

## **(“Official Gazette” of Bosnia and Herzegovina, No. 19/02)**

Pursuant to Article IV.4.a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina, at the session of the House of Representatives, held on 20 June, 2002 and at the session of the House of Peoples, held on 25 June, 2002, adopted

### **LAW ON ADMINISTRATIVE DISPUTES OF BOSNIA AND HERZEGOVINA**

#### **I- BASIC PROVISIONS**

##### **Article 1**

In order to provide judicial protection of the rights of citizens, companies, associations, institutions and other legal persons in Bosnia and Herzegovina this Law shall regulate the rules of administrative disputes in which it is decided on legality of individual and general final administrative acts issued based on the state law in exercise of public offices of the institutions of Bosnia and Herzegovina deciding on the rights and duties of citizens and legal entities.

##### **Article 2**

The right to initiate an administrative dispute shall be vested in:

- 1) citizen or legal person if the final administrative act violated his/her right or direct personal interest based on law;
- 2) if the final administrative act violated the law to the disadvantage of Bosnia and Herzegovina or if it violated the law for the benefit of a legal person or citizen, the administrative dispute may be initiated by the Public Attorney of Bosnia and Herzegovina;
- 3) civil servant if the final administrative act violated his/her right arising from employment;
- 4) groups representing collective interests (associations and foundations, corporations, trade unions) if the final administrative act violated their rights or collective interests they represent;
- 5) administrative body, administrative service, business unit of a company (association), settlement or group of people although they do not have the status of a legal person, if they may be the holders of the rights and obligations that have been decided in the administrative dispute;
- 6) in the case referred to in Item 2 of this Paragraph all administrative bodies, administrative services and legal persons shall be bound to inform the competent Public Attorney or other legally authorized body on such acts, when they become aware of them.

An administrative dispute may be initiated by the Ombudsman for Bosnia and Herzegovina but he/she can also intervene in the ongoing procedure when in discharge of tasks falling within his/her jurisdiction the Ombudsman concludes that the final administrative act violated human dignity, rights and freedoms of citizens ensured by the Constitution of Bosnia and Herzegovina and instruments referred to in Annex I of the Constitution of Bosnia and Herzegovina.

##### **Article 3**

The judgment of the Court of Bosnia and Herzegovina delivered in the administrative disputes shall be final and binding in accordance with the provisions of this Law.

##### **Article 4**

The institutions of Bosnia and Herzegovina, in terms of this Law, shall include: the Ministries of Bosnia and Herzegovina and their bodies, public agencies, public corporations, institutions of the Brcko District of Bosnia and Herzegovina and other organizations stipulated by law of the state of Bosnia and Herzegovina executing public authorities (hereinafter: the competent institution).

## **II-JURISDICTION**

### **Article 5**

Administrative disputes shall be decided by the Administrative Division of the Court of Bosnia and Herzegovina (hereinafter: the Court).

### **Article 6**

The Court shall decide the actions taken against final administrative acts of the institutions of Bosnia and Herzegovina referred to in Article 4 of this Law.

### **Article 7**

In administrative disputes the Court shall decide in panel of three judges unless otherwise regulated by this Law.

## **III-ADMINISTRATIVE DISPUTES**

### **Article 8**

An administrative dispute may only be conducted against the final administrative act.

The final administrative act, in terms of this Law, shall be the act by which the competent institution referred to in Article 4 of this Law decides on a certain right or duty of a citizen or legal person in some administrative issue (hereinafter: the final administrative act).

### **Article 9**

An administrative dispute may only be initiated against final administrative acts issued by the institutions referred to in Article 4 of this Law.

An administrative dispute may be initiated even when the issue is an administrative silence of the institution referred to in Article 4 of this Law (the administrative silence) under the condition set forth in Article 21 of this Law.

### **Article 10**

An administrative dispute cannot be conducted:

- 1) against final administrative acts issued in matters in which judicial protection is provided apart from the administrative dispute;
- 2) against acts issued in the matters that, according to the strict stipulation of the law, cannot be the subject of the administrative dispute;
- 3) in matters in which the Parliamentary Assembly of Bosnia and Herzegovina or Presidency of Bosnia and Herzegovina directly bring decisions based on the constitutional authorizations.

In matters referred to in Item 2 Paragraph 1 of this Article the administrative dispute cannot be

conducted if the competent institution in issuance of the final administrative acts beyond the limits of its competencies.

### **Article 11**

The final administrative act may be disputed if:

- 1) in the act concerned the law of Bosnia and Herzegovina, regulations based on the law or general act were not properly applied or applied at all in the performance of the duties of authorized institutions;
- 2) if the act was issued by an unauthorized institution of Bosnia and Herzegovina;
- 3) in the administrative procedure prior to the issuance of the actions were not taken according to the rules of proceedings, and especially if the facts of the case were not established completely and properly, or if an incorrect conclusion was made from the established facts regarding the facts of the case;
- 4) if the authorized institution deciding based on free estimate overstepped the limits of the authorization given to it by legal regulations and contrary to the aim for which the authorization was given.

