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THE CONTRIBUTION OF THE COUNCIL OF EUROPE TO REINFORCING THE POSITION OF THE INDIVIDUAL IN ADMINISTRATIVE PROCEEDINGS

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THE CONTRIBUTION OF THE COUNCIL OF EUROPE TO REINFORCING THE POSITION OF THE INDIVIDUAL IN ADMINISTRATIVE PROCEEDINGS *

The Council of Europe is the only intergovernmental organisation conducting specific activities on administrative law as such. These became visible to the outside world for the first time eight years ago when the Committee of Ministers adopted Resolution (77) 31 on the protection of the individual in relation to acts of administrative authorities. This was followed in 1980 by Recommendation No. R (80) 2 on the exercise of discretionary powers by administrative authorities.

At first sight, it is somewhat puzzling that it has taken the Council of Europe almost thirty years before it acted in a field which comes so manifestly within its task of guarantor of democracy, rule of law and human rights, all the more so as "... legal and administrative matters" are specifically mentioned as fields of activity in Article 1 b of the Statute. One explanation is that originally, administrative law and administrative procedures were not regarded as subject matters per se. One member State even declared on several occasions that in its domestic legal system there was no such thing. Gradually, as the Council of Europe developed its standard-setting activities, the impact of these activities in the administrative field became clearly visible. Examples are the numerous legal instruments relating to data protection, mutual assistance in administrative matters, aliens law, transfrontier co-operation, social security, equilavence of degrees and diplomas, etc. However, the way in which each State would implement these questions in its domestic administrative law was largely left to its discretion. There is a standard formula in many legal instruments asking States to give effect to common European norms "... in its law and practice."

Several factors have induced the Committee of Ministers to undertake in the 1970s a major intergovernmental activity relating to the protection of the individual vis-à-vis administrative authorities.

First of all, the Human Rights Convention gave only partial satisfaction to the solution of conflicts arising out of the exercise of public authority in administrative cases affecting individuals.

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* This paper is based on a speech given by Mr Frits Hondius, former Deputy to the Director of Human Rights, (in Dutch) on 25 January 1982 at the Raad van State, The Hague

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Secondly, the Convention is designed mainly to check abuses and possibly to help bringing about a friendly settlement of conflicts, but it does not contain detailed standards on good administration. There are many instances of action which the Council of Europe has undertaken outside the framework of the Convention proper in order to foster optimal conditions in specific fields of governmental activity and thus to promote respect for human rights and fundamental freedoms. Examples are the Council of Europe's Conventions, Declarations and Recommendations in the fields of asylum, conditions of detention, data protection, nomads, search for missing persons, mass media. Its action to reinforce the protection of the individual in relation to administrative authorities is yet another example.

A third factor which has stimulated this activity is the fact that more and more administrative acts of one State affect citizens and residents of other States and sometimes even the public administration of other States. An example is the construction of factories or power stations located near the border between two States, for instance when that border is a river. The administrative decisions enabling the construction must take the rights and interests of the population of the neighbouring country into account. The Council of Europe has concluded a number of Conventions on transfrontier co-operation and on mutual assistance in administrative matters which take this need for an "espace européen administratif" into account, and these instruments are based on the assumption that while administrative procedures and remedies at both sides of the border may be widely different in form, they should offer similar guarantees to individuals as far as the substance is concerned.

In this respect, a tendency has developed in the Council of Europe which is inspired by Articles 1 and 14 of the Human Rights Convention. Rights and freedoms of individuals laid down in this and other European instruments should be enjoyed by all, not by some. This means that there is a preference in those cases for universal rather than reciprocal undertakings and for European rather than bilateral instruments.

The contribution of the organs under the Human Rights Convention to the protection of citizens vis-à-vis the administration is the subject of a separate paper. Suffice it to mention here the two milestones in the pioneering work of the Commission and the Court in discovering the common law of Europe in the administrative field, ie the Ringeisen and König cases. The doctrine of the two organs has focussed on Articles 6 (fair trial) and 13 (right to an effective remedy). Although the Convention mentions neither administrative proceedings nor administrative remedies, the Court decided in the Ringeisen Judgment of 16 July 1971 that the fair trial safeguards of Article 6 are applicable to a procedure which under the law of the State complained against is an administrative procedure when that involves the determination of what is deemed under the Convention to be a "civil right" or "criminal charge".

