

Strasbourg, 4 March 2005

CJ-DA (2005) 5

PROJECT GROUP ON ADMINISTRATIVE LAW
(CJ-DA)

17th meeting
Strasbourg, 28 February – 2 March 2005

REPORT TO THE EUROPEAN COMMITTEE ON LEGAL CO-OPERATION (CDCJ)

FOREWORD

The CJ-DA asks the CDCJ in particular to:

- a. approve the preliminary draft report on the feasibility and desirability of preparing a recommendation concerning good administration and/or a consolidated model code of good administration for submission to the Committee of Ministers (see Appendix III and section IV of the present report);
- b. approve the CJ-DA's revised specific terms of reference for 2005-2006 (see Appendix IV and section V of the present report);
- c. note the exchange of views on holding a multilateral meeting on training for public officials (see section VI of the present report);
- d. note the membership of Working Party CJ-DA-GT (see section IX of the present report);
- e. note the present report as a whole.

Secretariat memorandum
prepared by the
General Directorate of Legal Affairs

TABLE OF CONTENTS

	Page
I. OPENING OF THE MEETING	3
II. ADOPTION OF THE AGENDA	3
III. INFORMATION FROM THE SECRETARIAT	3
IV. DRAFTING OF A PRELIMINARY DRAFT REPORT ON THE FEASIBILITY AND DESIRABILITY OF PREPARING A RECOMMENDATION CONCERNING GOOD ADMINISTRATION AND/OR A CONSOLIDATED MODEL CODE OF GOOD ADMINISTRATION	4
V. PRELIMINARY DRAFT REVISED CJ-DA SPECIFIC TERMS OF REFERENCE FOR 2005-2006	5
VI. EXCHANGE OF VIEWS ON A MULTILATERAL MEETING ON TRAINING OF PUBLIC OFFICIALS	5
VII. DATES OF THE NEXT CJ-DA-GT MEETING	5
VIII. ELECTION OF THE CHAIR AND VICE-CHAIR	5
IX. OTHER BUSINESS	6
 <u>APPENDICES</u>	
APPENDIX I: LIST OF PARTICIPANTS	7
APPENDIX II: AGENDA	13
APPENDIX III: PRELIMINARY DRAFT REPORT ON THE FEASIBILITY AND DESIRABILITY OF PREPARING A RECOMMENDATION AND/OR A CONSOLIDATED MODEL CODE OF GOOD ADMINISTRATION	16
APPENDIX IV: PRELIMINARY DRAFT REVISED SPECIFIC TERMS OF REFERENCE OF THE PROJECT GROUP ON ADMINISTRATIVE LAW (CJ-DA)	24

REPORT TO THE EUROPEAN COMMITTEE ON LEGAL CO-OPERATION (CDCJ)

I. Opening of the meeting

1. The meeting was opened by the Chair of the CJ-DA, Ms Caroline DALY (Ireland). At the Chair's invitation a number of new CJ-DA members introduced themselves briefly to the committee (Monaco and Luxembourg, whose first attendance this was, Russia, Spain, San Marino, the United Kingdom, Serbia and Montenegro and "the former Yugoslav Republic of Macedonia"). Participants are listed in Appendix I.

II. Adoption of the agenda

2. The agenda was adopted as set out in Appendix II.

III. Information from the Secretariat

3. The Head of the Public Law Service, Mr Giovanni Palmieri, said that the Council of Europe was currently preparing for the 3rd Summit of Heads of State and Government, to be held in Warsaw on 16 and 17 May 2005 at the Polish Government's invitation. The member states were preparing the draft declaration and draft action plan to be adopted at the Summit. At the first meeting after the Summit the Secretariat would inform the CJ-DA of the decisions which the Summit had taken.

4. The Secretariat announced that at its 909th meeting (15 December 2004) the Committee of Ministers had adopted Recommendation No. Rec(2004)20 on judicial review of administrative acts, which the CJ-DA had drafted in 2004.

