COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, le 14 January 2005 CJ–DA–GT (2004) 9

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

2nd meeting
Strasbourg, 8 – 10 December 2004

MEETING REPORT

FOREWORD

At its second meeting the CJ-DA-GT:

a. examined the preliminary draft report prepared by the scientific expert on the feasibility and desirability of preparing a recommendation and/or a consolidated model code of good administration;

b. decided on the layout and content of the preliminary draft report to be submitted to the CJ-DA;

c. decided to finalise the preliminary draft report by means of a written procedure;

d. expressed its opinion on the desirability of updating the handbook "The administration and you".

Secretariat memorandum
prepared by the Directorate General of Legal Affairs

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I. INTRODUCTION

1. The Working Party of the Project Group on Administrative Law (CJ-DA-GT) held its second meeting from 8 to 10 December 2004 at the Council of Europe headquarters in Strasbourg, with Mr Vittorio Ragonesi (Italy) and Ms Caroline Daily (Ireland) in the chair. A list of participants appears in Appendix I to this report.

2. The CJ-DA-GT examined and adopted the draft agenda, as it appears in Appendix II.

3. The Secretariat said that the draft recommendation on judicial review of administrative acts would be examined by the Committee of Ministers on 15 December 2004 with a view to its adoption. It also announced that there was provision in the 2005 budget for holding a multilateral meeting on the training of civil servants.

II. PREPARATION OF A DRAFT REPORT ON THE FEASIBILITY AND DESIRABILITY OF PREPARING A RECOMMENDATION AND/OR A CONSOLIDATED MODEL CODE OF GOOD ADMINISTRATION

4. The CJ-DA-GT delegations examined the preliminary draft report prepared by the scientific expert (see Appendix III) with a view to drafting a document for submission to the CJ-DA. It was on the basis of this document that the CJ-DA would ultimately prepare a text for submission to the CDCJ.

5. The CJ-DA-GT delegations discussed the layout and content of the preliminary draft report.

6. With regard to layout, the CJ-DA-GT decided to keep the four sections of the text submitted by the scientific expert, namely a description of the concepts of good governance and good administration, an indication of the main principles of good administration set out in texts adopted by the Council of Europe, along with a description of new principles of good administration that should be added in order to encompass all aspects and approaches, in particular the improvement of administration decision-making, and a conclusion concerning the preparation of a certain type of document to be submitted to the CDCJ for forwarding to the Committee of Ministers.

7. The CJ-DA-GT then examined the content of the preliminary draft report prepared by the scientific expert. The Chair took the opportunity to point out that the final document would have to be drafted in accordance with the CJ-DA's terms of reference.

8. One delegation thought it would be preferable to have an explanation of the terms of good governance and good administration and the relations between the two concepts rather than a definition. This would make it possible to familiarise the reader with these terms, which were widely used but whose meaning was not clear.

9. The Chair suggested further explaining the relationship between good governance and good administration, even though the subject being addressed by the Working Party was good administration. The preliminary draft prepared by the scientific expert referred to maladministration, but this concept should be dealt with more briefly and encompassed in that of good administration.

10. Another delegation said that the concepts of good administration and maladministration should be dealt with together, though without putting emphasis on maladministration, so that the CJ-DA-GT could ultimately in come up a description of good administration. Other delegations thought that the examples of maladministration in the preliminary draft report by the scientific expert were useful as a means of defining good administration and should be included so that good administration and its effects could be broached positively.

11. One delegation pointed out that the European Ombudsman's Code already referred to principles of good administration, and that good administration entailed more than complying with a few strictly legal principles. If maladministration referred to the concept of illegal administration that did not observe the rules, good administration was the opposite, i.e. lawful administration in compliance with the rules.

12. Referring specifically to the terms of reference, which called for improvements in administrative decision-making, one delegation thought it necessary not just to concentrate on the classic principles of good administration but also to consider members of the public as users and thus elaborate on practical aspects. Another delegation reminded the Working Party that it was agreed that administrative decisions should not be taken without the person concerned having an opportunity to express his or her views.

13. One delegation said that good administration was a standard concept defining and limiting the results to be achieved. The way in which administrative authorities were organised and the resources at their disposal therefore needed to be in keeping with their objectives.

14. One delegation said that effectiveness and performance were the main objectives of administration; participatory administration, i.e. administration that was close to members of the public and involved them in the decision-making process, was part and parcel of efficient, effective administration.

15. Having established a list of principles set out in Council of Europe recommendations and resolutions, the delegations examined the other principles not covered in existing texts and set out in the scientific expert's preliminary draft report. The Chair asked the Working Party to check that the new principles in the preliminary draft report did not exist already in Council of Europe texts and to justify their inclusion in the principles of good administration.

16. One delegation said that the report submitted to the Committee of Ministers should inform it about the contribution that principles of good administration made over and above that made by the principles already recognised in existing texts, and explain how this "added value" made it possible to improve administrative decision-making. An effort therefore needed to be made to give specific examples.

17. One delegation said it was important that the prospective recommendation or code should set forth principles specifying the tasks of administrative authorities and the rules of conduct they had a duty to follow. Some of the aspects of the European Ombudsman's Code could be incorporated here.

18. At one delegation's suggestion, the CJ-DA-GT took note of the diagram of characteristics of good governance produced by the United Nations (see Appendix IV), which referred to four dimensions: the rule of law, democracy, performance and operations.

19. At the end of its discussions on the layout of the preliminary draft report, the working party agreed to prepare a consolidated document, divided into four parts:

I Introduction:

- reminder of the terms of reference
- reminder of the definition of good governance
- reminder of the definition of good administration

II Principles set out in Council of Europe recommendations and resolutions:

The principles set out in these texts had been adopted in a much more restricted context than that in which the Working Party was operating. New principles would have to be added to the 23 existing ones.

III New principles of good administration:

A few ideas would be put forward for consideration, with an indication of how they could be translated into practice in order to improve administrative decision-making.

IV Type of document to be recommended:

A code or handbook of good administration would make it possible to broaden the concept and scope of the principles set out in Council of Europe resolutions and recommendations, and at the same time add new principles to those that already existed.

20. With regard to the type of document to be advocated, the working party agreed to suggest preparing a recommendation to Council of Europe member states, to which would be appended a Code of Good Administration which would apply to their national civil servants.

21. To this end, an editing group comprising the Irish, Netherlands, Swiss and Italian delegations was appointed to produce, around 10 January 2005, a preliminary draft report that would be submitted to the CJ-DA once it had been approved by the working party by means of a written procedure. The preliminary draft report appears in Appendix V to this report.

III. REVISION OF THE COUNCIL OF EUROPE HANDBOOK "THE ADMINISTRATION AND YOU"

22. During the discussion of the type of document to be recommended, much reference was made to the revision of the handbook "The administration and you". The Working Party considered that updating the handbook was outside the CJ-DA's terms of reference for 2004/2005, but that it would be very useful to revise it in the light of the CJ-DA-GT's latest work.

23. This valuable tool published by the Council of Europe in 1996 was as yet the only general document on the subject prepared by the Council of Europe and was therefore very well-known. The layout and content of the handbook no longer reflected recent developments in rules and standards and the latest case law of the Court of Justice of the European Communities and the European Court of Human Rights.

24. The CJ-DA-GT accordingly considered it desirable that the Council of Europe should envisage, in the near future, preparing a second (updated or new) edition of the handbook referring, in particular, to the Code of Good Administration that the Working Party intended to prepare.

IV. DATES OF FORTHCOMING MEETINGS

25. The next plenary meeting of the CJ-DA would be held in Strasbourg from 28 February to 2 March 2005.

26. Subject to the adoption of the revised specific terms of reference of the CJ-DA for 2005/2006, the Working Party would hold two meetings in 2005 and two in 2006.