It would be strange indeed if a convention protecting the individual against the State would not apply to one of the most typical State/ citizen relationships, ie the administrative act. The Court developed the Ringeisen doctrine further in its König Judgment of 1978 and the Le Compte, Van Leuven and de Meyere Judgment of 1981 and other Judgments thereafter. It is interesting to note that in the three cases mentioned, the Court also awarded compensation of costs of damages under Article 50.

In summary we can state that the human rights organs have contributed in two distinct ways to clarifying due administrative process. They have made some parts of the administrative field subject to the safeguards laid down in the Convention. With regard to other matters they have excluded from these safeguards, they have nevertheless helped by defining them. Many decisions by the Commission on non-admissibility of applications made to it under Article 25 have listed such matters, such as: the widening of a street or admission to the public service , etc.

At the Ministerial Conference on Human Rights in Vienna in March 1985, it has been proposed that procedural guarantees with regard to individual measures and decisions taken in the exercise of public authority should be studied in depth. This might lead to certain procedural guarantees in administrative matters being included in a Protocol to the Convention. But it is clear that the Human Rights Convention can incorporate only such new rights as are widely accepted in the member States. It is therefore fortunate that already in the early seventies, specialists of the Council of Europe in the field of administrative law have begun to take stock of and codify certain principles of administrative justice common to all member States.

Resolution (77) 31

In 1970, the Committee on Legal Co-operation in Europe (CCJ) included the protection of the individual in relation to acts of administrative authorities in a list of legal questions recommended for action at the European level. It did so on the basis of a report drawn up by four distinguisehd constitutional lawyers, Professor E. Loebenstein (Vienna), B. Christensen (Copenhagen), M. Fromont (Dijon) and H. Wade (Oxford). They pointed out that while various national and international instruments spelled out in detail the rules to protect persons accused of criminal offences or involved in civil disputes, no uniform body of rules existed for example where an authority refused someone a permit to run a taxi service. And yet the financial loss he would suffer as a result might be infinitely greater than, say a fine for a minor traffic offence. In particular, Professor Wade suggested that the

Council of Europe draw up a "European Charter of fair administrative process".

The Committee of Ministers reaeted favourably to the CCJ's proposal for action in this field to the extent even of giving it a high priority.

In 1971, the CCJ set up a Sub-Committee to find out whether any principles common to all member States could be discovered with regard to the protection of the individual in relation to acts of administrative authorities.

The Sub-Committee, chaired by Professor J.M. Grossen (Switzerland) first sent a questionnaire containing 77 questions to the then 17 member States, as well as Finland and Spain, which participated as observers. Extensive replies were received from all States except Iceland and Malta.

Having sifted through the wealth of information received the Grossen Committee presented an interim report to the CCJ in 1974 in the form of an analytical survey. It also based itself on the results of a study on the same topic, but in a world wide context, carried out by the International Institute of Administrative Sciences (IIAS). The main conclusion of the interim report, which was endorsed by the CCJ and the Committee of Ministers, was that:

> "despite the differences between the legal and administrative systems of the member States, it was possible to discern a large measure of agreement on the fundamental aims of the rules relating to the administrative process, in particular the need to ensure fairness in the relations between the individual and the administration".

The CCJ instructed the Grossen Committee to concentrate on the administrative process, ie the process relating to the taking of an administrative decision, and not to concern itself with the second phase, ie remedies against decisions.

The Committee had noted in its interim report that the situation in 1971 with regard to the administrative process showed Europe to be roughly divided into two parts. In some member States, all administrative processes were governed by one general law. This was evidently of great importance for the legal security of the citizens. Whether they were applying for a fishing licence or objecting to the construction of a motorway behind their house, the same basic procedures and rules were applicable. In other member States, the administrative process was different from case

to case. One government replying to the questionnaire stated in fact that it was virtually impossible to answer the different questions asked by the questionnaire for it would require that government to undertake extensive research into the rules and practices governing the activities of its numerous administrative agencies.

The Committee could not help wondering how citizens were supposed to find their way through the administrative labyrinth if the Government admitted not to know it either.

It is true that in the countries belonging to the second category, certain general principles were recognised. But the Committee also noted that there were sometimes two conflicting general principles governing different administrative processes in the same country. For example, in one respondent country applications made by citizens to a public authority were, depending on the subject matter, either considered rejected or granted if that authority did not reply within a given time-limit. Another difficulty which the Committee noted was the fact that in this second category of countries it was often unclear, in the absence of a general rule or principle, whether a specific procedure should be regarded the rule or the exception (for example, with regard to access to information).

