

Rada Evropy

Recommendation CM/Rec(2007)7 of the Committee of Ministers to member states on good administration

*(Adopted by the Committee of Ministers on 20 June 2007
at the 999bis meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Having regard to Recommendation 1615 (2003) of the Parliamentary Assembly, which calls on the Committee of Ministers to draft a model text for a basic individual right to good administration and a single, comprehensive, consolidated model code of good administration, based in particular on Committee of Ministers' Recommendation No. R (80) 2 and Resolution (77) 31 and the European Code of Good Administrative Behaviour (2001), in order to define the basic right to good administration, and therefore facilitate its effective implementation in practice;

Having regard to Resolution (77) 31 of the Committee of Ministers on the protection of the individual in relation to the acts of administrative authorities;

Having regard to Recommendation No. R (80) 2 of the Committee of Ministers concerning the exercise of discretionary powers by administrative authorities;

Having regard to Recommendation No. R (81) 19 of the Committee of Ministers on the access to information held by public authorities;

Having regard to Recommendation No. R (84) 15 of the Committee of Ministers relating to public liability;

Having regard to Recommendation No. R (87) 16 of the Committee of Ministers on administrative procedures affecting a large number of persons;

Having regard to Recommendation No. R (91) 10 of the Committee of Ministers on the communication to third parties of personal data held by public bodies;

Having regard to Recommendation No. R (2000) 6 of the Committee of Ministers on the status of public officials in Europe;

Having regard to Recommendation No. R (2000) 10 of the Committee of Ministers on codes of conduct for public officials;

Having regard to Recommendation [Rec\(2002\)2](#) of the Committee of Ministers on access to official documents;

Having regard to Recommendation [Rec\(2003\)16](#) of the Committee of Ministers on the execution of administrative and judicial decisions in the field of administrative law;

Having regard to Recommendation [Rec\(2004\)20](#) of the Committee of Ministers on judicial review of administrative acts;

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Considering that public authorities play a key role in democratic societies; that they are active in numerous spheres; that their activities affect private persons' rights and interests; that national legislation and various international instruments, particularly those of the Council of Europe, offer these persons certain rights with regard to the administration; and that the European Court of Human Rights has applied the Convention for the Protection of Human Rights and Fundamental Freedoms to the protection of private persons in their relations with the administration;

Considering that public authorities must provide private persons with a certain number of services and issue certain instructions and rulings, and that when the public authorities are required to take action, they must do so within a reasonable period;

Considering that cases of maladministration, whether as a result of official inaction, delays in taking action or taking action in breach of official obligations, must be subject to sanctions through appropriate procedures, which may include judicial procedures;

Considering that good administration must be ensured by the quality of legislation, which must be appropriate and consistent, clear, easily understood and accessible;

Considering that good administration implies that services must meet the basic needs of society;

Considering that good administration in many situations involves striking an appropriate balance between the rights and interests of those directly affected by state action on the one hand, and the protection of the interests of the community at large, in particular those of the weak or vulnerable, on the other, and recognising that procedures intended to protect the interests of individuals in their relations with the state should in certain circumstances protect the interests of others or the wider community;

Considering that good administration is an aspect of good governance; that it is not just concerned with legal arrangements; that it depends on the quality of organisation and management; that it must meet the requirements of effectiveness, efficiency and relevance to the needs of society; that it must maintain, uphold and safeguard public property and other public interests; that it must comply with budgetary requirements; and that it must preclude all forms of corruption;

Considering that good administration is dependent on adequate human resources available to the public authorities and on the qualities and appropriate training of public officials;

Considering that the administration exercises its prerogative of public power to carry out the tasks required of it; that these powers might however, if used in an inappropriate or excessive manner, infringe the rights of private persons;

Considering that it is desirable to combine the various recognised rights with regard to the public authorities into a right to good administration and to clarify its content, following the example of the Charter of Fundamental Rights of the European Union (2000);

Considering that the requirements of a right to good administration may be reinforced by a general legal instrument; that these requirements stem from the fundamental principles of the rule of law, such as those of lawfulness, equality, impartiality, proportionality, legal certainty, taking action within a reasonable time limit, participation, respect for privacy and transparency; and that they provide for procedures to protect the rights and interests of private persons, inform them and enable them to participate in the adoption of administrative decisions,

Recommends that the governments of member states:

– promote good administration within the framework of the principles of the rule of law and democracy;

– promote good administration through the organisation and functioning of public authorities ensuring efficiency, effectiveness and value for money. These principles require that member states:

- ensure that objectives are set and performance indicators are devised in order to monitor and measure, on a regular basis, the achievement of these objectives by the administration and its public officials;

- compel public authorities to regularly check, within the remit of the law, whether their services are provided at an appropriate cost and whether they shall be replaced or withdrawn;

- compel the administration to seek the best means to obtain the best results;

- conduct appropriate internal and external monitoring of the administration and the action of its public officials;

– promote the right to good administration in the interests of all, by adopting, as appropriate, the standards set out in the model code appended to this recommendation, assuring their effective implementation by the officials of member states and doing whatever may be permissible within the constitutional and legal structure of the state to ensure that regional and local governments adopt the same standards.

