this may be done, the date when such timeline begins to run, and the administrative authority with whom the statement of opposition may be lodged.

(5) Where the party is present and fully acknowledges the reasons for the issuance of the order, the situation shall be deemed evidenced and the order may be issued on site, if it is to impose an obligation for monetary payment of up to 10,000 CZK or an obligation of non-monetary performance that may be fulfilled by the party immediately on site. The rationale of the order may be replaced with a statement of the party signed in the party's own hand to the effect that the party agrees with the imposition of the obligation. Upon signing of the statement, the order shall become a final and enforceable decision. The party shall be provably advised to this effect in advance.

## Section 151

### **Issuance of a document**

(1) Where an administrative authority fully grants an application for the conferring of a right the existence of which is certified by means of a document stipulated by law, it shall be possible to issue only such document instead of the written execution of the decision.

(2) The issuance of the document shall be recorded in the dossier, with particulars referred to under Section 67, paragraph 2. In the record, the rationale shall be replaced with a list of source materials for the decision.

(3) Upon the date of receipt of the document by the party the decision shall become final and legally effective.

(4) Where a decision is revoked after its finality, the issued document shall cease to be valid.

## TITLE VII

### SPECIAL PROVISIONS GOVERNING REVIEWS OF DECISIONS

#### Section 152

##### **Remonstrance**

(1) A remonstrance may be filed against a decision issued by a central administrative authority, minister or the head of another central administrative authority in the first instance.

(2) A remonstrance shall be decided by a minister or the head of another central administrative authority.

(3) A draft of the decision referred to under paragraph 2 shall be submitted to the minister or to the head of another central administrative authority by the remonstrance commission. The remonstrance commission shall have at least five members. The chair and other members of a remonstrance commission shall be appointed by a minister or the head of another central administrative authority. Most of the members of a remonstrance commission shall be experts who are not employees of the central administrative authority. The provisions of Sections 14 and 134 shall likewise apply, but the remonstrance commission may act and adopt resolutions in at least five-member boards and most of the members present must be experts who are not the employees of the central administrative authority.

(4) Unless precluded by the nature of the case, a remonstrance procedure shall be governed by the provisions on appeals.

(5) Unless stipulated otherwise by a special law, in a remonstrance procedure

a) a decision may be revoked or altered, if this fully satisfies the remonstrance and if no harm may arise therefrom to any of the parties, unless all of those concerned express their consent therewith;

b) the remonstrance may be dismissed.

#### Section 153

##### **Satisfying parties after filing actions in judicial administrative systems**

(1) If a claimant seeks, through administrative judicial action,

a) revocation of a decision of an administrative authority, it may be satisfied by altering or revocation of such decision in a review procedure;

b) declaration of nullity of a decision of an administrative authority for reasons referred to under Section 77, paragraph 1, it may be satisfied by a declaration of nullity of the decision;

c) declaration of nullity of a decision of an administrative authority for reasons other than those referred to under Section 77, paragraph 1, it may be satisfied by the issuance of a decision or referring the case if the administrative authority against which the action lies does not have jurisdiction over the issuance of the decision; in the issuance of the decision, the course of action outlined under Section 102 shall be followed;

d) that a penalty imposed by the decision of an administrative authority be reduced or waived, it may be satisfied by the issuance of a new decision.

(2) Jurisdiction over the procedure referred to under paragraph 1 shall lie with the administrative authority against which the action lies. It may issue a decision only with the approval of a superior administrative authority; in case it is necessary to complement the procedure prior to the issuance of the decision, approval of the superior administrative authority with the commencement of the procedure must be sought. The decision must not alter the rights or obligations of other parties arising from the decision against which the action lies, unless they express their consent therewith. If the claimant notifies the court that he has been satisfied, it shall be considered the claimant's waiver of the right for appeal or remonstrance; other parties shall not have the right to file an appeal or remonstrance, either. The decision of the administrative authority against which the action lies issued as per paragraph 1 shall become final as of the date of finality of the court decision on the termination of the procedure regarding the action. Review procedure against such decision of the administrative authority against which the action lies shall not be permissible.

