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CJ-DA-GT (98) 5 rev

**EUROPEAN COMMITTEE ON LEGAL CO-OPERATION  
(CDCJ)**

**WORKING PARTY OF THE PROJECT GROUP ON ADMINISTRATIVE  
LAW  
(CJ-DA-GT)**

**1st meeting  
Paris, Office of the Council of Europe, Room 2  
3-5 June 1998**

**MEETING REPORT**

Secretariat Memorandum  
prepared by the Directorate of Legal Affairs

**1. Opening of the meeting by the Chairman**

The first meeting of the Working Party of the Project Group on Administrative Law (CJ-DA-GT) was opened by the Vice-Chair of the Project Group on Administrative Law (CJ-DA), Mr NIEMIVUO, appointed Chairman of the CJ-DA-GT by the CJ-DA. Mr NIEMIVUO welcomed members of the Group and in particular Professor BODIGUEL, expert-consultant who would be called upon to advise the Working Party.

**2. Adoption of the agenda**

The agenda was adopted as it appears in Appendix II to this document.

**3. Statement by the Secretariat**

The Secretariat introduced the activity on the status of public officials in Europe to the members of the Working Party.

The activity resulted from *Recommendation 1322 (1997) of the Parliamentary Assembly of the Council of Europe* addressed to the Committee of Ministers of the Council of Europe. This Recommendation called upon the Committee of Ministers to include in its intergovernmental programme of activities an activity relating to the general principles of the civil service in Europe.

Following this recommendation, the Committee of Ministers adopted specific terms of reference for the CJ-DA calling upon it: a) to examine which general principles characterise the recruitment, training, ethics and status of civil servants and other public officials in European States; b) to propose measures designed to improve the efficiency and, where appropriate, facilitate the reform of civil service in a spirit of awareness of citizens' needs; and c) where appropriate, to prepare a recommendation for adoption by the Committee of Ministers.

At its last meeting (Strasbourg, 13-15 October 1997), the CJ-DA approved a questionnaire on the status of public officials and decided to send it to all member States of the Council of Europe as well as to observer countries in the CJ-DA by the intermediary of the CJ-DA members as a first course of action to fulfil its terms of reference.

On the basis of the replies to the questionnaire, the Secretariat prepared a preliminary-draft report on the Status of Public Officials in Europe, which is dealt with under the following item.

The Secretariat noted that, on the basis of the information provided by the report, the Working Party was invited to hold a preliminary exchange of views about the follow up to the activity concerning namely, the proposal of measures designed to improve the efficiency and, where appropriate, facilitate the reform of civil service in a spirit of awareness of citizens' needs, and to prepare a recommendation for adoption by the Committee of Ministers.

#### **4. Examination of the preliminary draft report on status public officials in Europe**

As mentioned above, on the basis of the replies received to a specific questionnaire, the Secretariat prepared a preliminary draft-report. This report was intended to recapitulate the general principles that characterise the recruitment, training, ethics and status of public officials in European States.

As regards the structure of the report, the CJ-DA decided at its last meeting that the report should include a descriptive part, an analytical part and possibly conclusions.

The Working Party examined the preliminary draft report (document CJ-DA-GT (98) 1) and held a general *tour de table*. The members of the Working Party agreed that each section should be introduced by a short summary in order to ascertain the specific issues.

Several members stressed the importance of the activity in view of reforms underway. The delegate of Hungary noted that an Act on Civil servants is currently under preparation and observed that the activity of the CJ-DA would be of great help. The delegate of the Ukraine noted that this work would be of great assistance for his country because the concept of administrative reform will be shortly proposed to the President and if adopted will considerably influence legislation and subsequent reform.

The observer of the OECD referred to the SIGMA Programme of the OECD, which covers 13 Countries of Central and Eastern Europe and focuses precisely in the field of public officials. He further noted that SIGMA has undertaken a similar exercise for the 10 countries, which are candidates for accession to the European Union.

At the end of a fruitful discussion the Working Party agreed on a number of changes to the preliminary draft report concerning the various sections as follows.