On the whole, the Committee found, not surprisingly, that the overall position of the individual vis-à-vis the public administration was more satisfactorily regulated in countries having a general law on administrative procedure. This was not only a factor in favour of the individuals concerned, but also of the administration, which was thus spared the need of devising procedural rules for every particular administrative statute. A typical example to illustrate this point is the right to be heard in administrative proceedings. The Committee found that this right is recognised in all States having a general administrative procedure law. The other States may be divided into those where the right is provided by law or required by case-law in so many cases that it can be said to be the rule, States where it is more sparingly given and those where it appears to be rather the exception.

It should be mentioned that the composition of the Committee greatly contributed to the success of its work. It comprised civil servants, members of conseils d'état or similar bodies, ombudsmen, professors of administrative law and members of administrative tribunals, who brought together theoretical and practical expertise from the different parts of Europe. On many principles, the Committee had no difficulty in identifying a rule common to all member States, for example the rule of proportionality (the decision taken by an authority should not be more onerous for the citizen than is required for the fulfilment of the particular public interest at issue). On other principles, the Committee sometimes found that there was basic agreement even though the principle was

differently worded in different legal systems (eg the German notion of Vertrauensschutz, ie predictability of the action of the public administration). Finally, it found that certain rules considered essential in some countries (eg indication of available remedies to the citizens concerned (Rechtsmittelbelehrung) or the right of a citizen to know the identity of the offical dealing with his case) were not so considered in other countries.

The Committee elaborated a set of principles on administrative justice which it submitted in April 1977 to the CCJ (now the CDCJ, having acquired the status of "Comité Directeur"). The text was adopted on 28 September 1977 by the Committee of Ministers as Resolution (77) 31 on the protection of the individual in relation to the acts of administrative authorities (see Appendix I). It is applicable to individual measures or decisions taken in administrative procedures in the exercise of public authority and of such a nature as to affect the rights, liberties or interests of persons. This excludes acts of an administrative agency not taken in the exercise of public authority, for example as a party to a private law transaction. We should stress that the drafters have not yielded to the temptation of simply referring for the definition of administrative acts to the domestic law of States. Not only would that have handicapped the interpretation of the Resolution, but it was also found that the domestic law of some countries did not even offer a ready definition. The Resolution laid down five major principles, while noting that in their application the requirements of good and effective administration, interests of third parties and major public interests can be taken into account:

i. right to be heard;
ii. access to information;
iii. assistance and representation;
iv. statement of reasons;
v. indication of remedies.

With regard to the right to be heard the Committee noted that in several countries difficulties have arisen in relation to administrative proceedings directly affecting a very large number of people, eg in the case of the construction of a nuclear power plant. This question is at present (1985) being studied with a view to the drawing up of a separate Recommendation.

The question of access to information in administrative cases forms part of a much wider issue of access to public files in general and is also closely related to the right to information as laid down in Article 10 of the Human Rights Convention. As that Article will be the subject of the 6th Colloquy on the Convention to be held in November 1985 in Seville, it does not seem neccesary to elaborate on it here. Let it suffice to mention that following a Colloquy organised by the Council of Europe in Graz, a Recommendation was

adopted by the Committee of Ministers in 1981 (Recommendation No. R (81) 19 on access to information held by public authorities, see Appendix II) and that the Committee of Ministers re-confirmed the principle of the pursuit of an open information policy in the public sector, including access to information in their Declaration of 29 April 1982 on the freedom of expression and information, the importance of making progress in the implementation of this principle was, moreover, stressed again at the above-mentioned Ministerial Conference on Human Rights. Further, the principle of access of the individual to information about himself stored in computerised files has been reaffirmed in the Council of Europe's Resolution (74) 23 on data protection in the public sector as well as the Data Protection Convention of 28 January 1981. The main problem with which the drafters of Resolution (77) 31 were concerned, in connection with both principle (ii) and principle (iv) (statement of reasons) was: how much information and with how much effort on the part of the public administration?

The wording chosen shows that both legal and factual information is meant ("elements of information"). The term "appropriate means" leave the administration a certain flexibility: it may show the whole case file to the citizen or supply him with relevant extracts, but in any case the means should be appropriate. It would not be appropriate, for instance, to overwhelm the citizen with such an amount of information that he feels lost as well (the "truckload" strategy as one expert called it. If the citizen loses and asks for the reason why, the administration might send him another truckload of documents).

