

Strasbourg, 17 April 2007

CJ-DA-GT (2007) 2

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

**1st meeting**

**Strasbourg, 28 – 30 March**

**REPORT OF THE MEETING**

**FOREWORD**

At its meeting the CJ-DA-GT *inter alia*:

- a) considered and adopted the draft questionnaire which the scientific expert had prepared for a study of member states' law and practice regarding administrative appeals with a view to assessing the advisability of preparing a recommendation on the subject in accordance with the 2007 specific terms of reference of the Project Group on Administrative Law;
- b) noted the text of the recommendation on good administration as adopted by the European Committee on Legal Co-operation (CDCJ).

Secretariat memorandum prepared  
by the  
Directorate General of Legal Affairs

**TABLE OF CONTENTS**

		Page
I.	Introduction .....	3
II.	CJ-DA-GT working methods .....	4
III.	Preparation of the draft questionnaire on administrative appeals in Europe .....	5
IV.	Any other business .....	6
V.	Dates of the next CJ-DA-GT meetings .....	6

**APPENDICES**

APPENDIX I	List of participants.....	7
APPENDIX II	Agenda .....	11
APPENDIX III	Terms of reference of the Project Party on Administrative Law (CJ-DA) for 2007 .....	13
APPENDIX IV	Questionnaire on administrative appeals in Europe .....	16

## **I. Introduction**

1. The Chair of the CJ-DA-GT, Ms Caroline Daly (Ireland), welcomed the members of the Working Party and the other participants, including the scientific expert Professor Michel Fromont. The participants are listed in Appendix I hereto.
2. The agenda was adopted as set out in Appendix II hereto.
3. The Head of the Public Law and Private Law Department, Mr Giovanni Palmieri, announced the retirement of Mr Guy De Vel, who had been Director General of Legal Affairs until December 2006, and that the Director General of Human Rights (DGII), Mr Philippe Boillat, had also been made acting head of the Directorate General of Legal Affairs (DGI), with instructions to submit proposals for a reorganisation of the two directorates general. The reorganisation would be imminent.
4. With regard to the work of CJ-DA-GT, Mr Palmieri informed that on 31 January 2007 the Committee of Ministers had adopted terms of reference for the CJ-DA for 2007 only. It had refrained from setting out action guidelines for 2008 since the discussions on value, synergy and interaction of committees in the Council of Europe intergovernmental co-operation field would be continuing in the months ahead. The intention in 2007 was once again to transfer financial and human resources to the European Court of Human Rights on account of the Court's backlog and the various action to which the Council of Europe Heads of State and Government had committed themselves in the action plan which they had adopted at their summit meeting in Warsaw (16 and 17 May 2005). Sacrifices were accordingly foreseeable for 2008 in the intergovernmental co-operation sector, particularly the legal field, but it was still too early for details to be known. (For the CJ-DA terms of reference for 2007, see Appendix III hereto.)
5. Mr Palmieri informed that the work entrusted to the CJ-DA-GT was closely linked to Resolution No.1 of the European Ministers of Justice as adopted at their 27th Conference (Yerevan, Armenia, 12 and 13 October 2006) and to the theme of the ministers' next conference, in Lanzarote (Spain) at the end of October. The subject of the 28th Conference of European Ministers of Justice would be "Emerging issues of access to justice for vulnerable groups, in particular: migrants and asylum seekers; children, including children perpetrators of crime". The CJ-DA-GT's work at the present meeting was assisted by the questionnaire on administrative appeals in Europe which the Working Party's scientific expert, Professor Fromont, had prepared.
6. At its plenary meeting from 26 February to 1 March 2007 the European Committee on Legal Co-operation (CDCJ) had approved the draft recommendation on good administration, which would shortly be submitted to the Committee of Ministers for adoption.
7. The Chair said that, with the scientific expert, Mr Delvolvé, she had attended the CDCJ work on the recommendation on good administration and that a number of amendments to the text had been put forward. She had not been able to take part in all of the discussion on the question but had been present when the proposals for amendments had been reviewed. She suggested that the members of the Working Party be given copies of the document which the CDCJ had adopted (see also section IV, "Any other business").

8. Professor Fromont's guidance document provided an excellent basis for the CJ-DA-GT's work. The Chair asked him to present the document and invited the Working Party to begin its examination.