##### ***a) Definition of the public service***

The Working Party agreed that a definition is very difficult in the light of the different

systems that exist in Europe. Professor BODIGUEL noted that this definition could be made from different perspectives: from the point of view of the organ, i.e. public officials are all those persons who work for the public services, but this definition is not very useful; from the point of view of the function carried out, this definition is more useful and has been retained in the context of the EU (cf. free circulation of persons, article 48 Treaty of the European Community). A stricter definition would consider public officials only those who exert public authorities i.e.: public powers; this definition is used for instance in Germany where it covers civil servants only and excludes those other persons employed by the public administration which do not exercise public authority.

Some delegations observed that the relation between the public authority and the employee is the key element for a definition and not so much what the person actually does.

The Working Party agreed with the definition included in the preliminary draft report, which covers both contractual and statutory staff. Yet, it recognised that in some instances distinctions would have to be made in the report concerning the different working conditions and status of both types of staff. It decided to further expand on the problems connected thereto, namely: the distinction between contractual and statutory staff, the existence of certain categories which are also included in the definition of public officials, e.g. doctors, police, etc.

#### ***b) Legal framework***

The Working Party agreed that under this heading the two major alternatives of civil service in Europe should be introduced: the statutory and the contractual system indicating that the choice between one or other depends on particular circumstances.

The Chairman observed that the most important elements and key principles of the civil service could be provided for in the Constitution and then be developed by means of legislation.

In this connection, the delegate of the United Kingdom noted that in the United Kingdom there is no legislation relating to civil service and ministers freely decide working conditions and status.

The delegate of the Netherlands observed that in the Netherlands civil servants are not considered special employees but their employer, the State. Despite an order calling for adoption of legislation in the field (a civil service act) there is a certain tendency to drop it altogether and let it fall under private law. Therefore plans are being made and discussed to put an act to the Parliament in which public service law is eventually abolished for a great deal. Yet, he recognised that this course of action cannot be extrapolated to every country.

The Working Party further agreed that a distinction should be made between legal and administrative framework. While the first is established by the Parliament, the second falls under the scope of competence of administrative authorities as a general rule (see below "Authority responsible").

***c) Authority responsible for public officials***

The Working Party agreed that this section should not contain any references to legal status since it is strictly limited to administrative status.

In this context, the delegate of the United Kingdom observed that even though no precise legal framework exists in this country, there is precise administrative framework.

It was the general understanding that while a political authority should decide on the general principles of the civil service, its implementation (administrative framework) should be left for lower instances namely the Government and its administration. In this context, avoiding conflict of competence would be an Important means for achieving an efficient public service.

***d) Categories of public officials, levels and grading***

Professor BODIGUEL observed that in career system countries, statutory staff is the rule and where it is not possible, subsidiary contractual staff is recruited.

As regards the various categories of staff, the Working Party agreed that main factor is the function performed. This has subsequently been associated with the level of education and a certain level of remuneration has been assigned to it. Some countries have defined the categories in view of the level of education in order to simplify the recruitment procedure and not to have to define each post. However, this system is no longer satisfactory as there has been a general and significant increase in people's level of qualification.

The Working Party concluded that the key issue behind the existence of various categories is the search for certain profiles for carrying out certain tasks.

It further agreed that the report should also make reference, under a different section, to the figure of political advisers who are arbitrarily appointed by the ministers and other high officials and are dismissed when the latter leave office. They may be considered public officials or not. Yet, they may fit also in the categories that apply to other public officials dependant on the function.

The Working Party observed that the above-mentioned issue is only relevant in the context of a career system. In a contractual system the Ministers and other high officials are free to appoint the person they consider best fits a given post.

The Working Party acknowledged that the distinction between contractual and statutory staff is particularly important in the context of categories and levels of staff. Thus, in Germany for contractual staff there is no grading or levels of requirements.

***e) Recruitment conditions and criteria***

The Working Party agreed that the report should refer to the two basic principles that inspire recruitment of public officials, namely: equal access to public service posts and merit. Then possible exceptions to those key principles should be presented.

The Chairman noted that the importance of these principles is such that they might be established in the constitution, as it is the case in Finland where both, the current and the new Constitution under preparation provide for them.