5. It then gave the background to the preliminary draft report which was on the agenda of the present meeting, and in particular announced that the Working Party's second meeting (the Working Party having met twice in 2004¹) had concluded with a decision to set up an editing group to finalise the preliminary draft report on the feasibility and desirability of preparing an instrument concerning good administration. The text produced by the editing group had been forwarded for comment to those who had taken part in the Working Party's meeting. The Swedish delegation had suggested substantially reworking the preliminary draft (document CJ-DA(2005)3).

6. The CJ-DA was invited to finalise and adopt the preliminary draft report at the present meeting so as to submit it to a meeting of the CDCJ Bureau on 9 and 10 March 2005. Subject to any amendments which the CDCJ Bureau might wish to make, the document would be submitted to the CDCJ at its plenary meeting on 20-22 April 2005, for submission thereafter to the Committee of Ministers for adoption.

7. As the CJ-DA's current terms of reference were completed by adoption of the preliminary draft report (subject to its approval by the CDCJ and the Committee of Ministers), the CJ-DA was asked to submit its draft new terms of reference to the CDCJ so that its work could continue.

¹ The reports of the meetings, documents CJ-DA-GT (2004) 6 and CJ-DA-GT (2004) 9, are available on the CJ-DA Internet site.

8. The Secretariat announced that it had obtained the necessary funds for a multilateral meeting on training of public officials, possibly in October 2005. It remained to agree organisational details. The CJ-DA took note of this.

IV. Drafting of a preliminary-draft report on the feasibility and desirability of preparing a recommendation concerning good administration and/or a consolidated model code of good administration

9. The Chair gave an outline of the preliminary draft report as drawn up by the Working Party (see doc. CJ-DA-GT(2004)10). The CJ-DA delegations went through the text point by point, making a number of amendments.

10. One delegation suggested that the Council of Europe draw up a charter of good administration. It felt that a charter was preferable to a recommendation or code not only because a charter ranked high in the scheme of Council of Europe documents but also because the Council had done a great deal of work on the question and a charter would do proper justice to it. In addition, the Council of Europe handbook, "The administration and you", which was a compendium of Council of Europe conventions, recommendations and resolutions on the subject, needed replacing by a general Council of Europe legal instrument covering the main components of sound administrative procedure. A charter was the appropriate instrument.

11. After discussion of the proposal it was decided that, at the present stage, the idea was premature and that it was preferable to draw up an instrument in accordance with the CJ-DA terms of reference, both setting out the principles of good administration and explaining them in detail so that administrative authorities in the member states could readily apply them.

12. It was agreed to offer the CDCJ alternatives as to the type of instrument: a recommendation, or a recommendation with a model code of good administration appended to it. Either would have a greater impact on discussion in the member states and the European Union about the principles of good administration because the key ingredients could be more clearly presented in documents of that type than in the handbook, which dealt with quite a few other subjects.

13. The CJ-DA took the view that the handbook, "The administration and you", which so far was the only general work on the question in the Council of Europe and had made a definite mark, needed updating soon as its structure and content no longer matched current standard-setting developments or the latest case-law advances by the Court of Justice of the European Communities and the European Court of Human Rights. The Council of Europe should therefore consider preparing a second edition (an update or a rewrite) of the handbook, in which reference would be made, in particular, to the new instrument which the CJ-DA was planning to draw up.

14. The text of the preliminary draft report on the feasibility and desirability of preparing a recommendation concerning good administration and/or a consolidated model code of good administration, as approved by the CJ-DA, will be found in Appendix III hereto.

15. One of the delegations said that it would send the Secretariat and CJ-DA in writing the comments it had made during the discussion which had not been taken up, in particular that in matters of good governance the word "state" was not relevant, that good administration required judicial review, that there were another eleven principles in Council of Europe documents which the preliminary draft report made no reference to, that the principle of good faith had two meanings in Council of Europe documents, namely good faith on the part of the administrative authorities and

good faith on the part of the citizen (reference would likewise be made to Council of Europe documents which also dealt with legal certainty), that economic efficiency was not the only criterion to be taken into account with regard to flexibility, that with regard to meeting budgetary requirements account had to be taken not just of budget resources but also of other resources such as human resources, and that preservation of public property necessarily also involved preservation of private property.