## PART FOUR

### STATEMENTS, CERTIFICATES, AND NOTIFICATIONS

#### Section 154

Where an administrative authority issues a statement, certificate, executes verification or makes a notification relevant for the persons concerned, it shall proceed pursuant to the provisions of this Part, pursuant to the provisions of Part One, and likewise pursuant to the following provisions of Part Two: Section 10 to Section 16, Section 19 to Section 26, Section 29 to Section 31, Section 33 to Section 35, Section 37, Section 40, Section 62, Section 63, and likewise pursuant to the following provisions of Part Three: Section 134, Section 137 and Section 142, paragraphs 1 and 2; other provisions of this Act shall be applied adequately wherever necessary.

#### Section 155

(1) Unless precluded by the nature of the statement, certificate or notification, particularly where it is not necessary to examine the facts or draw on records kept by a particular administrative authority, such statement, certificate or notification may be issued or executed by any administrative authority with subject-matter jurisdiction.

(2) If an administrative authority has been asked to issue a certificate or verification and if all of the preconditions of the conduct of the required act have been met, the administrative authority shall perform such act without any further action.

(3) If an administrative authority finds out that a statement or certificate cannot be issued or a verification executed or a notification made, it shall be obliged to advise the person concerned upon request to this effect and to provide the reasons resulting in such conclusion.

#### Section 156

(1) Where a statement, certificate or notification of an administrative authority suffers from defects which may be corrected without causing harm to any of the persons concerned, the administrative authority shall correct them by means of a resolution which shall be only noted in the dossier.

(2) A statement, certificate or notification of an administrative authority which is contrary to legal regulations and which cannot be corrected as referred to under paragraph 1, shall be revoked by a resolution of an administrative authority that issued or executed them, taking effect on the date when the revoked statement or certificate was issued or a notification made, unless another course of action is set forth by law; such resolution may be issued at the time when the effects of the statement, certificate or notification last. This course of action shall be adequately governed by the provisions of Title IX, Part Two on review procedures.

#### Section 157

Where no harm is caused by such action to any of the persons concerned, the administrative authority may declare by a resolution that a statement, certificate or notification and/or null decision which exhibits the particulars of another act is the act the particulars of which it meets, if the administrative authority has jurisdiction over the conduct or issuance of both of the acts concerned.

#### Section 158

(1) The provisions of this Part shall likewise apply to cases where the administrative authority conducts other acts not regulated by Parts One, Three, Five or Six or by this Part.

(2) The provision of Section 156, paragraph 2 shall adequately apply also to acts conducted by an administrative authority in the course of action referred to under parts Two, Three, Five or Six, the revocation of which is not specifically regulated.

### **PART FIVE**

### **PUBLIC CONTRACTS**

#### Section 159

(1) A public contract is a bilateral or multilateral act which establishes, alters or cancels rights and obligations in the sphere of public law.

(2) A public contract must not be contrary to legal regulations, must not bypass legal regulations and must be consistent with the public interest.

(3) Entering into a public contract whose party is an administrative authority must not diminish the trustworthiness of public administration, must be purposeful and, when entering into the contract, the administrative authority must set as its objective the fulfilment of public administration tasks.

(4) A public contract shall always be assessed on the basis of its actual content.

#### **Types of public contracts**

#### Section 160

(1) The state, a public corporation, other legal persons established by law and legal and natural persons discharging delegated powers in the sphere of public administration under the law may, for the purposes of fulfilment of their tasks, enter into public contracts with each other.

(2) Actions carried out on behalf of the state are governed by special laws.<sup>41)</sup>

(3) Administrative authorities which are organisational units of the state may, in their mutual relations or relations with other public authorities or other organisational units of the state, likewise apply the provisions of this Part.

(4) Disputes arising from agreements concluded pursuant to paragraph 3 shall be addressed by the administrative authority immediately jointly superior to the administrative authorities which are parties to the respective contract. Where no such administrative authority exists, the dispute arising from an agreement shall be addressed by the central administrative authorities superior to the respective administrative authorities.

