AUSTRIA

General Administrative Procedure Act 1991 - AVG

Part I: General Provisions
1. Section: Authorities
Jurisdiction

§ 1. The jurisdiction of the authorities, as regards subject matter and territory, is governed by the rules on their scope of activities as well as by the administrative rules and regulations.

§ 2. If the rules and regulations stated in § 1 do not contain any provisions with regard to jurisdiction in the subject matter, the district administration authorities (the federal police authorities) will be the first instance for subject matters regarding the federal administration, and the second instance of jurisdiction will be the Governor of the Land.

§ 3. As long as the rules and regulations stated in § 1 do not provide otherwise, the territorial jurisdiction depends

1. in matters regarding items of immovable property:
   on the location of the property;
2. in matters regarding the operation of a business or the performance of any other permanent activity: on the place where the business is to operate or the activity to be performed;
3. in other matters: first of all on the permanent residence (place of business) of the party involved, in case of doubt of the party prosecuted or under obligation, then on the place where the party is staying, finally on the place of the last permanent residence (place of business)or of the last stay in this country, however, if none of the afore-stated reasons for jurisdiction can apply or whenever there is imminent danger, on the reason for action by the authority; if even such criteria cannot determine the jurisdiction, such jurisdiction will be with the respective highest authority having jurisdiction in the subject matter.

§ 4. (1) If under the provisions stated in § 1 more than one authority would have territorial jurisdiction and nothing special is provided for such case or if the facts stated in § 3 subparas 1 and 2 establish territorial jurisdiction of more than one authority, such authorities shall proceed by unanimous agreement.

(2) In case they do not arrive at an agreement in the subject matter, jurisdiction shall pass to the higher authority having jurisdiction in the subject matter, and, if still more than one authority would have jurisdiction and, in the absence of an agreement, jurisdiction shall pass to the common higher authority having jurisdiction in the subject matter.

(3) In any case of imminent danger each of the authorities named in para 1 shall perform the necessary official acts within its jurisdiction and at the same time inform the other authorities.

§ 5. (1) Disagreement over jurisdiction among authorities shall be resolved by the common higher authority having jurisdiction in the subject matter.

(2) § 4 para.3 shall apply also in this case.

§ 6. (1) The authority shall ex officio exercise its jurisdiction regarding subject matter and territory; should it be addressed in matters in which it has no jurisdiction, it shall forward such matters without undue delay, on the risk of the applicant, to the authority having jurisdiction or refer the applicant to such authority.

(2) The parties are not authorized to determine or modify the jurisdiction of the

authority by an agreement of their own.

Partiality of administrative bodies

§ 7. (1) In exercising their duties, administrative officers shall abstain from the following matters for which they have to appoint a substitute:

1. matters in which the officer personally, his/her spouse, a relative or in-law in ascending or descending line, a descendant of brothers or sisters or any other person closer related or an in-law of the same degree, is involved;
2. matters of foster parents or children, wards or persons under their guardianship;
3. matters in which they were or still are appointed representative of a party;
4. if there are any other important reasons resulting in doubts as to their full unbiasedness;
5. in an appeals proceeding if they had been involved in issuing the ruling appealed against.

(2) In any case of imminent danger, if it is not possible to immediately appoint a substitute, also an administrative officer who is biased is entitled to perform the necessary official acts himself.

2. Section: Persons involved and their representatives

Persons involved; parties

§ 8. Persons who make use of the services performed by an authority or who are affected by the activity of such authority, are persons involved, and, to the extent they are involved in the matter on the grounds of a legal title or a legal interest, they are parties.

Legal capacity and capacity to act

§ 9. Unless provided differently in the administrative rules and regulations, the legal capacity and the capacity to act of persons involved shall be decided by the respective authority in accordance with the provisions of the civil law.

Representatives

§ 10. (1) Whenever personal appearance is not expressly requested, the parties involved and their legal representatives may be represented by natural persons with full legal capacity, legal entities, sole proprietorships and partnerships under the commercial law or registered civil law partnerships. Representatives shall give proof of their authority by a written power of attorney in the name of the respective person or company. In the presence of the authority such power of attorney may also be given orally; this can be recorded in a memorandum.
Whenever a person intervening is authorized by the law to represent parties, the reference to the power granted to such person replaces the respective documentary evidence.

(2) The contents and the scope of the power of representation is determined by the stipulations of the power of attorney; any doubts in this connection shall be judged in accordance with the provisions of the civil law. Any deficiencies shall be remedied ex officio by the respective authority by applying § 13 para 3 correspondingly.

(3) Persons engaging, for business purposes, in unauthorised representation of others, shall not be admitted as representatives.

(4) The authority may waive the requirement of an express power of attorney if the representative is a family member known to the authority, a person living in the same household, an employee or officer of a professional or similar organisation, provided that such employee or officer is known to the authority and there are no

doubts on the existence and the scope of the right of representation.

(5) Persons involved may engage legal counsel who may accompany them when appearing at the authority.

(6) Appointing a representative does not preclude the grantor of the power to make statements in his own name.

§ 11. If ex officio or upon a party's request an official act is to be performed with regard to a person involved that lacks the capacity to act or that lacks a legal representative, or with regard to a person whose place of stay is not known, the authority may, if the degree of importance of the matter so requires, institute the nomination of a guardian with the court of law having jurisdiction therefor (§ 109 JN [Jurisdiktionsnorm – Standard of Court Decisions]).

§ 12. The provisions of the subject federal act on the persons involved shall also apply to their legal and appointed representatives.

3. Section: Communication between the authorities and the persons involved

Submissions

§ 13. (1) Unless provided for differently in the administrative rules and regulations, any submissions, applications, information laid against somebody, complaints, and other reports may be filed with the respective authority in writing, or, to the extent feasible with regard to the subject matter, personally or by telephone. Written submissions may, depending on the availability of the technical means involved, also be presented by telegram, telex, telefax, by e-mail or in any other technically feasible way.

(2) Appeals and submissions with a specific deadline or determining the duration of a period of time with a deadline shall be submitted in writing.

(3) Deficiencies of written submissions shall not entitle the authority to reject such submissions. However, the authority shall ex officio and without delay see to the rectification of the deficiency and may request the applicant to remedy it with the proviso that the submission will be rejected after futile expiry of an adequate term to be fixed at the same time. In case the deficiency is remedied in due time, the submission is deemed to have been filed correctly from the beginning.

(4)If a submission submitted in writing does not carry any personal and original signature, the authority, when in doubt whether the person named is the author of the submission, may request a confirmation through a written submission bearing a personal and original signature, with the proviso that the submission will be rejected after futile expiry of an adequate term to be fixed simultaneously. Written confirmation of a submission brought forward personally or by telephone may be ordered with the same effect. (4a) For purposes of unmistakeable identification of persons involved in the proceeding who use electronic means for communication with the authority, the latter is authorized to use the ZMR (Central Residence Registry) number (§ 16 para 4 of the Residence Registration Act 1991, Federal Law Gazette No. 9/1992)as basis for a separate person identification code based on it and specific to the field of administration. Such ZMR (Central Residence Registry) number may also be recorded on the chip cards used in the social security electronic administration system (ELSY, § 31a para 1 of the General Social Security Act, Federal Law Gazette No. 189/1955) as base number for an unmistakeable identification of cardholders who use the electronic signature and the code. The ZMR number must not be recorded by the authority on occasion of any electronic identification.

(5) The authority is obligated to accept submissions submitted personally or by telephone only during office hours open to the public, unless there is a case of imminent danger; written submissions are accepted only during office hours. Office hours and such time when the office is open to the public shall be publicly posted on the authority premises. Submissions filed by telefax, by e-mail or in any other technically possible way received by the authority within the term but after office hours are considered as having been submitted in due time. Terms for decision deadlines to be respected by the authorities, however, start being counted only as

soon as the office opens again.

(6) The authority is not obligated to process such submissions not referring to any particular subject matter.

(7) Submissions may be withdrawn during any stage of the proceeding.

(8) The submission resulting in the opening of a proceeding may be modified during any stage of the proceeding. Such modification of a submission must neither modify the essence of the subject matter nor affect the jurisdiction with regard to subject matter and territory.

(9) The authority may process submissions and other documents concerning the proceeding by electronic data processing. Such processing does not impair the value of the evidence as long as it is safeguarded that documents processed in this way cannot be modified at a later date.

Information on appeal

§ 13a. As a rule, the authority is obligated to give to persons not represented by professional counsel oral instructions they need to take steps in the proceeding and to instruct them on the legal consequences connected directly with such acts or the failure to perform them.