With regard to the principle of the citizen's right to be assisted or represented in the administrative procedure (principle iii), the Committee noted that this should not prevent the person concerned from appearing and defending his case himself.

The Committee devoted a great deal of discussion to principle iv (indication of remedies), not so much because of the principle itself as its practical implementation, the main difficulty being that in many instances more than one normal remedy is open to the aggrieved individual. This provision is also closely connected with Article 26 of the Human Rights Convention (exhaustion of domestic remedies). In the opinion of the Committee, an administrative authority should not suffice by simply advising the citizen to go and see his lawyer, nor should it lead him astray by referring to unusual remedies or to recourse to bodies of the ombudsman type who cannot alter the decision.

Recommendation No. R (80) 2

Resolution (77) 31 laid the basis for further co-operation between the member States in the field of administrative justice. When it presented the draft text to the CDCJ and the Committee of Ministers,

the Committee of Experts of administrative law called attention to a number of other questions which required a common European approach. Among these was the question of the exercise of discretionary powers by administrative authorities. These powers allow an authority to choose from among several solutions which the law permits, the one which appears most fitting (eg selecting one from a number of equally qualified applicants for an appointment).

Originally, some member States had reservations. Since discretionary power means leaving the administration a certain latitude, how could one legally circumscribe the application of that criterion?

To this, the Committee replied that "discretion" should never be allowed to deteriorate into "arbitrariness" or "abuse of power" and that the administration should never lose sight of the purpose for which it received the power.

The Committee began work on this question in December 1978 and already by May 1979 had adopted a draft Recommendation; this was approved by the CDCJ and adopted by the Committee of Ministers on 11 March 1980, as Recommendation No. R (80) 2 on the exercise of discretionary powers by administrative authorities (see Appendix III).

It is interesting to note that the Committee was inspired, inter alia, by an Australian act on the same subject. Australia, being an immigration country with a common law tradition, had a particular need for a law on the relationship between citizens and authorities, drawn up in the clearest possible language.

Contrary to Resolution (77) 31, the new Recommendation deals both with administrative decision-making and administrative review.

With regard to the decisions themselves, the Recommendation lists six criteria which the authority taking them should observe:

i. the purpose for which the power was granted;
ii. objectivity and impartiality;
iii. equality before the law and non-discrimination;
iv. proportionality;
v. reasonable time
vi. consistency (predictability).

With regard to the procedure, the Recommendation refers back to the rules contained in Resolution (77) 31 but adds to these:

vii. publicity of administrative guidelines;
viii. statement of reasons in case of deviations from the guidelines.

With regard to review the Recommendation contains three principles:

ix. the legality of discretionary decisions should be subject to review by a judicial or other independent body

x. failure to take a decision within a reasonable time, in cases where no time-limit has been fixed by law, should be subject to review;

xi. the control organs must have sufficient powers to obtain the necessary information.

Concluding Remarks

This activity of the Council of Europe, which is supplementary to the Human Rights Convention, fills a specific need in the field of administrative law. The range of responsibilities and regulatory activities of the modern State is enormous and the speed with which new urgent problems arise is such that the law-maker has considerable difficulty keeping up with it. His desire to avoid a legal vacuum and to regulate new questions in detail, may result in a lack of attention to general principles of justice and fairness. Administrative authorities, for their part, may even be confronted with total silence on the part of the law.

In all these situations it is very useful to have available a concise, sensible and general code, such as is contained in Resolution (77) 31 and Recommendation (80) 2.

This activity of the Council of Europe may also help certain countries to overcome internal obstacles. They can now point to the common agreement reached in the Council of Europe with regard to principles of administrative justice and fairness. A clear example are the laws which several member States have introduced or adopted, since 1977, on access to information and on the general administrative process. The working methods of the Council of Europe enable States, in particular, to learn from each other. Participation of member States in these activities also enable each State to see its own peculiar system, product of a long historial evolution, against a common European background.