(5) Public contracts the subject-matter of which is the execution of state administration, may be concluded by and between persons referred to under paragraph 1 only if so provided for by a special law and only with an approval of the superior administrative authority; the superior administrative authority shall assess the public contract and the content thereof from the perspective of compliance with legal regulations and the public interest.

(6) Territorial self-governance entities may conclude public contracts on the fulfilment of tasks implied by their autonomous powers in the execution of public administration with each other only if a special law so provides.

#### Section 161

(1) Where a special act so provides, an administrative authority may enter into a public contract with a person who would be a party referred to under Section 27, paragraph 1, if a procedure governed by Part Two was conducted, even instead of the issuance of a decision. A public contract shall become effective only if other persons who would be parties as per Section 27, paragraph 2 or 3 express their consent. In this respect, the administrative authority shall proceed as per the provisions governing consent of third parties (Section 168).

(2) A public contract may be concluded also after a procedure has been commenced as per Part Two. After the conclusion of the public contract the administrative authority shall terminate the procedure by means of a resolution.

#### Section 162

(1) Those who would be parties referred to under Section 27, paragraph 1, if a procedure referred to under Part Two was held, or those who are parties to such procedure, may conclude a public contract on the transfer or method of execution of their rights or obligations, unless precluded by the nature of the case or unless a special law stipulates otherwise. The conclusion of such public contract shall be preconditioned by an approval of the administrative authority, which shall assess the public contract and the content thereof with a view to compliance with legal regulations and the public interest.

(2) Should an administrative authority join a public contract, it shall be construed as having approved of the conclusion of the public contract.

### Entering into public contracts

#### Section 163

(1) The expression of will executed in writing, aimed at the conclusion of a public contract, which is intended for one or more specific persons, shall be a proposal for the conclusion of a public contract (hereinafter referred to as a "proposed contract"), if adequately specific and reflecting the will of the person making such proposal (hereinafter referred to as a "contract proponent ") to be bound thereby in case of its acceptance.

(2) The proposed contract shall be effective as of the date it is delivered to the person for whom it is intended. The proposed contract may be cancelled by the contract proponent, if the expression of cancellation reaches its addressee sooner than or at least concurrently with the proposed contract; this shall apply even if the proposed contract is irrevocable.

(3) A proposed contract shall expire

a) upon the expiry of the timeline specified therein for acceptance, if the proposed contract has not been accepted within such timeline;

b) where no timeline for acceptance has been determined, upon the expiry of a period of time adequate with a view to the nature of the proposed public contract and to the speed of the means used by the contract proponent for the sending of the proposed contract; or

c) upon the point of time when the expression of refusal of the proposed contract is delivered to the contract proponent.

(4) Candidates may be invited to submit a proposed contract by way set forth under Section 146, paragraph 2. The provisions of Part Three governing procedures in the form of a selection shall likewise apply.

#### Section 164

(1) A public contract must be executed in writing and the expressions of will of all parties shall be provided in the same instrument.

(2) Where the parties to the contract are present at the same time, the public contract shall be concluded upon the time of attachment of the signature of the last party to the contract. Where the parties are not present at the same time, the public contract shall be concluded at the point of time when the proposed public contract with attached signatures of other persons for whom it has been intended is delivered to the contract proponent.

(3) Where the law stipulates that an approval of an administrative authority is necessary for the conclusion of a public contract, the public contract shall be concluded upon the date on which such approval becomes final. The administrative authority which granted its approval with the conclusion of the public contract shall publish the public contract on its official notice board.



(4) Where the administrative authority requires a translation of a public contract regarding matters of national minorities executed in the language of the members of the national minority, the costs of the translation shall be covered by the administrative authority upon the fulfilment of conditions set forth by Section 16, paragraph 4.

#### **Review of compliance of a public contract with legal regulations**

##### Section 165

(1) Compliance of a public contract with legal regulations may be reviewed ex officio. A party to a public contract which is not an administrative authority may file a motion for the conduct of a review procedure within 30 days of the date when it learned of the reason for the commencement of the review procedure.