### **Article 12**

The action for initiation of the administrative dispute shall not operate to delay enforcement of the disputed final administrative act, unless otherwise decided by the Court.

In the administrative dispute the following may be requested:

- 1) to establish whether the disputed final administrative act is contrary to law and to annul it;
- 2) to recognize, as required, to the plaintiff the legal status and right to restoration of the previous situation before enforcement of the disputed administrative act;
- 3) to establish the responsibility of the administration including the payment of compensation for the damage inflicted;
- 4) to establish whether fulfillment of legal obligations, if the issue is an omission to act by the administration or public agencies.

### **Article 13**

In the administrative dispute the repossession of the seized objects as well as compensation of a damage inflicted to the plaintiff by execution of the final administrative act which is being disputed may be requested.

### **Article 14**

The plaintiff in the administrative dispute may be a citizen, legal person and other persons referred to in Article 2 of this Law under the conditions stipulated in that provision.

### **Article 15**

When a citizen is a member of some social organization or association of citizens which, according to its rules (Statute), has a task to protect certain rights and interests of its members and when a final administrative act violated any of these rights or interests, that social organization or association of citizens may on his/her behalf, based on the written consent of its member, file an action and conduct an administrative dispute against such act.

The organization or association referred to in Paragraph 1 of this Article may, at every stage of the proceedings, with the right of subsidiary party to enter already initiated dispute on behalf of such citizen and to his benefit take all actions and use all legal instruments unless it is contrary to statements and actions of the citizen himself/herself.

## **Article 16**

The third party for which the annulment of the disputed final administrative act would be directly damaging (interested party) shall have a status of the party to the dispute.

## **Article 17**

The defending party in the administrative dispute shall be the institution of Bosnia and Herzegovina referred to in Article 4 of this Law whose final administrative act is disputed.

## **Article 18**

As a rule, an action shall not operate to delay enforcement of the disputed final administrative act, unless otherwise specified by law.

Upon the request of the plaintiff the institution competent for enforcement of the disputed final administrative act shall delay enforcement until the final court decision if the enforcement would inflict to the plaintiff damage which could be difficult to mend and if a delay is not contrary to public interest nor it would cause an irreparable damage to the opposite party. The evidence on filed action must be attached to the request for delay of enforcement. The competent institution shall have to issue decision in respect to each request no later than three days from the day of receipt of the request for delay of enforcement.

The competent institution referred to in Paragraph 2 of this Article may also, for other reasons, delay the enforcement of the disputed final administrative act until the final court decision, if allowed so by public interest.

If required by the plaintiff in writing the Court before which the action is filed may also decide on delay of enforcement under the conditions referred to in Paragraphs 2 and 3 of this Article on delay of enforcement of the final administrative act against which the action is filed.

## **IV-PROCEDURE**

### **Article 19**

An administrative dispute shall be initiated by an action.

The action shall be filed within two months from the day when the party which filed the action was informed or when it received the final disputed administrative act or decision or from the day of publishing of the disputed regulation.

The deadline referred to in Paragraph 2 of this Article shall also be applied to the Public Attorney of Bosnia and Herzegovina or Ombudsman of Bosnia and Herzegovina when they are authorized to file an action.

### **Article 20**

An action shall be submitted to the Court directly or sent to it by registered mail.

An action may be filed for records in the Court or any other Court in Bosnia and Herzegovina. The day when the action is submitted by registered mail or the day when it was filed for the records shall be considered to be the day when it is filed with the Court.

If the action was not filed with the Court but with some other body and if it arrives to the Court after expiry of the deadline for filing of the action it shall be considered as it was filed on time if the late filing was caused by lack of knowledge or obvious omission of the party which file the action.

The day when the action is submitted to the military unit or military institution or headquarters shall be considered to be the day when the action is filed with the Court for persons in the armies of the entities of Bosnia and Herzegovina serving obligatory military service.

The provision referred to in Paragraph 4 of this Article shall also be applied to the persons in the armies of the entities of Bosnia and Herzegovina who are serving in military units or military institution or headquarters in the places where there is no post office.

For detained persons the day when the action is submitted to the management of the institution in which the person is detained shall be considered to be the day of submission to the Court.

### **Article 21**

If in the administrative procedure the second instance institution did not issue a decision upon the appeal of the party against the first instance decision within month or within shorter period stipulated by special regulation and if it does not issue the decision within the additional period of seven days after the written request the party may initiate the administrative dispute as if the appeal was refused.

The party may also act as stipulated in the Paragraph 1 of this Article when the first instance institution in the administrative procedure did not issue the decision which cannot be appealed against according to law.

The party shall have the right to address the second instance institution with the request if in the administrative procedure the first instance institution the decision of which can be appealed against did not issue any decision upon request within 60 days or within the special shorter deadline. The party may initiate the administrative dispute against the decision of the second instance institution and it may also initiate the administrative dispute, under the conditions referred to in Paragraph 1 of this Article, even if the second instance institution does not issue a decision within the prescribed deadline.