## **II. CJ-DA-GT working methods**

9. In the light of the information from the Secretariat, the CJ-DA-GT discussed its working methods for the current year, expressing concern that it was to have only three meetings in 2007 for preparing a questionnaire and a draft report as part of the study which it had been asked to conduct on the advisability and feasibility of drawing up a recommendation on administrative appeals. To complete the work in the short time allowed (nine meeting days), the first meeting must aim to adopt the draft questionnaire which would be sent out to Council of Europe member states; the objective of the second meeting would be to consider the draft study report, which the scientific expert would be basing on the replies to the questionnaire; the third meeting would finalise the draft report to be submitted, in principle, to the CJ-DA for approval. However, the CJ-DA would be unable to ratify the outcome of the Working Party's activities as no plenary meeting was scheduled in what remained of 2007 and the forecasts for 2008 were not yet known. The Chair thus wondered how many meetings the Working Party could hope for in 2008 for continuing its work, and when that information would be available.

10. Mr Palmieri said that it was difficult to answer the question as the date on which the Committee of Ministers would be adopting its budget decisions was not known. In 2006 those decisions had been taken very late in December. In September, at the second meeting, it would be possible to have an estimate of the probable decisions for 2008 but the situation would not be clear until the final months of the year, and perhaps not until the very end of the year. That said, it should be possible for the work which the CJ-DA-GT did this year to be used later. The intention was not to halt work in progress and put it in cold storage but at most to hold it over for a year or two. The procedure certainly required that the Working Party submit a draft to the CJ-DA for approval.

11. In the light of Mr Palmieri's answer and the fact that the CJ-DA was not scheduled to have a plenary meeting before the Working Party's terms of reference expired at the end of 2007 the Chair wondered whether, for lack of a plenary meeting, the results of the CJ-DA-GT's work would have to be submitted direct to the CDCJ for finalisation and approval, unless a plenary CJ-DA meeting could be arranged by December 2007.

12. Mr Palmieri said that the CJ-DA-GT could proceed on the basis that a plenary meeting of the CJ-DA would be possible in 2008. The CJ-DA-GT's draft report could then be approved in 2008, or else at a later date. It was possible that the next Conference of European Ministers of Justice would demonstrate the importance of the CJ-DA's work, because of its relevance to the theme to be discussed at Lanzarote, and would thus lend impetus to the CJ-DA's future work.

13. The Secretariat said that another possibility for approving the draft report was to use the written-consultation procedure: when the Working Party had adopted the draft report, the Secretariat could be instructed to send it to all the CJ-DA members for written comment.

14. The Chair said that a written-approval procedure had the advantage of making clear to the CJ-DA that its Working Party had been active in between the plenary committee's meetings.

15. One delegation expressed puzzlement about the written-consultation procedure, which, while presenting an advantage, might also be difficult to implement in the form suggested in that it would take some time and required that decisions be taken on any stances that emerged from the procedure. If that happened, who would be responsible for taking the decisions and how would they be taken? In addition, the point of reducing the number of CJ-DA-GT members to seven had been to allow a plenary meeting to be held.

16. Another delegation said that at the present stage the approach should be to complete the work requested by the end of the year so that either the CJ-DA could approve it in 2008 or the work could be refined at further CJ-DA-GT meetings. The questionnaire was part of long-term thinking since the various work involved in deciding the advisability and feasibility of a recommendation concerning administrative appeals would take time. The question was therefore rather whether the terms of reference as set out were practicable or not.

17. The Secretariat said that the CJ-DA-GT had itself suggested reducing the number of members of the Working Party to seven to ensure there would be a plenary meeting of the CJ-DA in 2007. The proposal of the CJ-DA-GT would mean two meetings of the CJ-DA-GT and a plenary meeting of the CJ-DA for 2007 and 2008. That idea had been approved by the CJ-DA, which had then forwarded the draft terms of reference as adopted by the Committee of Ministers, except that the Committee of Ministers had since decided to limit the terms of reference of all committees to one year. Although the CJ-DA's terms of reference – initially for two years – had thus been reduced to one year, its objectives had in no way been altered as a result.

18. In reply to this explanation, one delegation said that the Committee of Ministers decision necessitated changes to the planning of the CJ-DA-GT's work. The Working Party's prime task was clearly to carry out a study of law and practice in the member states regarding administrative appeals, not prepare a recommendation. The Working Party would not be fulfilling its terms of reference if the preliminary study was omitted. The original approach should therefore be kept, particularly as it had been mapped out with a precise objective in mind, that of a possible recommendation.