APPENDIX I

WORKING PARTY OF THE PROJECT GROUP ON ADMINISTRATIVE LAW/ GROUPE DE TRAVAIL DU GROUPE DE PROJET SUR LE DROIT ADMINISTRATIF (CJ-DA-GT)

2nd Meeting/*2ème réunion*
Strasbourg, 8 – 10 December/décembre 2004

LIST OF PARTICIPANTS / *LISTE DES PARTICIPANTS*

MEMBER STATES / *ETATS MEMBRES*

CJ-DA-GT Members / *Membres du CJ-DA-GT*

BELGIUM / BELGIQUE
Mme Hrisanti PRASMAN, Attaché, Service de Coordination et d'Appui, Service Juridique, BRUXELLES

BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE not represented / non représentée

CZECH REPUBLIC / RÉPUBLIQUE TCHÈQUE
Mrs Taisia ČEBIŠOVÁ, Associate Professor, Faculty of Law, Administrative Law Department, Charles University, PRAHA

FINLAND / FINLANDE
Mr Matti NIEMIVUO, Deputy Director General, Ministry of Justice, HELSINKI

GREECE / GRECE
M. Théodore FORTSAKIS, Professeur de Droit Public, Université d'Athènes, ATHENES

IRELAND / IRLANDE
Mrs Caroline DALY, Advisory Counsel, Office of the Attorney General, Government Buildings, DUBLIN
(Chair of the CJ-DA / Présidente du CJ-DA)

ITALY / ITALIE
Mr Vittorio RAGONESI, Conseiller de la Cour de Cassation, Cour de Cassation, ROME
(Chair of the CJ-DA-GT / Président du CJ-DA-GT)

LATVIA / LETTONIE
Mrs Jautrite BRIEDE, Judge, Supreme Court, Administrative Department, RIGA

NETHERLANDS / PAYS-BAS
Mr Theo SIMONS, Senior Vice-President of the Administrative Court of Appeal, UTRECHT

PORTUGAL
M. Mário AROSO de ALMEIDA, Professeur universitaire de droit administratif, PORTO

ROMANIA / ROUMANIE
Mme Violeta Eugenia BELEGANTE, Conseiller juridique, Direction de l'élaboration des actes normatifs, des études et de la documentation, Ministère de la Justice, BUCAREST

SWITZERLAND / SUISSE
M. Philippe GERBER, Collaborateur scientifique, Division I de la Législation, Office Fédéral de la Justice, Département Fédéral de Justice et Police, BERNE
(Vice-Chair of the CJ-DA / Vice-Président du CJ-DA)

Others / Autres

ANDORRA / ANDORRE
M. Pierre PASTOR VILANOVA, Juge, Batllia d'Andorra, ANDORRA LA VELLA

AZERBAIJAN / AZERBAIDJAN
Mr Bahram MAMMADLI, Senior Advisor, Division of Legislation and Legal Expertise, Executive Office of the President of the Republic of Azerbaijan, BAKU

GERMANY / ALLEMAGNE – Apologised/Excusée

LIECHTENSTEIN - Apologised/Excusé

LUXEMBOURG - Apologised/Excusé

RUSSIAN FEDERATION / FEDERATION DE RUSSIE
Mr Ivan VOLODIN, Deputy to the Permanent Representative of the Russian Federation to the Council of Europe, STRASBOURG

SWEDEN / SUEDE
Mrs Maria HELLBERG, Deputy Director, Division for Constitutional Law, Ministry of Justice, STOCKHOLM

SCIENTIFIC EXPERT / EXPERT SCIENTIFIQUE

M. Cyril CLEMENT, Maître de Conférences en droit public, Université de Paris 8, Avocat à la Cour, PARIS

COUNCIL OF THE EUROPEAN UNION / CONSEIL DE L'UNION EUROPEENNE
not represented / non représenté

OBSERVERS WITH THE COUNCIL OF EUROPE/
OBSERVATEURS AUPRES DU CONSEIL DE L'EUROPE

CANADA – not represented / non représenté

HOLY SEE / SAINT SIEGE - Apologised / excusé

JAPAN / JAPON
Mme Françoise Nadia RICHER, Assistante, Consulat Général du Japon, STRASBOURG

MEXICO / MEXIQUE – not represented / non représenté

UNITED STATES OF AMERICA / ETATS-UNIS D'AMERIQUE - not represented / non représentés

OBSERVERS WITH THE CJ-DA / OBSERVATEURS AUPRES DU CJ-DA

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD) /
ORGANISATION DE COOPERATION ET DE DEVELOPPEMENT ECONOMIQUE (OCDE)
not represented / non représentée

UNITED NATIONS / NATIONS UNIES - not represented / non représentés

INTERNATIONAL COMMISSION ON CIVIL STATUS /
COMMISSION INTERNATIONALE DE L'ETAT CIVIL (CIEC) - Apologised/Excusée

EUROPEAN PUBLIC LAW CENTRE /
CENTRE EUROPEEN DE DROIT PUBLIC - not represented / non représenté

ASSOCIATION OF EUROPEAN ADMINISTRATIVE JUDGES /
FEDERATION EUROPEENNE DES JUGES ADMINISTRATIFS
M. Pierre VINCENT, President of the Association of European Administrative Judges, Vice-Président du Tribunal Administratif de Strasbourg, Strasbourg Administrative Court, STRASBOURG

Prof. Dr. Jan BERGMANN, Juge, Tribunal Administratif de Stuttgart, Professeur de Droit Public, Université de Stuttgart, STUTTGART

COMMISSIONER FOR HUMAN RIGHTS /
COMMISSAIRE AUX DROITS DE L'HOMME
Mr Ali Riza GUDER, Legal Officer, Office of the Commissioner for Human Rights, Council of Europe

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (Venice Commission) /
COMMISSION EUROPEENNE POUR LA DEMOCRATIE PAR LE DROIT (Commission de Venise)
Ms Helen ZYMAN, Administrator, Secretariat of the Venice Commission, Council of Europe

STEERING COMMITTEE FOR HUMAN RIGHTS (CDDH) /
COMITE DIRECTEUR POUR LES DROITS DE L'HOMME (CDDH)
not represented / non représenté

CONGRESS OF LOCAL AND REGIONAL AUTHORITIES OF EUROPE /
CONGRES DES POUVOIRS LOCAUX ET REGIONAUX DE L'EUROPE
not represented / non représenté

SECRETARIAT DU CONSEIL DE L'EUROPE /
SECRETARIAT OF THE COUNCIL OF EUROPE

Directorate General of Legal Affairs, Department of Public Law/
Direction Générale des Affaires Juridiques, Service du droit public
www.coe.int/cj-da

M. Giovanni PALMIERI, Head of the Department / Chef du Service

Mme Danuta WIŚNIEWSKA-CAZALS, Secretary of the CJ-DA / Secrétaire du CJ-DA

Mme Catherine GALLAIS, Administrative Assistant / Assistante Administrative

Mme Edith LEBEAU, Assistant / Assistante

INTERPRETATION
Mme Amanda BEDDOWS
Mr Derrick WORSDALE

APPENDIX II

WORKING PARTY OF THE PROJECT GROUP ON ADMINISTRATIVE LAW/
GROUPE DE TRAVAIL DU GROUPE DE PROJET SUR LE DROIT ADMINISTRATIF
(CJ -DA-GT)

2nd Meeting/*2ème réunion*
Strasbourg, 8 – 10 December/décembre 2004

AGENDA / *ORDRE DU JOUR*

1. Opening of the meeting / *Ouverture de la réunion*

2. Adoption of the agenda / *Adoption de l'ordre du jour*

3. Information by the Secretariat / *Informations par le Secrétariat*

4. Preparation of a draft report on the feasibility and desirability of preparing a recommendation concerning good administration and/or a consolidated model code of good administration / *Elaboration d'un projet de rapport sur la faisabilité et l'opportunité de préparer une recommandation concernant une bonne administration et/ou un code modèle consolidé de bonne administration*

Working document / *Document de travail*

Preliminary draft report prepared by the scientific expert / *Avant-projet de rapport préparé par l'expert scientifique*

CJ-DA-GT (2004) 8 rev.