### **Article 22**

An action must include: name, surname and place of residence or the name and seat of the plaintiff, number and date of final administrative act against which the action was filed, short explanation of reasons for action as well as what is the direction and scope of the proposed annulment of the final administrative act and signature of the party filing the action. The original of the final administrative act or copy must be attached to the action.

If the action requests repossession of the objects or compensation of damages then it must include a certain request in respect to the objects or the level of inflicted damages.

One copy of the action and attachments for the defending institution and one for each interested party, if any, shall be submitted with the action.

### **Article 23**

The plaintiff may abandon the action until issuance of the court decision and the party shall submit the written submission to the Court about that or it shall record the statement with the Court in that case the Court shall suspend the proceedings with the decision.

### **Article 24**

If the action is incomplete or incomprehensible the President of the Panel shall invite the plaintiff, if required even through some other court in Bosnia and Herzegovina to eliminate shortcomings of the action within the set deadline. In doing so, he/she shall advise the party on steps to be taken and present the consequences if it does not act in accordance with the request of the court.

If the plaintiff does not eliminate the shortcomings within the set deadline and the shortcomings are such that they prevent the Court to work, the Court shall, by decision, reject the action as untidy if it does not conclude that the disputed final administrative act is null and void according to the law.

### **Article 25**

The Court shall reject the action by decision if it concludes:

- 1) that the action was filed untimely (Article 19) or early (Article 21) or if it was filed by an unauthorized person ( Article 2);
- 2) that the act disputed by the action is not a final administrative act (Article 8);

- 3) that it is obvious that the final administrative act disputed by the action does not affect the right of the plaintiff or his/her personal interest based on law (Article 4);
- 4) that an appeal might be submitted against the final administrative act disputed by the action, so the appeal was not filed at all or not filed on time (Article 9);
- 5) that it is the issue which according to the explicit provision of this Law cannot be subject to an administrative dispute (Article 10);
- 6) that there is already valid court decision issued in an administrative dispute referring to the same issue;

For the reasons referred to in Paragraph 1 of this Article the Court shall reject the action in every stage of the proceedings.

### **Article 26**

If the Court does not reject the action based on Article 24 Paragraph 2 or Article 25 of this Law and if it concludes that the disputed administrative act contains such important shortcomings which prevent an assessment of legality of the act, it may, for that reason, annul the disputed final administrative act even without submitting the action for reply.

### **Article 27**

If during the court proceedings the competent institution issues the other final administrative act which amends or renders ineffective the final administrative act against which the administrative dispute was initiated, as well as in the case referred to in Article 21 of this Law if it issues the final administrative act subsequently, that institution shall be bound, in addition to the plaintiff, simultaneously to inform in writing the Court before which the procedure was initiated, given that it shall submit to the Court the new final administrative act. In that case, the Court shall invite the plaintiff to state in writing within 15 days whether the subsequently issued final administrative act satisfies him/her or he/she shall proceed with the action and in which scope or whether it shall extend the action on the new administrative act.

If the plaintiff states that he/she is satisfied with the subsequently issued final administrative act or if the plaintiff does not give a statement referred to in Paragraph 1 of this Article, the Court shall issue decision on suspension of the proceedings.

If the plaintiff states that the new final administrative act does not satisfy him/her the Court shall continue with the proceedings.

### **Article 28**

If the Court does not reject the action pursuant to Article 24 Paragraph 1 or Article 25 of this Law nor annuls the administrative act pursuant to Article 26 of this Law, the Court shall forward one copy of the action with attachments for answer to the institution the administrative act of which is disputed (hereinafter: the defendant party) and interested persons, if any.

The answer to the action shall be given within the deadline set by the Court in each individual case. This deadline cannot be shorter than 10 or longer than 20 days.

The defendant party shall be bound to send to the Court all the documents referring to the case within the deadline referred to in Paragraph 2 of this Article. If the defendant party even after the second request does not send the documents referring to the case or if it states that it cannot send them the Court shall decide the matter even without documents pursuant to the provision of Article 35 Paragraph 4 of this Law.

### **Article 29**

The Court shall decide the administrative disputes in a session closed for public.

Due to complexity of a disputed matter or if otherwise it concludes that it is necessary for better explanation of the situation, the Court may decide to hold oral hearing (hereinafter: hearing).

For the reasons given in Paragraph 2 of this Article even the party may propose holding of the hearing.

### **Article 30**

If the Panel of Judges decides to hold a hearing the President of the Panel shall set the day of hearing and invite the parties and interested persons, if any.

The hearing may be postponed only for important reasons which shall be decided by the Panel.

### **Article 31**

The President of the Panel shall administer the hearing.

The minutes on the hearing shall be taken and only important facts and circumstances shall be recorded as well as operating part of the decision. The minutes shall be signed by the President of the Panel and court reporter.

### **Article 32**

The absence of a party at the hearing shall not delay work of the Court. It shall not be understood that the parties abandon their request because of the absence of the parties from the hearing, but their submissions shall be read.

If both the plaintiff and defendant do not attend the hearing and if the hearing is not postponed the Court shall discuss the dispute without presence of the parties.