16. Now that its work on the preliminary draft report was complete, the CJ-DA thanked everyone involved in preparing it for their invaluable input ; in particular it thanked the scientific expert, Mr Cyril CLEMENT, for his report and the very useful information he had supplied.

V. Preliminary draft revised CJ-DA specific terms of reference for 2005-2006

17. The CJ-DA drew up preliminary draft revised specific terms of reference for itself for 2005-2006 (see Appendix IV), for submission to the CDCJ. The preliminary draft assumed that the CDCJ would approve the conclusions of the preliminary draft report and that the Committee of Ministers would do likewise.

VI. Exchange of views on a multilateral meeting on training of public officials

18. The Secretariat said that the previous multilateral colloquy involving the CJ-DA had been in December 2003 – the Warsaw conference on the right to good administration. The CJ-DA had made extensive use of the conference’s findings in carrying out its present terms of reference.

19. The CJ-DA welcomed the possibility of an international meeting on training for public officials, a subject that was highly relevant. One delegation pointed out that, under many countries’ law, it was compulsory to provide training, in particular in-service training, for public officials, which made it important to have an opportunity to discuss the problems of organising it. The programme for the colloquy needed to take into account other conferences in that field, in particular those in Slovenia (1994) and Switzerland (1995) and the UniDem seminars in Trieste.

20. It was decided that the Secretariat would send CJ-DA delegations the draft programme so that they could send in any observations and proposals on persons who could be invited to act as rapporteurs.

VII. Dates of the next CJ-DA-GT meetings

21. The CJ-DA-GT agreed to meet twice in 2005: from 14 to 16 September and 7 to 9 December. Two other CJ-DA-GT meetings were scheduled for 2006 and would be followed by a plenary CJ-DA meeting in the course of that year. Dates would be agreed later.

VIII. Election of the Chair and Vice-Chair

22. Ms Caroline DALY (Ireland) and Mr Philippe GERBER (Switzerland) were unanimously re-elected respectively Chair and Vice-Chair of the CJ-DA.

IX. Other businessa. “Principles of good administration in member states of the European Union”

23. The Swedish delegation presented a document entitled “Principles of good administration in the member states of the European Union”, which it made available to the CJ-DA and which in particular contained a summary of a 2004 study which the Swedish Government had commissioned from the Swedish Agency for Public Management, on the rules of good administration currently in force in European Union member countries.

b. CJ-DA working group

24. In accordance with its terms of reference the CJ-DA set up its working group (CJ-DA-GT), composed of: Mr Vittorio RAGONESI, Chair (Italy) and 11 members: Ms Hrisanti PRASMAN (Belgium), Mr Matti NIEMIVUO (Finland), Ms Caroline DALY (Ireland), Mr Georges RAVARANI (Luxembourg), Mr Theo SIMONS (Netherlands), Ms Teresa GÓRZYŃSKA (Poland), Mr Mário AROSO de ALMEIDA (Portugal), Mr Mark ENTIN (Russian Federation), Ms Jelena Tisma JOVANOVIC (Serbia and Montenegro), Ms Maria HELLBERG (Sweden) and Mr Philippe GERBER (Switzerland).

25. It was pointed out that other CJ-DA delegations were allowed to attend meetings of the working group if they wished.

APPENDIX I**LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS****MEMBER STATES / ETATS MEMBRES****ALBANIA / ALBANIE**

Mr Ansi SHUNDI, Head of Section, Department of Public Administration, TIRANA

ANDORRA / ANDORRE not represented / non représenté

ARMENIA / ARMENIE not represented / non représentée

AUSTRIA / AUTRICHE

Ms Elisabeth GROIS, Legal Advisor, Division of International Affairs and General Administrative Affairs, Federal Chancellery, Constitutional Service, VIENNA

AZERBAIJAN / AZERBAIDJAN

Ms Gulnar RASULOVA, Senior Adviser, Department of Legislation and Legal Expertise, Executive Office of the President of the Republic of Azerbaijan, BAKU