### **III. Preparation of the draft questionnaire on administrative appeals in Europe**

19. The CJ-DA-GT considered the scientific expert's draft questionnaire, taking account also of the working documents which had been available, such as the Action Plan approved by the Third Summit of the Council of Europe and Resolution No.1 of the 27th Conference of European Ministers of Justice, which dealt with victims of offences, and more particularly with availability of remedies to the most vulnerable victims.

20. After discussion, and after amendments had been made to it, the CJ-DA-GT adopted the draft questionnaire finalised at its first meeting, as set out in Appendix IV hereto.

21. It was agreed that the Chair and the Vice-Chair of the CJ-DA-GT would perform a purely formal check on the English and French versions of the document to make sure that the two versions completely agreed. They would send the Secretariat their absolutely final

version of the text, which the Secretariat would email to the Council of Europe member countries as soon as possible as a Word attachment. The questionnaire would also be available on the CJ-DA's website. The member states would have a maximum of eight weeks to reply. After that, the scientific expert would be in a position to analyse the replies received and to pinpoint the strengths and weaknesses of the member states' various administrative-appeal systems so as to prepare a draft report for the Working Party's second meeting. The second meeting would be devoted to drafting the report on the advisability and feasibility of a recommendation on the question.

#### **IV. Any other business**

22. The participants noted the text of the recommendation on good administration with, appended to it, the code of good administration as approved at the CD-CJ's plenary meeting on 1 March 2007 and revised both by the Legal Advice Service and the Council of Europe's Editorial Service. The Secretariat said that the text was provided for information only, as the Committee of Ministers would not be formally adopting it for some weeks.

#### **V. Dates of the next CJ-DA-GT meetings**

23. The Working Party confirmed the dates of its second and third (final) meetings, which would be held respectively from 19 to 21 September 2007 and from 5 to 7 December 2007.

**APPENDIX I****LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS****CJ-DA-GT MEMBERS / MEMBRES DU CJ-DA-GT****France**

Mme Dominique GENIEZ, Premier Conseiller de Tribunal Administratif, Chargée de Mission auprès du Directeur des Affaires Civiles et du Sceau, Direction des Affaires Civiles et du Sceau, DACS/Justice, Ministère de la Justice, PARIS

**IRELAND / IRLANDE**

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

**ITALY / ITALIE**

Mr Vittorio RAGONESI, Judge of the Supreme Court of Cassation, ROME

**LATVIA / LETTONIE**

Ms Jautrite BRIEDE, Judge, Supreme Court, Administrative Department, RIGA

**NORWAY / NORVEGE**

M. Arnulf TVERBERG, Legal Adviser, Legislation Department, Ministry of Justice, OSLO

**PORTUGAL**

M. Mário AROSO de ALMEIDA, Professeur de droit administratif, Ministère de la Justice, PORTO (Vice-Chair of the CJ-DA / Vice-Président du CJ-DA)

**SWITZERLAND / SUISSE**

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

**SCIENTIFIC EXPERT / EXPERT SCIENTIFIQUE**

M. Michel FROMONT, Professeur de droit public, PARIS, France

**MEMBER STATES / ETATS MEMBRES**

**ESTONIA / ESTONIE**

Mr Antero HABICHT, Conseiller du Droit public, Ministère de la Justice, TALLINN

**ROMANIA / ROUMANIE**

Mme Violeta BELEGANTE, Chef du Service, Direction de l'Elaboration des actes normatifs, des études et documentation, Ministère de la Justice, BUCAREST