As regards the criteria and requirements for recruitment and appointment of public officials the Working Party agreed that they should not hinder in any way the above mentioned principles. Yet, it recognised that these criteria may vary considerably from State to State.

Moreover, it stressed the fact that some requirements may in fact constitute disguised unjustified restrictions if wrongly applied, e.g. physical and mental health for the past, moral character. Therefore, they should be as objective as possible and only accepted in as far as they are required for carrying out the functions assigned to the public official.

The moral character and age requirements were the object of significant discussion. Concerning the first, some delegations agreed that it could be verified by the absence of a criminal record even though some posts might require a higher moral standard; yet, the Working Party agreed that it could not be linked to private individual moral.

Concerning the age requirement, the Working Party noted that it exists in some countries while not in others. More over it may not be an absolute criterion, maximum but minimum or vice-versa. As a general rule the minimum age is connected with full legal capacity. In this connection, the delegate of Germany noted that age is only relevant for statutory staff but not for contractual.

As regards citizenship as a condition for recruitment, the Chairman asked members of the Working Party whether it should be an absolute criterion or apply only to highest posts or those where state authority is exercised.

The Working Party acknowledged that this criterion is absolute in some countries while in others it applies only to certain categories of posts. Moreover, it is the subject of significant exceptions, e.g.: EU and European Economic Space nationals may access public posts provided that they do not entail exercise of public authority.

The Working Party further observed that this criterion is particularly problematic in countries with minorities. Yet, the key issue is whether the minorities are in fact nationals or not.

The observer of the OECD observed that the criteria could also be reformulated as "full capability of the national language".

The delegate of Spain, observed that citizenship is a difficult criterion, but it will always been a basis a criteria for discrimination, even in the context of EU for posts involving exercise of public authority.

The delegate of Switzerland informed members of the Working Party that the current law for civil service (dating from 1927) does not allow recruitment of foreigners as public officials. However, a draft law on civil service in preparation will allow for recruitment of all citizens regardless of their nationality.

The Working Party held a discussion on the issue of positive discrimination and concluded that it may have some perverse effects and that its scope is problematic as it is sometimes connected with minorities.

The delegate of the United Kingdom referred to the Civil Service equal opportunities policy in his country which provides that all eligible people must have equality of opportunity for employment and advancement on the basis of their suitability for the work. There must be no unfair discrimination on the basis of age, disability, gender, marital status, sexual orientation, race, colour, nationality, ethnic or national origin, or (in Northern Ireland) community background.

#### ***f) Recruitment procedures***

The Working Party agreed that, under this section, the two main civil service systems: career and contract systems should be further referred to and their recruitment methods presented. These methods include competitive examinations based on equal access and merit for the career system and discretion within the scope of the post description for the contract system.

The Working Party agreed that competition (as in competitive examinations) should be understood in the wider sense of the word covering, e.g.: anonymous tests, competition based on CV, etc.

It further acknowledged that some countries might have a combination of various recruitment systems. Thus, in Ukraine or in Switzerland recruitment by competitive examination does not exclude recruitment by contract on the basis of discretionary choice in the context of the post description.

The Working Party agreed that the section on political advisers (see d) above) should also refer to recruitment of discretionary positions (cf. political advisers) which do not fall under the scope ordinary recruitment procedures.

The delegate of the Netherlands informed the Working Party about recent developments in this connection. He observed that in the Netherlands top management positions are more open to new people from outside the administration while in the past it was normally accessible from the inside. Offering fix-term contracts for top management positions is being considered and this new system will be operational in a few years. Yet, as public sector cannot pay as much as the private the functioning of the system remains to be seen.

The Working Party concluded that whatever recruitment system are put in place, they should be open, and transparent, their rules should be clear while at the same time the system should be flexible.

It further agreed on the need to ensure legal protection of applicants in the context of the recruitment procedure. This issue is particularly significant in view of the confidential nature that the application documentation might have in some countries.

Moreover, it agreed on the need to ensure a legal remedy against the recruitment procedure, in order to avoid breaches of the above-mentioned principles of recruitment and in particular to avoid politicisation of the public officials and nepotism. However, this appeal might not cover all cases, e.g.: discretionary appointments.