Minutes

§ 14. (1) The material contents of submissions submitted orally by the persons involved shall, in case of necessity, be recorded in writing. Minutes on hearings (hearing minutes) shall be worded in such a manner that, when eliminating everything not pertinent to the matter, the course and the contents of the hearing are recorded correctly and understandably.

(2) In addition, minutes shall contain:

1. place, date, and subject matter of the official act and, in case there have been any pertinent official acts at an earlier date, a brief presentation of the status of the matter;
2. the name of the authority and of the officer in charge of the official act as well as of other officers involved, of the persons involved who were present and their representatives, as well as of any witnesses and experts examined.
3. the personal signature of the person in charge of the official act.

(3) The minutes shall be presented for perusal or read to persons examined or called in in any other way, unless they waive their respective right; if a technical recording device has been used (para 7), their contents can be reproduced also in another manner.

The officer in charge may dispense with the repeat presentation of the contents also if no-one has waived his right to it; the persons present are in such case entitled to request, before the end of the official proceeding, to be served a copy of the minutes and to raise objections for alleged incompleteness or incorrectness of the minutes within a period of two weeks of being served.

(4) Once the minutes have been completed, nothing material may be deleted, added or modified. Parts crossed out shall remain legible. Material additions or objections for alleged incompleteness or incorrectness of the minutes on the part of the persons having been present shall be compiled in an addendum and signed separately.

(5) The minutes shall be confirmed by the persons present who shall sign them personally; in case more than 20 persons are present, this requirement is dropped. In case a person present does not sign the minutes, such fact is to be stated in them, indicating also the reason therefor.

(6) Upon request, the persons having been present shall be issued or served a copy of the minutes.

(7) The minutes or parts thereof may be recorded by use of a technical device or taken in shorthand. The information according to para 2, the information, that for the

remaining part of the minutes a technical device is being used, and the fact of a decision being rendered orally shall be recorded in longhand writing. The recording and the parts of the minutes taken in shorthand shall immediately be transferred into longhand writing. As long as the official act is not terminated, the persons present may request to be served a copy of the transcript and are granted a two weeks' period from being served the copy for raising objections for alleged incompleteness or incorrectness of the transcript. If such service is requested, the recording must not be erased before the termination of a one month's period after expiry of the date allowed for presenting objections, otherwise at the earliest one month after the recording has been transferred in writing.

(8) Minutes prepared by means of electronic data processing, in particular by using word processing software, need not be signed by the officer in charge and the persons present, if checking on confirmation of the contents of the minutes by the officer in charge is ensured in a different way. Para 3 last half sentence shall be applicable.

§ 15. As long as no objections are raised, minutes on the course and the subject matter of the respective official act recorded in accordance with § 14 shall constitute full evidence. The evidence to the contrary of the occurrence as testified remains admissible.

Memoranda

§ 16. (1) Information obtained ex officio and information obtained by the authority via telephone, furthermore personal instructions, requests and orders not issued in writing, finally facts relevant only for internal purposes of the authority shall, if not provided for otherwise, and no reason exists to prepare minutes, in case of necessity be recorded in a memorandum.

(2) The contents of the memorandum shall be confirmed by the officer in charge by adding date and signature. The requirement to sign however can be dispensed with if the identity of the officer in charge can be determined in another way.

Inspection of the files

§ 17. (1) The authority shall, as long as not provided differently in the administrative rules and regulations, grant the parties the right of inspection of the files or parts of files concerning their case; the parties are allowed to make their own copies or have copies made at their expense, depending on the technical possibilities available. Depending on the technical possibilities available, inspection of the files can be also granted by giving access to electronic data processing files.

(2) All parties involved in a particular proceeding must be granted access to the files to an equal extent.

(3) Excluded from the right to inspection are parts of files whose disclosure would result in damage to justified interests of either party or of third parties or jeopardize the work of the authority or impair the objective of the proceeding.

(4) No appeal is admissible against refusal of the right to inspect the files.

Blind persons and persons with severely impaired vision

§ 17a. Persons who are blind or whose vision is severely impaired and who lack a representative shall, upon request, be read the contents of files or parts of files by the authority, or such contents shall be brought to their knowledge in another suitable way, depending on the technical equipment available.

Processing submissions

§ 18. (1) The authority shall process submissions, to the extent possible, in particular in case of instructions and preliminary informative hearings, orally or by

telephone, and record the material contents of the proceeding, if required, in minutes or a memorandum.

(2) The approval of a submission processed shall be given with of the signature of the person giving the approval. The requirement of a signature however can be dispensed with if the identity of the person approving can be determined in another way.

(3) After submissions have been processed, the result shall be rendered in writing if such procedure is expressly stated in the administrative rules and procedures or requested by the party. The written document on the submission processed may be delivered or communicated by telegram, telex or telefax. Submissions processed in writing may be communicated by e-mail or in any other technically feasible way, if the party has expressly consented to this mode of communication or if it has submitted its submissions in the same manner and not expressly objected to this mode of communication with the authority.

(4) Every matter processed in writing shall state the name of the authority, the date when processed and the name of the person authorizing. As long as not provided for otherwise hereinafter, matters dealt with in writing shall bear also the signature of the person authorising them. Such signature may be substituted by the certification issued by the office, indicating that the result corresponds with the text of the matter of the respective document processed and that the document contains the approval as per para 2; detailed instructions will be issued by regulation. If results of matters processed, issued in writing, are copied, only the original needs to bear the signature or the certification. Written matters processed by computer or communicated by telegram, telex, telefax or e-mail, or in any other technically feasible manner, need neither a signature nor a certification.

(5) For rulings Part III shall apply, for rulings of summons also § 19.

Summons

§ 19. (1) The authority has the right to summon persons having their residence (registered office) within the area of its territorial jurisdiction whenever such appearance is deemed necessary. In proceedings before the independent appeals panels, summons of persons having their residence (registered office) outside of the territorial jurisdiction of the independent appeals panel are also admissible.

(2) The summons shall indicate, besides place and date of the official act, also the subject matter of the act, the capacity in which the person is summoned (person involved, witness etc.) and what auxiliary documentation and evidence he/she shall take with him. The summons shall further state whether the person summoned shall appear in person or whether it is sufficient to send a representative, and the consequences resulting from non-appearance.

(3) Whoever is not prevented from appearing by illness, frailty or any other justified obstacle is obligated to comply with the summons and can be summoned by subpoena or brought before the judge by force.

Use of such compulsory measures is only admissible if it was announced in the summons and the person has been served the summons personally; the enforcement authorities are in charge of implementing such compulsory measures.

(4) No appeal is admissible against the summons and against being brought in court by force.

§ 20. If the person to be summoned holds a public office or is a civil servant or is employed with a company performing public transportation services and, in order to maintain safety or other public interests, a replacement is required for him/her during the time of absence, the latter person's superior is to be notified simultaneously with the summons.

4. Section: Service

§ 21. Service shall be effected in compliance with the Service of Documents Act.

§ 22. For important reasons a copy shall be served against signature of a return receipt. For very important reasons or if provided for by the law, service shall be delivered to the recipient personally .

§ 23. (repealed; article III para 2 of the official announcement)

§ 24. (repealed; article III para 2 of the official announcement)

§ 25. (repealed; article III para 2 of the official announcement)

§ 26. (repealed; article III para 2 of the official announcement)

§ 27. (repealed; article III para 2 of the official announcement)

§ 28. (repealed; article III para 2 of the official announcement)

§ 29. (repealed; article III para 2 of the official announcement)

§ 30. (repealed; article III para 2 of the official announcement)

§ 31. (repealed; article III para 2 of the official announcement)

5. Section: Deadlines

§ 32. (1) In counting the duration of terms counted in days, the day or the event on which the term depends shall not be included in the count.

(2) Terms counted in weeks, months or years terminate at the end of such day of the last week or the last month whose name or number corresponds with the day on which the term started. If such day does not exist in the last month, the respective term ends with expiry of the last day of such month.

§ 33. (1) Beginning and duration of a term is not affected by Sundays or public holidays.

(2) If a term ends on a Saturday, Sunday, public holiday or Good Friday, the subsequent working day shall be the last day of the term.

(3) The days required till the mail is delivered shall not be included in the count of the term.

(4) Terms determined by laws or regulations cannot be modified, unless expressly provided for differently.

6. Section: Administrative penalties and fines for frivolous acts

Penalties

§ 34. (1) The administrative officer in charge of a hearing, examination, an inspection or the taking of evidence, shall see to order and decency being maintained.

(2) Persons interfering with the official proceeding or violating decency by improper behaviour shall be reprimanded; if such reprimand remains futile, silence may, after previous announcement, be imposed on such persons, they may be expelled and instructed to appoint a representative, or be fined a penalty of up-to 726 euros.

(3) The authority may impose such penalties also on persons using offensive language in written submissions.