APPENDIX I

RESOLUTION (77) 31

ON THE PROTECTION OF THE INDIVIDUAL IN RELATION TO THE ACTS OF ADMINISTRATIVE AUTHORITIES

(Adopted by the Committee of Ministers on 28 September 1977, at the 275th meeting of the Ministers' Deputies)

The Committee of Ministers,

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

Considering that, in spite of the differences between the administrative and legal systems of the member states, there is a broad consensus concerning the fundamental principles which should guide the administrative procedures and particularly the necessity to ensure fairness in the relations between the individual and administrative authorities ;

Considering that it is desirable that acts of administrative authorities should be taken in ways conducive to the achievement of those aims ;

Considering that, in view of the increasing co-operation and mutual assistance between member states in administrative matters and the increasing international movement of persons, it is desirable to promote a common standard of protection in all member states,

Recommends the governments of member states :

a. to be guided in their law and administrative practice by the principles annexed to this resolution,

b. to inform the Secretary General of the Council of Europe, in due course, of any significant developments in relation to the matters referred to in the present resolution ;

Instructs the Secretary General of the Council of Europe to bring the contents of this resolution to the notice of the governments of Finland and Spain.

Appendix to Resolution (77) 31

The following principles apply to the protection of persons, whether physical or legal, in administrative procedures with regard to any individual measures or decisions which are taken in the exercise of public authority and which are of such nature as directly to affect their rights, liberties or interests (administrative acts).

In the implementation of these principles the requirements of good and efficient administration, as well as the interests of third parties and major public interests should be duly taken into account. Where these requirements make it necessary to modify or exclude one or more of these principles, either in particular cases or in specific areas of public administration, every endeavour should nevertheless be made, in conformity with the fundamental aims of this resolution, to achieve the highest possible degree of fairness.

I

Right to be heard

1. In respect of any administrative act of such nature as is likely to affect adversely his rights, liberties or interests, the person concerned may put forward facts and arguments and, in appropriate cases, call evidence which will be taken into account by the administrative authority.

2. In appropriate cases the person concerned is informed, in due time and in a manner appropriate to the case, of the rights stated in the preceding paragraph.

II

Access to information

At his request, the person concerned is informed, before an administrative act is taken, by appropriate means, of all available factors relevant to the taking of that act.

III

Assistance and representation

The person concerned may be assisted or represented in the administrative procedure.

IV

Statement of reasons

Where an administrative act is of such nature as adversely to affect his rights, liberties or interests, the person concerned is informed of the reasons on which it is based. This is done either by stating the reasons in the act, or by communicating them, at his request, to the person concerned in writing within a reasonable time.

V

Indication of remedies

Where an administrative act which is given in written form adversely affects the rights, liberties or interests of the person concerned, it indicates the normal remedies against it, as well as the time-limits for their utilisation.

APPENDIX II

RECOMMENDATION No. R (81) 19

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON THE ACCESS TO INFORMATION HELD BY PUBLIC AUTHORITIES [1]

(Adopted by the Committee of Ministers on 25 November 1981 at the 340th meeting of the Ministers' Deputies)

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

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

Having regard to Assembly Recommendation 854 on access by the public to government records and freedom of information ;

Considering the importance for the public in a democratic society of adequate information on public issues ;

Considering that access to information by the public is likely to strengthen confidence of the public in the administration ;

Considering therefore that the utmost endeavour should be made to ensure the fullest possible availability to the public of information held by public authorities,

Recommends the governments of member states to be guided in their law and practice by the principles appended to this recommendation.

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1. When Recommendation No R (81) 19 was adopted, and in application of Article 10.2.*c* of the Rules of Procedure for the meetings of the Ministers' Deputies, the Representatives of Italy and Luxembourg reserved the right of their governments to comply with it or not.

Appendix to Recommendation No. R (81) 19

The following principles apply to natural and legal persons. In the implementation of these principles regard shall duly be had to the requirements of good and efficient administration. Where such requirements make it necessary to modify or exclude one or more of these principles, either in particular cases or in specific areas of public administration, every endeavour should nevertheless be made to achieve the highest possible degree of access to information.

I.

Everyone within the jurisdiction of a member state shall have the right to obtain, on request, information held by the public authorities other than legislative bodies and judicial authorities.

II.

Effective and appropriate means shall be provided to ensure access to information.

III.

Access to information shall not be refused on the ground that the requesting person has not a specific interest in the matter.

IV.

Access to information shall be provided on the basis of equality.

V.

The foregoing principles shall apply subject only to such limitations and restrictions as are necessary in a democratic society for the protection of legitimate public interests (such as national security, public safety, public order, the economic well-being of the country, the prevention of crime, or for preventing the disclosure of information received in confidence), and for the protection of privacy and other legitimate private interests, having, however, due regard to the specific interest of an individual in information held by the public authorities which concerns him personally.