**COUNCIL OF THE EUROPEAN UNION / CONSEIL DE L'UNION EUROPEENNE**

not represented / non représenté

**EUROPEAN COMMISSION / COMMISSION EUROPEENNE**

not represented / non représentée

**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**

not represented / non représenté

**MEXICO / MEXIQUE**

not represented / non représenté

**UNITED STATES OF AMERICA / ETATS-UNIS D'AMERIQUE**

not represented / non représenté

**REPUBLIC OF MONTENEGRO / REPUBLIQUE DU MONTENEGRO**

not represented / non représenté



**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 représenté

**INTERNATIONAL COMMISSION ON CIVIL STATUS /****COMMISSION INTERNATIONALE DE L'ETAT CIVIL (CIEC)**

not represented / non représentée

**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, Presiding Judge, Nancy Administrative Court of Appeal, NANCY

M. Bernard EVEN, Vice-Président du Tribunal administratif de Strasbourg, STRASBOURG

**STEERING COMMITTEE FOR HUMAN RIGHTS (CDDH) /****COMITE DIRECTEUR POUR LES DROITS DE L'HOMME (CDDH)**

Mme Severina SPASSOVA, Lawyer/Juriste, Human Rights Intergovernmental Co-operation Division/Division de la coopération intergouvernementale en matière de Droits de l'Homme, Council of Europe/Conseil de l'Europe

apologised /excusée**SECRETARIAT OF THE COUNCIL OF EUROPE /****SECRETARIAT DU CONSEIL DE L'EUROPE**

Directorate General of Legal Affairs, Department of Public and Private Law/

Direction Générale des Affaires Juridiques, Service du Droit Public et Privé

[www.coe.int/admin](http://www.coe.int/admin)

Mr Giovanni PALMIERI, Head of the Department of Public and Private Law / Chef du Service du Droit Public et Privé, DG 1 - Legal Affairs, DG 1 – Affaires juridiques

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

Mrs Catherine GALLAIS, Administrative Assistant / Assistante Administrative

Mrs Wendy POLVECHE, Assistant / Assistante

Mrs Sylvie BROCHARD, Assistant / Assistante

Mr Enno KOOPS, Trainee, DG1 – Legals Affairs

**INTERPRETATION**

M. Philippe QUAINÉ

Mme Chloé CHENETIER

Mr Derrick WORSDALE

## APPENDIX II

### 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. Examination of the desirability of preparing a recommendation on administrative review as a means of protecting human rights and on ways of access to justice  
/ *Examin de l'opportunité de préparer une recommandation sur le recours administratif en tant que moyen de protection des droits de l'homme et sur les modalités d'accès à la justice*

#### Working documents / Documents de travail

Objective setting document prepared by the scientific expert / *Document d'orientation préparé par l'expert scientifique*

**CJ-DA-GT (2007) 1**

#### Background documents / Documents de référence

Specific terms of reference of the CJ-DA for 2007 / *Mandat spécifique du CJ-DA pour 2007*

**CJ-DA (2007) 1**

Resolution No. 1 on victims of crime adopted by the 27th Conference of European Ministers of Justice (Yerevan, 12-13 October 2006) / *Résolution n° 1 relative aux victimes d'infractions adoptée par la 27e Conférence des Ministres européens de la Justice (Erevan, 12-13 octobre 2006)*

**MJU-27 (2006) Resol.1 Final**

Resolution No. (76) 5 on legal aid in civil, commercial and administrative matters / *Résolution n° (76) 5 concernant l'assistance judiciaire en matière civile, commerciale et administrative*

**Res (76) 5**

Resolution No. (78) 8 on legal aid and advice / *Résolution n° (78) 8 sur l'assistance judiciaire et la consultation juridique*

**Res (78) 8**

Recommendation No. R (81) 7 on measures facilitating access to justice / *Recommandation n° R (81) 7 sur les moyens de faciliter l'accès à la justice*

**R (81) 7**

Recommendation No. R (86) 12 concerning measures to prevent and reduce the excessive workload in the courts / *Recommandation n° R (86) 12 relative à certaines mesures visant à prévenir et réduire la surcharge de travail des tribunaux*

**R (86) 12**

5. Any other business / *Divers*

Background documents / *Documents de référence*

Warsaw Declaration – Third Summit of Heads of State and Government of the Council of Europe (Warsaw, 16-17 May 2005) / *Déclaration de Varsovie – Troisième Sommet des Chefs d’Etat et de Gouvernement du Conseil de l’Europe (Varsovie, 16-17 mai 2005)*

**CM (2005) 79 final**

Plan of Action – Third Summit of Heads of State and Government of the Council of Europe (Warsaw, 16-17 May 2005) / *Plan d’Action – Troisième Sommet des Chefs d’Etat et de Gouvernement du Conseil de l’Europe (Varsovie, 16-17 mai 2005)*