(4) No penalty shall be imposed on public officers and representatives authorized by law to represent parties provided that such officers and representatives are subject to disciplinary sanctions, in such cases only a complaint to the disciplinary authority shall be filed.

(5) Imposing a penalty shall not exclude criminal prosecution of the same act.

Penalties for frivolous acts

§ 35. Persons who in an apparently frivolous manner request the service of the authority or who give false information in order to delay a matter can be fined up-to 726 euros by the authority.

Appropriation and enforcement of administrative penalties and fines for frivolous acts;

Appeal

§ 36. (1) The administrative penalties and fines for frivolous acts shall go to the funds of such regional entity bearing the respective expenses of the authority. The provisions of the Administrative Penal Act on execution of a sentence shall be applied accordingly.

(2) Against an administrative fine or a fine imposed for frivolous acts appeal may be filed with the independent administrative panel of appeal. Such procedure is not applicable in matters of a municipality's own scope of activities. A single member of the independent administrative panel of appeal shall decide.

II. Part I: Investigation procedures

1. Section: Objective and course of the investigation procedure General principles

§ 37. It is the purpose of the investigation procedure to ascertain the state of facts relevant for processing an administrative matter and to enable the parties to claim their rights and legal interests. In case of a modification of a submission (§ 13 para 8), the authority is obligated to amend the investigation procedure to the extent necessary with regard to its objective.

§ 38. As long as not provided otherwise by law, the authority has the right to evaluate precondition-issues arising during the investigation procedure which would have to be decided as main issues by other administrative authorities or by the courts, in accordance with its own view on the relevant situation and to use this evaluation as basis for its decision. It can however also suspend the proceeding until the precondition-issue will be decided and final, provided that such precondition-issue is already subject of a proceeding pending with the authority having jurisdiction or that such a proceeding is being instituted simultaneously.

§ 38a. (1) In case an authority having jurisdiction in this regard on basis of relevant Community rules has filed a motion requesting a preliminary decision by the Court of Justice of the European Communities, it may, until the preliminary decision will have been rendered, proceed with only such procedural acts or decisions which cannot be affected by the preliminary decision or which do not finally decide on the issue and do not allow for any delay.

(2) In case the authority considers the preliminary decision not having been rendered yet to be no more required for its decision in the matter, it shall withdraw its motion immediately.

§ 39. (1) The investigation procedure shall be carried out in accordance with the administrative rules and regulations.

(2) To the extent that the administrative rules and regulations do not contain any provisions thereon, the authority shall proceed ex officio and determine the procedure of the investigation in accordance with the rules and regulations contained in this part. In particular, it can order, ex officio or upon a motion, to proceed to a hearing and combine a number of administrative matters for one joint hearing and decision or separate them again. In all these procedural provisions the authority shall as a guideline take into account maximum efficiency, speed, minimum of complications and cost effectiveness.

(2a) If for a particular project the administrative rules and procedures require more than one approval, authorization or ruling, which are filed simultaneously, the authority shall combine them for joint hearing and decision and coordinate them with proceedings conducted by other authorities. A separate course of proceedings is admissible if this in the interest of efficiency, speed, minimum of complications and cost effectiveness.

(3) As soon as the matter is ready to be decided upon, the authority may declare the investigation procedure closed. New facts or evidence shall be taken into consideration by the authority only in such cases, when by itself or together with the result of the remaining part of the procedure they could lead to a different decision in the subject matter.

Interpreters and translators

§ 39a. (1) If a party or a person to be examined has no sufficient command of the German language, is deaf mute, deaf, or unable to speak, an interpreter (official interpreter) available to the authority shall be called in. §§ 52 para 2 to 4 and 53 are to be applied.

(2) For the purposes of the subject federal act, translators shall also be considered to be interpreters.

Oral hearing

§ 40. (1) All known persons involved as well as all witnesses and experts required shall be called in to oral hearings and, provided that such hearings include a judicial inspection, they shall preferably be held on site, or otherwise at the office of the authority or at such place deemed most feasible in accordance with the situation. In choosing the place for holding the hearing, attention is to be paid that it is accessible for handicapped persons without any danger and without having to resort to help by third persons unless the hearing is combined with a judicial inspection of the premises.

Oral hearings in combined proceedings (§ 39 para 2a) shall to the extent possible be organized by the authority to take place simultaneously.

(2) The authority shall see to it that a judicial inspection shall not be used for purposes of violating a secret of art, manufacturing or business.

§ 41. (1) For the scheduling of an oral hearing the persons involved, to the extent they are known, shall be notified personally.

If further persons could be involved, the hearing shall also be publicly announced by being posted in the municipality office or by publication in the media serving for official announcements of the authority.

(2) The hearing shall be scheduled at such time, date, and place that the participants are able to appear on time and duly prepared. The information (announcement) on a hearing to be scheduled shall contain the information required for summons including the information on consequences resulting from § 42. If for the purpose of hearing any drawings or other supporting objects are to be presented on the part of the persons involved, the announcement for the scheduled hearing shall contain date and place where such evidence can be inspected.

§ 42. (1) If an oral hearing has been announced according to § 41 second sentence which is held in accordance with a special procedure of the administrative rules and regulations, the consequence is that a person may lose the capacity of being a party, unless such person raises an objection with the authority at the latest on the day preceding the hearing or during the hearing itself. If the administrative rules and procedures do not contain any provisions on the way of publication of the announcement, the legal consequence described in the first sentence shall apply if the oral hearing has been announced in accordance with § 41 para 1 second sentence and in a suitable mode. A mode of announcement shall be deemed suitable if it ensures that a person involved is likely to obtain knowledge about the scheduled hearing.

(2) If an oral hearing has not been announced in accordance with para 1, the legal

consequence described therein shall apply only to such persons involved who obtained knowledge about the scheduled hearing in due time.

(3) A person presenting prima facie evidence of having been prevented to raise objections in due time by an unforeseeable or unavoidable event and who is not at fault or only to be charged with a lesser degree of oversight, may raise objections within two weeks after the reason for being prevented has ceased to exist, at the latest however by the date of the legally effective decision of the subject matter. Such objections shall be deemed to have been raised in due time and are to be taken into consideration by the authority where the proceeding was pending.

(4) If the person whose submission initiated the proceeding misses the hearing, such hearing may either be held in his absence or may at his expense be postponed to another date.

§ 43. (1) The executive officer in charge of holding the oral hearing (chief officer of the hearing) is obligated to check the identity of the persons appearing, their capacity as party or other person involved, as well as any power of attorney, if any.

(2) The officer in charge of the hearing opens the hearing and explains the case. He may subdivide the hearing into sections and establish a time schedule. He determines the order of sequence in which the persons involved are to be heard, the evidence to be taken and the results of earlier evidence taken or investigations to be presented and discussed. He decides on admission of evidence and shall reject motions which are apparently immaterial. He is also authorized to declare a recess of the hearing, whenever required, or to adjourn the hearing and determine and orally announce the date when it is to be resumed.

(3) The officer in charge shall conduct the hearing speedily with a constant eye on its objective in a way that the parties' right to be heard is warranted and other persons involved are given the opportunity to contribute towards ascertaining the facts of the case. Persons not involved are not allowed to speak in the hearing.

(4) Each party must be offered the opportunity to submit and evidence all aspects pertaining to the subject matter, to ask the witnesses and experts present questions and to comment on the facts presented by other persons involved, by witnesses and experts or on the facts treated as obvious and on the motions filed by others and on the result of investigations on the part of the authorities.

(5) If two or more parties are opposing each other with controversial claims, the officer in charge shall strive towards a settlement of such claims in accordance with the public interest as well as the interest claimed on the part of other persons involved.

§ 44. (1) Minutes are to be taken in writing on each oral hearing in accordance with §§ 14 and 15.

(2) Written comments and information submitted by persons involved, minutes on evidence taken by the end of the oral hearing or outside of the hearing, reports and expert opinions in writing shall be attached to the minutes of the hearing. This is to be recorded in the minutes of the hearing.Participants of the oral hearing however are not allowed to present their statements in writing.

(3) As soon as the admissible arguments of all persons involved have been heard and the taking of evidence is completed, the officer in charge shall, after repetition of the minutes of the hearing (§ 14 para 3),if applicable, and after oral announcement of the ruling (§ 62 para 2), declare the hearing closed.

Large scale proceedings

§ 44a. (1) If more than 100 persons are likely to be involved in an administrative matter or in joint administrative matters, the authority may publicly announce the submission or the submissions by edict.

(2) Such edict shall contain:

1. the subject of the submission and a description of the project;
2. a term of at least six weeks for objections to be raised in writing with the authority;
3. an information on the legal consequences of § 44b;

4. an information that notifications and services of deliveries in the proceeding may be effected by edict.