### **Article 33**

At a hearing, the floor shall first be given to the member of the Panel who is the rapporteur.

The rapporteur shall present the situation and essence of the dispute not giving his/her opinion. After that the floor shall be given to the plaintiff to explain the action, then to the representative of the defending party and interested persons to explain their positions.

### **Article 34**

The Court shall decide the dispute, as a rule, based on the facts established in the administrative proceeding.

If the Court finds that the dispute cannot be solved on the basis of facts established in the administrative proceeding because of the contradiction in the documents referring to the established facts, because those are incompletely established in essential items, because an irregular conclusion was made from the established facts reference to factual situation, or it is found that the attention was not paid to rules of proceedings in the administrative procedure which would influence resolution of the issue, the Court shall annul the final disputed administrative act and the first instance administrative act with a decision and remand it. The first instance administrative act shall be annulled if the omissions in establishment of the state of facts and violation of rules of procedure were committed during the first instance proceedings and the final administrative act shall be annulled if these omissions were made in the second instance administrative procedure. In these cases the competent institution shall be bound to act in the manner as defined in the judgment and to issue a final administrative act.

If annulment of the disputed administrative act according to Paragraph 2 of this Article and repeated conduct of procedure at the authorized institution would cause damage to the plaintiff which would be hard to mend or if it is obvious, on the basis of public documents or other evidences in the documents of the file, that the factual situation is different from the one found in the administrative procedure, or if the administrative act was already annulled once in the same dispute and in particular if the authorized institution did not act completely in accordance with the judgment, the Court shall be bound to establish the facts itself based on specified facts decide the administrative dispute by judgment or decision.

In the case referred to in Paragraph 3 of this Article, the Court shall, as a rule, specify the factual situation at the hearing, or through a member of the Panel, or through another regular court or other body. The party shall also be invited to the hearing. If the Court establishes the facts through the other court or through the other body, that court or body shall be bound to act upon the request of the court within the deadline set by the

court.

### **Article 35**

Legality of the disputed final administrative act shall be examined by the Court within the framework of the request from the action, but is not restricted by reasons for the action.

The Court shall *ex officio* monitor the nullity of the administrative act.

If the Court establishes (estimates) that the disputed final administrative act is null and void it shall annul it and if the reasons for nullity are contained even in the first instance administrative act it shall also annul that act.

### **Article 36**

The Court shall issue judgment or decision by majority of votes of the Panel of Judges.

A special minutes shall be taken on deliberations and voting, to be signed by all the members of the Panel and the court reporter.

Deliberations and voting shall be done without presence of the parties.

### **Article 37**

The Court shall settle the dispute by judgment.

An action shall be approved or rejected as ungrounded. If the action is approved the Court shall annul the disputed final administrative act.

The judgment shall annul the final administrative act and remand the case to the competent institution in cases as stipulated in Article 34 Paragraph 2 of this Law and other cases stipulated by law.

The final administrative act shall be annulled by the judgment and administrative matter shall be settled in cases referred to in Article 34 Paragraph 3 of this Law and other cases regulated by this Law. Such judgment shall completely replace the disputed final administrative act.

By the judgment annulling the final administrative act the Court shall also decide on the request of the plaintiff on repossession of objects or compensation of damages if the data on the procedure give sound grounds. Otherwise, if the issue is more complex procedure ( presentation of evidences, evaluation of documentation etc.), the Court shall decide according to the provisions of the Law on Civil Procedure.

When the action was lodged based on Article 21 of this Law and if the Court finds it justified, it shall approve the action by pronouncing the judgment, annul the disputed final administrative act and give the guidelines to the authorized institution as to a new decision or it shall settle the administrative matter by judgment.

In cases when the Court does not decide by judgment it shall issue a decision.

### **Article 38**

If the hearing has been held, the Court shall pronounce judgment or decision immediately afterwards together with the most important reasons.

In complex cases the Court can abandon verbal announcement of the judgment or decision and pronounce the judgment or decision within eight days at latest.

If after the completed hearing the Court cannot pronounce the judgment or decision due to the reason that the Court needs to solve a preliminary issue that does not need a new hearing, it shall pronounce the judgment or decision without hearing no later than eight days from the day after that issue is determined.

### **Article 39**

The judgment or decision shall include: the name of the Court, number and date, introduction with the name and surname of the President of the Panel, members of the Panel and court reporter, names of the parties and their representatives, a short presentation of the dispute and the day when the judgment or decision was

pronounced and announced, the operating part, the explanation and an instruction on legal remedy. The operating part must be separated from the explanation. The judgment must evaluate all statements of the action.

The judgment shall be final and it can be disputed only by extraordinary legal remedies.

The original judgment or decision shall be signed by the President of the Panel and court reporter.

The judgment or decision by which the decision is pronounced ungrounded or rejected shall have legal effect only on the parties to the proceedings.

The judgment or decision in the certified copy shall be forwarded to all the parties and published in "Official Gazette of BiH".

