

**Legislative Decree No. 16/97
of 10 November**

The Government proposes to give continuity to the process initiated with Legislative Decree No. 2/95, gradually gathering, modernizing and clarifying the norms and principles dispersed today regarding homogeneous aspects of the activity, procedure and organization of the Public Administration, until it is possible to gather in a single Administrative Code the fundamental Cape-Verdian administrative law.

Thus. Under the legislative authorization granted by Article 2 d) of Law No. 23/V/97, of 27 May, and

In the use of the faculty conferred by subparagraph b) of No. 2, Article 216 of the Constitution, the Government decrees the following:

**Article 1
Object**

This Legislative Decree establishes the general regime for complaints and non-contentious administrative appeal.

**CHAPTER I
General Provisions**

**Article 2
General Principle**

1. The persons have the right to impugnate the administrative acts administratively, soliciting their modification or revocation, under the terms regulated in this legislative decree by:

- a) Complaints to the author of the act;
- b) Appeal to a hierarchic superior of the author of the act, to the collegial organ of which it is a member, to the “delegator” or “sub-delegator” or to the organ of the same collective person in which the author of the act is integrated and that exercises supervision power upon him/her, outside the ambit of the administrative hierarchy;
- c) Appeal to the organ that exercises tutelage powers of superintendence over the author of the act.

2. The interested parties may impugnate administratively the execution acts or operations that exceed the limits of the executed act, under the terms of number 1.

**Article 3
Fundaments of the Complaint or Appeal**

Save for provisions to the contrary, the complaints and appeals may have as fundament the illegality or the inconvenience of the impugned administrative act.

Article 4. Legitimacy

1. The bearers of legally protected subjective rights or interests, that consider themselves harmed by the administrative act, have legitimacy to complaint or appeal.
2. Also endowed with legitimacy to complaint or appeal in the framework of the protection of diffuse interests, juridically recognized in favor of a plurality of citizens, are:
 - a)* The citizens in general, regarding the relevant losses provoked by an administrative act on fundamental goods such as public health, housing, education, cultural patrimony, the environment, the territorial organization and the quality of life;
 - b)* The residents in a circumscription in which is located some good in the public domain affected by an administrative act.
3. To defend the diffuse interests of the residents of a specific territorial circumscription, the associations dedicated to the defense of such interests and the municipal organs of the respective area also have legitimacy.
4. Those that may have accepted without expressed or tacit reservation, in an administrative after it has been committed, can neither complaint not appeal.

CHAPTER II Of the Complaint

Article 5 General Principle

1. Save for express legal provision to the contrary, any administrative act can be contested.
2. It is forbidden to contest administrative acts that decide prior complaints or administrative appeal, save if the organ that decided the complaint did not pronounce on some of the fundaments or reasons presented by the contester or appellant.

Article 6 Deadline

The complaint may be presented within twenty days counting from:

- a)* The publication of the act in the Official Bulletin, when mandatory;
- b)* The notification of the act, when the same was committed, if the publication is not mandatory;
- c)* The date in which the interested party acknowledged the act, in the remaining cases.

Article 7

Effects

1. The complaint or the act for which contentions appeal is not applicable has suspensive effect, save in the cases in which the law disposes to the contrary or when the author of the act considers that its non-immediate execution causes great losses to the public interest.
2. The complaint to the act for which contentious appeal applies does not have suspensive effect, save in the cases in which the law disposes to the contrary or when the author of the act, ex-officio or at the request of the interested party, considers that the immediate execution of the act causes irreparable damages or damages difficult to repair to its destinatory.
3. The suspension of the execution at the request of the interested parties must be required in the complaint itself.
4. In the evaluation of the request it should be verified if the proof reveal a serious probability of the veracity of the facts alleged by the complainant, and if affirmative suspension of the execution should be decreed.
5. The provisions of the preceding numbers do not harm the request of suspension of the execution of the act before the administrative courts, under the terms of the applicable legislation.
6. The complaint does not suspend nor does it interrupt the deadlines for hierarchic or contentious appeal.

Article 8

Decision

1. The decision regarding the complaint should be proffered within fifteen days counting from the date in which it is presented.
2. The decision regarding the complaint should be fundamented, under the terms of the law.

CHAPTER III

Of the Hierarchic Appeal

Article 9

General Principle

All the administrative acts committed by organs subject to the hierarchic power of other organs may be the object of hierarchic appeal, as long as the law does not exclude this possibility.

Article 10

Types

The hierarchic appeal is necessary or optional, depending on whether the act to be

impugned is or not susceptible of contentious appeal.