(3) The edict is to be published in the editorial section of two of the Land's large circulation newspapers and in the "Amtsblatt zur Wiener Zeitung" (Official Gazette of the Vienna newspaper "Wiener Zeitung"). If the administrative rules and regulations for the announcement of the oral hearing provide for a special format, the contents of the edict shall also be published in such format; the authority also may choose any suitable format for the announcement. No announcements by edict shall be released in the period between 15th July until 25th August and 24th December until 6th January.

§ 44b. (1) If a submission has been announced by edict, persons will lose their capacity of being a party in case they do not object in writing with the authority in due time. § 42 para 3 shall be applied accordingly.

(2) The submission, the pertinent documentation and the expert opinions available shall, unless excluded from availability for inspection, be available for public inspection during the period allowed for objections, on the premises of the authority and of the municipality office.

The persons involved may make their own copies or have copies made at their expense. In case of necessity the authority shall supply a sufficient number of copies for the municipality office.

§ 44c. (1) Under the prerequisites stated in § 44a, para 1, the authority may conduct a public debate of the project. Date, place, and subject of the debate shall be published in accordance with § 44a para 3.

(2) Experts may be called in for the public debate. Everybody is allowed to ask questions and to comment on the project.

(3) No minutes need to be drawn up on the public debate.

§ 44d. (1) The authority may schedule an oral hearing according to § 44a para 3 by edict if the submission has been publicly announced in accordance with § 44a or is being announced simultaneously.

(2) Such edict shall contain:

1. the object of the hearing, a description of the project and a time schedule, if any;
2. place and date of the hearing.

§ 44e. (1) The oral hearing scheduled by the edict shall be open to the public.

(2) § 67e applies accordingly.

(3) The minutes of the hearing shall be available for public inspection at the latest within one week after the end of the oral hearing on the premises of the authority and of the municipality office during office hours for a minimum period of three weeks. If a recording or a shorthand note has been typed, the persons involved may raise objections with the authority for alleged incompleteness or incorrectness of the transcript during the time allowed for the inspection. The persons involved may make their own copies of the minutes of the hearing or have copies made at their expense.In case of necessity the authority shall supply a sufficient number of copies for the municipality office. Depending on the technical possibilities available, the authority shall post the minutes of the hearing on the internet.

§ 44f. (1) If the submission has been announced in accordance with § 44a para 1, the authority may serve documents by edict. For this purpose it shall publicly announce in accordance with § 44a para 3 that a written document containing certain information is available for public inspection on the premises of the authority; reference shall be made to the provisions of para 2. After elapse of two weeks from the date of this public announcement the document is deemed to have been served .

(2) The authority shall make the document available for public inspection for a minimum period of eight weeks during office hours. Upon request it shall deliver copies of the document to persons involved and send it to parties without delay.Depending on the technical possibilities available, the authority shall post the

minutes of the hearing on the internet.

§ 44g. The expense of the publication of the edict in the "Amtsblatt zur Wiener Zeitung" shall be borne by the authority.

2. Section: Evidence
General principles for evidence

§ 45. (1) Facts already known to the authority and facts assumed by law need no further evidence.

(2) Also, the authority shall evaluate, in its free judgment, carefully taking into consideration the result of the investigation, whether a fact is to be assumed as substantiated or not.

(3) The parties shall be given the opportunity to take notice of the result of the evidence taken and to comment on it.

§ 46. Anything suitable for ascertaining the relevant facts of the case and feasible in the circumstances of the particular case can constitute evidence.

Deeds

§ 47. The probatory effect of public deeds and private deeds is to be judged by the authority in accordance with §§ 292 to 294, 296, 310 and 311 ZPO (Code of Civil Procedure). In this connection, however, § 292 para 1 first sentence of the Code of Civil Procedure shall apply only subject to the proviso that public deeds issued by domestic authorities shall furnish evidence also on such facts and situations of law which constituted the basis for their issuance and are expressly named in the deed; if the authority has, with respect to the special circumstances of the particular case, any reservations as to whether the deed furnishes such evidence, it may order the party to furnish the evidence in another manner.

Witnesses

§ 48. Not eligible to be witnesses are:

1. persons unable to communicate their perceptions or who have, at the time to which their statement is to refer, not been able to perceive the fact to be evidenced;
2. clergymen on what has been confided to them during confession or otherwise under the pledge of the secret of the confessional;
3. executive bodies and officers of the federal administration, the Laender, districts, and municipalities, if a statement of theirs would violate the official secrecy they are subject to, unless they are released from such obligation.

§ 49. (1) A witness may refuse to testify:

1. regarding questions when the answer would result in a direct material pecuniary prejudice or in the risk of criminal prosecution or in discredit to himself, his/her spouse, a relative or in-law in ascending or descending line, a descendant of brothers or sisters or to any other person related or being an in-law of the same or a nearer degree, and furthermore his/her foster parents or foster children or his/her guardian or a person in custody;
2. regarding questions he would not be able to answer without violating an officially recognized secrecy obligation of which he had not been released with legal effect or in case he would disclose a secret of art, manufacturing or business.
3. regarding questions how he/she has cast a vote if exercising it has been declared to be secret.

(2) Persons authorized to professionally represent parties can also refuse to testify on what has been confided to them in their capacity as representative of a

party.

(3) Nobody has the right to refuse to testify regarding births, marriages and cases of death of persons designated in para 1 subpara 1 on the grounds of the risk of a pecuniary prejudice.

(4) If a witness refuses to testify he has to give the reasons of his refusal.

(5) A witness not complying with a summons (§§ 19 and 20) without sufficient excuse or refusing to testify without giving any reasons or insisting on his refusal although the reasons he submitted have been considered not to be justified (para 1 through 3), can be charged all expenses caused by his absence or refusal; in case of unjustified refusal to testify the witness may be fined (§34).

§ 50. At the beginning of his examination every witness shall be asked to state his personal situation relevant for the examination and be admonished to tell the truth and not keep anything secret. His attention is also to be drawn to the reasons the law provides for the refusal to testify, the consequences of an unjustified refusal to testify and the consequences under the criminal law in the case of a false deposition.

Examination of persons involved

§ 51. §§ 48 and 49 shall be applied also to the examination of persons involved for the purpose of finding evidence, however the reason to refuse according to § 49 para 1 sub-para 1 shall not be applicable for the risk of a pecuniary prejudice.

Fees payable to witnesses and persons involved in proceedings at independent administrative panels of appeal

§ 51a. Witnesses examined for the purpose of finding evidence in proceedings at independent administrative panels of appeal or whose examination does not take place without any fault of theirs, are entitled to be paid fees according to § 2 para 2 and §§ 3 through 18 of the Fees Entitlement Act 1975, Federal Law Gazette No. 136. According to § 19 of the Fees Entitlement Act 1975 the fee shall be claimed at the independent administrative panels of appeal.

§ 51b. The amount of the fee is determined in accordance with § 20 of the Fees Entitlement Act 1975 subject to the following:

1. At first the fee is to be ascertained by the person in charge of the office of the independent appeals panel on a preliminary basis. Before the fee is ascertained, the witness may be asked to explain facts relevant for the amount of the fee ascertained and to present missing evidence within a given term. The amounts of the fee shall be rounded to full 10 cent figures.
2. The preliminary fee shall be communicated to the witness in writing or personally. Within two weeks after having been informed of the amount of the fee, the witness may personally or in writing request that the fee be determined by the independent administrative panel of appeals and the member in charge will have to decide. If the witness does not file a request for determination of the fee or withdraws such request, the fee already communicated is deemed to be final. The administrative panel of appeal however may ex officio determine a different fee. After expiry of three years, to be counted from the date of communication of the fee, no more modification of the determined fee is admissible.
3. The witness can also request the fee to be determined by the independent administrative panel of appeal if he is not notified of any fee within eight weeks after having presented his respective claim. In case he withdraws his request for determination of the fee, his claim is forfeited.

§ 51c. The fee is payable to the witness without any deduction for costs. If the independent administrative panel of appeal determines a higher fee than what had

been paid to the witness, the additional amount is to be paid to the witness free of any deduction for costs. If the independent administrative panel of appeal determines a lower fee or if the advance amount paid to the witness exceeds the fee determined, the witness is to be obligated to return the excess amount.

§ 51d. §§ 51a through 51c are also applicable to persons involved.

Experts

§ 52. (1) If it becomes necessary to have evidence taken by an expert, the officially appointed experts at the disposal or availability of the authority (officially appointed experts) shall be called in.

(2) If officially appointed experts are not available or if under the circumstances of the particular case it is advisable, the authority may exceptionally call in other qualified persons as experts (not officially appointed experts).