**CM (2005) 80 final**

Message from the Committee of Ministers to the Committees involved in the intergovernmental co-operation at the Council of Europe / *Message du Comité des Ministres aux Comités oeuvrant dans le cadre de la coopération intergouvernementale du Conseil de l’Europe*

**CJ-DA (2007) CM Message 2**

### APPENDIX III

#### TERMS OF REFERENCE OF THE PROJECT GROUP ON ADMINISTRATIVE LAW (CJ-DA)

#### FOR 2007

1. **Name of Committee:** Project Group on Administrative Law (CJ-DA)
2. **Type of Committee:** Committee of Experts
3. **Source of terms of reference:** European Committee on Legal Co-operation (CDCJ)
4. **Terms of reference:**

Having regard to:

the Declaration and Action Plan adopted by the Third Summit of Heads of State and Government of the Council of Europe (Warsaw, 16-17 May 2005), in particular concerning the necessity:

- to pursue intergovernmental co-operation on good governance at all levels as well as developing norms as regards the proper functioning of civil services in Europe (see Chapter I.3 of the Action Plan);

- to ensure that effective domestic remedies exist for anyone with an arguable complaint of a European Convention on Human Rights violation (see Chapter I.1 of the Action Plan);

the Resolution No. 1 on victims of crime adopted by the 27th Conference of European Ministers of Justice (Yerevan, 12-13 October 2006), in particular concerning the necessity to make administrative means of appeal available to the victims;

the following recommendations of the Committee of Ministers:

- R (76) 5 on legal aid in civil, commercial and administrative matters;
- R (78) 8 on legal aid and advice;
- R (81) 7 on measures facilitating access to justice;
- R (86) 12 concerning measures to prevent and reduce the excessive workload in the courts.

Under the authority of the European Committee on Legal Co-operation (CDCJ), and in relation with the implementation of Project 2004/DGI/162 “Administrative law and administrative justice” of the Programme of Activities, the Committee is instructed to:

- i. carry out a study on the law and practice of the member states regarding:
  - a) effective administrative review available to individuals in particular those claiming a breach of the European Convention on Human Rights by an administrative authority, taking into consideration how administrative review operates and when;
  - b) access for deprived persons, including vulnerable victims, to justice through internal administrative proceedings. Examine, within this framework, if and to what extent the provision of legal aid in respect of legal costs incurred by persons with insufficient resources should exist in the case of administrative review;
- ii. on the basis of this study and taking into account the relevant case law of the European Court of Human Rights, examine the desirability of preparing a recommendation on administrative review as a means of protecting human rights and on ways of access to justice;
- iii. carry out any other activity with which the CDCJ might entrust it in execution of its own terms of reference or in implementing the priorities identified by the Committee of Ministers.

## **5. Composition of the Committee:**

### **5.A Members**

Governments of member states are entitled to appoint representatives with the following desirable qualifications: senior officials having responsibilities regarding administrative law and administrative justice.

The Council of Europe's budget bears the travelling and subsistence expenses for one representative per member state.

### **5.B Participants**

The Steering Committee for Human Rights (CDDH) may send a representative to meetings of the Committee, without the right to vote and at the charge of the corresponding Council of Europe budget sub-head.

### **5.C Other participants**

- i. The European Commission and the Council of the European Union may send a representative to meetings of the Committee, without the right to vote or defrayal of expenses.
- ii. States with observer status with the Council of Europe (Canada, Holy See, Japan, Mexico, United States of America) may send a representative to meetings of the Committee, without the right to vote or defrayal of expenses.
- iii. The following intergovernmental organisations may send a representative to meetings of the Committee, without the right to vote or defrayal of expenses:

- OECD;
- United Nations and its specialised organs.

#### **5.D. Observers**

The following non-member states:

- Montenegro;

and the following non-governmental organisations:

- International Commission on Civil Status (CIEC);
- European Public Law Centre;
- Association of European Administrative Judges;

may send a representative to meetings of the Committee, without the right to vote or defrayal of expenses.

#### **6. Working methods and structures:**

To facilitate specific work to be carried out by the CJ-DA, a Working Party will be set up and composed of 7 persons among the members of the Committee within the budgetary appropriation assigned to the CJ-DA. These persons will be appointed taking into account, in particular, legal systems, geographical distribution and gender balance.

To fulfil its terms of reference and within the budgetary resources available, the CJ-DA may use consultants and organise hearings and consultations.

