

# Law 107-13 of rights of persons in their relations with the Administration and Administrative Procedures

## PURPOSE OF THE ACT

The law 107-13 in its first article determines the application object of this legislative tool. Since this regulate the rights and duties of individuals in their relations with the public administration, the principles that sustain those relationships and the rules of administrative procedure governing administrative activity.

This law also contains administrative modernization measures that allow the release and bureaucratic simplification, the functioning of collegiate bodies, administrative sanctions regime and regulating the responsibility of public authorities and their servers.

## SCOPE

The provisions of the law object of the present executive summary shall be applicable to all organs that make up the Central Public Administration, the autonomous bodies established by law and the entities that make up the Local Administration. Defining its scope, the paragraphs of the second article of the law provides that the organs and administrative bodies of the Armed Forces, the National Police, and the legislative and judicial branches shall be governed by the principles and rules established in this organic always law and they are compatible and do not violate the functions that the Constitution gives them, together with the laws governing the functioning respectively.

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## STRUCTURE OF THE LAW

1. Purpose and Scope.
2. Principles of administrative action.
3. Rights and duties of individuals in their relations with the Administration.
4. Administrative Acts.
5. Administrative Procedures.
6. Sanctioning power.
7. Administrative Appeals.
8. System of corporate bodies.
9. Simplifying Administrative and bureaucratic download.
10. Liability of public bodies and staff at your service.
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## CONCEPTS DEFINED BY LAW

Administration or Public Administration: bodies and public entities within the scope of this law.

People: this concept covers both natural persons and legal persons.

Administrative Action: any unilateral declaration of intent, knowledge or judgment made in exercise of administrative functions by a public administration or any other body or public body produces direct, individual and immediate legal effect against third parties.

## PRINCIPLES OF ADMINISTRATIVE ACTION

In the framework of respect for the legal system as a whole, the public administration and

ensures objectively serves the general interest and acts, especially in its relations with the people according to the following principles set out and described by this law:

1. Principle of legality: by which all administrative action is fully subjected to law.
2. Principle target people service: projecting all administrative actions and their agents, this takes the form of respect for the fundamental rights of individuals, outlawing any administrative action that depends on bias of any kind.
3. Promotional Principle expressed in creating the conditions for freedom and equality of opportunity for people and groups to which they belong are real and effective, removing obstacles to compliance and also encouraging participation.
4. Principle of rationality which extends especially to the motivation and argumentation should underpin the whole administrative action.
5. Principle of equal treatment: For the people who are in the same situation shall be treated equally, guaranteeing, expressly motivation in specific cases, the reasons that may trigger a different treatment.
6. Principle of effectiveness: whereby in the administrative procedures of the authorities will remove the purely formal trade barriers, prevent the lack of response to requests, the delays and delays.
7. Principle of publicity of the rules, procedures and the entire administrative tasks: In the framework of respect for the privacy and reserves for confidentiality reasons accredited or general interest on each relevant case.

8. Principle of legal certainty, predictability and regulatory certainty for which the Administration is subject to existing law at all times, but may vary arbitrarily legal rules and administrative criteria.
9. The principle of proportionality: The decisions of the administration, when they are restrictive of rights or pose a negative effect on people, must observe the principle of proportionality, according to which the limits or restrictions must be suitable, consistent and useful for achieving the purpose of general interest to be achieved in each case.
10. Principle of legal exercise of power: under which Public Administration shall exercise its powers and authorities within the framework of what they defined by law and in accordance with the purpose for which such jurisdiction or authority is granted, without incurring an abuse or misuse of powers, with respect and compliance with the general objective interests.
11. Principle of impartiality and independence: The staff at the service of the Public Administration shall abstain from any arbitrary action or causes preferential treatment for any reason and act in the general interest objective service, prohibiting the participation of such personnel in any matter in which he himself, people or close relatives, have any interest or conflict of interest may exist.
12. Principle of relevance: whereby administrative actions be taken based on the most relevant aspects, without it being possible, as a basis for the decision to proceed, only assess aspects of little consideration.
13. Principle of consistency: The administrative actions will be consistent with safe practice and administrative background that the reasons in writing explicit relevant in some cases away from them.
14. The principle of good faith whereby the authorities and individuals presumed lawful behavior of each other in the exercise of their powers, rights and duties.
15. The principle of legitimate expectations: under which the administrative action be respectful of expectations it could reasonably have generated the Administration in the past.
16. Principle of advice: The staff at the service of the Public Administration should advise people on how to submission of applications and processing.
17. Principle of responsibility: In the Administration responsible for injuries or property rights of those incurred as a result of the operation of administrative activity.
18. Principle of Facilitation: People will always find in the administration the best facilities for handling matters affecting them, especially in terms of identifying the responsible official to obtain stamped copy of applications, to meet the processing status to send, if necessary, the procedure the competent body, to be heard and make submissions or reference to the resources likely to filing.
19. Principle of speed: under which administrative actions will be performed to optimize the use of time, solving procedures in reasonable time and in any case may not exceed two months from the filing of the application in the corresponding organ unless the sectoral legislation indicates a longer period.