(3) If the prerequisites of para 2 are not given, the authority may nevertheless call in not officially appointed experts if this is likely to result in a substantial acceleration of the proceeding. Such procedure however is admissible only if it was the initiative of the person whose submission had initiated the proceeding and the resulting expenses are not likely to exceed an amount determined by such party.

(4) The appointment as not officially appointed expert shall be accepted by such persons officially commissioned under public law to prepare expert opinions of the kind required or who for business purposes engage in the science, the art, or the industry, whose knowledge is a prerequisite for the expert opinion required or who are employed or authorised to practice it under public law. Not officially appointed experts shall be taken under oath unless they already have been taken under a general oath for preparing expert opinions of the kind required. §§ 49 and 50 are also applicable to not officially appointed experts.

§ 53. (1) § 7 applies to officially appointed experts. Other experts are excluded if one of the reasons of §7 para 1 subpara 1 through 3 and 5 applies; also, they can be rejected by a party if prima facie circumstances are presented that cast doubts on the impartiality or expertise of the expert. The rejection can be brought up before hearing the expert, however after that only if the party presents prima facie evidence that it did not know the reason for the rejection before or was not able to raise it in due time because of an inevitable reason.

(2) The authority is in charge of finally deciding on a rejection.

Fees of not officially appointed experts

§ 53a. (1) Not officially appointed experts are entitled to fees for their activities in the proceeding in accordance with §§ 24 through 37 and 43 through 51 of the Fees Entitlement Act 1975. In accordance with §38 of the Fees Entitlement Act 1975, the fee shall be claimed with the authority having called in the expert.

(2) The amount of the fee shall be determined by the authority having called in the expert; the member in charge of the matter of an independent administrative panel of appeal shall decide. Before the fee is determined, the expert may be asked to explain circumstances relevant for ascertaining the fee and to present missing evidence within a given term. The total amounts of the fee shall be rounded to full 10 cent figures.

(3) The expert is entitled to file an appeal to the authority of higher instance against a ruling fixing an expert's fee or an advance amount, if however in the subject matter an appeal is to be handled by the independent administrative panel of appeal, is to be addressed to this administrative body.

(4) §51c shall apply to the payment of the fee.

Fees of non-official interpreters

§ 53b. Non-official interpreters are entitled to fees for their activities in the proceeding in accordance with §§ 24 through 33, 34 para 1 in connection with para 2 first sentence, paras 4 and 5, 36, 37 para 2, 53 para 2 and 54 of the Fees Entitlement Act 1975. § 53a para 1 second clause and para 2 through 4 shall be applied.

Judicial Inspection

§ 54. Upon request or ex officio the authority may, for further investigation the case, proceed to a judicial inspection and also call in experts for this purpose, if required.

Indirect evidence and investigations

§ 55. (1) The authority may also request or instruct administrative authorities or particular public executive bodies or officers to take evidence or conduct other or supplementary investigations. In particular, officially appointed experts may, except in case of an oral hearing, be asked to perform a judicial inspection of their own.

(2) The courts may be asked to take evidence only in such cases as specifically provided for by the law,

III. Part: Rulings

Issuance of rulings

§ 56. Except in cases of a summons (§ 19) or a ruling under § 57, the relevant facts shall be ascertained in accordance with §§ 37 and 39, before a ruling is issued, unless such facts are already clear beforehand.

§ 57. (1) In cases of amounts of money to be charged under a law, statutes or a tariff or in cases of measures not to be postponed because of imminent danger, the authority has the right to issue a ruling without any prior investigation procedure.

(2) Against a ruling issued in accordance with para 1, an appeal may be lodged with the issuing authority within a two weeks' term. The appeal shall have suspending effect only in cases it is directed against a payment order.

(3) Within two weeks after receipt of the appeal the authority shall institute the investigation procedure, failing which the ruling appealed shall lose legal force by virtue of the law. Upon request of a party, the fact of a ruling having lost legal force shall be confirmed in writing.

Contents and form of rulings

§ 58. (1) Any ruling shall expressly be named as such and contain the decision and the information regarding appeals.

(2) Whenever the point of view of the party is not fully shared or decisions are taken on objections or submissions of persons involved, the reasons therefor shall be stated in the ruling.

(3) § 18 para 4 shall apply also to rulings.

§ 58a. In joint administrative proceedings (§39 para 2a) the authority shall decide on approvals or authorisations required under the administrative rules and regulations in one ruling. The decision of the ruling shall be itemized in accordance with the respective administrative regulations applied. The authority may decide separately on authorizations or approvals – one or more at a time – if it deems suitable to do so.

§ 59. (1) As a rule, the decision shall cover the full scope of the matter of the hearing as well as all motions by parties with regard to the main issue, then also the decision on the costs, if applicable, in a brief and clear wording and quote all provisions of the law applied. Any objections on the motion initiating the procedure are also deemed to be dealt with by the decision. If the matter of the hearing allows for dealing with items separately, a separate decision can be taken on each one of such items, as soon as any of them is ready to be decided, provided that such procedure is deemed feasible.

(2) If the decision results in an obligation to perform or to create a certain condition, it shall determine also an adequate term for complying with such obligation.

§ 60. The reasons given for the decision shall summarize the results of the investigation procedure, the arguments determining the evaluation of the evidence and the opinion on the legal issue in a clear and concise manner.

§ 61. (1) The instructions on the right to appeal shall indicate whether the ruling may be appealed or not, and, in the affirmative case, it shall also indicate the authority and the deadline for submission such appeal. It shall also indicate the legal prerequisites, i.e. the designation of the ruling contested and the grounds for the appeal.

(2) If a ruling does not contain any instructions on the right to appeal or wrongly says that no appeal is admissible or does not indicate any or a shorter term for submission an appeal than provided by law, an appeal is considered filed in due time if it has been filed within the term provided by law.

(3) If the ruling indicates a longer term than provided by law, an appeal filed within the term indicated is considered as having been filed in time.

(4) If a ruling does not indicate or wrongly indicates the authority where an appeal is to be filed, an appeal is considered to have been filed correctly if filed either with the authority having issued the ruling or with the authority indicated.

(5) (Note: repealed by BGBl I No. 158/1998)

§ 61a. Rulings issued by the authority of final instance shall indicate:

1. the right to file a complaint with the Constitutional Court and, provided that the matter is not excluded from the jurisdiction of the Administrative Court under art. 133 of the Federal Constitution Act (B-VG), the right to file a complaint with the Administrative Court;
2. the terms to be complied with for submission such complaints;
3. the requirement that such complaint requires the signature of an attorney at law;
4. the fees payable for filing such complaints.

§ 62. (1) If the administrative rules and regulations do not provide otherwise, rulings may be issued both in writing as well as orally.

(2) The contents and the pronouncement of a ruling issued orally, provided that it was pronounced in the course of an oral hearing, shall be recorded in the final part of the written minutes of the hearing, in other cases in separate written minutes.

(3) A written copy of the ruling pronounced orally shall be delivered to parties not present when it was pronounced and to such parties who so request at the latest within three days of the pronouncement; the party shall be given information on this right on occasion of the pronouncement of the oral ruling.

(4)Rulings containing typing or calculating errors or inaccuracies obviously due to an oversight or exclusively to technically inadequate operation of electronic data processing equipment may be corrected ex officio by the authority at any time.

IV. Part: Legal protection
1. Section: Appeal

§ 63. (1) The stages of appeal and the right to file an appeal and other remedies (representation) are governed by the administrative rules and regulations, unless covered by provisions for special cases in the subject federal act.

(2) Separate appeals against procedural orders are not admissible. Such orders can be appealed only in the appeal against the ruling deciding in the matter.

(3) The appeal shall indicate the ruling it contests and contain a motion of appeal with the reasons.

(4) No more appeal is admissible if the party expressly waived the right of appeal after receipt or pronouncement of the ruling.

(5) The appeal shall be filed by the party within a two weeks' term with the authority that issued the ruling of first instance. The term starts for each party with the receipt of the written copy of the ruling, in the case of oral pronouncement simultaneously with it. If an appeal is filed with the appellate authority within such term it is deemed of having been filed in due time; the appellate authority shall forward the appeal without delay to the authority of first instance.

§ 64. (1) Appeals filed in due time have suspensive effect.

(2) The authority may exclude the suspensive effect if early enforcement is in the interest of a party or for the common good because of imminent danger. It is recommendable to include a statement to this effect already in the ruling given on the main issue.

§ 64a. (1) The authority may process the appeal by a preliminary decision within a two months' term after receipt on the part of the authority of first instance. After having carried out any further necessary additional investigation, it may reject the appeal as inadmissible or filed too late, cancel the ruling or modify it in any way.