(2) A public contract concluded contrary to legal regulations shall be revoked by the administrative authority.

(3) Where only certain provisions of a public contract are contrary to legal regulations, only such provisions shall be revoked, unless the nature of the public contract or the content thereof or the circumstances under which it has been concluded imply that these are not severable from the other provisions.

(4) Revocation of public contracts concluded pursuant to Section 160 or Section 161 and/or revocation of their provisions shall not apply to acts executed in respect of third parties by a party to the contract in the execution of powers taken over from another party to the contract on the basis of this public contract. Following the finality or provisional enforcement of a decision issued as per paragraph 2 or 3 the powers regarding these matters shall pass onto the administrative authorities which had jurisdiction over the conduct of such acts prior to the conclusion of the revoked public contract, or, where applicable, onto administrative authorities who gained such jurisdiction in the meantime due to a change in the circumstances decisive for the determination of jurisdiction. This shall likewise apply also to cases of withdrawn approval for the conclusion of a public contract as per Section 160.

(5) Where public contracts concluded under Section 160 or Section 161 are concerned, jurisdiction over the review of compliance of the public contract with legal regulations shall lie with the administrative authority authorised to address disputes arising from the public contract (Section 169, paragraph 1); where public contracts referred to under Section 162 are concerned, such jurisdiction shall lie with the administrative authority superior to the administrative authority whose approval is required for the conclusion of the public contract.

(6) Parties to the procedure referred to under paragraphs 1 to 5 shall be the parties to the contract and, in respect of public contracts referred to under Section 162, also the administrative authority whose approval is required for the conclusion of the public contract.

(7) Unless stipulated otherwise under paragraphs 1 to 6, the provisions governing review procedures shall likewise apply to the review of compliance of a public contract with legal regulations, but the administrative authority shall not be bound by the timelines referred to under Section 96, paragraph 1 and Section 97, paragraph 2; the provisions of Section 99 shall adequately apply to the determination of effect of the decision.

#### **Amendment to the content of a public contract, notice of termination, and revocation of a public contract**

##### Section 166

(1) The content of a public contract may be amended only by means of a written agreement of the parties to the contract; where the conclusion of the public contract requires an approval of an administrative authority or a third party, such approval shall be required also for the conclusion of the aforementioned agreement; the provisions of Section 164, paragraph 3 shall likewise apply.

(2) A public contract may be terminated solely by a written notice only where this has been agreed by the parties to the public contract and where a notice period has been set.

##### Section 167

(1) A party to the contract may submit a written proposal for the revocation of a public contract

a) if it is so agreed in the public contract;

b) if the relations decisive for the determination of the content of the public contract significantly change and, for this reason, performance of the public contract cannot be fairly required from a party to the contract;

c) if a contradiction between the public contract and legal regulations has arisen;

d) in order to protect a public interest; or

e) if facts have been revealed which existed at the time of conclusion of the public contract and were not known to a party to the contract without the party's fault, if such party proves that it would not conclude the public contract had it known the facts;

(2) Where a party to the contract files a proposal for revocation of a public contract for reasons stipulated by law, and other parties express their consent therewith, the public contract shall terminate as of the date when the written consent of the last of the parties to the contract was delivered to the party to the contract that filed the proposal. Where the conclusion of the public contract required an approval of an administrative authority, such approval shall be required also with the revocation of the public contract.

(3) Where any of the parties to the contract does not agree with the revocation of the public contract, the revocation of the public contract may be, upon request of the party to the contract who filed a proposal referred to under paragraph 1, decided by the administrative authority with jurisdiction as per Section 169, paragraph 1.

### **Consent of third parties**

#### Section 168

Unless a public contract referred to under Section 160 is concerned, a public contract which directly concerns the rights or obligations of a third party shall become effective only at the point of time when such person expresses a written consent therewith. Where such consent has not been obtained, the administrative authority, instead of concluding a public contract, may issue a decision in an administrative procedure, availing of the source materials obtained in the preparation of the public contract.