Background documents / Documents de référence

Report of the 1st meeting in 2004 of the CJ-DA-GT (Strasbourg, 29 September – 1st October 2004) / *Rapport de la 1ère réunion du CJ-DA-GT en 2004 (Strasbourg, 29 septembre – 1er octobre 2004*

CJ-DA-GT (2004) 6

Revised specific terms of reference of the CJ-DA/*Mandat spécifique révisé du CJ-DA*
CJ-DA (2004) 11 rev.

Report of the 16th meeting of the Project Group on Administrative Law (CJ-DA) (Strasbourg, 3-5 March 2004) */ Rapport de la 16ème réunion du Groupe de projet sur le droit administratif (CJ-DA) (Strasbourg, 3-5 mars 2004)*

CJ-DA (2004) 9

Parliamentary Assembly Recommendation 1615 (2003) on the institution of ombudsman and its explanatory memorandum / *Recommandation 1615 (2003) de l'Assemblée Parlementaire sur l'institution du médiateur et son exposé des motifs*

CJ-DA-GT (2004) 1

Reply by the Committee of Ministers to Parliamentary Assembly Recommendation 1615 (2003) on the institution of ombudsman / *Réponse du Comité des Ministres à la Recommandation 1615 (2003) de l'Assemblée Parlementaire sur l'institution du médiateur*

CJ-DA-GT (2004) 2

Council of Europe instruments relevant to the preparation of a draft opinion on the feasibility of preparing a consolidated model code of good administration / *Instruments du Conseil de l'Europe pertinents pour l'élaboration d'un projet d'avis sur la faisabilité de l'élaboration d'un code modèle consolidé de bonne administration*

CJ-DA-GT (2004) 3

The European Code of Good Administrative Behaviour of the European Ombudsman */ Le code européen de bonne conduite administrative du Médiateur européen*

CJ-DA-GT (2004) 4

Proceedings of the European Conference on "The right to good administration" (Warsaw, 4-5 December 2003) / *Actes de la Conférence européenne sur "Droit à une bonne administration" (Varsovie, 4-5 décembre 2003)*

Conf. DA (2003) 1

Information note on the principle of good administration in the member states of the Council of Europe / *Note d'information sur le principe de bonne administration dans les Etats membres du Conseil de l'Europe*

CJ-DA-GT(2004)5

5. Dates of the future meetings of the CJ-DA-GT / *Dates des futures réunions du CJ-DA-GT*

6. Any other business / *Divers*

APPENDIX III

PRELIMINARY DRAFT REPORT OF THE SCIENTIFIC EXPERT

ON THE FEASIBILITY AND DESIRABILITY OF PREPARING A RECOMMENDATION CONCERNING GOOD ADMINISTRATION AND/OR A CONSOLIDATED MODEL CODE OF GOOD ADMINISTRATION

I the undersigned, Cyril Clément, scientific expert to the CJ-DA, have prepared my preliminary draft report in the light of all the documents passed on to me by the CJ-DA Secretariat at the meeting held in Strasbourg from 29 September to 1 October 2004, and of the ideas mooted at the discussions held on this occasion, the comments made by the Chair and the Vice-Chairs of the CJ-DA and my own research, which was necessary in order for me to define the key concepts.

I – The CJ-DA's specific terms of reference concerning good administration and an explanation of the key concepts

A/ The requirements of the terms of reference are quite clear.

The CJ-DA is required to "*to carry out a study on the means of strengthening the legal framework of good administration as an essential element of good governance and, in particular, to study what improvements should be made to administrative decision making*".

In addition, the CJ-DA must "*indicate the feasibility and desirability of preparing a recommendation in this field and/or a consolidated model code of good administration as envisaged in Parliamentary Assembly Recommendation 1615 (2003)*".

B/ The logical first step before beginning any analysis is to explain the key concepts contained in the CJ-DA's terms of reference – namely good administration and good governance – and, in short, to try to define them.

We should deal first with good governance because, if our understanding of the terms of reference is correct, the CJ-DA is expected to consider good administration in the light of good governance. Next will come a consideration of good administration as an "*essential element of good governance*".

1) What is good governance?

Apart from the fact that it is a fashionable concept – so much so that it has become a recurring refrain of those in power – and that it can cloud the issue, as people tend to use the word governance rather than government because it has a modern ring, it is possible nonetheless to attribute two meanings to the concept of good governance.

The first is an economic one, in which case the concept has to be understood as a set of management techniques and methods that may increase the economic efficiency of a private (commercial) company – or, in one word, profits.

In its second sense, good governance can have a legal and political dimension in that it evokes an image of political and administrative institutions closer to citizens. Seen in this light, good governance is a better way of governing and hence of taking public decisions.

For our purposes here, we shall focus on this second meaning deriving from political science. It should be recalled, however, that good governance was originally a product of public international law, which is why it was initially seen as a "*transcendence of the state*" (J. Chevalier). According to this definition, good governance means that the state is no longer sovereign, in that "*various other partners will be involved in decision-making processes. The state is no longer the sole master on board as it is forced in both its external and its internal affairs to recognise the existence of other partners, who are expected to participate in one way or another, either formally or informally, in the decision-making process*" (J. Chevalier, La gouvernance, un nouveau paradigme étatique [Governance – a new model of the state?], *Revue française d'administration publique*, 2003, p. 203).

Generally speaking, governance designates a way of governing and good governance is a new way of governing, different from conventional models. Furthermore, good governance makes it possible for more citizens to be involved in decision making.

It should also be said that good governance is broad in scope as it covers not just political and administrative bodies but also environmental aspects such as sustainable development and economic and social aspects.

Over and above its wide sphere of activity, the concept of good governance should be understood broadly to mean the introduction of new working methods combining flexibility, open-mindedness and efficiency. To put it plainly, good governance is a matter of making "*democracy and the rule of law realities*" (T. Fortsakis) and, in connection with this, of enhancing participatory democracy. Ultimately, its aim is to ensure that citizens are not so much subjected to the power of the state as active participants in decision-making. There is a transition from the impassive, not to say passive, citizen to the active citizen, the goal being to involve the community more in public decision-making.

This means that governance – of the good sort – is synonymous both with the improvement of decision-making processes and with a redefinition of the role of political and administrative authorities in the pursuit of the public interest.

It is interesting to note, moreover, that in its White Paper of 25 July 2001 on European governance, the European Union identified five principles, namely openness, participation, accountability, effectiveness and coherence. In applying these principles the intention is to improve the democratic functioning of the Community institutions and involve civil society in the process of framing Community policies, thereby instilling public confidence in the future of the European Union.

In the final analysis, the most important thing is that good governance proposes a new policy, closer to the citizens and with more accessible decision-making processes, and "*requires subsidiarity*" (J. Chevalier). This means that the state – regardless of its traditional so-called sovereign functions – must intervene where it is most effective and refrain from taking on tasks which others are better equipped to perform.

To put it yet another way, good governance implies increased democracy in that it advocates an enhanced culture of consultation and dialogue.