(2) Within two weeks after receipt of the preliminary decision on the appeal, each party may file a request with the authority to the effect that the appeal be submitted to the appellate authority for decision (request for filing).

(3) Upon receipt of the request for submission, the preliminary decision on the appeal becomes inoperative. The authority is obligated to notify the parties that the preliminary decision on the appeal has become inoperative.

Late or inadmissible requests for submission shall be rejected.

§ 65. If the appeal contains new facts or evidence the authority deems material, it shall immediately notify persons who may wish to contest the appeal and give them the opportunity to obtain information on the subject matter of the appeal and to comment on it within an adequate term not exceeding however two weeks.

§ 66. (1) Additional investigation which may be necessary shall be carried out by an authority of lower instance upon instruction by the appellate authority.

(2) If the facts of a case presented to the authority are incomplete to an extent that implementation or a repetition of an oral hearing is deemed unavoidable, the appellate authority may repeal the contested ruling and remand the subject matter to an authority of lower instance for a new hearing and for issue of a new ruling.

(3) The appellate authority however may hear the case and take evidence itself if such procedure would save time and costs.

(4) Except for the case stated in para 2, the appellate authority shall always decide the matter directly, unless the appeal is rejected as inadmissible or late. It is authorised to replace the opinion of the lower instance authority by its own opinion, both with regard to the decision as well as the reasons (§60) and modify the contested ruling accordingly in any way.

§ 67. Section III also applies to rulings of the appellate authority, but reasons for the decision shall also be given in case the appeal is allowed.

2. Section: Special provisions for the procedure at the independent appeal panels

Jurisdiction; members

§ 67a. (1) The Independent Administrative Panels of Appeal in the Laender decide on:

1. submissions and appeals regarding matters assigned to them on basis of the administrative rules and regulations;
2. complaints by persons claiming a violation of their rights through the use of immediate orders or exercise of coercive power on the part of administrative authorities, unless in cases of federal revenue offences. Unless provided otherwise by law, the independent panels of appeal of the Laender decide through single members.

In matters of subpara 1 they decide through chambers consisting of three members on submissions within their jurisdiction as first instance or under §73 para 2, and on appeals against rulings of the Governor of the Land, the Land Government, any other authority with jurisdiction covering the complete territory of the Land, with the exception of the Land Vienna, or of a collegial executive body. In cases of appeals against procedural rulings, a single member of an independent administrative panel of appeal decides. Regarding matters of judicial review including issue of temporary injunctions concerning awards of orders in minor cases it is also a single member that decides.

(2) The Independent Federal Asylum Panel is the highest instance for matters of asylum seekers. Unless provided otherwise by law, a single member decides.

Parties

§ 67b. A party is also:

1. in an appellate proceeding: the authority that issued the contested ruling;
2. in a proceeding regarding a complaint against exercise of immediate orders or coercive power by administrative authorities: the authority charged;
3. in a proceeding regarding a motion for delegation: the authority of lower instance.

Complaints against exercise of immediate orders or coercive power by administrative authorities

§ 67c. (1) Complaints under §67a para 1 subpara 2 shall be filed with the independent administrative panel of appeal having jurisdiction for the location where such administrative act took place within a period of six weeks to be counted from the date when the claimant obtained information of immediate orders or coercive power exercised by administrative authorities, however if he was prevented by such measure to make use of his right to complain, to be counted from the termination of such impediment.

(2) Such complaint shall contain:

1. the identification of the administrative act contested,
2. to the extent it is reasonable, the information which executive body performed the administrative act contested and which authority is responsible for it (authority charged),
3. the facts of the case,
4. the reasons on which the claim of unlawfulness is based,
5. the request to declare the administrative act contested as illegal,
6. the information required to judge whether the complaint has been filed in due time.

(3) The administrative act contested shall be declared illegal if the complaint is not to be dismissed or rejected for lack of merits. If an administrative act declared illegal is still in course, the authority prosecuted shall without delay re-establish the legal conditions corresponding to the decision.

Public oral hearing (hearing)

§ 67d. (1) Upon request or, if it deems necessary, ex officio, the independent administrative panel of appeal shall hold an public oral hearing.

(2) The hearing may be dispensed with if

1. the party's submission initiating the hearing or the appeal is to be dismissed or already according to the documents before the panel the ruling is to be repealed;
2. the request for delegation is to be dismissed or rejected;
3. the complaint is to be dismissed or already according to the documents before the panel the administrative act contested is to be declared illegal.

(3) Filing the motion to hold a hearing in the appeal is the responsibility of the complainant. Persons who may wish to contest the appeal shall be given the opportunity to file a motion to hold a hearing within an adequate term not exceeding two weeks. A motion to hold a hearing can be withdrawn only with the consent of the other parties.

(4)Irrespective of a motion filed by a party, the independent administrative panel of appeal may dispense with a hearing if it has to issue a procedural ruling or if the documents before the panel indicate that personal discussion is not likely to provide further clarification of the matter, provided that art. 6 para 1 of the Convention for the Protection of Human and Basic Rights, Federal Law Gazette No. 210/1958, does not provide anything to the contrary.

Exclusion of the general public

§ 67e. (1) Exclusion of the general public from attending the hearing is only permitted for reasons of public morality, public order or national security, for ensuring nondisclosure of business or manufacturing secrets or in the interest of the protection of minors or the private sphere of a party or of witnesses.

(2) The general public can be excluded by a procedural order either ex officio or upon a motion of a party or of a witness.

(3) Immediately after the pronouncement of the decision on exclusion of the general public, all persons attending shall leave, but each party may request that three persons each of their confidence be permitted to continue to attend the hearing.

(4) If the general public has been excluded from a hearing, disclosure of details of the hearing is prohibited to the extent as required by the reasons stated in para 1.

Principle of immediacy of the proceeding; deliberation and vote

§ 67f. (1) In a hearing the decision may be taken only by those members of the independent administrative panel of appeal who were present in the hearing. If there has been any change in the membership of the panel, the hearing shall be repeated.

(2) Deliberation and voting procedure of the chamber of the independent administrative panel of appeal are not public.

(3) (Note: repealed by BGBl I No. 158/1998)

Issuance of rulings

§ 67g. (1)Based on the hearing and to the extent possible immediately upon its termination, a resolution on the ruling and its essential statement of reasons shall be passed and publicly announced. The ruling shall be pronounced irrespective whether the parties are present.

(2) The pronouncement will be dispensed with if

1. a hearing has not taken place (not been continued) or
2. passing the resolution on the ruling is not possible immediately upon termination of the oral hearing and the ruling is available for inspection to

everybody.

(3) The parties shall be served a written copy of the ruling.

Decision on appeals under the administrative rules and regulations

§ 67h. (1) In matters regarding §67a para 1 subpara 1, §66 is applicable with the proviso that the independent administrative panel of appeal shall in such cases decide in accordance with §66 para 4, if the authority charged does not object to such procedure upon presentation of the appeal, bearing in mind the considerable simplification or acceleration of the proceeding.

(2) In case of an objection on the part of the authority charged, the independent administrative panel of appeal repeals the ruling, provided that it is illegal. It shall not be considered illegal to the extent that legislation does not provide a binding rule for the actions of an administrative authority and leaves it up to the authority to judge such action by itself, as long as the authority charged has used its discretion within the scope of the law.

3. Section: Other modification of rulings

Modification and remedying ex officio

§ 68. (1) Submissions of persons involved who, apart from cases of §§ 69 and 71, request the modification of a ruling not or no more subject to appeal, shall be rejected for reasons of decision final, unless the authority finds reason to decide according to paras 2 through 4.

(2)A ruling not resulting in any rights of someone may be repealed or modified ex officio either by the authority or the independent administrative panel of appeal which issued it or by the higher authority having jurisdiction in the matter in exercise of its right of supervision.

(3) Other rulings may be modified for the benefit of the common good by the authority issuing in last instance or by an independent administrative panel of appeal if issued by such panel, or the higher authority having jurisdiction in the matter, to the extent that this is necessary and inevitable for eliminating grievances resulting in detriment to life or health of people or for avoiding severe damage to the economy.In all such cases the authority shall proceed in a manner not interfering, to the extent possible, with any rights already arisen to somebody.

(4) Rulings may also declared void ex officio by the higher authority having jurisdiction in the matter in exercise of its right of supervision, if such rulings

1. were issued by an authority not having jurisdiction or by a panel whose membership was not composed properly,
2. would result in a situation contrary to penal law,
3. is in effect impossible to implement or
4. is affected by an error expressly sanctioned with nullity by a provision of the law.

(5) After expiry of a three years' period to be counted from the date defined in §63 para 5, a declaration of nullity is no more admissible for the reasons as stated in para 4 subpara 1.