### **Liabilities arising from public contracts**

#### Section 169

- (1) Disputes arising from a public contract shall be decided by
- a) the Ministry of Interior, where a public contract referred to under Section 160 is concerned and where at least one of the parties to the contract is the region or where the parties to the contract are municipalities with extended powers; the Ministry of Interior shall consult the case with the ministry having subject-matter jurisdiction or with another central administrative authority having subject-matter jurisdiction;
  - b) the concerned regional authority, where a public contract referred to under Section 160 is concerned and the parties to the contract are municipalities which are not municipalities with extended powers, unless the case is taken over by the Ministry of Interior;
  - c) the administrative authority which is jointly superior to the parties to the contract, where another public contract referred to under Section 160 is concerned; where no such administrative authority exists, the dispute arising from the agreement shall be addressed by central administrative authorities superior to the administrative authorities which are superior to the parties to the contract;
  - d) the administrative authority superior to the administrative authority which is a party to a public contract, where a public contract referred to under Section 161 is concerned; or
  - e) the administrative authority that has approved its conclusion, where a public contract referred to under Section 162 is concerned.

(2) No appeal or remonstrance against a decision issued as per paragraph 1 may be filed.

### **General provision**

#### Section 170

In the course of action taken as stipulated by this Part, the provisions of Part One shall likewise apply and the provisions of Part Two hereof shall adequately apply; unless precluded by the nature of the case and the purpose of public contracts, the provisions of the Civil Code shall apply, except for the provisions on invalidity of legal acts and relative non-effects, the provisions on withdrawing from a contract and severance pay, the provisions on the change to the person of the debtor or creditor, with the exception of legal succession, contract transfers, and provisions regarding a set-off is concerned.

## **PART SIX**

### **GENERAL MEASURES**

#### Section 171

This Part shall be applicable to the course of action to be taken by administrative authorities in cases where a special law prescribes that a binding general measure be issued thereby which does not constitute a legal regulation or a decision.

#### Section 172

(1) The administrative authority, having held consultations with authorities concerned referred to under Section 136, shall deliver the proposed general measure with a rationale by means of a public notice as per Section 25, which shall be published on the official notice board of the administrative authority and on the official notice boards of municipal authorities in those municipalities the administrative districts of which the general measure is relevant for and shall invite the persons concerned to file their objections or comments in respect of the proposed measure. If necessary, the proposed measure shall be published also in another manner, usually in the respective location. The proposed general measure must be published for the minimum period of 15 days.

(2) Where, with a view to the scope of the proposed measure, the publication of its full text on the official notice board is not practicable, information on what general measure is concerned, whose interests it pertains to directly, and where and within what timeline one may acquaint himself/herself with the proposed measure shall be posted on the official notice board. Nonetheless, even in such a case, the full text of the proposed measure including a rationale shall be published in a manner allowing for remote access.

(3) The procedure concerning the proposed general measure shall be conducted in writing, unless the law stipulates or the administrative authority determines that a public hearing to discuss the proposed measure is to be held. The time and venue of such public hearing shall be published by the administrative authority on the official notice board no later than 15 days in advance thereof; such notification shall be also published on the official notice boards of the municipal authorities of municipalities the administrative districts of which the general measure is relevant for. In case of a danger in delay, such timeline may be shortened; unless the law provides otherwise, the shortened timeline must be at least five days long.

(4) Any one person whose rights, obligations or interests may be directly affected by the general measure may submit written comments on the proposed general measure to the administrative authority or voice oral comments thereon during public hearings. The administrative authority shall be obliged to consider the comments as a source material for the general measure and to address them in its rationale.