In this connection, the observer of the OECD noted that legal protection is a very important control function and it might be of particular importance in the Countries of Central and Eastern Europe.

The delegate of the United Kingdom informed members of the Working Party that a recruitment code exists in the United Kingdom, mandatory on departments for posts opened to competition. The code aims at “recruiting the best possible candidate, avoiding patronage and reinforcing of political impartiality”. Moreover, the code provides for an appeal procedure.

#### ***g) Mobility of public officials: transfers***

The Working Party examined the issue of transfer of public officials and agreed that it has significant consequences for the public official. It is important for the administration itself to ensure certain mobility and also for the official.

The consent of the public officials as a condition for the transfer was the subject of significant discussions in the Working Party. In some countries, such as Germany, if the transfer occurs within the same department or to a department within the jurisdiction of the original department, consent of the public official is not necessary while if the transfer is to another department consent is necessary.

Professor BODIGUEL further noted that in the contractual system, contracts normally indicate the location of the post and that a change requires another contract unless an obligation of mobility is included. He further acknowledged that, in the context of transfers, terminology is essential, thus different notions could be used:

- Change of position (“changement d'affection”) which implies a change of department but not a higher function (horizontal change). In this case consent of the public official is not necessary because this possibility comes within the power of the administrative authority.

- Move (“mutation”) which implies a different location. In this case consent should be required but there might be some limits, thus in France three refusals may lead to dismissal.

- Secondment (“detachment”) which also requires consent of the public official.

Professor BODIGUEL further noted that legal remedies should be available where consent of the public official is not required.

According to the delegate of Germany the key issue is the change of location, even if the transfer takes place within the same department. In Germany consent of the public official concerned is not required for transfers within the same department. This issue is the subject of ongoing litigation in Germany opposing public officials and other State employees to the public authorities, particularly as a result of the transfer of the Federal capital from Bonn to Berlin.

Some delegations proposed that mobility be included in the section on duties. It was observed that in France, public officials are informed of such obligation when recruited. This issue is particularly important in the context of the implementation by the Government of a “deconcentration” policy (“politique de délocalisation”) aiming at decentralising State administration. As a result, officials are normally bound to accept to be transferred. Yet they may refuse but, as mentioned above, three refusals can lead to a dismissal from service.

#### ***h) Promotion***

The Working Party agreed that the report should deal with functional promotions, i.e. to a higher post or post with higher responsibility because financial promotions are not a real promotion and should be dealt under the section on remuneration. Yet, it noted that functional promotions generally amount to a financial promotion or increase in salary.

The Working Party further agreed that promotions vary depending on the system. They could take place following an assessment of the public official’s work, a professional exam or test or a competitive examination. A promotion may result in a duty to undergo certain training and some other conditions may be required e.g. minimum time lapsed in an inferior post, training, etc.

The Working Party agreed that there should be equality in promotion and decisions should be made based on merit, the only criterion that counts. Public officials have a right not to be discriminated as regards the possibility of being promoted.

#### ***i) Termination***

The Working Party agreed that two main cases of termination could be envisaged: voluntary termination at the request of the public official concerned, with or without acceptance by the State, or involuntary termination, without request of the public official.

Several case of involuntary termination can be envisaged: retirement due to age or to incapability, suppression of posts, disciplinary sanctions, professional unsuitability,



lost of one of the conditions required for recruitment e.g.: penal sanction, lost legal capacity or nationality.

The Working Party further agreed that this issue is also relevant regarding top positions and political advisers and therefore it should be included in the specific section dealing with the latter.

The Working Party concluded that no termination should occur outside the legal framework and that a legal remedy should be available in all cases. However, it was observed that, given that no legal framework (laws and regulations) exists as such in the United Kingdom, this statement could not be taken literally for this country.

#### *j) Rights*

The Working Party agreed to move the general section on rights before the other sections on specific rights (promotion, remuneration, and training) and state that other specific rights are dealt with separately.