BELGIUM / BELGIQUE

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

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

BULGARIA / BULGARIE

Ms Rumiana PAPAZOVA, Judge, Supreme Administrative Court of Bulgaria, SOFIA

CROATIA / CROATIE

Mr Edmond MILETIĆ, Deputy State Secretary, Central State Office for Administration, ZAGREB

CYPRUS / CHYPRE not represented / non représenté

CZECH REPUBLIC / RÉPUBLIQUE TCHÈQUE not represented / non représentée

DENMARK / DANEMARK not represented / non représenté

ESTONIA / ESTONIE

Ms Marin VALLIKIVI, Counsel, Ministry of Justice of the Republic of Estonia, TALLINN

FINLAND / FINLANDE

Mr Matti NIEMIVUO, Deputy Director General, Ministry of Justice, GOVERNMENT

FRANCE not represented / non représentée

GEORGIA / GEORGIE

Ms Irine BARTAIA, Head of Office of the State Representative to the European Court of Human Rights, Ministry of Justice of Georgia, TBILISSI

GERMANY / ALLEMAGNE

Mr Arne SCHLATMANN, Bundesministerium des Innern, Verwaltungs- und
Verwaltungsverfahrenrecht, 10559 BERLIN

GREECE / GRECE not represented / non représentée

HUNGARY / HONGRIE

Prof. Dr Imre VEREBÉLYI, Professor, Vice-President of the International Institute of Administrative Sciences (Brussels), Diplomat at the OECD, Permanent Delegation of Hungary to the OECD, PARIS

ICELAND / ISLANDE not represented / non représentée

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 (*apologised / excusé*)

Mr Vittorio RAGONESI, Conseiller de la Cour de Cassation, ROME

LATVIA / LETTONIE

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

LIECHTENSTEIN apologised / excusé

LITHUANIA / LITUANIE not represented / non représentée

LUXEMBOURG

M. Georges RAVARANI, Président du Tribunal Administratif, Juridictions Administratives, LUXEMBOURG

MALTA / MALTE not represented / non représenté

MOLDOVA

Mme Maria SECRIERU, Chef de Section du Régime Constitutionnel et des Autorités publiques, Département de la Législation, Ministère de la Justice, CHISINĂU

MONACO

M. Dominique ADAM, Conseiller à la Cour d'Appel de la Principauté de Monaco, Palais de Justice, MONACO

M. Laurent ANSEMI, Directeur des Affaires Législatives, MONACO

NETHERLANDS / PAYS-BAS

Mr Theo SIMONS, Senior Vice-President of the Administrative Court of Appeal, UTRECHT

NORWAY / NORVEGE

Ms Kristin RYAN, Higher Executive Officer, Legislation Department, Ministry of Justice, OSLO

POLAND / POLOGNE

Mme Teresa GÓRZYŃSKA, Maître de conférences à l'Institut des Sciences Juridiques, Académie Polonaise des Sciences, Professeur à la Haute Ecole de Gestion, VARSOVIE

PORTUGAL

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

ROMANIA / ROUMANIE

Mme Violeta BELEGANTE, Conseiller juridique, Direction de l'Elaboration des actes normatifs, des études et documentation, Ministère de la Justice, BUCAREST

RUSSIAN FEDERATION / FEDERATION DE RUSSIE

Mr Mark ENTIN, Director of the MGIMO University Institute of European Law, MOSCOW

SAN MARINO / SAINT MARIN

Mr Guido GUIDI, Professore ordinario di diritto pubblico comparato, Giudice amministrativo d'appello, Tribunale Amministrativo, SAN MARINO

SERBIA AND MONTENEGRO / SERBIE-MONTÉNÉGRO

Ms Jelena TISMA-JOVANOVIC, Senior Adviser for Administrative Law, Civil and Administrative Division, Office of the Public Prosecutor of the Republic of Serbia, BELGRADE