(5) Owners of real estate whose rights, obligations or interests associated with the execution of their ownership right may be directly affected by the general measure, or, if the administrative authority so decides, also other persons whose legitimate interests may be directly affected by the general measure may file written substantiated objections against the proposed general measure with the administrative authority within the timeline of 30 days of the date of its publication. Act default may not be waived. The objections shall be decided by the administrative authority issuing the general measure. Where the settlement of an objection would result in a solution which will directly influence the legitimate interests of any person in a manner different from the proposed general measure, and if the change is not apparently to the benefit of such person, the administrative authority shall seek the person's opinion. The decision on objections which shall contain its own rationale shall be presented as part of the rationale of the general measure (Section 173, paragraph 1). No appeal or remonstrance may be filed against the decision. Alteration or revocation of a final decision on objections may constitute a reason for alteration of the general measure.

#### Section 173

(1) A general measure which shall contain a rationale shall be notified by the administrative authority by means of a public notice; the general measure shall be, moreover, published thereby on the official notice boards of the municipal authorities of municipalities the administrative districts of which the general measure is relevant for. The provisions of Section 172, paragraph 1 shall likewise apply. A general measure shall take effect as of the fifteenth day of the publication of the public notice. Where severe harm to public interest is imminent, a general measure may take effect as of the date of its publication; where so stipulated by a special law, this may happen prior to the course of action referred to under Section 172. Any one person may view the general measure and the rationale thereof at the administrative authority that issued the general measure.

(2) No remedy may be applied against a general measure.

(3) An obligation stipulated by law and the scope of which within the limits of law is defined by a general measure may be enforced by execution only if a decision has been issued declaring the existence of such obligation and specifying the name of the person upon whom such obligation has been imposed.

#### Section 174

(1) Procedures referred to hereunder shall be likewise governed by the provisions of Part One and adequately by the provisions of Part Two.

(2) Compliance of a general measure with legal regulations may be assessed in a review procedure. A resolution on the commencement of a review procedure may be issued within three years of the legal effect of the measure. The effects of the decision in a review procedure shall commence as of the date of its finality.

## **PART SEVEN**

### **COMMON, TRANSITIONAL AND FINAL PROVISIONS**

#### TITLE I

#### COMMON PROVISIONS

#### Section 175

#### **Complaints**

(1) Persons concerned shall have the right to file complaints with administrative authorities regarding improper conduct of officials or the course of action taken by the administrative authority, unless another remedy is provided by this Act.

(2) Filing of a complaint may not be prejudicial for the complainant; liability for a criminal or administrative offence shall not be prejudiced hereby.

(3) A complaint may be filed orally or in writing; where an oral complaint is filed, which cannot be settled immediately, the administrative authority shall draft a written record thereof.

(4) A complaint shall be filed with the administrative authority that conducts the procedure. Such administrative authority shall be obliged to examine the facts specified by the complaint. If considered appropriate thereby, it shall hear the complainant, the persons against whom the complaint is directed, or, if appropriate, any other persons that may contribute to the elucidation of the case.

(5) A complaint must be settled within 60 days of the date of its delivery to the administrative authority with jurisdiction over its handling. Within this timeline, the complainant shall be advised of the settlement of the complaint. The established timeline may be exceeded only if source materials necessary for the settlement of the complaint may not be practically obtained within such timeline.

(6) Where a complaint has been found justified or partly justified, the administrative authority shall be obliged to adopt necessary measures to remedy the situation without any delay. The outcome of the investigation and the measures adopted to remedy the situation shall be recorded in the dossier; the complainant shall be advised only if he/she so requested.

(7) If the complainant believes that a complaint filed thereby with the concerned administrative authority has not been handled properly, he/she may apply with the superior administrative authority to review the method of the handling of the complaint.

#### Section 176

The Ministry of Interior shall issue a legal regulation implementing Section 79, paragraphs 4 and 5.

#### Section 177

(1) The basic principles of the operation of administrative authorities referred to under Section 2 to 8 shall apply to the execution of public administration also in those cases in respect of which a special law stipulates that the provisions of the Code of Administrative Procedure shall not apply, but does not stipulate relevant provisions corresponding to these principles.

(2) In those cases where an administrative authority carried out acts which are not governed by Parts Two and three hereof, it shall proceed likewise in compliance with Part Four.