The Working Party agreed that public officials enjoy no special rights. They are citizens and in as far as possible should have the same rights than other citizens. Yet, they are subject to restrictions or limitations in the exercise of these rights. In this regard, the State is called upon to regulate the exercise of these rights to make it compatible with some duties, which are inherent to public service such as efficiency

Professor BODIGUEL observed that some rights do not pose any problems but two specific rights: political activity and right to strike raise significant issues and very different solutions have been adopted in the various countries.

As regards political activity of public officials the situation varies significantly among countries, thus in the United Kingdom restrictions to political activity increase as the responsibility of the public official increases.

As regards the right to strike, most delegations agreed that as a general rule officials should have this right. However, it was noted that this is not the case in Germany in so far as civil servants are concerned. Some States, such as the Netherlands, have tried solving this issue by not mentioning anything at all or by not developing the laws which made specific provision thereto, such as France. Other delegations stressed that logically there should be no right to strike in career systems.

The delegate of Germany stressed that according to the German Constitution civil servants do not have right to strike. This being a very sensitive issue, the German delegation could not agree to any common acknowledgement of such right.

The delegate of the United Kingdom explained the situation in the United Kingdom noting that civil servants (apart from prison officers) have a right to strike like most other workers provided the majority of the trade union membership vote for industrial action in a secret postal ballot.

At the end of discussions, the Working Party realised that it would be difficult to reach common agreement regarding the right to strike for public officials.

The Working Party held a thorough discussion regarding the right to participation. It observed that the titled was a little confusing and that it should be separated from the trade union rights. In this connection, the Working Party decided to expressly differentiate political rights and trade union rights.

Concerning the latter, it acknowledged an increasing trend towards a greater involvement of public officials in the organisation and running of public services. In this context, the right of participation could be seen as a right to certain overlook ("droit de regard") particularly as regards the structure of the staff career. In some countries the term "co-management" is used.

The Working Party concluded that the right of participation is not a general right but tends to generally apply. The problem might be of definition. And for that reason the Working Party further decided to differentiate trade union rights and right of participation. In this connection, the delegate of Germany further observed that the right of participation is different from the right of coalition.

As regards the trade union rights, the delegate of Switzerland proposed that the report also examined the powers of the trade unions set up by public officials, particularly in relation to trade unions in the private sector. The Working Party agreed to include this problematic in the introduction to the trade union rights.

The Working Party concluded on the need to separate right of participation from trade union rights and to difference between political rights, right of participation and trade union rights which include the right of coalition and the right to strike.

### ***k) Training***

The Working Party agreed that training is an essential element for an efficient system of public administration. Therefore public officials have a right and a duty to training. The public administration for its part has a duty to provide that training.

The delegate of Switzerland suggested establishing a link between training and job security. Thus, an official who refuses to undergo training could be dismissed, given that ongoing training is an essential element of job security.

The Working Party agreed that training can be a requirement for promotion, yet the administration has no duty to promote all agents undergoing training nor can training and promotion be absolutely linked.

### ***l) Remuneration***

The Working Party agreed that public officials have a right to remuneration including several elements: a basic salary complemented with other allowances of social nature and productivity bonuses.

The level of remuneration should be adequate so as allowing a decent live for an insufficient salary will place public officials at an unacceptable risk for corruption or other occupations incompatible with the performance of public duties. In this connection, the Working Party recognised that salaries are much lower than in the private sector.

Further to that it decided that there was no need for a section tax returns.

As regards remuneration adjustment, the Working Party agreed that it does not have to be necessarily automatic but adapted to the specific economic situation. Thus, it was mentioned that in the United Kingdom due to budgetary constraints there was a tendency to move away from automatic adjustment and to link pay to performance.

Professor BODIGUEL argued against automatic adjustment observing that it could restrict the parliaments power to fix levels of expenditure.

### *m) Duties*

The Working Party agreed that duties or obligations of public officials might be considered even more important than their rights. In this connection, it is important to strike a balance between the two.

It further agreed that the respect for the public and citizen-oriented provision of services is perhaps the most important duty in the light of developments. Therefore, the Working Party decided to further develop it possibly with references to the Handbook *The Administration and You* prepared by the CJ-DA and published in 1997.

In addition, it decided to include among the duties, professional discretion (“secret professional”) and accountability.