SLOVAK REPUBLIC / RÉPUBLIQUE SLOVAQUE

Mr Sergej KOHUT, Chairman of the Administrative Collegium, Supreme Court of the Slovak Republic, BRATISLAVA

SLOVENIA / SLOVÉNIE

Mr Samo GODEC, Legal Advisor, Academy of Administration, LJUBLJANA

SPAIN / ESPAGNE

Mrs Carmen CASTANON, Administratrice Civile de l'Etat, Service des Relations Internationales de la DG de la Fonction Publique, Ministère des Administrations Publiques, MADRID

SWEDEN / SUÈDE

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

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**)

« THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA »/« L'EX-REPUBLIQUE YOUGOSLAVE DE MACEDOINE

Mrs Zagorka TNOKOVSKA, Head of the Department for State Administration, Electoral system and Administrative competencies, Ministry of Justice of the Republic of Macedonia, SKOPJE

TURKEY / TURQUIE

Mrs Gülhan AKYÜZ, Ministry of Justice, Adalet Bakanligi, KIZILAY, ANKARA

UKRAINE

Mrs Olga PROKOPCHUK, Senior Specialist, Department of Constitutional Law and State Government, Ministry of Justice of Ukraine, KIEV

UNITED KINGDOM / ROYAUME-UNI

Ms Judith BERNSTEIN, Department for Constitutional Affairs, Selborne House, LONDON

SCIENTIFIC EXPERT/EXPERT SCIENTIFIQUE

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

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

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-DAORGANISATION 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 / apologised / excusée
COMMISSION INTERNATIONALE DE L'ETAT CIVIL (CIEC)

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, Président de la Fédération Européenne des Juges Administratifs, Tribunal Administratif de Strasbourg,

M. Heinrich ZENS, Vice-Président de la Fédération Européenne des Juges Administratifs, Juge, Cour Administrative d'Autriche.

M. MARIUZZO, Vice-Président de la Fédération Européenne des Juges Administratifs, Président de la Chambre détachée de Brescia, Tribunal Administratif de Lombardie.

apologised / excusé

COMMISSIONER FOR HUMAN RIGHTS /
COMMISSAIRE AUX DROITS DE L'HOMME

Ms Sirpa RAUTIO, Administrator, Office of the Commissioner for Human Rights, Council of Europe

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (Venice Commission) /
COMMISSION EUROPEENNE POUR LA DEMOCRACIE PAR LE DROIT (Commission de Venise) not represented / non représentée

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

Mr Giovanni PALMIERI, Head of the Department / Chef du Service

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

Mme Catherine GALLAIS, Administrative assistant/Assistante Administrative, Department of Public Law/ Service du Droit Public

Mme Edith LEBEAU, Assistant/Assistante, Department of Public Law / Service du Droit Public

Mme Frédérique BONIFAIX, Assistant/Assistante, Department of Public Law / Service du Droit Public

INTERPRETATION

Mme Katia DI STEFANO
Mr Didier JUNGLING
Mr Christopher TYCZKA

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. Preparation of the preliminary draft report on the feasibility and desirability of preparing a recommendation concerning good administration and/or a consolidated model code of good administration / *Elaboration de l'avant-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 documents / documents de travail

Preliminary draft report prepared by the CJ-DA-GT / *Avant-projet de rapport préparé par le CJ-DA-GT*

CJ-DA-GT (2004) 10

Background documents / Documents de référence

Preliminary draft report as amended by the Swedish delegation / *Avant-projet de rapport tel qu'amendé par la délégation suédoise*

CJ-DA (2005) 3

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

CJ-DA-GT (2004) 8 rev.