(6) The right of an authority to repeal or restrict a permit on basis of administrative regulations by a proceeding separate from an appeals proceeding remains unaffected.

(7) Nobody has a right to insist that the authority exercises its power to modify or remedy under paras 2 through 4. Frivolous requests for administrative review or modification are punishable under §35.

Reopening of a proceeding

§ 69. (1) A motion of a party for reopening of a proceeding already terminated by a ruling is to be adopted if no or no more remedy against the ruling is admissible and:

1. the ruling has been fraudulently obtained by a forged deed or certificate or any other act punishable under criminal law or in some other surreptitious way or

2. new facts or evidence come up, which the party, without its fault, was not able to bring up during the proceeding and which alone or in connection with other results of the proceedings so far were likely to result in a ruling different from the main contents of the decision, or
3. the ruling depended on precondition-issues as per §38 and the authority (court) having jurisdiction decided differently with regard to essential items of it at a later date.

(2) The request for reopening shall be filed within a two weeks' period with the authority that issued the ruling in first instance. This term starts with the date when the party submission the request obtained knowledge of the reason for reopening; but if this happened after the pronouncement of an oral ruling and before service of the written copy, only on such date.

After expiry of a three years' period after issue of a ruling no more request for reopening is admissible. The facts proving that the term provided in the law has been complied with shall be substantiated by the person submission the request.

(3) A reopening of the proceeding may also be ordered ex officio if the prerequisites of para 1 are given. After expiry of a three years' period after the date of issuance of the ruling, also a reopening ex officio is only admissible for the reasons stated in para 1 subpara 1.

(4) The authority that issued the ruling as last instance is the one to decide a reopening, unless it has been issued by an independent administrative panel of appeal which then would have jurisdiction.

§ 70. (1) The ruling authorising or ordering the reopening shall state to what extent and at what stage of instances the proceeding shall be resumed, unless a new ruling can already be issued on the basis of the documents already before the authority.

(2) Investigation and evidence taken at an earlier date and not affected by the reasons for reopening shall in no case be repeated.

(3) The applicant is entitled to file an appeal to the authority of higher instance against a rejection of a request for reopening, if however for the subject matter an appeal is to be addressed to the independent administrative panel of appeal, it is to be addressed to the latter one. A separate appeal against the approval of or the order for a reopening is not permitted.

Reinstatement into the previous legal position

§ 71. (1) In case of failure to respect a deadline or to attend an oral hearing, the request of a party, having suffered a legal detriment by such failure, for reinstatement into the previous legal position shall be granted if:

1. such party furnishes evidence that it had been prevented from respecting the due date or appearing in the hearing by an unforeseen or unavoidable event and it is not at fault or only at fault to a minor degree, or
2. such party exceeded a deadline for a remedy because the ruling did not contain any instruction with regard to remedies available, no deadline for remedies or wrongly the information that no remedy is available.

(2) The request for reinstatement shall be filed within a period of two weeks after the reason ceases to exist or after the date on which the party obtained information that the appeal is admissible.

(3) In case a deadline has not been respected, the party shall perform the action it failed to perform simultaneously with the request for reinstatement.

(4) The request for reinstatement is to be decided by such authority where the action not performed in due time was supposed to be performed or with such authority that ordered the respective action to be performed or which gave the incorrect information on the remedies available.

(5) No reinstatement in the previous legal position is admissible when the deadline for submission the request for reinstatement of the previous legal position has been exceeded.

(6) The authority may grant a suspending effect to the motion for reinstatement

in the previous legal position. A single member of an independent administrative panel of appeal shall decide.

(7) A request for reinstatement in the previous legal position, with the objective to extend the term exceeded or to postpone the hearing not attended, can not be based on facts which already at an earlier date had been deemed insufficient by the authority.

§ 72. (1) Upon approval of the reinstatement in the previous legal position, the proceeding resumes the position as it was before the deadline had expired.

(2)A motion for reinstatement because of failure to attend the oral hearing shall not extend the term available for appeal of a ruling issued because of the failure to attend.

(3) If a party requested reinstatement because of failure to attend the oral hearing and filed an appeal against the ruling, such appeal shall only be processed after the request for reinstatement has been rejected.

(4) The applicant is entitled to file an appeal with the authority of higher instance against a rejection of a request for reinstatement, if however for the subject matter an appeal is provided to be processed by the independent administrative panel of appeal, it is to be addressed to the latter one. No appeal is admissible against the approval of reinstatement.

4. Section: Obligation to decide

§ 73. (1)Unless provided differently in the administrative rules and regulations, the authorities are obligated to issue a ruling on submissions of parties (§8) and appeals without undue delay, however at the latest within six months after receipt. Provided that the legal provisions applicable result in different terms for the decision of combined proceedings (§39 para 2a), the term with the latest expiry date shall apply.

(2) In case the ruling is not issued within the term allowed for the decision, the party may request in writing that the higher authority having jurisdiction in the matter shall be in charge to take the decision; however, if an appeal against the ruling would be permitted to be filed with the independent administrative panel of appeals, the latter one shall be in charge of the decision (request for transfer of jurisdiction). The request of transfer of jurisdiction shall be filed with the higher authority (the independent administrative panel of appeal). It shall be rejected if the delay is not mainly due to a fault of the authority.

(3) The deadline for the decision of the higher authority (the independent administrative panel of appeal) starts on the day on which the request for the transfer of jurisdiction is received.

Part V: Costs

Costs incurred by the parties involved

§ 74. (1) Each party involved in an administrative proceeding shall bear all its costs incurred.

(2) The administrative rules and regulations determine whether and to what extent a party is entitled to claim reimbursement of costs from another party. The claim for reimbursement of costs shall be submitted in due time at a date allowing to incorporate the decision on the costs in the ruling. The amount of costs to be reimbursed will be fixed by the authority which may also determine a lump sum amount.

Costs incurred by the authorities

§ 75. (1) Unless provided differently in §§76 through 78 the authority shall bear the costs incurred for its activities performed in the administrative proceeding ex officio.

(2) It is not permitted to request performance of any payments from the parties other than provided in §§76 through 78, regardless under which title.

(3) Any legal provisions concerning legal and stamp fees of the federal

administration remain unaffected.

§ 76. (1) Cash expenses incurred by an authority for an official act shall be borne by the party submitting the submission initiating the respective proceeding, unless the administrative regulations provide that such expenses be borne by the authority. Fees to be paid to experts and interpreters are also considered to be cash expenses. Costs arising to an authority from its obligation under §17a as well amounts due to be paid to an interpreter for deaf persons are not considered cash expenses. In cases of §52 para 3 a party is liable to bear the fees due to not officially appointed experts only to the extent they do not exceed the amount determined by the party.

(2)If however the official act was caused by the fault of another person involved, such person shall bear the respective expenses. In case the official act was ordered ex officio, the person involved is to be charged the expenses only if the official act is the result of a fault of such person involved.

(3) If the circumstances of the preceding paragraphs involve more than one person, the various persons shall be charged the expenses pro rata.

(4) If an official act necessarily entails larger amounts of cash expenditure, the party filing the request to institute the proceeding can be ordered to deposit an adequate advance payment.

(5) Any costs arising to the authority under its obligation from §17a, and the amounts to be paid to experts and interpreters, are – in case the parties involved in the proceeding are not obligated to bear them – to be borne by such legal entity in whose name the authority acted in the subject matter concerned.

§ 76a. The fees payable to witnesses shall be borne by such legal entity in whose name the independent administrative panel of appeal acted in the subject matter. This is also the case for any fees payable to persons involved.

§ 77. (1) Special handling charges may be collected by the authority for official acts performed outside of the office premises. §76 shall apply accordingly with regard to the obligation to pay such charges.

(2) Such special charges shall be debited as lump sum amounts (according to rate schedules) or, whenever no lump sum amounts (rates) are fixed, as cash expenditures under §76. The lump sum amounts (rates) shall be determined in accordance with the time spent for the official act, the distance between the place where the official act was performed and the office of the authority, or by the number of officers involved.

(3) The lump sum amounts (rates) shall be fixed by Federal Government regulation, or by Laender government regulation for the authorities of the Laender, districts and municipalities.

(4) The special handling charges shall be collected by the authority performing the official act and credited to such regional entity bearing the cost of the authority involved.

(5) If other administrative authorities involved in the proceeding delegate officers, the authority in charge of the official act shall collect special handling charges in cash according to the rates applicable for the officers delegated and credit the respective amounts to the legal entity delegating the respective administrative officers.

(6) § 76 para.4 shall apply also to the special handling charges.