VI.

Any request for information shall be decided upon within a reasonable time.

VII.

A public authority refusing access to information shall give the reasons on which the refusal is based, according to law or practice.

VIII.

Any refusal of information shall be subject to review on request.

APPENDIX III

RECOMMENDATION No. R (80) 2

OF THE COMMITTEE OF MINISTERS CONCERNING THE EXERCISE OF DISCRETIONARY POWERS BY ADMINISTRATIVE AUTHORITIES

(Adopted by the Committee of Ministers on 11 March 1980 at the 316th meeting of the Ministers' Deputies)

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

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

Considering that administrative authorities are acting in an increasing number of fields, and, in the process, are frequently called upon to exercise discretionary powers ;

Considering it is desirable that common principles be laid down in all member states to promote the protection of the rights, liberties and interests of persons whether physical or legal against arbitrariness or any other improper use of a discretionary power, without at the same time impeding achievement by the administrative authorities of the purpose for which the power has been conferred ;

Recalling the general principles governing the protection of the individual in relation to the acts of administrative authorities as set out in Resolution (77) 31 ;

Considering that it is desirable that the said Resolution be supplemented when applied to acts taken in the exercise of discretionary powers,

Recommends the governments of member states :

a. to be guided in their law and administrative practice by the principles annexed to this recommendation,

b. to inform the Secretary General of the Council of Europe, in due course, of any significant developments relating to the matters referred to in the present recommendation ;

Instructs the Secretary General of the Council of Europe to bring the contents of this recommendation to the notice of the Government of Finland.

Appendix to Recommendation No. R (80) 2

Principles applicable to the exercise discretionary powers by administrative authorities

I. *Scope and definitions*

The following principles apply to the protection of the rights, liberties and interests of persons with regard to administrative acts taken in the exercise of discretionary powers.

The term "administrative act" means, in accordance with Resolution (77) 31, any individual measure or decision which is taken in the exercise of public authority and which is of such nature as directly to affect the rights, liberties or interests of persons whether physical or legal.

The term "discretionary power" means a power which leaves an administrative authority some degree of latitude as regards the decision to be taken, enabling it to choose from among several legally admissible decisions the one which it finds to be the most appropriate.

In the implementation of these principles the requirements of good and efficient administration, as well as the interests of third parties and major public interests should be duly taken into account. Where these requirements or interests make it necessary to modify or exclude one or more of these principles, either in particular cases or in specific areas of public administration, every endeavour should nevertheless be made to observe the spirit of this recommendation.

II. *Basic principles*

An administrative authority, when exercising a discretionary power :

1. does not pursue a purpose other than that for which the power has been conferred ;

2. observes objectivity and impartiality, taking into account only the factors relevant to the particular case ;

3. observes the principle of equality before the law by avoiding unfair discrimination ;

4. maintains a proper balance between any adverse effects which its decision may have on the rights, liberties or interests of persons and the purpose which it pursues ;

5. takes its decision within a time which is reasonable having regard to the matter at stake ;

6. applies any general administrative guidelines in a consistent manner while at the same time taking account of the particular circumstances of each case.

III. *Procedure*

In addition to the principles of fair administrative procedure governing administrative acts in general as set out in Resolution (77) 31, the following principles apply specifically to the taking of administrative acts in the exercise of a discretionary power.

7. Any general administrative guidelines which govern the exercise of a discretionary power are :

i. made public, or

ii. communicated in an appropriate manner and to the extent that is necessary to the person concerned, at his request, be it before or after the taking of the act concerning him.

8. Where an administrative authority, in exercising a discretionary power, departs from a general administrative guideline in such a manner as to affect adversely the rights, liberties or interests of a person concerned, the latter is informed of the reasons for this decision.

This is done either by stating the reasons in the act or by communicating them, at his request, to the person concerned in writing within a reasonable time.

IV. *Control*

9. An act taken in the exercise of a discretionary power is subject to control of legality by a court or other independent body.

This control does not exclude the possibility of a preliminary control by an administrative authority empowered to decide both on legality and on the merits.

10. Where no time-limit for the taking of a decision in the exercise of a discretionary power has been set by law and the administrative authority does not take its decision within a reasonable time, its failure to do so may be submitted to control by an authority competent for the purpose.

11. A court or other independent body which controls the exercise of a discretionary power has such powers of obtaining information as are necessary for the exercise of its function.