As regards the former, the Chairman informed the Working Party that a draft law is under discussion in the Finnish Parliament concerning this duty particularly in relation to the access to information held by administrative authorities. According to the draft, public officials are called upon to facilitate access to information by the public.

The latter is included in some countries in the notion of responsibility for the proper performance of the tasks assigned whatever level of authority.

The Working Party held a significant discussion on the issue of incompatibilities, namely the possibility for public officials to have other jobs or activities. It agreed on the need to differentiate having a second employment from entering into financial activities.

As regards the first, some extra-civil service activities may benefit the performance of public functions or the public service as a whole (e.g. academic, literary, artistic).

As regards the second, it should be acknowledged that in some countries, particularly of Central and Eastern Europe public officials are so badly paid that they must have a second source of income to survive. However, the Working Party agreed that no

second jobs should be allowed which would compromise the exercise of the public functions.

The Working Party further decided to deal with ethical issues of public officials in a separate section. In this connection, the delegate of the United Kingdom noted that when it comes to acceptance of gifts what is important thing is that they do not compromise the judgement or proper exercise of the public functions.

#### ***n) Protection of public officials' rights***

The Working Party agreed that this section dealt exclusively with the rights of public officials in relation to the public administration, i.e.: their employer.

#### ***o) Statistics***

The Working Party agreed to revise the statistics in this section, as in their current form their use is rather limited.

The Secretariat proposed to co-operate with the OECD in order to revise this section of the report. The observer of the OECD expressed his willingness to that co-operation.

The Working Party concluded that it would go back to this section on the light of the new information gathered and it would then decide on whether or not to maintain this section of the report.

### **5. Follow-up**

The Secretariat introduced document CJ-DA-GT (98) 2 concerning the follow-up to the activity on the status of public officials in Europe. The document included, namely the preparation of a preliminary draft recommendation of the Committee of Ministers to member States on the status of public officials in Europe or alternatively of conclusions to appearing in the preliminary draft report examined under 4 above.

At the Chairman's request, the Working Party held a *tour de table* on the usefulness of preparing such a recommendation subject to subsequent decision to be taken by the CJ-DA.

At the end of a fruitful discussion the Secretariat was instructed to prepare a preliminary draft recommendation for consideration at the next meeting of the Working Party. The Working Party agreed that its final decision would depend on the actual content of the draft instrument.

In addition, it was the general understanding of the Working Party that there are areas where there is no right or wrong answers and therefore recommendations could not be made pushing States to go along one or another avenue.

On the basis of the discussion concerning the preliminary draft report on the status of public officials in Europe the following preliminary elements of agreement could be retained:

a) Definition

It is important to introduce the contractual and statutory system of civil service and stress that the choice between one and other depends on the specific circumstances. In this context, it is important to recall the reasons for public service. They could appear in the "considerings" of the recommendation.

b) Legal Framework

The legal framework, including the general principles of the civil service, should be established by parliament and the administrative framework should be set up by administrative authorities either Government or by collective negotiation.

c) Authority responsible

The administrative framework should in general be the responsibility of the government or the administration. It is essential to avoid conflict of competence in order for the civil service to be efficient.

d) Categories and levels

The categories should be defined in the light of the function performed and levels of remuneration will be determined according to the category, which has a given responsibility attached. A given level of education will be a requirement for accessing a given category.

e) Conditions and requirements for recruitment

Recruitment of public officials should be defined by two main principles: equality of access to public posts and merit. Some pre-conditions exist for accessing public posts, e.g. mental and physical health. In addition, general and specific requirements exist for recruitment. They constitute in fact restrictions to the two principles and should be admitted only in as far as justified.

f) Recruitment procedures

Recruitment systems and procedures should be open, transparent, rules should be clear, but system should be flexible.

They should provide for the legal protection of applicants: there should be regulations about protecting the confidentiality of the information provided in the context of the selection procedure and there should be appeal against the recruitment authority for legal protection is a very important control function

g) Mobility

Mobility may constitute one of the duties of public officials. Yet, transfers should not serve as disguised disciplinary sanctions, which are not justified.