## **V- EXTRAORDINARY LEGAL REMEDIES**

### **Article 40**

Extraordinary legal remedies shall include:

- 1) Request for reopening of proceedings
- 2) Request for protection of legality
- 3) Request for review of court judgement.

### **V. 1 - Request for reopening of proceedings**

#### **Article 41**

The proceedings terminated by the decision of the panel of the Court's Administrative Division shall be reinstated at the request of the party.

The request for reopening of proceedings shall be decided by the panel of the Court's Administrative Division (hereinafter: the panel) that reached the judgment.

#### **Article 42**

The request for reopening of proceedings may be lodged in the event that:

- 1) a party to the proceedings has come to knowledge of new facts or found or got the opportunity of availing itself of new evidence based on which the dispute would have been decided more favorably for such party had such facts or evidence been presented or used at an earlier court proceeding;
- 2) the court has reached its decision as a result of criminal offense committed by a judge or court official, or such decision has been effectuated through fraudulent action undertaken by a counsel or authorized agent of the party, his adversary or adversary's counsel or authorized agent, and such action constitutes a criminal offense;
- 3) the decision is based on the judgment reached in criminal or civil matters, and such judgment has been later repealed by another final court decision;
- 4) the document on the basis of which the court decision has been taken is a forgery or has been falsely revised, or if the witness, expert court witness or party has provided false statement at hearing before the court and the court decision is based on such statement;
- 5) the party finds or gets the opportunity to avail him/herself of an earlier court decision taken in the same administrative dispute;
- 6) the party concerned has not been given an opportunity to take part in the administrative dispute.

Under the circumstances referred to in items 1 and 5 of this Article, the reopening of the proceedings shall be allowed only if the party, without personal fault, was not able to present these circumstances during the earlier proceedings.

### **Article 43**

The reopening of the proceedings may be requested not later than within 30 days of the day when the party has become aware of the grounds for reopening. Should the party become aware of the grounds for reopening prior to the completion of the court proceedings, but has been unable to avail him/her/itself of the grounds during the course of proceedings, the reopening may be requested within 30 days of the notification of the panel decision.

The reopening may not be requested five years after the panel decision becomes final. The reopening may, nevertheless, be requested to take place exceptionally upon the lapse of these five years, on the legal grounds provided under Article 42, Paragraphs 1, 2, 3 and 4 of this Law.

### **Article 44**

The reopening of the proceedings shall be initiated by means of lodging a request for reopening of the proceedings.

The application for reopening of the proceedings shall contain a reference to the court decision taken in the proceedings the reopening of which is requested, legal grounds for the reopening (Article 42), or circumstances under which these grounds may likely be brought into existence, as well as the reasoning and extent to which the modification shall be proposed as to the decision taken in the proceedings the reopening of which is required.

### **Article 45**

The panel shall reject the request for reopening of the proceedings, should the panel find that such a request has been lodged by an unauthorized person, or lodged untimely, or that the party has failed at least to provide for a likelihood in terms of the existence of legal grounds for the reopening.

Should the panel not reject the request referred to in Paragraph 1 hereof, the request shall be communicated by the panel to the adversary party and all persons concerned and they shall be invited by the panel to provide their response regarding the request within 15 days.

### **Article 46**

Following the end of the period required for providing a response to the request (Article 45, Paragraph 2), the Panel shall reach a judgment in order to decide the request for reopening of the proceedings.

Should the reopening of the proceedings be allowed, the earlier court decision shall be repealed entirely or partially.

No earlier procedural actions that have been unaffected by the grounds for reopening shall be repeated.

The judgment allowing the reopening of the proceedings shall also decide the principal matter.

### **Article 47**

The legal remedies that are allowed under this Law as to the principal matter may be invoked against the decision of the panel taken with regard to the request for reopening of the proceedings.

### **Article 48**

The provisions of this Law of relevance to the proceedings following an action brought shall apply accordingly to the procedure for reopening of proceedings, unless otherwise established under Articles 42 through 47 of this Law.

## **V. 2 - Request for review of court decisions**

#### **Article 49**

The request for review of the Court decisions (hereinafter: the request for review) may be lodged against the final decision of the Administrative Division of the Court and final decision of the Court of last resort of Brcko District of Bosnia and Herzegovina taken in an administrative dispute.

The request for review may be lodged for violation of laws of Bosnia and Herzegovina or breach of the rules of procedure that preceded the taking of the contested decision.

#### **Article 50**

The request for review shall be lodged as set forth in Article 20 of this Law, before the Court against whose decision the request is to be lodged.

The request referred to in Paragraph 1 of this Article may be lodged within 30 days after the party receives the Court decision against which the request is to be lodged.

The request for review referred to in Paragraph 1 hereof shall be decided by the Appellate Division that sits in a panel of five judges.

#### **Article 51**

The request for review shall contain the reference to the Court decision the review of which is proposed as well as a reasoning and extent to which the review of the decision is proposed.

Should the application referred to in Paragraph 1 hereof be incomplete or illegible, the Appellate Division shall proceed as provided under Article 24 of this Law.