*Appendix to Recommendation CM/Rec(2007)7
of the Committee of Ministers to member states
on good administration*

Code of good administration

Article 1 – Scope

1. This code lays down principles and rules which should be applied by public authorities in their relations with private persons, in order to achieve good administration.

2. For the purposes of this code, "public authorities" shall be taken to mean:

a. any public law entity of any kind or at any level, including state, local and autonomous authorities, providing a public service or acting in the public interest;

b. any private law entity exercising the prerogatives of a public authority responsible for providing a public service or acting in the public interest.

3. For the purposes of this code, "private persons" shall be taken to mean individuals and legal persons under private law who are the subject of activities by public authorities.

Section I

Principles of good administration

Article 2 – Principle of lawfulness

1. Public authorities shall act in accordance with the law. They shall not take arbitrary measures, even when exercising their discretion.

2. They shall comply with domestic law, international law and the general principles of law governing their organisation, functioning and activities.

3. They shall act in accordance with rules defining their powers and procedures laid down in their governing rules.

4. They shall exercise their powers only if the established facts and the applicable law entitle them to do so and solely for the purpose for which they

have been conferred.

Article 3 – Principle of equality

1. Public authorities shall act in accordance with the principle of equality.
2. They shall treat private persons who are in the same situation in the same way. They shall not discriminate between private persons on grounds such as sex, ethnic origin, religious belief or other conviction. Any difference in treatment shall be objectively justified.

Article 4 – Principle of impartiality

1. Public authorities shall act in accordance with the principle of impartiality.
2. They shall act objectively, having regard to relevant matters only.
3. They shall not act in a biased manner.
4. They shall ensure that their public officials carry out their duties in an impartial manner, irrespective of their personal beliefs and interests.

Article 5 – Principle of proportionality

1. Public authorities shall act in accordance with the principle of proportionality.
2. They shall impose measures affecting the rights or interests of private persons only where necessary and to the extent required to achieve the aim pursued.
3. When exercising their discretion, they shall maintain a proper balance between any adverse effects which their decision has on the rights or interests of private persons and the purpose they pursue. Any measures taken by them shall not be excessive.

Article 6 – Principle of legal certainty

1. Public authorities shall act in accordance with the principle of legal certainty.
2. They may not take any retroactive measures except in legally justified circumstances.
3. They shall not interfere with vested rights and final legal situations except where it is imperatively necessary in the public interest.
4. It may be necessary in certain cases, in particular where new obligations are imposed, to provide for transitional provisions or to allow a reasonable time for the entry into force of these obligations.

Article 7 – Principle of taking action within a reasonable time limit

Public authorities shall act and perform their duties within a reasonable time.

Article 8 – Principle of participation

Unless action needs to be taken urgently, public authorities shall provide private persons with the opportunity through appropriate means to participate in the preparation and implementation of administrative decisions which affect their rights or interests.

Article 9 – Principle of respect for privacy

1. Public authorities shall have respect for privacy, particularly when processing personal data.
2. When public authorities are authorised to process personal data or files, particularly by electronic means, they shall take all necessary measures to guarantee privacy.
3. The rules relating to personal data protection, notably as regards the right to have access to personal data and secure the rectification or removal of any data that is inaccurate or shall not have been recorded, shall apply to personal data processed by public authorities.

Article 10 – Principle of transparency

1. Public authorities shall act in accordance with the principle of transparency.
2. They shall ensure that private persons are informed, by appropriate means, of their actions and decisions which may include the publication of official documents.

3. They shall respect the rights of access to official documents according to the rules relating to personal data protection.
4. The principle of transparency does not prejudice secrets protected by law.

Section II

Rules governing administrative decisions

Article 11 – Definitions

1. For the purposes of this code, “administrative decisions” shall mean regulatory or non-regulatory decisions taken by public authorities when exercising the prerogatives of public power.
2. Regulatory decisions consist of generally applicable rules.
3. Non-regulatory decisions may be individual or otherwise. Individual decisions are those addressed solely to one or more individuals.