Article 11 Deadline

1. Whenever the law does not establish a different deadline, the deadline for filing the necessary hierarchic appeal is thirty days, counted under the same terms of Article 6.
2. The optional hierarchic appeal must be interposed within the deadline established to interpose the contentious appeal of the act in question.

Article 12 Effects

1. The necessary hierarchic appeal suspends the efficacy of the act appealed, save when the law disposes to the contrary or the author of the act considers that its non-execution immediately causes great losses to the public interest.
2. The competent organ to evaluate the appeal may revoke the decision referred to in No. 1, or make that decision when the author of the act has not done so.
3. The optional hierarchic appeal does not suspend the efficacy of the appealed act.

Article 13 Procedure

1. The hierarchic appeal is interposed by means a fundamented presentation and accompanied by the documents that the appellant considers convenient, added to and presented at the highest hierarchic superior of the author of the act or to the organ to whom the hierarchic superior has delegated or sub-delegated the competence for the decision.
2. The appeal should be liminarly rejected when:
 - a) It was interposed by an incompetent organ;
 - b) The impugned act was not susceptible of appeal;
 - c) The appellant lacks legitimacy;
 - d) It was interposed out of date;
 - e) Another cause occurs that, legally, inhibits knowledge of the appeal.
3. If the appeal is not rejected, the organ competent to acknowledge it should notify those that might be harmed by its procedence, to allege, within eight days, what they found convenient about the request and its fundaments. The author of the act shall be informed of the reception of the appeal, and copies should be sent to him/her.
4. If the deadline referred to in No. 3 has run out or, if the counter-interested were not notified, as soon as there was knowledge of the appeal, an eight-day deadline begins to run within which the author of the act may pronounce on the same. When the counter-interested have not deduced opposition, the author of the act may revoke it or substitute

it, according to the request of the appellant, informing the competent organ of his/her decision to acknowledge the appeal.

Article 14 **Decision**

1. The competent organ to acknowledge the appeal may without subjection to the appellant's request and save for the exceptions in the law, confirm or revoke the appealed act and, furthermore, if the competence of the actor of the act is not exclusive, modify it or replace it.
2. The organ competent to acknowledge the appeal may, if such is the case, annul the administrative proceeding, in whole or in part, and determining the realization of a new documenting or of complementary diligences.
3. When the law does not fix a different deadline, the hierarchic recourse should be decided within thirty days counting from the term of the deadline for the pronouncement of the author of the act referred to in No. 4 of Article 13.
4. The deadline referred to in No. 3 of this Article is raised to the maximum of sixty days, when the realization of new documenting or of complementary diligences.
5. After the deadlines referred to in Nos. 3 and 4 of this Article have elapsed without a decision being taken, the appeal is considered tacitly rejected.

CHAPTER IV **Of the Hierarchic Appeal and the Tutelage Appeal**

Article 15 **Improper Hierarchic Appeal**

1. The following hierarchic appeals are considered to be improperly interposed:
 - a) To an organ that exercises power of supervision upon another organ of the collective person, outside the ambit of the administrative hierarchy;
 - b) To the collegial organs with regard to administrative acts committed by any of its members;
 - c) To the "delegator" or "sub-delegator" in relation to the acts committed by delegation or sub-delegation.
2. With the necessary adaptations, the regulatory provisions of the hierarchic appeal itself indicated in Chapter III are applicable to the improper hierarchic appeal.

Article 16 **Tutelage Recourse**

1. The tutelary appeal has as object the administrative acts committed by organs of public collective persons subject to tutelage or superintendence directed to the organ that exercises these powers over the author of the act.

2. The tutelary appeal is optional, save for legal provision to the contrary, and is possible only in the cases foreseen by law.
3. The tutelary appeal can only have as fundament the inconvenience of the appealed act in the cases in which the law establishes merit tutelage.
4. The modification or replacement of the appealed act is possible only in the tutelary appeal, if the law confers substitutive tutelage powers in the ambit of the latter.
5. To the tutelary appeal are applicable the regulatory provisions of the hierarchic appeal foreseen in Chapter III, in the part where they are not contrary to the nature proper of the former and due respect to the autonomy of the tutelage entity.

CAPITULO V

Final Provisions

Article 17

Revocation

Articles 469 and 470 of the Public Service Code, as well as all the legislation that is contrary to the provisions of this Legislative Decree, are hereby revoked.

Article 18

Effective Date

This legislation goes into effect on 1 January 1998.

Viewed and approved in Council of Ministers - *Carlos Alberto Veiga* - *José António Mendes dos Reis*.

Promulgated on 10 November 1997.

Publish it.

The President of the Republic, ANTÓNIO MANUEL MASCARENHAS GOMES MONTEIRO.

Referended on 10 November 1997. The Prime Minister, *Carlos Veiga*