#### **Article 52**

The Appellate Division shall issue a decision rejecting inadmissible or untimely requests for review or those lodged by unauthorized persons.

Should the Appellate Division not reject the request referred to in Paragraph 1 hereof, it shall deliver the request to the adversary party that may respond to the request within the time limits set out by the Appellate Division.

#### **Article 53**

The Appellate Division shall decide the requests generally by way of sessions closed for the public, whereas it shall review the contested decision only within limits of the request.

#### **Article 54**

The Appellate Division shall reach a judgment denying or upholding the request for review of court decisions.

By reaching the judgment upholding the request referred to in Paragraph 1, the Appellate Division may overturn or revise the court decision against which the request is lodged.

Should the Appellate Division overturn the court decision, the case shall be remanded to the court the decision of which has been overturned. Such court must perform all procedural actions and discuss the issues indicated to the court by the Appellate Division and thereafter make an appropriate decision.

### **V. 3 - Request for protection of legality**

#### **Article 55**

The State Attorney of Bosnia and Herzegovina may lodge a request for protection of legality against the

final decision of the Administrative Division of the Court and against the final decision of the court of last resort of Brcko District of Bosnia and Herzegovina reached in an administrative dispute.

The request for protection of legality referred to in Paragraph 1 of this Article shall be decided by the Appellate Division that sits in a panel of five judges.

A request for protection of legality may be filed within 30 days from the delivery to the party of the final decision subject of the request.

#### **Article 56**

A request for protection of legality shall include the reference to the court decision being subject to the request, as well as the reasons of and the extent to which a review of the legality of the decision is being proposed.

If the request referred to in paragraph 1 of this article is incomplete or incomprehensible, the Appellate Division shall act pursuant to the provisions of Article 24 of this Law.

#### **Article 57**

An inadmissible and untimely request for protection of legality or a request filed by an unauthorised person shall be rejected by the Appellate Division in a decision.

If the Appellate Division does not reject the request referred to in paragraph 1 of this Article, the request shall be sent to the opposing party who may submit a response to the request within the deadline set by the Appellate Division.

#### **Article 58**

As a rule, the Appellate Division shall decide a request for protection of legality at a session closed for the public, and a disputed decision shall be reviewed only within the limits of the request.

#### **Article 59**

The Appellate Division shall render a judgement denying or granting a request for protection of legality.

A judgement granting the request as referred to in paragraph 1 of this article, the Appellate Division may reverse or revise the court decision which is subject of the request.

If the Appellate Division reverses the court decision, the case shall be remanded to the court whose decision has been reversed. That court shall have the duty to carry out all the procedural steps and to deliberate the matter referred by the Appellate Division and to take an adequate decision.

#### **Article 60**

Reopening of the proceedings and a review of a court decision may be requested by the Ombudsmen for Bosnia and Herzegovina if he or she has participated in the administrative dispute proceedings or when he or she finds that the court decision has infringed upon the human dignity or the rights and freedoms set out in the Constitution and the instruments of Annex to the Constitution of Bosnia and Herzegovina.

## **VI. COSTS OF PROCEEDINGS**

#### **Article 61**

The costs of administrative dispute proceeding are the expenses incurred in connection with administrative dispute from the time it is instituted until it is completed.

In every decision terminating administrative dispute proceeding the Court decides as to who will pay the costs of proceeding and as to the amount of those costs.

The Court shall decide that Court costs shall be paid in full by any party who initiated or maintained the proceeding in bad faith or through recklessness.

## **VII. BINDING CHARACTER OF JUDGMENTS**

### **Article 62**

When the Court reverses a final administrative act which has been disputed, the case shall be restored to the situation prior to the passage of the act disputed. If, according to the nature of the matter subject to a dispute, a new act replacing the final administrative act reversed should be passed, the competent institution must pass it without a delay, but not later than within 15 days from the delivery of the judgement. In doing so, the competent institution shall be bound by the legal interpretation of the Court and the objections related to the proceedings.

### **Article 63**

If, following the annulment of the final administrative act, the competent institution adopts an administrative act contrary to the legal interpretation of the Court, or contrary to the objections of the Court related to the proceedings, and the plaintiff takes a new action, the Court must reverse in that case the disputed final administrative act and decide the matter on its own by rendering its judgement. Such a judgement shall substitute the final administrative act of the competent institution in all respects.

### **Article 64**

If, following the annulment of the final administrative act, the competent institution fails to enact forthwith or not later than within 15 days, a new administrative act or a new administrative act in the execution of the judgement rendered pursuant to Article 37, Paragraph 6 of this Law, the party may file a submission requesting the adoption of such an act. If the competent institution fails to enact an administrative act within the seven-day period from the filing of the request, the party may request the adoption of such an act from the Court which rendered the judgement in the first instance proceeding.

At the request of the party as referred to in Paragraph 1 of this article, the Court shall request from the competent institution the file of the case and information about the reasons why the institution concerned has failed to enact the administrative act. The competent institution must deliver the file and the information forthwith, and not later than within seven days. If it fails to comply to the request, or if the information delivered does not justify, as the Court deems, the failure to comply with the Court judgement, the Court shall take a decision which shall substitute the final administrative act of the competent institution in all respects which shall be delivered to the competent institution in charge for execution which must comply with the execution without delay.