Article 12 – Initiation of administrative decisions

Administrative decisions can be taken by public authorities either on their own initiative or upon request from private persons.

Article 13 – Requests from private persons

1. Private persons have the right to request public authorities to take individual decisions which lie within their competence.
2. Decisions in response to requests to public authorities shall be taken within a reasonable time which can be defined by law. Remedies for cases where no such decision has been taken should be foreseen.
3. When such a request is made to an authority lacking the relevant competence, the recipient shall forward it to the competent authority where possible and advise the applicant that it has done so.
4. All requests for individual decisions made to public authorities shall be acknowledged with an indication of the expected time within which the decision will be taken, and of the legal remedies that exist if the decision is not taken. An acknowledgement in writing may be dispensed with where public authorities respond promptly with a decision.

Article 14 – Right of private persons to be heard with regard to individual decisions

If a public authority intends to take an individual decision that will directly and adversely affect the rights of private persons, and provided that an opportunity to express their views has not been given, such persons shall, unless this is manifestly unnecessary, have an opportunity to express their views within a reasonable time and in the manner provided for by national law, and if necessary with the assistance of a person of their choice.

Article 15 – Right of private persons to be involved in certain non-regulatory decisions

1. If a public authority proposes to take a non-regulatory decision that may affect an indeterminate number of people, it shall set out procedures allowing for their participation in the decision-making process, such as written observations, hearings, representation in an advisory body of the competent authority, consultations and public enquiries.
2. Those concerned in these procedures shall be clearly informed of the proposals in question and given the opportunity to express their views fully. The proceedings shall take place within a reasonable time.

Article 16 – Contribution of private persons to costs for administrative decisions

Costs, if payable by private persons to public authorities in respect of administrative decisions, shall be fair and reasonable.

Article 17 – Form of administrative decisions

1. Administrative decisions shall be phrased in a simple, clear and understandable manner.
2. Appropriate reasons shall be given for any individual decision taken, stating the legal and factual grounds on which the decision was taken, at least in cases where they affect individual rights.

Article 18 – Publication of administrative decisions

1. Administrative decisions shall be published in order to allow those concerned by these decisions to have an exact and comprehensive knowledge of them. Publication may be through personal notification or it may be general in nature.
2. Those concerned by individual decisions shall be personally notified except in exceptional circumstances where only general publication methods are possible. In all cases, appeal procedures including time limits shall be indicated.

Article 19 – Entry into force of administrative decisions

1. Administrative decisions shall not take effect retroactively with regard to a date prior to their adoption or publication, except in legally justified circumstances.
2. Except in urgent cases, administrative decisions shall not be operative until they have been appropriately published.

Article 20 – Execution of administrative decisions

1. Public authorities shall be responsible for the execution of administrative decisions falling within their competence.
2. An appropriate system of administrative or criminal penalties shall, in principle, be established to ensure that private persons comply with the decisions of the public authorities.
3. Public authorities shall allow private persons a reasonable time to perform the obligations imposed on them, except in urgent cases where they shall duly state the reasons for this.
4. Enforced execution by public authorities shall be expressly prescribed by law. Private persons subject to the execution of a decision are informed of the procedure and of the reasons for it. Enforced execution measures shall be proportionate.

Article 21 – Changes to individual administrative decisions

Public authorities can amend or withdraw individual administrative decisions in the public interest if necessary, but, in doing so, they should have regard to the rights and interests of private persons.

Section III

Appeals

Article 22 – Appeals against administrative decisions

1. Private persons shall be entitled to seek, directly or by way of exception, a judicial review of an administrative decision which directly affects their rights and interests.
2. Administrative appeals, prior to a judicial review, shall, in principle, be possible. They may, in certain cases, be compulsory. They may concern an appeal on merits or an appeal on the legality of an administrative decision.
3. Private persons shall not suffer any prejudice from public authorities for appealing against an administrative decision.

Article 23 – Compensation

1. Public authorities shall provide a remedy to private persons who suffer damages through unlawful administrative decisions or negligence on the part of the administration or its officials.
2. Before bringing actions for compensation against public authorities in the courts, private persons may first be required to submit their case to the authorities concerned.
3. Court orders against public authorities to provide compensation for damages suffered shall be executed within a reasonable time.
4. It shall be possible, where appropriate, for public authorities or private persons adversely affected to issue legal proceedings against public officials in their personal capacity.