#### **7. Duration:**

These terms of reference will expire on 31 December 2007.

## APPENDIX IV

### QUESTIONNAIRE ON ADMINISTRATIVE APPEALS IN EUROPE

#### PRESENTATION OF THE QUESTIONNAIRE

##### *I. SCOPE OF THE SURVEY*

The terms of reference of the Project Party on Administrative Law (CJ-DA) are to carry out a study on the law and practice of the member states on administrative appeals with a view to examining the desirability of preparing a recommendation in this field. Accordingly, information from each country is required on the system of administrative appeals available to individuals in order to review administrative decisions which affect their rights and interests.

##### *Administrative appeals against administrative decisions*

“Administrative appeals” must be understood to arise where an application is made by an individual to a public authority to review an administrative decision. Depending on the circumstances, the authority with which the application is lodged may be:

- the authority which took the decision;
- a higher authority (hierarchically superior to or supervising the authority which took the decision);
- an independent public authority, but not of the nature of a tribunal as understood by the European Convention on Human Rights.

“Administrative decisions” shall mean non-regulatory decisions taken by public authorities when exercising the prerogatives of public power. Non-regulatory decisions may be individual or otherwise. Individual decisions are those addressed solely to individuals.

“Public authorities” shall be taken to mean:

- a) any public-law entity of any kind or at any level, including state, local and autonomous authorities, providing a public service or acting in the public interest,
- b) any private-law entity exercising the prerogatives of a public authority responsible for providing a public service or acting in the public interest.

##### *II. SURVEY METHOD AND PRESENTATION OF THE REPLIES TO THE QUESTIONNAIRE*

The survey will give *a general overview*, as concise as possible, of the different types of administrative appeals available in your country. Information is sought on whether member states have general or special rules governing administrative appeals. Where special rules exist information is sought in relation to those appeals which would significantly impact on



individuals in one or more specific field(s) such as tax, immigration or social welfare, or any further examples of such appeals you might wish to offer.

This will make it possible to gauge the relative importance of each of the main types of administrative appeals within your country which safeguard private persons from the adverse consequences of administrative acts.

The survey will then address the *legal rules and the de facto situations concerning each type of administrative appeal*. The aim is to establish what factors help make an administrative appeal easy to access and to use and enable effective protection of the interests of the private persons concerned.

## **QUESTIONNAIRE**

### ***I. DIFFERENT TYPES OF APPEALS***

1. Are there general rules in your country which apply to administrative appeals? If so, please complete Part II of the questionnaire concerning those general rules.
2. Are there special rules in your country which apply to administrative appeals relating to specific areas? If so, please indicate the most important of these and complete Part II of the questionnaire concerning those special rules.
3. Are there special rules in your country which apply to administrative appeals relating to sensitive areas which seek to protect the rights and interests of individuals, in areas like tax, immigration, social welfare or personal data protection? If so, please complete Part II of the questionnaire concerning those special rules.
4. Are there special rules in your country which apply to administrative appeals where it is claimed that there has been a breach of the European Convention on Human Rights? If so, please complete Part II of the questionnaire concerning those special rules.
5. Are there special rules in your country which apply to administrative appeals where a public authority fails or refuses to respond to a request? If so, please complete Part II of the questionnaire concerning those special rules. If not, please explain what procedures apply in such cases.
6. Are there general rules or practices governing the payment by the State of legal expenses incurred by individuals with insufficient resources in the context of an administrative appeal? If so, please describe briefly those general rules or practices.

### ***II. EASE AND EFFECTIVENESS OF APPEALING AGAINST ADMINISTRATIVE DECISIONS***

Please complete separate sets of answers for the questions below, one set to deal specifically with appeals subject to general rules and the other sets of answers to deal specifically with appeals subject to special rules as referred to in Part I of the questionnaire.

1. Please indicate what type of administrative appeal as set out in Part I of the questionnaire is being referred to whether general or special in nature? In the latter case, please further specify which type of appeal you are referring to in the context of your reply to Part I of the questionnaire.
2. What law governs this administrative appeal?
3. Is the subject of an administrative decision informed of the right to an administrative appeal of that decision and of the manner in which the appeal can or must be lodged?
4. Before which authority can or must an administrative appeal be lodged?