The responsible person in the competent institution who does not comply with the provisions of Article 62, 63 and 64 of this Law shall be liable for a serious violation of the duty.

A proposal to institute a disciplinary proceeding against that person shall be submitted by the Administrative Division of the Court which has rendered the judgement reversing the disputed administrative act ex officio or at the request of the party.

### **Article 65**

The Court must notify the Council of Minister of Bosnia and Herzegovina in writing of the conduct of the competent institution referred to in Art. 63 and 64 of this Law in order for them to take, within the scope of their powers, relevant measures to have the competent institution comply with the decision of the Administrative Division of the Court.

The competent institution whose final administrative act has been reversed by the Court decision must comply with the order of the Council of Ministers of Bosnia and Herzegovina.

The Council of Ministers of Bosnia and Herzegovina shall ensure, as appropriate, the execution of any

court decision rendered in an administrative dispute at the proposal of the Administrative Division of the Court or at the request of a party.

#### **Article 66**

When a judgement has been rendered in an administrative dispute annulling the disputed administrative act, and the competent institution adopts a new administrative act in the execution of the judgement, and a party requests that the institution should reopen the administrative procedure following the administrative act, the reopening may be allowed if the reason for reopening has occurred in respect of the final administrative act adopted by that institution.

### **VIII. PROCEDURE OF PROTECTION OF CITIZENS FREEDOMS AND RIGHTS ENSHRINED IN THE CONSTITUTION**

#### **Article 67**

A citizen whose rights or fundamental freedoms enshrined in the Constitution of Bosnia and Herzegovina have been violated by a final administrative individual act of the institutions referred to in Article 4 of this Law shall be entitled to request the protection of the rights or freedoms from the Court, in accordance with this Law, unless a different judicial protection is provided.

#### **Article 68**

Requests referred to in Article 67 of this Law shall be decided by the panel of the Administrative Division of the Court.

A proceeding following a request referred to in Article 67 of this Law shall be subject to the provisions of Chapter IV – Procedure, Art. 19 – 40 of this Law.

#### **Article 69**

Protection of freedoms and rights of citizens enshrined in the Constitution shall also be provided if those rights or freedoms are violated by an action of an official in an institution, or of the responsible person in a public agency or public corporation, which directly prevents from or restricts, contrary to law, a certain individual in exercising such freedom or right.

#### **Article 70**

A request of the citizen whose right or freedom has been violated by an action referred to in Article 69 of this law shall be decided by the panel of the Administrative Division of the Court.

A request for protection due to an illegal action shall include the action, the place and the time when it was performed, the institution or the public agency or corporation where the action was performed, the information on the official or the responsible person who performed the action, the evidence of the performance, as well as the request to remove the hindrance or restriction in respect of exercising the freedom or right challenged by the illegal action.

#### **Article 71**

A request referred to in Article 70 of this Law may be submitted as long as the action lasts.

If the person who is subject of an illegal action is not in the situation to submit a request for protection against the illegal action, the request may be submitted by his or her spouse, child, parent or another close relative.

## **Article 72**

Proceeding following a request referred to in Article 70 shall be urgent and a judicial decision must be taken as soon as possible and not later than within 15 days from the receipt of the request.

## **Article 73**

The Court shall submit the request for response to the institution or the public agency or corporation, depending on who performed the action referred to in Article 69 of this Law. A response to the request shall be submitted within the deadline as set by the Court.

When the Court deems the request grounded, it shall take a ruling prohibiting the illegal action from being continued. Otherwise, the Court shall deny the request by a ruling.

The Court shall, in the ruling referred to in Paragraph 1 of this article, determine measures which need to be taken in order to establish a legal situation, specifying the deadline for compliance, as well as the legal sanctions in the case of non-compliance with the ruling.

The Court ruling shall be executed by the institution or public agency or corporation referred to in Article 69, paragraph 1 of this Law whose official or responsible person has performed the illegal action.

## **Article 74**

For the purpose of ensuring the execution of the ruling, the Court which took the ruling shall forthwith, relative to the circumstances of the specific case, undertake what is necessary to ensure the execution of the ruling. It may also notify of the ruling the institution referred to in Article 65, paragraph 1 of this Law, which must undertake the measures necessary for the establishment of the legal state in the manner as specified in the Court ruling.

## **Article 75**

If the ruling has not been executed within the prescribed deadline, the Court shall execute the ruling, at the request of the party concerned, directly or through the institution.

The execution shall be done, relative to the circumstances of the case, at the expense of the institution, the public agency or the corporation, or at the expense of the official or other responsible person who performed the illegal action concerned.

For the purpose of execution, the Court may submit a request to the competent institution or the legal person to remove from office the official or responsible person, and, it may, as appropriate, pronounce a fine of KM 200 or 800 to the official or responsible person if he or she fails to execute the ruling, as well as to determine other appropriate measures according to the rules of the enforcement judicial procedure.