Generally speaking, good governance is aimed therefore at consolidating democracy and requires:

- the opening up of decision-making and citizen participation in public decisions;

- transparent decision-making processes; accessible information systems;

- organisational standards: subsidiarity, devolution, proximity, efficiency, flexibility, etc.;

- competent staff: qualifications, anti-corruption measures, in-service training, etc.;

- skilled budgetary and financial organisation: sound management, etc.

- an effective regulatory framework: better regulations, legislation, etc.;

- lawfulness: legal certainty, due regard to the adversarial principle, legitimate expectations, etc.;

- fairness

- accountability: supervision of decision-making bodies, etc.;

- effectiveness: decisions taken must yield the results expected on the basis of clear objectives, implying a need to determine at what level it is best for decisions to be taken.

On the basis of these ingredients of good governance, we now have to define good administration.

(2) Good administration – "*An essential element of good governance*"

Good administration – or, more precisely, the right to good administration – is classed as a fundamental right in some countries' legislation (particularly Finland's) and guaranteed, moreover, by the Charter of Fundamental Rights of the European Union (Article 41). It is regarded by some as a new human right and a third-generation fundamental right (P. Delvolvé).

What does it mean? What does it consist of? These are the questions that we will have to address before proceeding with any kind of conceptual overview.

(a) What does it mean?

Good administration is a generic term, which is supposed to apply to all civil servants working for public services. It is tempting, at first sight, to contrast it with maladministration or bad administration.

If we do so, specific examples of maladministration readily come to mind including negligence, failure to act, delay, waste or underhand dealings, abstention, omission, lost files, incomprehensible documents, endless forms, discourtesy, offhanded treatment at counters, arbitrary attitudes, etc.

Even so, it is difficult to define maladministration precisely. The European Ombudsman has attempted to define it in the following terms: "*Maladministration occurs when a public body fails to act in accordance with a rule or principle which is binding upon it*". However interesting this definition may be, it is still somewhat restrictive. For what the Ombudsman focuses on is basically a failure by the administrative service to act in accordance with a principle that it is required to abide by or a duty it is required to perform. If we follow the logic of this conceptual approach through to its conclusion, what we end up saying is that maladministration is a form of illegal conduct. In fact this is entirely true, but maladministration is not confined to illegal actions alone. It may be true that illegality is a form of maladministration but it is not true that all forms of maladministration are illegal, as they may not have gone before a court. This may be because nobody took the case to court or because the courts do not have jurisdiction (as is the case, for example in French law where certain internal measures are concerned). The result is that some cases of maladministration can remain purely administrative and so they are dealt with internally.

Furthermore, maladministration can sometimes arise from the application of the law – one example is an over-formal approach, which may result in delays but has nothing illegal about it.

Thus, maladministration and illegality do not necessarily coincide, and so we need to find a broader definition of maladministration. All things considered, the main feature of maladministration is not so much the actions but the conduct of the institution concerned. Seen from this viewpoint, it can be said that maladministration is "*the poor functioning of a department*" (P. Sabourin). More accurately still, it is the malfunctioning of a department causing damage to others which may not necessarily be indemnifiable.

It can also be said, in broad terms, that maladministration can be both too much and not enough administration.

This in turn gives rise to the idea that good administration is neither too much nor too little administration. A balance has to be struck between the two, and when it is upset in either direction, maladministration occurs. However, at this stage in the analysis, it would be difficult to take our conceptual investigation any further, the main reason being that there is no single model of good administration because each administrative department has distinct tasks and different resources and methods at its disposal.

(b) What does good administration consist of?

It has been clearly demonstrated that good administration is the foundation on which many of the principles of European administrative laws have been built (T. Fortsakis). In this connection, it has been rightly noted that both fundamental principles and procedural rules may be involved (P. Delvolvé). We will be looking at these principles in detail later, but for the time being we should not lose sight of the fact that good administration is to be seen as a component part of good governance. And this has several implications.

Firstly, good administration must bring government closer to the citizens, and so pride of place must be given to the principle of proximity and, in turn, to that of subsidiarity. This means that for any given task, the first question should be whether it would be best managed by the administrative authorities or not. The principle of subsidiarity also leads directly on to issues of devolution and regionalisation, and this in turn raises the question whether an activity is best managed at local level or not.
Nor should it be forgotten that the rule that an administration should attempt both to protect its citizens (through legal certainty, etc.) and to safeguard their rights (through fair hearings, etc.) is one of the bases of the principle of proximity.

Secondly, as an element of good governance, good administration is one of the prerequisites for the modernisation of administrative operations, with the corollary that new administrative procedures are introduced since the aim is to come up with new consultation arrangements. In other words, public participation in the decision-making process needs to be made effective, and this naturally presupposes that these processes are opened up. Open administration means not only a less hermetic, more accessible form of administration but also one in which citizens are involved in decision-making. Accordingly, efforts should be made to organise consultations questionnaires, and public debates – in short, to make public authorities accountable. This also leads us on quite naturally to the right of citizens to consult administrative documents. Put another way, the aim is to democratise the functioning of administration and arrive at a form of "*participatory administration*" (G. Braibant).

Thirdly, good administration also implies effective administration, the understanding being that effectiveness should apply as much to the methods used as to the outcome (T. Fortsakis). Effective administration has at least three different implications. The first is that the public interest must be pursued more effectively, meaning that administrative services are expected to obtain results in keeping with social needs and hence that they must be flexible. The second is that regulations must be improved and even simplified, and communication methods must be updated (through the introduction of new technologies, etc.). And improved regulations implies better implementation. The third and last is that administrative activities themselves should be efficient, that is to say that the best possible service is provided at the lowest cost and in the shortest possible time. Citizens want prompt services, the best possible reception, the best information and the best advice. This requires courtesy, tact and respect on the part of public servants and presupposes that they have appropriate training.

(c) Taken as a whole, the above considerations enable us to map out a conceptual overview of what good administration is.

As an essential element of good governance, good administration is synonymous with a form of administration that has due regard to the rights of individuals while providing an efficient public service thanks to sound management methods, favouring a pluralistic, interactive approach to decision-making.

Lastly, good administration must be seen from three viewpoints – that of the authority, that of the public servant, and that of the citizen.

Having established this, it remains for us to consider the principles of good administration set out in Council of Europe recommendations and arising from other instruments (at national level) and activities (the Warsaw Conference of December 2003). Afterwards, the degree to which these principles must be fleshed out from the viewpoint of good governance will have to be considered.

II – Principles of good administration set out in Council of Europe recommendations (and resolutions)

It should be pointed out at the outset that, of the existing Council of Europe instruments, a number of recommendations – and some resolutions – contain principles relating to good administration in general although they were actually adopted to deal with a particular aspect of administrative law.

No less than 26 principles have been listed, each of which is taken from a Council of Europe recommendation. Some of them are also listed in the Council of Europe's handbook "The administration and you" (1997). Here is a mere reminder of the instruments in question:

- Lawfulness; automatic obligation for the administration to enforce the law in cases provided for by the law: R(2000) 10 and R(80)2.

- Non-discrimination; prohibition of arbitrary conduct; equality: R(2000)10, R(97)7 and R(80)2.

- Proportionality: R(80)2.

- Prohibition of abuse of power: R(80)2.

- Impartiality; objectivity; neutrality of public officials and of administration: R(2000)10, R(97)7, R(80)2.

- Legitimate expectations and consistency: R(2000)10.