- 4.1 the public authority which took the impugned decision?
  - 4.2 a higher public authority (hierarchically superior to the authority which took the decision)?
  - 4.3 a public authority supervising the authority which took the decision, e.g.:
    - an authority supervising a local government authority
    - or an authority supervising an administrative body with limited powers?
  - 4.4 an independent public authority not linked in any way to the authority which took the decision?
5. Are restrictions placed on the lodging of an administrative appeal?
- 5.1 What is the time-limit for lodging an appeal?
  - 5.2 Is a person who is considering to lodge an appeal entitled to know the grounds on which the decision was based (which may be communicated either automatically or on request)?
  - 5.3 Is the person who is affected by a decision the only person entitled to lodge an administrative appeal or can an appeal be lodged by a third party whose interests or rights have been affected?
  - 5.4 Is it easy to obtain access to the case-file or the documents in the possession of the public authority which took the decision?
  - 5.5 Which formal requirements must be complied with?  
In particular, must the complete case-file be provided or is it, for example, sufficient to submit a copy of the decision and brief arguments explaining why it is being appealed?
  - 5.6 Is it necessary for the appellant to be assisted by a lawyer? Is it easier for a lawyer to obtain access to the case-file as compared with a mere individual? Can the appellant be assisted by an association, for example a trade union, or by any other person in lodging an appeal? In that case, can those persons access the case-file?
6. What is the effect of lodging an appeal?
- 6.1 Does the lodging of an appeal automatically result in a stay of the administrative decision being implemented? If not, is it possible to apply for a stay?
  - 6.2 Does lodging the appeal allow the appellant to ask the public authority ruling on the appeal to adopt interim or protective measures?
  - 6.3 Is the public authority obliged to decide the appeal within a given time-limit?
7. The appeal procedure:
- 7.1 Can (or must) the appellant be assisted by a lawyer or by an association (in particular a trade union) or any other person?
  - 7.2 Does the appellant have access to all or part of the case-file?
  - 7.3 Is the appellant entitled to know the counter-arguments given by the public authority which made the impugned decision in response to the arguments set out in the appeal? To what extent and in which form, orally or in writing, is the appellant entitled to respond to those counter-arguments?
  - 7.4 Is the appeal examined by a legally qualified official? By a higher-ranking official?

8. The decision of the appeals authority:
  - 8.1 How broad are the powers of review enjoyed by the authority deciding the appeal?
    - 8.1.1 Can the appeals authority review in full the impugned decision or only its lawfulness?
    - 8.1.2 Can the appeals authority review a violation of the European Convention on Human Rights either *ex officio* or on foot of the claim lodged?
    - 8.1.3 Can the appeals authority take into consideration arguments which have not been advanced by the appellant and/or of which the appellant has not been informed?
  - 8.2 How broad are the decision-making powers enjoyed by the authority deciding the appeal? Can it take:
    - 8.2.1 a decision that is even more unfavourable to the appellant?
    - 8.2.2 a decision affecting the rights of third parties?
  - 8.3 Is it mandatory for the authority hearing the appeal to:
    - 8.3.1 give grounds for its decision?
    - 8.3.2 accompany its decision with information on the judicial remedies available to the appellant (including information on time-limits for appealing to the courts or other admissibility criteria)?
    - 8.3.3 formally notify its decision? To whom (the appellant, the person concerned by the decision)?
  
9. Costs of the proceedings and legal assistance:
  - 9.1 Is the administrative appeal free of charge for the appellant? Must the appellant pay for the costs of photocopying or translations for example?
    - 9.1.1. If not, can an appellant without sufficient means seek the costs of the appeal from the state and under what conditions?
    - 9.1.2. Can the appeals authority make admissibility of the appeal conditional on the advance payment of costs? If so, can the person without sufficient means seek a waiver from the state of the advance payment of such costs and under what conditions?
  - 9.2 Can the person without sufficient means obtain from the state payment of the costs of a lawyer?
  - 9.3 Does the state ensure that an appellant without sufficient means is able to obtain necessary legal advice in respect of the appeal?
  
10. Relations between administrative appeals and judicial appeals:
  - 10.1 Is it mandatory to have an administrative appeal before there can be an appeal to the court?
  - 10.2 In a judicial appeal, can new arguments not raised before the administrative appeal be raised in the course of judicial proceedings?
  - 10.3 Where an appeal has been lodged before the court, is it possible for the public authority to revise the administrative decision pending the determination of the court proceedings?