#### Section 178

(1) The superior administrative authority shall be the administrative authority stipulated by a special law. Where the special law does not stipulate it, it shall be the administrative authority which, by law, decides on appeals or conducts surveillance, where applicable.

(2) Where the superior administrative authority cannot be determined as per paragraph 1, it shall be determined as per this paragraph. The superior administrative authority of a municipality shall be the regional authority. The superior administrative authority of a regional authority shall be the Ministry of Interior for procedures conducted within autonomous powers, and the central administrative authority with subject-matter jurisdiction or the central administrative authority whose field of powers is most relevant for the case to be decided for procedures conducted within delegated powers. The superior administrative authority of another public corporation shall be the administrative authority appointed to conduct surveillance; and the superior administrative authority of a legal or natural person authorised to execute public administration shall be the authority which, pursuant to a special law, decides on appeals; where no such authority has been established, such authority shall be the authority which delegated the execution of public administration to these persons pursuant to law. The superior administrative authority of a central administrative office shall be the minister or the head of another central administrative office. The superior administrative authority of a minister or a head of another central administrative office shall be the head of the concerned central administrative office.

### TITLE II

#### TRANSITIONAL AND FINAL PROVISIONS

#### Section 179

(1) Procedures which have not been finally completed prior to the effect of this Act shall be completed pursuant to the existing regulations. Where a decision has been revoked prior to the effect hereof and returned for new consideration to the administrative authority, the course of action set forth by the existing regulations shall be taken.

(2) Where a procedure has been finally completed prior to the effect hereof, a review procedure, resumed procedure or issuance of a new decision shall proceed in compliance with this Act, including the timelines within which such procedure may be commenced.

(3) Discharge of a decision which had begun prior to the effect hereof shall be completed in compliance with the existing regulations.

#### Section 180

(1) Where the existing legal regulations allow administrative authorities to issue decisions without the procedures being fully regulated thereby, the administrative authorities shall proceed in compliance with this Act, including Part Two in issues the solution of which is necessary.

(2) Where administrative authorities proceed as per the existing legal regulations in a procedure the objective of which is not the issue of a decision, and the said regulations do not fully regulate such procedure, the administrative authorities shall, in respect of issues the solution of which is necessary and which cannot be solved pursuant to these regulations, proceed in compliance with Part Four hereof.

#### Section 181

Where the existing legal regulations stipulate that in cases decided by administrative authorities pursuant to this Act by means of a resolution a decision is to be issued, the administrative authorities shall issue a resolution pursuant to this Act.

#### Section 182

(1) The nullity provisions hereof shall be applicable solely to the acts of administrative authorities conducted pursuant to this Act.

(2) The provisions hereof shall govern also public contracts formed prior to the effect hereof; nonetheless, the formation of such contracts as well as claims arising therefrom prior to the date of effect hereof shall be considered pursuant to the existing legal regulations.

#### Section 183

Act No 71/1967 Coll., on Administrative Procedure (Administrative Code) is hereby repealed.

## PART EIGHT

### EFFECT

#### Section 184

This Act shall come into force on 1 January 2006.

**Zaorálek, in his own hand**

**Klaus, in his own hand**

**Špidla, in his own hand**

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1) Act No 128/2000 Coll., on Municipalities (Establishment of Municipalities), as amended.

Act No 129/2000 Coll., on Regions (Establishment of Regions), as amended.

Act No 131/2000 Coll., on the Capital City of Prague, as amended.

2) Section 2, paragraph 3 of the Commercial Code.

3) Act No 133/2000 Coll., on the Population Register and Birth Numbers and on Amendment to Some Acts (the Population Register Act), as amended.

4) Act No 326/1999 Coll., on the Residence of Foreign Nationals in the Territory of the Czech Republic and on Amendment to Some Acts, as amended.

Act No 325/1999 Coll., on Asylum and Amendment to Act No. 283/1991 Coll., on the Police of the Czech Republic, as amended, (the Asylum Act), as amended.

5) Section 7, paragraph 1 a 2 of the Commercial Code.