## **IX. PROCEDURE IN ELECTORAL APPEALS**

### **Article 76**

An appeal may be lodged before the Appellate Division against a decision of the Election Commission of Bosnia and Herzegovina (the Election Commission) or of the Election Appeals and Complaints Sub-commission which violates the Law on Elections of Bosnia and Herzegovina (the Election Law) and the regulations issued by the Election Commission thereunder.

### **Article 77**

An appeal may also be lodged before the Appellate Division against a decision of any authority in Bosnia and Herzegovina, in its Entities, as well as against a decision of the courts of the last resort of the Brcko District of Bosnia and Herzegovina which violates the Election Law and the regulations issued by the Election

Commission thereunder, and which is not subject to another ordinary appeal.

#### **Article 78**

An appeal referred to in Art. 76 and 77 may be lodged by any individual, political party or coalition whose right established by the Election Law and the regulations issued by the Election Commission thereunder has been violated or who has a legal interest.

#### **Article 79**

An appeal shall be decided by the Appellate Division sitting in a panel of three judges in an expedient proceeding, preserving the basic principles of the proceedings. It shall take a Court decision as soon as possible and not later than within ten days from the receipt of the appeal.

#### **Article 80**

An appeal shall be lodged in writing within ten days from the taking of the decision of the last instance and it shall include a summary of the violation and the evidence supporting the allegations. The appeal must be signed by the applicant. If the applicant is a party or a coalition, the appeal shall be signed by the president or the authorised person of the political party or coalition.

An appeal shall be submitted to all the parties concerned as indicated in the appeal. The parties indicated in the appeal may respond in writing to the allegations in the appeal within 48 hours from the receipt of the appeal.

The party whose decision has been appealed must submit, at the request of the Appellate Division and within the deadline specified in Paragraph 2 of this article, all the records to which the appeal pertains.

#### **Article 81**

When the Appellate Division establishes that there are grounds for an appeal, it shall take a decision ordering that the irregularities violating the electoral right should be removed. Otherwise, it shall deny the appeal.

The Appellate Division shall order in the ruling referred to in Paragraph 1 of this article the measures to be undertaken in order to remove the irregularities violating the electoral right of the applicant, setting the deadline for compliance. It shall also determine sanctions in the case of non-compliance.

#### **Article 82**

A decision of the Appellate Division following an appeal alleging the violation of the electoral right shall be final and binding.

### **X. PENAL PROVISIONS**

#### **Article 83**

A fine from KM 1,500 to 5,000 shall be imposed for a minor offence on the competent institution:

- 1) if it fails to comply with the deadline prescribed for issuing a ruling at the request of the party concerned (Art. 18, para. 2);
- 2) if it fails to provide the Court with all the files relating to the case (Art. 28, para. 3);
- 3) if it fails to comply with the judgement order or to adopt a new administrative act, or if it fails to comply with the request of the Court (Art. 34, paras. 2 and 4);
- 4) if it fails to adopt a new administrative act within the deadline or it adopts an act which runs contrary

- to the legal interpretation of the Court or the objections of the Court (Art. 63)
- 5) if it fails to adopt an administrative act within the deadline or following a separate submission of the a party or if it fails to provide the Court with the files and information as requested or if it fails to comply with the decision of the Court (Art. 64)

A fine from KM 200 to 800 shall be imposed on the responsible person in the competent institution for the minor offences referred to in Paragraph 1 of this article.

#### **Article 84**

Pursuant to Article 83, paragraph 2 of this Law, a responsible person in the competent institution shall be considered the manager of the institution and the officer in the institution who is directly in charge of carrying out a certain duty and who has failed to do so or has done an action contrary to the duty assigned.

### **X. TRANSITIONAL AND FINAL PROVISIONS**

#### **Article 85**

An administrative dispute under this Law may be conducted against final decisions which, in accordance with the Constitution of Bosnia and Herzegovina and international agreements, are taken by international administrators and other institutions carrying out certain tasks in the territory of Bosnia and Herzegovina under the international administration, and who decide on certain rights and freedoms of citizens and legal persons, unless otherwise provided by international agreement.

The Court shall decide on actions taken against administrative acts of the institutions referred to in Paragraph 1 of this article, which were established in order to meet the needs of Bosnia and Herzegovina.

An administrative dispute against the administrative acts referred to in Paragraph 1 of this article shall be instituted and conducted in the manner and under the conditions set forth in the provisions of this Law governing administrative dispute.

#### **Article 86**

This Law shall enter into force on the eighth date from the publication and it shall be published in the Official Gazette of Bosnia and Herzegovina, the Official Gazette of the Federation of Bosnia and Herzegovina and the Official Gazette of Republika Srpska and the Official Gazette of the Brcko District of Bosnia and Herzegovina.

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3 July 2002  
Sarajevo

Chairman  
House of Representatives  
BiH Parliamentary Assembly  
Mariofil Ljubic

Chairman  
House of Peoples BiH  
Parliamentary Assembly  
Nikola Spiric