Report of the 1st meeting of the Working Party of the Project Group on Administrative Law (CJ-DA-GT) (Strasbourg, 29 September – 1st October 2004) / *Rapport de la 1^{ère} réunion du Groupe de travail du Groupe de projet sur le droit administratif (CJ-DA-GT) (Strasbourg, 29 septembre- 1^{er} octobre 2004)*

CJ-DA-GT (2004) 6

Report of the 2nd meeting of the Working Party of the Project Group on Administrative Law (CJ-DA-GT) (Strasbourg, 8-10 December 2004) / *Rapport de la 2^{ème} réunion du Groupe de travail du Groupe de projet sur le droit administratif (CJ-DA-GT) (Strasbourg, 8-10 décembre 2004)*

CJ-DA-GT (2004) 9

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 16^{ème} 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. Preparation of the preliminary draft specific terms of reference for the CJ-DA for 2005-2006 / *Elaboration de l'avant projet de mandat spécifique révisé pour le CJ-DA pour 2005-2006*

Working document / document de travail

Preliminary draft specific terms of reference for the CJ-DA for 2005-2006 / *Avant-projet de mandat spécifique révisé pour le CJ-DA pour 2005-2006*

CJ-DA (2005) 1

6. Exchange of views on future activities of the CJ-DA / *Echange de vues sur les travaux futurs du CJ-DA*

Background documents / Documents de référence

Legal instruments of the Council of Europe in the field of administrative law / *Les instruments juridiques du Conseil de l'Europe dans le domaine du droit administratif*

CJ-DA (2005) Inf

7. Exchange of views on a multilateral meeting on training of public officials / *Echange de vues sur la réunion multilatérale sur la formation des fonctionnaires*

8. Dates of the future meetings of the CJ-DA-GT / *Dates des prochaines réunions du CJ-DA-GT*

9. Election of the Chair and the Vice-Chair / *Election du Président ou de la Présidente et du Vice-président ou de la Vice-présidente*

Information document / Document d'information

Election of the Chair and the Vice Chair / *Election du Président ou de la Présidente et du Vice-président ou de la Vice-présidente*

CJ-DA (2005) 2

10. Any other business / *Divers*

APPENDIX III

PRELIMINARY DRAFT REPORT ON THE FEASIBILITY AND DESIRABILITY OF PREPARING A RECOMMENDATION 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

1. The requirements of the terms of reference are quite clear.

i) 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*”.

ii) 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)*”.

2. 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.

3. 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*”.

a. What is good governance?

4. The concept of good governance is frequently used, in particular within the framework of international organisations. It can be regarded as a set of standards which are evolving and developing, against which each state’s organisation in the broadest sense, may be measured. It applies to the legislature, the executive as well as the judiciary, all together and at the same time.

5. This general (“umbrella”) concept of good governance has a normative role. It is the duty and the obligation of the political infrastructure of each State to ensure that the applicable standards of good governance 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 allow the State perform in accordance with those standards.

6. Among the standards of good governance, the following 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.

7. 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. It is an important part of the work of the Council of Europe and in particular that of the CJ-DA, that the final aim of good governance is to ensure human rights are respected.

b. What is good administration?

8. 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.

9. Irrespective of whether good administration is classed as a right or not, good administration is an important element of good governance. Good administration requires an administration to have 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.

10. Good administration is a concept applicable to administrative authorities as such, but also to public officials and other persons who, on behalf and under the supervision of the competent administrative authorities, carry out public duties. The applicable standards primarily deal with the external relationship between the administration, including public officials, and individuals. Secondly, they also deal with the internal relationship between the administrative authorities and public officials.

11. In an examination of the standards that underpin good administration, for practical reasons the CJ-DA have divided these standards into four different groups they being: lawfulness, participation, performance, transparency and control.

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

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

13. The CJ-DA has listed no less than 23 standards, each of which is taken from Council of Europe recommendations and resolutions. Many 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 23 standards have been drawn. An attempt has been made to group these standards into the above four groups. Many of the standards referred to in each group could in fact be mentioned and referred to in more than one group.