6) Section 1 of Act No 2/1969 Coll., on the Establishment of Ministries and Other Central Government Authorities of the Czech Republic, as amended.

7) E.g. Act No 191/2004 Coll., on International Assistance in the Collection of Some Financial Claims.

9) E.g. Section 61, paragraph 1(v) of the Act on Civil Service.

10) Art. 37, paragraph 4 of the Charter of Fundamental Rights and Freedoms.

11) Act No 325/1999 Coll.

12) Act No 273/2001 Coll., on the Rights of Members of Minorities and on Amendment to Some Acts, as amended by Act No. 320/2002 Coll.

13) Act No 155/1998 Coll., on Sign Language and on Amendments to Other Acts, as amended by Act No. 384/2008 Coll.

13a) Act No 300/2008 Coll., on Electronic Acts and Authorised Document Conversion.

14) Act No 131/2000 Coll., as amended.

Act No 128/2000 Coll., as amended.

15) Act No 29/2000 Coll., on Postal Services and on Amendment to Some Acts (Postal Service Act), as amended.

- 16) Act No 227/2000 Coll., on Electronic Signature and on Amendment to Some Other Acts (Act on Electronic Signature), as amended.
- 17) Section 16 of Act No. 29/2000 Coll.
- 17a) Section 10b, paragraph 1 of Act No. 133/2000 Coll., on the Population Register and Birth Numbers and on Amendment to Some Acts (the Population Register Act), as amended by Act No. 7/2009 Coll.
- 18) Section 65 of Act No. 128/2000 Coll., as amended by Act No. 313/2002 Coll.
- 19) Section 30 et seq. of the Civil Code.
- 20) Section 55 et seq. of the Civil Code.
- 21) Section 1126 et seq. of the Civil Code.
- 22) Section 21 of the Code of Civil Procedure.
- 23) E.g. Section 26 of Act No. 85/1996 Coll., on the Legal Profession, as amended by Act No. 210/1999 Coll.
- 25) Sections 1 and 2 of Act No. 245/2000 Coll., on Public Holidays, Other Holidays, Significant Days and on Non-working Days.
- 26) Section 116 of the Civil Code.
- 27) Act No 337/1992 Coll., on the Administration of Taxes and Fees, as amended.
- 28) Sections 118 to 121 of the Civil Code.
- 29) Section 76, paragraph 2 of Act No. 150/2002 Coll.
- 30) Section 80, paragraph 2 of Act No. 582/1991 Coll., on the Organisation and Implementation of Social Security, as amended by Act No. 590/1992 Coll.
- 31) Act No 41/1993 Coll., on the Verification of Compliance with Transcripts or Copies of the Document and Signature Authentication by District and Local Municipal Authorities and on the Issuance of Certificates by Municipalities and District Authorities, as amended.
- Act No 358/1992 Coll., on Notaries and Their Activities (Notarial Code), as amended.
- 32) Section 135 of the Civil Code.
- 33) Section 96 of Act No. 50/1976 Coll., on Zoning and Construction Rules (the Building Code), as amended by Act No. 83/1998 Coll.
- 35) The Code of Civil Procedure.
- Act No 26/2000 Coll., on Public Auctions, as amended by Act No. 120/2001 Coll.
- 37) Section 20, paragraph 1 of the Civil Code.
- 38) Section 97, paragraph 1(c) of Act No. 150/2002 Coll., the Code of Administrative Justice.
- 39) E.g. Act No 254/2001 Coll., on Waters and on Amendment to Some Acts (Act on Waters), as amended.
- 40) Act No 151/1997 Coll., on Property Appraisal and on Amendment to Some Acts (Property Appraisal Act), as amended by Act No. 121/2000 Coll.
- 41) Act No 219/2000 Coll., as amended.
- 42) E.g. Act No 128/2000 Coll., as amended, Act No 129/2000 Coll., as amended, and Act No 131/2000 Coll., as amended.
- 43) Section 38 et seq. of the Civil Code.
- 44) Section 45 et seq. of the Civil Code.