§ 78. (1) Federal administration fees may be levied from parties for matters of the federal administration (direct or indirect federal administration, federal matters delegated to municipalities) for licences granted or other official acts essentially pertaining to their private interest, unless exemption from this type of fees is expressly provided by law. If a legal entity that is party in an administration proceeding is in charge of implementing a law, it is not subject to the obligation to pay federal administrative fees to the extent that the official act constitutes a direct prerequisite of the implementation of the law being the duty of such legal entity. The regional entities also are not subject to pay a federal administration fee if such fee would accrue to the regional entity being a party in the proceeding.

(2) Except in cases with special regulations provided by law, the rates for the federal administration fees shall be determined by regulations to be issued by the Federal Government, consisting of fixed amounts which may vary in accordance with objective prerequisites, not exceeding an amount of 1090 euros for each single case.

(3) The amount of administrative fees payable in matters of Laender, district and municipality administration is determined in accordance with the provision of Laender laws existing on basis of the Fiscal Constitution Act and the Revenue Sharing Act.

(4) The federal administrative charges shall be collected by the authority having jurisdiction in first instance and credited to such regional entity bearing the cost of the authority involved.

(5) The system of collection shall be fixed by Federal Government regulation for the federal authorities, or by Laender government regulation for the authorities of the Laender, districts and municipalities.

§ 78a. Exempt from federal administrative fees are allocations of expert fees, instructions about legal remedies available and copies of official files.

§ 79. The fees provided in §§ 76 through 78 shall be collected only to the extent that their imposition does not jeopardize the necessary living maintenance of the persons involved and dependents whom they have to support under the law.

Expenses regarding complaints for exercise of direct ordering and coercive power by administrative authorities

§ 79a. (1) The party prevailing in a proceeding according to §67c is entitled to claim reimbursement of its expenses from the losing party.

(2) If the administrative act contested is declared illegal, the complainant is the prevailing and the authority charged the losing party.

(3) If the complaint is rejected or dismissed or withdrawn by the complainant before the independent administrative panel of appeal has taken a decision, the authority charged is the prevailing and the complainant the losing party.

(4) The following shall be considered expenses according to para 1:

1. the stamp and special handling fees as well as cash expenses which shall be borne by the complainant,
2. cost of transportation arising in connection with exercising rights of parties in proceedings at the independent administrative panel of appeal, and
3. the lump sum amounts fixed by regulation issued by the Federal Chancellor in coordination with the National Council main committee for the cost arising for the written pleading, for the oral hearing and the submission.

(5) The cost of the written pleading and the oral hearing shall be equivalent to the average cost of legal representation or filing of a pleading by an attorney at law. For the reimbursement of the expenses incurred by the authorities a lump sum shall be fixed which is equivalent to the average cost incurred by the authorities for presentation, pleading and hearing.

(6) Reimbursement shall be effected upon claim on the part of the party. The claim shall be filed before the end of the oral hearing.

(7) §§ 52 through 54 of the Administrative Court Act 1985 are also applicable to reimbursement of expenses according to Para 1.

VI. Part: Final provisions

References

§ 80. Whenever this federal law refers to provisions of other federal laws, they shall be applied in their wording valid as amended from time to time.

Execution

§ 81. The Federal Government shall execute this Federal Act, with the exception of §78. §78 shall be executed by the Federal Minister of Finance, regardless of the jurisdiction of the Federal Government to issue regulations on basis of §78 para 2.

Date of entering into legal force

§ 82. (1) §78 para 2 as amended by the Federal Act, Federal Law Gazette No. 866/1992 becomes effective as of January 1st 1993.

(2) § 18 para 3 clause five through nine, § 18 para 4 second clause, § 38a, § 39a para 1 second clause, § 47, § 51a, § 52 paras 2 through 4, § 53a para 1, § 63 para 5, § 64a para 1, § 67c para 3 as well as the new naming of paras 4 and 5, § 67d para 2, § 67g, § 67h including heading, § 68 para 2, § 70 para 3, § 71 para 6, § 73 para 1 and 3, § 76 para 1 second and third clause, § 76 para 5, § 76a, the heading preceding § 79b, the new designation of § 79b para 1 as well as the heading preceding § 80 as amended by the Federal Act Federal Law Gazette Nr. 471/1995 become effective as of July 1st, 1995.

(3) § 79a as amended by the Federal Act, Federal Law Gazette No. 471/1995 becomes effective as of January 1st 1996. Regulations issued on basis of § 79a as amended by the Federal Act Federal Law Gazette No. 471/1995 can be issued already as of the date following its public announcement; they however must not be given legal effect before January 1st, 1996.

(4) § 63 para 5 as amended by the Federal Act, Federal Law Gazette No. 471/1995 shall be applicable to rulings issued after June 30th, 1995. §67c para 3 as amended by the Federal Act, Federal Law Gazette No. 471/1995 shall be applicable to administrative acts implemented after June 30th, 1995 . (5) (Note: repealed by BGBl I No. 137/2001)

(6) §§ 3 subpara 3, 10 para 1, 13 including heading, 14 including heading, 18 paras 3 and 4, 20, 34 paras 2, 35, 36 para 2, 37 second clause, 39 paras 2 and 3, 41 paras 1, 42, 43, 44, 44a through 44g including heading, 51a through 51d including heading, 53a including heading, 53b including heading, 56, 59 para 1 first and second clause, 61 para 1 second clause, 61 para 5, 61a, 63 para 2, 64a, 66 para 1 and 2, 67a including heading, 67b including heading, the re-named § 67c para 3, § 67d including heading, the heading to § 67e, the heading to § 67f, die §§ 67g including heading, 69 para 2, 71 para 1 subpara 2, 71 para 6 second clause, 73, 76 para 1 first clause and 76a as amended by Federal Act Federal Law Gazette I No. 158/1998 become effective as of January 1st, 1999. §§ 61 para 5, 67c paras 3 and 5, 67f para 3, 67h including heading as well as the Regulation on Telecopies, Federal Law Gazette No. 110/1991, become ineffective after December 31st, 1998.

(7) All provisions contained in federal and Laender regulations deviating from §§ 13 paras 3 through 8, 14, 18 paras 3 and 4, 37 second clause, 39 paras 2 and 3, 42, 43, 44, 44a through 44g, 59 para 1 first and second clause, 61 para 1 second clause, 63 para 2, 64a, 66 para 1 and 2, 69 para 2, 71 para 1 subpara 2, 73 paras 2 and 3 and 76 para 1 first clause as amended by Federal Act Federal Law Gazette I No. 158/1998 become ineffective after December 31st, 1998. The above shall not apply in case these provisions were publicly announced after 30th June, 1998.

(8) Proceedings pending on 1st January, 1999, § 44f shall be applicable with the proviso that the authority may serve notice of a document by way of an edict to more than 100 persons also in case they have been notified personally that public announcements and services in proceedings may in future be effected by edict.

(9) §78 para 2 as amended by the Federal Act, Federal Law Gazette I No. 29/2000 becomes effective as of June 1st 2000.

(10) § 13 para 5, § 16 para 2 last clause, § 18 para 3 last clause, § 34 para 2, § 35, § 51b subpara 1 last clause and subpara 2 second clause, § 53a para 2 first and last clause, § 67d, § 76 para 4 and § 79a para 4 subpara 3 as amended by Federal Act Federal Law Gazette I No. 137/2001 become effective as of January 1st, 2002.

(11) For the transition to the legal situation created by the Administrative Reform Act 2001, Federal Law Gazette I No. 65/2002, the following shall apply:

1. § 13 paras 4a and 9, § 14 para 8, § 17 para 1 last clause, § 39 para 2a, § 40 para 1

last clause, § 58a, § 67a para 1, § 73 para 1 last clause as amended by the Administrative Reform Act 2001 become effective as of January 1st, 2002, however not before the day following the public announcement of the aforementioned federal act. §§ 39 para 2a, 40 para 1 last clause, 58a and 73 para 1 last clause as amended by the Administrative Reform Act 2001 shall not be applied to proceedings pending at the time of its becoming effective.

2. § 67h as amended by the Administrative Reform Act 2001 becomes effective as of July 1st, 2002, however not before the fourth first day of the month following the public announcement of the aforementioned act. It shall not be applied to proceedings pending at the time of its becoming effective.
3. § 36 para 2 as amended by the Administrative Reform Act 2001 becomes effective as of the first day of the month following the public announcement of the aforementioned Federal Act, however at the latest by November 1st, 2002.

(12) § 78 para 2 as amended by Federal Act Federal Law Gazette I No. 117/2002 becomes effective as of January 1st, 2003. § 67a para 1 as amended by Federal Act Federal Law Gazette I No. 117/2003 becomes effective as of January 1st, 2003, however shall not be applied to proceedings pending in the Land on that date with the independent administrative panel of appeal.