Transfers have significant consequences for public officials. It is important for the administration itself to ensure certain mobility and also for the official. Consent of the public officials might constitute a condition for the transfer but not an absolute requirement.

In those cases where consent of public officials is not required legal remedies should be available for public official to contest possible disguised undue sanctions.

#### h) Promotions

Promotions should be based on merit. No public official should be discriminated on any basis. Any discrimination in promotion would be in breach of the principle of equality.

#### i) Termination

No termination of public officials' job should occur outside the legal framework. A legal remedy should be available in all cases.

#### j) Rights

Public officials enjoy no special rights by the fact of being public officials. They are citizens and in as far as possible should have the same rights than other citizens. They are however subject to restrictions or limitations in the exercise of these rights. The State is called upon to regulate the exercise of their rights to make it compatible with some duties, which are inherent to public service such as efficiency. This is particularly so as regards, political rights and trade union rights including right to strike.

It is in the interest of the public administrations to promote participation of public officials in the structure and performance of public functions (cf. right of participation). Specific rights are dealt with below.

#### k) Training

Training is an essential element for an efficient system of public administration. Public officials have a right and a duty to undergo training. Further more, training can be a requirement for promotion.

#### l) Remuneration

Public officials have a right to remuneration. It can include several elements in addition to a basic salary such as social benefits and be complemented with productivity bonuses.

The level of remuneration should be at all times adequate so as allowing a decent live for an insufficient salary will place public officials at an unacceptable risk for corruption or other occupations incompatible with the performance of public duties.

#### m) Duties

Public officials should be in a position to dedicate themselves fully to their functions. Duties are imposed on them to achieve this aim and include discretion, neutrality, hierarchical subordination, respect for the public and accountability.

In addition, public officials are subject to certain incompatibilities, i.e.: they cannot have second jobs or carry out or participate in certain activities. These restrictions are intended to ensure not only that officials devote all their time to their public functions, but also to avoid conflicts of interest and corruption.

#### n) Protection of public officials

Public officials should be protected in relation to their employer (the State) as regards their rights, with the sole exceptions of restrictions that are imposed on them by the law in view of the correct exercise of their functions.

The above elements of agreement will serve as a basis for the preparation of a preliminary draft recommendation.

## **6. Date and place of next meeting**

The Group agreed on holding its second meeting 23-25 September 1998 in Paris.

## **7. Other business**

The Chairman thanked members of the Working Party and the Secretariat for their contribution to the satisfactory outcome of the meeting.

### **APPENDIX I**

#### **LIST OF PARTICIPANTS**

ALBANIA/ALBANIE: Apologised/Excusé

FINLAND/FINLANDE: Mr Matti NIEMIVUO **Chairman/Président**, Director of Legislation, Ministry of Justice, P.O. Box 1, SF 00131 HELSINKI

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#### **SCIENTIFIC EXPERT/EXPERT SCIENTIFIQUE**

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#### **SECRETARIAT**

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## APPENDIX II

### DRAFT AGENDA

1. Opening of the meeting by the Chairman, Mr NIEMIVUO

*Report of the 10th meeting of the CJ-DA,  
Strasbourg, 13-15 October 1997* CJ-DA (97) 7

2. Adoption of the agenda CJ-DA-GT (98) OJ 1

3. Statement by the Secretariat

4. Examination of the *preliminary draft report on status of public officials in Europe*  
CJ-DA-GT (98) 1

*Swedish Reply to the questionnaire on the Status  
of public Officials in Sweden* CJ-DA-GT (98) 1 Add

5. Follow-up to the activity

*Discussion paper on the follow-up to the activity Status  
of Public Officials in Europe* CJ-DA-GT (98) 2

*Selected texts, general report and conclusions of the Colloquy on  
the Role and Structure of the Civil Service in a Democratic State  
Portoroz (Slovenia), 2-3 June 1994* CJ-DA-GT (98) 3

*Selected texts of the Colloquy on Civil Service Systems: the European  
Experience, Geneva (Switzerland), 26-27 October 1995* CJ-DA-GT (98) 4

*Recommendation 1322 (1997) of the Parliamentary Assembly of the Council of Europe*

6. Date and place of the next meeting

7. Other business