- Courtesy: R(2000)10.
- Use of simple, clear and comprehensible language: R(97)7.
- Right to be heard and to make statements: R(91)10, R(87)16, Resolution (77)31.
- Requirement to take administrative decisions within a reasonable time: R(91)1, R(80)2.
- Duty to state the grounds of administrative decisions: R(91)1, R(87)16, Resolution (77)31.
- Indication of remedies: R(87)16, Resolution (77)31.
- Notification of the decision: R(87)16.
- Data protection; respect for privacy: R(91)10.
- Requests for information; respect for confidentiality: R(2000)10.
- Requests for public access to documents: R(2002)2, R(87)16.
- Keeping of adequate records: R(87)16.
- Effectiveness; continuity of administrative services; performing administrative tasks productively: R(2002)2, R(97)7.
- Transparency of administrative activities; active information policy: R(2002)2, R(97)7.
- Access to information; personal right of access to files; general right of access to documents; right to written material: R(81)19, R(2000)10, R(87)16 and Resolution (77)31.
- Simplicity (in organisation of services and co-ordination of procedures); simplification of administrative procedures and of documents; principle that the number of documents required should be reduced: R(97)7.
- Care: R(97)7.
- Training of public officials: R(97)7.

Of course, it would be sensible – as one delegation suggested, moreover – to group the above principles into categories, but this will be dealt with later.

Regardless of any classification, however, it is worth noting that most of the principles listed are geared to the protection of citizens. True, this is a key aspect of good administration, but good administration cannot be reduced to this protective aspect alone, as our purpose is to view it in the context of good governance. And yet, the above list does not include any of the aspects that make good administration a part of good governance; above all, there is no mention of the principle of more accessible decision-making processes.

III – Principles of good administration contained in other texts and arising from other activities

The aim here will be to identify principles which are not currently included in any Council of Europe recommendations (or resolutions) but either appear in other texts listed below or have resulted from other activities.

A/ The texts in which these rules of good administration have been identified fall into two categories – (i) the European Code of Good Administrative Behaviour and (ii) national legislation.

(1) The European Code of Good Administrative Behaviour

Most of the rules originating in this Code are found in the Council of Europe's existing legal instruments, but there are three exceptions:

- Due regard to fairness

Article 11 of the European Code of Good Administrative Behaviour provides "*The official shall act impartially, fairly and reasonably*".

- Acknowledgement of receipt and indication of the competent official (Article 14)

This is a kind of trace-back provision, enabling members of the public to know which official is in charge of their file.

- Obligation to transfer to the competent service of the institution (Article 15)

This rule saves citizens' time if they have applied to the wrong service.

(2) National legislation

Reference will be made here to the extracts from legislation submitted to us, which are mainly if not exclusively from Scandinavian sources.

They are as follows:

- Efficiency

This principle is laid down in Finnish legislation, to be precise, in Section 7 of the Administrative Procedure Act (434/2003), which provides that the administrative authorities must perform their tasks productively. In other words, not only are the administrative authorities expected to perform public duties but they must do so efficiently. It should also be mentioned in passing that Finnish legislation frequently uses the word "clients" in this context, not "citizens".

The principle of efficiency also forms part of Sweden's Administrative Procedure Act of 1986, codified in the Swedish Code Statutes and clearly providing that the administrative authorities are expected to provide the public with an efficient service.

- Improved decision-making

This principle is also one of the objectives of the Swedish law cited above. It undoubtedly forms part of good governance but it is not described in detail. However, on reflection, it is possible to tie it in with other principles including openness, in other words some sort of involvement of citizens in administrative decisions.

- The duty to provide advice and information

This principle comes from the aforementioned Finnish law (Section 8). This would tend to indicate that administrative authorities must offer individuals free advice.

- Adoption by each administration of a charter on the quality of regulations

This idea stems from a French circular of 30 September 2003 urging central government departments to improve the quality of texts and curb the ever-increasing number of regulations. As a senior civil servant in the French Ministry of Defence put it, the aim is "*better, fewer and more promptly promulgated regulations*" (C. Bergeal).

B/ Other principles of good administration not covered by Council of Europe recommendations have been put forward as the result of certain activities, particularly the major European conference on the right to good administration held in Warsaw on 4 and 5 December 2003.

They are as follows:

- Legal certainty and protection of vested rights

Rights acquired by citizens as the result of administrative decisions must not be jeopardised by new rules. There must be some stability in individual situations. This principle presupposes that administrative acts cannot have retroactive effect and at the same time reflects the principle of legitimate expectations.

- The right to appeal against administrative decisions

Every citizen has the right to bring an appeal against an administrative decision for a review of its lawfulness. Remedies must be available even where there is no specific text providing for them. It should be noted however that this rule is really only a variation on the right to a fair trial, enshrined in Articles 6 and 13 of the European Convention on Human Rights.

- Flexibility of administrative activities

Administrative authorities and services must be capable of adapting their activities to developments in and the needs of society. This could also be referred to as a principle of adaptability.

- Participation by citizens in administrative activities and decision-making (principle of openness)

This principle is illustrative of what good administration should be and is a component part of good governance. It enables citizens to contribute to administrative decisions by means of various procedures including consultations, surveys and questionnaires.

IV – Other principles of good administration (a preliminary list)

(A) At the meeting from 29 September to 1 October 2004, some delegations suggested that certain principles should be adopted with regard to good administration. Accordingly, they should be presented here in the form of a preliminary list.

- The precautionary principle and foresight and care

The precautionary ("safety first") principle should not be regarded as a synonym for foresight or care. What the precautionary principle means is that in a situation of scientific uncertainty, a public decision can only be taken once it has been checked that it poses no irreversible threat to health or the environment. Precaution implies a hypothetical risk, whereas prevention or care (or foresight) implies a recognised or known risk.

- Improved regulations

Although the law is becoming ever more complex, administrative authorities should draw up practical, readable and intelligible regulations. The principle of improved regulations should also serve as a means of curbing excessive regulation and result in better enforcement of the rules adopted. All in all, the improved regulations rule posits the principle of high standards.

- Maintenance, protection and preservation of public property

Administrative authorities must avoid any form of opulence, but on the other hand they must also look after their property to prevent it from deteriorating. They must manage their property and their assets reasonably, as if it were their own household, and make use of techniques to turn their assets to good account.

- Fulfilment of budgetary requirements

Resources must be managed properly and impartially to prevent waste and underhand dealings.

- Rationalisation of administrative organisation

This principle has several implications. Firstly, it suggests that administrative authorities should be better organised, with the result, for example, that services are provided in areas where they are totally lacking or that are under-equipped. Secondly, it reflects a desire to simplify administrative procedures – meaning, in short, fewer formalities and fewer forms.

- Accessibility of administrative authorities and public services

The delegations mentioned the draft recommendation on e-governance in this context. Administrative authorities should be expected and encouraged to use new technologies. For example, France has set up an agency for the development of electronic administration (under a Decree of 21 February 2003).

(B) The following principles could be added to those proposed by the delegations:

- "Reasonable" administration

This principle was identified by the Greek administrative court and requires administrative bodies "*to exercise their powers, particularly their discretionary ones, in accordance with the common sense, the*

feel for justice and the spirit of equity that govern the legal system, so as to avoid unfair and purely dogmatic interpretations and aim to adapt rules to prevailing social and economic conditions and requirements as well as to the specific features of the cases dealt with" (E. Spiliotopoulos).

This is somewhat reminiscent of the idea of fairness.

- Well-functioning administrative services

This principle, which also comes from a Greek source, requires administrative authorities to "*perform their tasks with due regard not only to the relevant legal rules but also to the rules and practices of the profession and to everyday realities, as well as with due regard to the principle of good faith as it should be understood in relation to any given activity"* (T. Fortsakis).

- Productivity

In some respects this overlaps with efficiency, but the term productivity puts more emphasis on economic aspects. A productive administrative department is one which has a good output record, delivering high-quality services at economically acceptable prices.

- Good faith

Public servants must perform tasks and process files in perfect good faith. No doubt this ties in with the principles of fairness and proper functioning of administrative authorities but, in view of its importance, it is preferable to list it as a separate principle.