A/ Standards that apply to lawfulness

- *Lawfulness; obligation ex officio for the administration to enforce the law in cases provided for by the law:*
 - Rec(2000)10 - on codes of conduct for public officials,
 - Rec(2000)6 - on the status of public officials in Europe,
 - R(80)2 - on the exercise of discretionary powers by administrative bodies.
- *Non-discrimination; equality:*
 - Rec(2000)10 - on codes of conduct for public officials.
 - Rec(2000)6 - on the status of public officials in Europe,
 - 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.
- *Prohibition of arbitrary conduct:*
 - Rec(2000)10 - on codes of conduct for public officials,
- *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, neutrality of public officials and of administration:*
 - Rec(2000)10 - on codes of conduct for public officials,
 - Rec(2000)6 - on the status of public officials in Europe,
 - 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 conduct for public officials.
- *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 conduct for public officials,
R(80)2 - on the exercise of discretionary powers by administrative bodies.

- *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.

B/ standards that apply to participation of individuals

- *Participation of individuals in the resolution of disputes through certain alternative means :*

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

- *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.

C/ Standards that apply to performance

- *Courtesy:*

Rec(2000)10 - on codes of conduct for public officials,
Rec(2000)6 - on the status of public officials in Europe.

- *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:*

Rec(2000)6 - on the status of public officials in Europe,
R(97)7 - on local public services and the rights of their users.

D/ 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 and the time-limits for their utilisation :*

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 conduct for public officials.
- *Keeping of adequate records:*
- R(87)16 - on administrative procedures affecting a large number of people.
- *Transparency of administrative activities; active dissemination of information*
- 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:*
 -
- Rec(2002) 2 - on access to official documents,
 Rec(2000)10 - on codes of conduct for public officials,
 R(87)16 - on administrative procedures affecting a large number of people,
 R(81)19 - on access to information held by public bodies,
 Resolution (77)31 - on the protection of individuals in relation to the acts of administrative bodies.

III – Standards of good administration from other sources or texts

14. The aim here will be to identify standards which are not highlighted in any Council of Europe recommendation or resolution but either appear in other texts (at national and international level) or have resulted from other activities (the Warsaw Conference of December 2003²).

A/ Standards that apply to lawfulness

* *Legal certainty*

Administrative acts should have regard to legal vested rights of individuals. Further, administrative acts which lead to change likely to affect individuals adversely should be objectively justified.

* *Good faith*

The administration must act in good faith, so that the individual can rely on what it says and does.

² “Right to good administration”. European Conference organised by the Council of Europe. Warsaw, 4-5 December 2003.

B/ Standards that apply to participation of individuals

- * *Participation and consultation with individuals in administrative activities and decision-making (openness)*

This standard of openness makes it possible, where appropriate, to enhance participation by individuals and other interested parties before an administrative act is taken. It is not only limited to the right to be heard before a decision is made.

- * *Accessibility of the administration and public services*

The administration should be accessible. To achieve that aim, the administration should be mindful of the importance of the quality of service it supplies and should avail itself of information technology. Where it is necessary to deal in person with the administration, the principle of proximity should be taken into account.

C/ Standards that apply to performance

- * *Obligation to transfer to the competent service*

The administration should do all in its power to assist individuals so that they can contact the right body or department they require.

- * *Effectiveness and efficiency*

The administration 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 review regularly whether it can furnish the same amount and standard of services for a lower cost.

- * *Flexibility of administrative activities*

The administration must be capable of adapting its activities to ensure economic efficiency and to respond to the developing needs of society.

- * *Quality of regulations*

The administration must ensure good standards of regulations in that they are understandable, consistent and, if outdated, be updated or revoked. It is desirable at national level to draft guidelines on the quality of regulations by national authorities.

- * *Maintenance, protection and preservation of public property*

The administration must manage the State's property and its assets diligently, as if it were their own household, and prevent them from deteriorating.

- * *Fulfilment of budgetary requirements*

Resources must be managed properly and impartially to ensure value for money.

* *Management of the administrative organisation*

The administration should be organised in such a manner to allow for regular review in relation to the services they provide.

* *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/ Standards that apply to transparency and control

* *The duty to provide information*

The administration should, on request, provide basic information, especially on the procedure leading to a decision.

* *Transparency of the opening of the administrative procedure*

When an individual has requested some act or decision from the administration it should acknowledge receipt of the request and indicate the competent department or public official dealing with the matter, if appropriate.