20. The principle of protection of privacy: So the staff working for the government that deals with personal data shall respect the privacy and integrity of individuals, prohibiting the processing of personal data for purposes not justified and transmission unauthorized persons
21. Principle of ethics by which all staff in the service of the public administration and people in general must act with honesty, loyalty and honesty.
22. The principle of due process: The administrative proceedings were conducted in accordance with the rules of procedure and jurisdiction laid down in the Constitution and laws, with full guarantee of the rights of representation, defense and contradiction.
5. The right to submit written requests.
6. The right to timely and effective response by the administrative authorities.
7. The right not to submit documents already in the possession of the Administration
8. Public or that deal with uncontested facts or irrelevant.
9. Right to be always heard before measures that may affect them adversely is taken.
10. Right to participation in administrative proceedings with an interest, especially through hearings and public information.
11. The right to fair compensation in cases of injuries or property rights as a result of the activity or inactivity of the Administration.

### **RIGHT TO GOOD ADMINISTRATION AND THE RIGHTS OF INDIVIDUALS IN THEIR RELATIONS WITH THE PUBLIC ADMINISTRATION.**

This law establishes a series of rights for the managed in the administration, through which the concept of "good governance" is specified, these being the following and many more that are explicitly enshrined in Article 4 of this law:

1. The right to effective administrative supervision.
2. Right to administrative proceedings motivation.
3. The right to an administrative decision within a reasonable time.
4. The right to a fair resolution of the administrative proceedings.

12. The right of access to public services in terms of universality and quality, under the principle of subsidiarity.
13. The right to choose and access in terms of universality and quality services of general interest of their choice.
14. Right to review the performance of services by the public administration.
15. The right to know the obligations and commitments resulting from services provided by the Public Administration.

### **DUTIES OF PERSONS IN THEIR RELATIONS WITH THE PUBLIC ADMINISTRATION**

1. Comply with the provisions of the Constitution, the laws and the legal system in general.

2. Acting in accordance with the principle of good faith and refrain from using delaying tactics in procedures, and making or providing knowingly false statements or documents or make rash statements, among other behaviors.
3. To exercise their rights responsibly, avoiding the repetition of improper requests.
4. Observe respectful with staff at the service of Public Administration deal.
5. Assist in the successful development of procedures, in compliance with its obligations under the law.

### AS REGARDS THE ADMINISTRATIVE ACTS

The third title, after giving a concept of administrative act, defining the conditions of validity of these to those that have been issued by a competent authority and following the procedure laid respects the purposes intended by the law for which it was authorized. However, retains the presumption of validity of administrative acts, granting them the right to become enforceable and executor they meet the above mentioned requirements validity. In this vein, the law null and void administrative acts that violate the constitutional order, dictated by incompetent organ or regardless of the procedure established for that purpose, is lacking in motivation when exercising the discretion of the Public Administration, and finally those who commit offenses expressly sanctioned with nullity by other laws that govern the matter.

On the other hand, defines the effectiveness of administrative acts depending on the effect they have on the managed. In this sense,

those whose decision will be enforceable administered favors from their issue, while those administered will adversely affect subsequent to notifying interested parties of the full text of the decision enforceable, and timing of resources made possible to challenge the act.

Likewise this law extrapolates the principle of non-retroactivity of the law, enshrined in Article 110 of our Constitution retroactively granting reasoned administrative acts favorably affect only when administered.

#### Administrative Procedure

The administrative procedure provisions of this law is to establish common rules to those administrative proceedings seeking the issuance of unilateral decisions or administrative acts affecting the rights and interests of the people, and involving, among others, permits, licenses, authorizations prohibitions, concessions, or resolution of administrative appeals or the imposition of administrative sanctions and in general, any decision that could dictate the administration to carry out its asset provision or limitation. This administrative procedure will aim to ensure the success of the administrative decision aimed at ensuring the protection of the rights and interests of people.

In this regard, in accordance with the provisions of this Act shall have capacity to act in the administrative procedure all natural and legal persons who are in the full enjoyment of their civil and political rights. Minors, can only access the administrative procedure when the law allows. In this sense, they have interest to act those who promote it as holders of rights or legitimate individual or collective interests without having promoted or having

promoted the procedure may be affected by the decision as final.