V – Conclusions

A/ The desirability and feasibility of preparing a code of good administration

This is desirable for two reasons.

The first is political, as the Council of Europe's fundamental purpose is to promote human rights and freedoms – in short, a democratic society. Good administration, or the right to good administration, seems fully in keeping with this political tradition. For, ultimately, while it may be difficult to define its content and legal status, the concept of good administration is clearly the complete opposite of arbitrary administration and the police state. It makes matters more intelligible to the public as well as offering them a legal and judicial guarantee. Good administration tallies perfectly with a state governed by the rule of law and is totally consistent with a democratic system of government. If it was promoted at European level, it would become a new model of administrative practice for the member States.

Secondly, a code of good administration is desirable at a legal level simply because good administration is not provided for per se in the European Convention on Human Rights. This means that the concept is absent from the European human rights system, despite the fact that it is acknowledged in practically all the member States. At the European Conference in Warsaw in December 2003, it was confirmed that the concept is either recognised implicitly in various legal instruments (statute and case-law) or embodied in a specific legal provision.

Good administration has not yet, however, been incorporated into Europe's legal instruments protecting human rights, apart from the notable exception of the European Union's Charter of Fundamental Rights (Article 41). Another important instrument is the European Code of Good Administrative Behaviour, adopted by the European Parliament on 6 September 2001. Important though these EU norms are, it has to be said that they drew their inspiration mainly from instruments

drawn up by the Council of Europe and from European human rights case-law. This would tend to indicate that the Council of Europe was a forerunner in the area of good administration. It would therefore be in the logical scheme of things for the Council of Europe to finish what it began in its recommendations (and resolutions) not specifically related to good administration by drawing up a code, especially as a code of good administration of the kind advocated in Recommendation 1615 of the Parliamentary Assembly would have a broad scope, applying to all of the member states' national civil servants, whereas the existing European Code applies only to Community institutions and administrative authorities in their relations with the public.

Furthermore, the advantage of a code would be to co-ordinate scattered, disparate rules by grouping them into a number of categories. Lastly, a code of good administration would make it possible to work out a model of efficient, rational administrative organisation (what Max Weber calls a "bureaucratic model") framed by various standards.

As to the feasibility of such a code, there should be no doubt about this whatsoever given the wealth of material available.

B/ The content of a code of good administration

In view of the large number of principles associated with good administration, it is essential in the interests of precision to group them into categories. At its previous meeting, the CJ-DA suggested that the principles should be divided into the following four categories:

(i) improving public participation in administrative decisions;

(ii) enhancing the procedural protection of citizens in dealings with the administrative authorities;

(iii) providing citizens with more information about administrative activities;

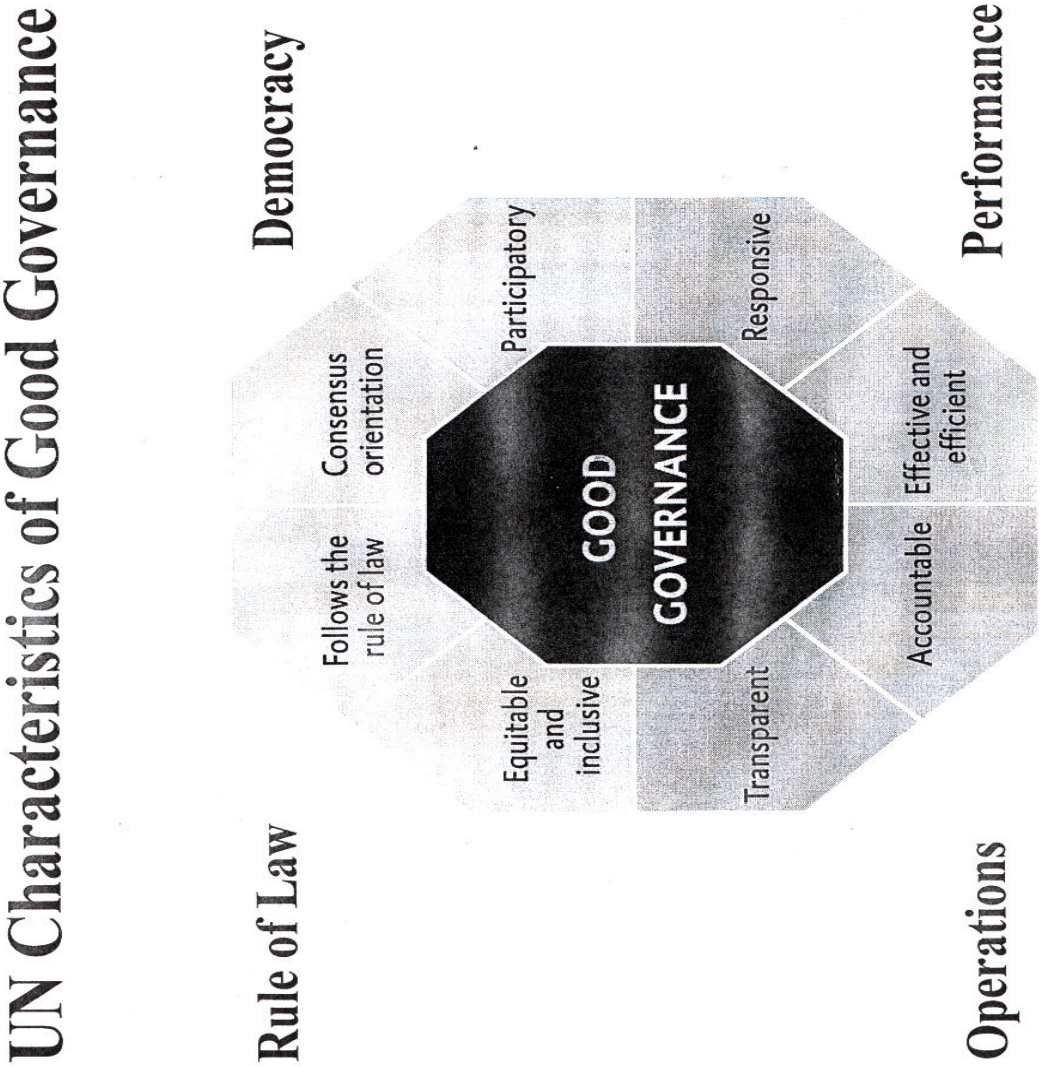
(iv) the role of the state in organising administrative services.

Whatever form of classification is adopted – and there are so many different types of principle, some procedural others fundamental, that one type of categorisation or another will have to be adopted – it is important to note that the precepts upon which good administration is based may also lead to radical changes. Because, if truth be told, it may be that we are moving in the direction of a new status for the citizen. Is the citizen in the process of becoming a client? We saw earlier that in its fundamental principles of good administration, Finnish law refers to clients. Furthermore, and citing only French law as an example, there are also instances of case-law to this effect (application of consumer law to industrial and commercial public services). Is good administration creating a new breed of consumers rather than citizens, or a combination of the two – a consumer citizen? This is an aspect of the whole issue which would most certainly warrant consideration.

At all events, good administration can only be a set of rules intended to protect citizens and establish administrative democracy, both in the way that the administrative authorities are organised and in the way that they operate, in accordance with the principles of openness and efficiency. In itself, good administration cannot be a subjective right (P. Delvolvé), which citizens are entitled to rely on directly; instead it takes the form of a set of standards applying to public servants and administrative authorities.