IV – Conclusions

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

16. 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. It would make matters more intelligible to the public as well as offering them legal and judicial protection. Good administration tallies perfectly with a State governed by the rule of law and is totally consistent with a democratic system of government. A Council of Europe document on good administration could become a new model of administrative practice in the member States.

17. A document on good administration is desirable at a legal level simply because a single, coherent document on good administration is not provided for per se in the instruments of the Council of Europe. There are standards on good administration, but they are scattered and not easily accessible to authorities or individuals.

18. The concept of a “right to good administration” is absent from the European human rights system, despite the fact that it is acknowledged in practically all the member States and has been included as a fundamental right in the EU Charter of Fundamental Rights (Article 41) and is recognised in the new Constitutional Treaty (Article II-101). A new article on a European law on good administration has been included in the Constitutional Treaty (Article III-398). Another important instrument is the European Code of Good Administrative Behaviour, adopted by the European Parliament on 6 September 2001. 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.

19. These EU norms drew their inspiration mainly from member States laws and traditions, as well as from instruments drawn up by the Council of Europe and from European human rights case-law. Good administration has as such not yet, however, been incorporated into the Council of Europe's legal instruments protecting human rights.

20. We can thus conclude that there has been a clear development of the right to good administration in Europe. 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 public officials.

21. The advantage of a specific text would be to co-ordinate scattered, disparate rules. Lastly, such a text would make it possible to work out a model of efficient, rational administrative organisation framed by various standards.

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

The type of document recommended

23. 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 standards of good administration outlined above. However it would take a considerable period of time to update the handbook.

24. The CJ-DA is of the opinion that it would be more effective to prepare either a recommendation or a recommendation with a model code appended on good administration. Either instrument 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.

25. Some of the standards already mentioned in this report are of significant importance and it could be argued that a Charter would be appropriate. However, the CJ-DA is of the view that this might be considered at a future date.

APPENDIX IV**PRELIMINARY DRAFT REVISED SPECIFIC TERMS OF REFERENCE
OF THE PROJECT GROUP ON ADMINISTRATIVE LAW (CJ-DA)**

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

Under the authority of the European Committee on Legal Co-operation (CDCJ), taking into account its revised specific terms of reference for 2005 and having regard to Parliamentary Assembly Recommendation 1615 (2003) on the institution of ombudsman, the CJ-DA is instructed:

- a. with a view to promoting an area of common legal standards throughout Europe, to prepare [a recommendation on good administration]* [a recommendation, accompanied with a consolidated model code of good administration]*, in order to strengthen the legal framework of good administration as an essential element of good governance and improve the functioning of public administration and relations between the administration and individuals;
- b. to propose ways to promote and follow-up the implementation of this legal instrument in the member States;
- c. to 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. Membership of the Committee:

a. The governments of all member States are entitled to appoint members with the following desirable qualifications: senior officials having responsibilities as regards administrative law and administrative justice.

The Council of Europe's budget bears travelling and subsistence expenses for one expert per member State.

b. The Commissioner for Human Rights, the European Commission for Democracy through Law (Venice Commission), the Steering Committee for Human Rights (CDDH) and the Congress of Local and Regional Authorities of the Council of Europe, may send one representative to the meetings of the Group.

c. The European Commission and the General Secretariat of the Council of the European Union may send one representative to the meetings of the Group without the right to vote or defrayal of expenses.

* according to the decision of the CDCJ

d. The following observers with the Council of Europe may send representatives to meetings of the Group without the right to vote or defrayal of expenses:

- Canada,
- Holy See,
- Japan,
- Mexico,
- United States of America.

e. The following observers with the Group may send representatives to meetings of the Group, without the right to vote or defrayal of expenses:

- OECD,
- UN and its specialised organs,
- the International Commission on Civil Status (CIEC),
- the European Public Law Centre and
- the European Federation of Administrative Judges.

6. Working structures and methods:

The CJ-DA may set up working parties, use consultants and organise hearings and consultations.

7. Duration: These terms of reference shall be reviewed before 31 December 2006.