With regard to the terms and affecting the administrative procedure, the law provides that the regulations governing each procedure set a reasonable deadline for processing, which may be extended or shortened depending on various elements that affect the execution of the task.

### **PROCEDURE DICTATES OF ACTS**

Law 107-13 provides a detailed explanation of the procedure to be followed by the Public Administration for the issuance of administrative acts, which may be initiated on motion of parties or at the request of an interested party. The application will start the process should contain identification of the applicant, to effect physical and computer address notifications, the facts and reasons supporting the application and documents deemed appropriate to clarify and complete the request, place and date, signature of the applicant and which body is intended application.

Regardless of the procedure is initiated motion of parties or ex officio, the Public Administration is empowered to order the provisional measures it deems appropriate to ensure the effectiveness of the resolution, which in the case, to end the procedure. These measures may remember simultaneously or immediately after the procedure, modified or lifted in the agreement to initiate the procedure when it starts its own initiative or at the time of submission of the request.

The administrative procedure is an instrument for the collection and processing of information necessary to make the best decision in question in each case. It is for this reason that

the Administration office may obtain all the evidence necessary to make the best decision, to safeguard the right of interested parties.

This law also refers to the arbitration administrative procedure, which will be accessible at the request of a party, whether it is voluntary or ex officio, when required.

Regarding their education, as well as for the ordinary procedure can be carried out all instructions of investigation where necessary and, in general, those actions they deem appropriate. All evidence are admitted, especially reporting, analysis, and active participation of the parties. In short the process ends with an executive and enforceable decision, against which you may file an administrative appeal.

### **SANCTIONING POWER**

In the sense of sanctioning powers of public administration, this weighs a reserve of law, so that it may be exercised only under express legal authorization. In this regard, the facts constitute administrative offenses or conduct well established in law, regulations or graduate can only specify the offenses or sanctions legally established with the aim of a more correct and proper identification of the object of conduct violations.

According to the related liability, the law provides only be sanctioned acts constituting violations legally established natural or legal persons found responsible following the appropriate procedure outlined in the General Regulations of the sanctioning power of the Public Administration. Following configured certainly the responsibility by the managed; the law 107-13 provides

that the administrative penalties cannot involve in any case sanctions of imprisonment. The penalties prescribed under the laws governing chelae; there is no provision for it, will be forfeited according to the provisions of this Act, being very serious infringements after five years, the grave after three years and the slight year.

Extrapolating from our Constitution the principle of "double jeopardy"; this law provides that cannot be sanctioned events that have merited criminal or administrative penalty in cases subject to appreciate identity, made and foundation.

The exercise of sanctioning powers materializes through disciplinary proceedings, which shall be exercised under the procedure determined by regulation that will be common to both the local administration to the national authorities. To do this, certain principles should be applied, including the separation of instructor function and sanctioning, ensuring the right of the suspect, guaranteeing the rights of individuals to the extent that the alleged perpetrator is an interested party in the procedure, adoption set provisional measures when necessary, and guaranteeing the presumption of innocence of the suspect until the contrary is proven.

During the disciplinary proceedings the burden of proof should fall to the Administration. On the other hand the decision terminating the disciplinary procedure shall be substantiated and shall resolve any and all issues raised in the corresponding file, but may not accept facts other than those identified in the proceedings. This resolution will only enforceable when end the administrative route, although in cases of request for precautionary measures, given the special nature of these

assumptions, the administrative authority for resolution will value the interests of conflict and the real possibilities of that a judicial remedy lose its meaning useless.

## ADMINISTRATIVE RESOURCES

Administrative measures to halt proceedings, preclude its continuation, produce helplessness, and injure subjective rights or produce irreparable damage may be directly challenged in administrative proceedings. In this regard the administrative resources shall be in writing in the records of the competent bodies to resolve. Unless otherwise expressly provided by law, the filing of administrative resources in principle not suspends implementation of the contested measure. Only it is suspended the execution of the act in the event that its execution would cause serious harm to the person concerned, or if the challenge is fundamental are in the nullity of the act, may require prior provision of security.

The law 107-13 makes a change to the optional nature of the administrative resources, in the sense that administrative resources will be optional for people who may at its option such remedies or go directly to the contentious administrative nature, without any blemishes matter.

## RESPONSIBILITY OF PUBLIC AUTHORITIES AND STAFF

The fundamental right to good administration includes the right for people to be compensated for any harm they suffer to their property or rights as a result of unlawful administrative act or omission. In that order, the law allows any citizen, public employees themselves and

by other public entity, provided that it has suffered injury as a result of an act or administrative omission.

To that end, the administration should compensate the patrimonial, physical, moral dam-

ages, for consequential damages or lost profits, providing the claimant of a maximum of two years to claim, starting from when the public action has occurred that caused the damage.