APPENDIX IV

CHARACTERISTICS OF GOOD GOVERNANCE ESTABLISHED BY THE UNITED NATIONS



APPENDIX V

PRELIMINARY DRAFT REPORT OF THE CJ-DA-GT

ON THE FEASIBILITY AND DESIRABILITY OF PREPARING A RECOMMENDATION CONCERNING GOOD ADMINISTRATION AND/OR A CONSOLIDATED MODEL CODE OF GOOD ADMINISTRATION

I – The CJ-DA's specific terms of reference concerning good administration and an explanation of the key concepts

A/ The requirements of the terms of reference are quite clear.

The CDCJ instructed the CJ-DA "*to carry out a study on the means of strengthening the legal framework of good administration as an essential element of good governance and, in particular, to study what improvements should be made to administrative decision making*".

In addition, the CJ-DA must "*indicate the feasibility and desirability of preparing a recommendation in this field and/or a consolidated model code of good administration as envisaged in Parliamentary Assembly Recommendation 1615 (2003)*".

B/ The logical first step before beginning any analysis is to explain the key concepts contained in the CJ-DA's terms of reference – namely good administration and good governance – and, in short, to look at their purpose.

We should deal first with good governance because, if our understanding of the terms of reference is correct, the CJ-DA is expected to consider good administration in the light of good governance. Next will come a consideration of good administration as an "*essential element of good governance*".

1) What is good governance?

Although the concept of good governance is frequently used, in particular within the framework of international organisations, its content is still not obvious. However, it can be regarded as a set of standards and requirements against which each state's organisation in the broadest sense, may be measured. It applies to the legislator, the administration as well as the judiciary, all together and at the same time.

This general ("umbrella") concept of good governance is – by nature – a normative concept. It is the duty and the obligation of the political infrastructure of each State to ensure that the applicable standards and requirements are met. This means, inter alia, that the political infrastructure should provide for an appropriate legal basis and for an open society that is well equipped to perform in accordance with those.

Among the standards and requirements that constitute good governance may be mentioned:

- good legislation
- lawfulness

- participation
- transparency of decision-making process
- access to information
- good organisation
- good staff
- good financial and budget management
- effectiveness
- accountability and supervision.

In applying these standards, good governance seeks to consolidate democratic culture, compliance with law and performance of state institutions as a means to social and economic development nationally.

(2) What is good administration?

Good administration – or, more precisely, the right to good administration – is classed as a fundamental right in some countries' legislation (particularly Finland's) and guaranteed, moreover, by the Charter of Fundamental Rights of the European Union (Article 41). It is regarded by some as a new human right and a third-generation fundamental right.

As an essential element of good governance, good administration is synonymous with a form of administration that has due regard to the rights of individuals while providing an efficient public service thanks to sound management methods, favouring a pluralistic, interactive approach to decision-making. In other words, if the administration acts in a way which complies with the legitimate and reasonable expectations of those it is intended to serve, it is proof that it is a good administration.

Good administration has to do with administrative authorities as such (those persons and institutions who do administrative acts and who carry out other public duties), but also with civil servants and other persons who, on behalf and under the supervision of the competent administrative authorities, carry out these public duties. The applicable rules and standards primarily deal with the - external - relationship between the administration (administrative authorities as well as civil servants) and individuals. Secondly, they also deal with the - internal - relationship between the administrative authorities and the civil servants.

For systematic reasons it is desirable to make a categorization of the rules and standards that together constitute the - normative - concept of good administration. For the purpose of this report the CJ-DA proposes the following classification:

1. Rules and standards that apply to lawfulness;
2. Rules and standards that apply to participation;
3. Rules and standards that apply to performance;
4. Rules and standards that apply to transparency and control.

Having established this, it remains for us to consider the principles of good administration set out in Council of Europe recommendations and arising from other texts (at national level) and activities (the Warsaw Conference of December 2003*). Afterwards, the degree to which these principles must be fleshed out from the viewpoint of good governance will have to be considered.

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* "Right to good administration". European Conference organised by the Council of Europe. Warsaw, 4-5 December 2003.

II – Principles of good administration set out in Council of Europe recommendations and resolutions

It should be pointed out at the outset that a number of recommendations and some resolutions of the Council of Europe contain principles relating to good administration in general although they were actually adopted to deal with a particular aspect of administrative law. In other words, the principles quoted below are not, at least not yet, the autonomous principles of good administration since being attached to a specific text.

No less than 25 principles have been listed, each of which is taken from a Council of Europe recommendation. Some of them are also listed in the Council of Europe's handbook "The administration and you" (1997). Here is a reminder of the instruments in question from which the 25 principles have been drawn. An attempt has been made to classify these principles into the above categories of good administration:

A/ Rules and standards that apply to lawfulness

- *Lawfulness; automatic obligation for the administration to enforce the law in cases provided for by the law*:

  Rec(2000) 10 - on codes of conducts for public officials,
  R(80)2 - on the exercise of discretionary powers by administrative bodies.

- *Non-discrimination; prohibition of arbitrary conduct; equality:*

  Rec(2000)10 - on codes of conducts for public officials,
  R(97)7 - on local public services and the rights of their users,
  R(80)2 - on the exercise of discretionary powers by administrative bodies.

- *Proportionality:*

  R(80)2 - on the exercise of discretionary powers by administrative bodies.

- *Prohibition of abuse of power:*

  R(80)2- on the exercise of discretionary powers by administrative bodies.

- *Impartiality; objectivity; neutrality of public officials and of administration*:

  Rec(2000)10 - on codes of conducts for public officials,
  R(97)7 - on local public services and the rights of their users,
  R(80)2- on the exercise of discretionary powers by administrative bodies.

- *Legitimate expectations and consistency:*

  Rec(2000)10 - on codes of conducts for public officials.

- *Right to be heard and to make statements:*

  R(91)10 - on the communication to third parties of personal data held by public bodies,
  R(87)16 - on administrative procedures affecting a large number of people,
  Resolution (77)31 - on the protection of individual in relation to the acts of administrative bodies.

- *Duty to state the grounds of administrative decisions:*

  R(91)1 - on administrative sanctions,
  R(87)16 - on administrative procedures affecting a large number of people,
  Resolution (77)31 - on the protection of individual in relation to the acts of administrative bodies.

- *Right of appeal against the administrative decisions:*

  Rec (2004)20 on the judicial review of administrative acts,
  Rec (2003)16 - on the execution of administrative and judicial decisions in the field of administrative law,
  Rec (2000) 10 on codes of conducts for public officials,
  R (80) 2 - on the exercise of discretionary powers by administrative bodies.

B/ Rules and standards that apply to participation

- *Alternatives to litigation between administrative authorities and private parties:*

  Rec (2001)9 - on alternatives to litigation between administrative authorities and private parties.

C/ Rules and standards that apply to performance

- *Courtesy:*

  Rec(2000)10 - on codes of conducts for public officials.

- *Requirement to take administrative decisions within a reasonable time:*

  R(91)1 - on administrative sanctions,
  R(80)2 - on the exercise of discretionary powers by administrative bodies.

- *Effectiveness; continuity of administrative services; performing administrative tasks productively:*

  R(97)7 - on local public services and the rights of their users.

- *Training of public officials*:

  R(97)7 - on local public services and the rights of their users.

D/ Rules and standards that apply to transparency and control

- *Use of simple, clear and comprehensible language*:

  R(97)7 - on local public services and the rights of their users.

- *Indication of remedies:*

  R(87)16 - on administrative procedures affecting a large number of people,
  Resolution (77)31 - on the protection of individuals in relation to the acts of administrative bodies.

- *Notification of the decision*:

  R(87)16 - on administrative procedures affecting a large number of people.

- *Data protection; respect for privacy*:

  R(91)10 - on the communication to third parties of personal data held by public bodies.

- *Requests for information; respect for confidentiality*:

  Rec(2000)10 - on codes of conducts for public officials.

- *Keeping of adequate records*:

  R(87)16 - on administrative procedures affecting a large number of people.

- *Requests for public access to documents*:

  R(87)16 - on administrative procedures affecting a large number of people.

- *Transparency of administrative activities; active information policy*:

  R(97)7 - on local public services and the rights of their users.

- *Access to information; personal right of access to files; general right of access to documents; right to written material:*

  R(81)19 - on access to information held by public bodies,
  Rec(2000)10 - on codes of conducts for public officials,
  R(87)16 - on administrative procedures affecting a large number of people,

  Resolution (77)31 - on the protection of individuals in relation to the acts of administrative bodies.

- *Simplicity (in organisation of services and co-ordination of procedures); simplification of administrative procedures and of documents; principle that the number of documents required should be reduced:*

  R(97)7 - on local public services and the rights of their users.

- *Care:*

  R(97)7 - on local public services and the rights of their users.

III – New principles of good administration

The aim here will be to identify principles which are not currently included in any Council of Europe recommendations or resolutions but either appear in other texts or have resulted from other activities.

A/ Rules and standards that apply to lawfulness

***** *Legal certainty*

This principle is relativisation of the principle of legality. Rights resulting from an administrative decision should not be revoked when the interest of the individual to the stability of his legal situation has priority over the respect of the law. For normative acts the principle of legal certainty may require transitional measures in case of changing law.

* *Principle of good faith*

The administration must act in good faith, so that the individual can have confidence in the veracity of the declarations and in the exactitude of the behaviour of the administration. This principle relativises the principle of legality in case of false information by the administration.

B/ Rules and standards that apply to participation

* *Participation by and consultation of individuals in administrative activities and decision-making (principle of openness)*

This principle of openness is a central element of good governance and good administration. It makes it possible to moderate the unilateral character of the administrative action. It is not only limited to the already stated right to be heard before a decision is made. The participation may take different forms, depending especially on the nature of the administrative action: consultation before enacting general rules, surveys before adopting general policies, etc.

* *Accessibility of administrative authorities and public services*

This principle has several implications. On the one hand, if administrative acts require from individuals a physical going to the office, the administration should be organised in accordance to the principle of proximity. The opening hours of the office should also be large. On the other hand, the administration should progressively use new technologies to give a larger access to its information and services.

C/ Rules and standards that apply to performance

* *Obligation to transfer to the competent service (Article 15 of the European Code of Good Administrative Behaviour)*

This principle facilitates the access to the administration and prevents running around. It should be respected (at least) within the same administration. The individual concerned must be informed about the transfer. If a document should have been sent to the administration before the end of a certain term, the date on which it was sent to the wrong authority should count as the date of transmission to the competent authority.

* *Effectiveness and efficiency*

The administration must be effective and efficient. It should be performing the right tasks correctly, consistent with the state's mission, vision, values and in support of the legal goals and objectives of the specific task. It should control regularly it if can furnish the same amount and standard of services for a lower cost if a more useful task could be substituted for a less useful one at the same cost or if needless activities could be eliminated.

* *Flexibility of administrative activities*

Administrative authorities and services must be capable of adapting their activities to developments in the needs of society.

* *The anticipatory principle*

The administrative authorities should not only be reactive. They should anticipate the problems or at least their evolution in order to take the necessary measures before a problem gets difficult to manage.

* *Quality of regulations*

Although the law is becoming ever more complex, administrative authorities should draw up practical, readable and intelligible regulations. One possibility is to draw up a charter on the quality of regulations.

* *Maintenance, protection and preservation of public property*

Administrative authorities must manage the State's property and its assets reasonably, as if it were their own household, and prevent it from deteriorating.

- *Fulfilment of budgetary requirements*

Resources must be managed properly and impartially to prevent waste and fraud.

- *Rationalisation of administrative organisation*

The organisation of the administrative authorities should regularly be adapted to the services they provide and be optimised for new tasks.

- *Simplification of the administrative procedures*

Procedures should be kept as simple as possible without unnecessary forms and formalities. Procedure concerning several authorities should be coordinated so that the individual has only one contact authority.

D/ Rules and standards that apply to transparency and control

* *The duty to provide information*

The administration should, on request, provide basic informations, especially on how to open a procedure leading to a decision.

* *Transparency of the opening of the administrative procedure*

When the administration acts on the request of an individual, it should acknowledge the receipt of the request and indicates the competent official (Article 14 of the European Code of Good Administrative Behaviour). This protects the individual against an inactivity of the administration and makes it possible to control the impartiality of the competent official.

IV – Conclusions

The preparation of a document on good administration is desirable for two reasons:

1. As the Council of Europe's fundamental purpose is to promote human rights and freedoms – in short, a democratic society, good administration, or the right to good administration, seems fully in keeping with this political tradition. For, ultimately, while it may be difficult to define its content and legal status, the concept of good administration is clearly the complete opposite of arbitrary administration and the police state. It makes matters more intelligible to the public as well as offering them a legal and judicial guarantee. Good administration tallies perfectly with a state governed by the rule of law and is totally consistent with a democratic system of government. If it was promoted at European level, it would become a new model of administrative practice for the member States.

2. A document on good administration is desirable at a legal level simply because good administration is not provided for per se in the European Convention on Human Rights. This means that the concept is absent from the European human rights system, despite the fact that it is acknowledged in practically all the member States. At the European Conference in Warsaw in December 2003, it was confirmed that the concept is either recognised implicitly in various legal instruments (statute and case-law) or embodied in a specific legal provision.

Good administration has not yet, however, been incorporated into Europe's legal instruments protecting human rights, apart from the notable exception of the European Union's Charter of Fundamental Rights (Article 41). Another important instrument is the European Code of Good Administrative Behaviour, adopted by the European Parliament on 6 September 2001. Important though these EU norms are, it has to be said that they drew their inspiration mainly from instruments drawn up by the Council of Europe and from European human rights case-law. This would tend to indicate that the Council of Europe was a forerunner in the area of good administration. It would therefore be in the logical scheme of things for the Council of Europe to finish what it began in its recommendations (and resolutions) not specifically related to good administration by drawing up a document, whatever it could be, which would have - according to the Recommendation 1615 (2003) of the Parliamentary Assembly - a broad scope, applying to all of the member states' national civil servants, whereas the existing European Code applies only to Community institutions and administrative authorities in their relations with the public.

The advantage of a specific text would be to co-ordinate scattered, disparate rules by grouping them into a number of categories. Lastly, such a text would make it possible to work out a model of efficient, rational administrative organisation (what Max Weber calls a "bureaucratic model") framed by various standards.

The feasibility of such a document is evident, given the wealth of material available.

The type of document recommended

The Council of Europe handbook on "The Administration and you" was published in 1997 and has been instrumental to member States since its publication. The handbook was published before the concept of good administration became widely known. While much of what is contained in the handbook would reflect good administration, the concept of good administration alone was not considered. It would be good to update the handbook and include detailed consideration of good administration which would include the various principles of good administration outlined above. However it would take a considerable period of time to update the handbook.

The CJ-DA is of the opinion that it would be more effective to prepare **a recommendation with a code attached on good administration** for two reasons. On the one hand, it could be done in a shorter period of time. On the other hand, a recommendation and code would have a greater impact on the discussions over the principle of good administration in the member States and in the EU since the key elements of this principle could be more clearly outlined in such documents than in the handbook which deals with many other subjects. It is envisaged that the recommendation would set out the principles which underpin good administration while the code would be specific on what is required of administrative authorities and civil servants when making administrative decisions and carrying out administrative acts which impact on individuals in order to ensure the delivery of better government.

On the adoption of such a recommendation and code the task of updating the handbook is recommended and that the recommendation and code be incorporated into the handbook for completeness.